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DIVISION 1

MODEL RULES FOR RULEMAKING

Definitions

137-001-0005
Definitions

For the purposes of OAR 137-001-0005 to 137-005-0070, unless otherwise defined therein, the words and phrases used in these rules have the same meaning as given to them in ORS 183.310 and:

(1) "Consensus" means a decision developed by a collaborative DR process that each participant can accept;

(2) "Convenor" means a person who aids in identifying appropriate issues and members for a collaborative rulemaking committee to develop a proposed rule, or who aids in identifying issues and participants for a collaborative dispute resolution process;

(3) "Collaborative dispute resolution process" or "collaborative DR process" means any process by which a collaborative dispute resolution provider assists the participants in working together to develop a mutually acceptable resolution to a controversy. A collaborative DR process does not include:

(a) Contested case hearings; or

(b) Meetings, outside of a collaborative rulemaking process, in which a facilitator is used solely to lead an orderly meeting, manage an agenda or assist the group in accomplishing tasks and the facilitator is not attempting to resolve a controversy by developing consensus among the participants.

(4) "Collaborative dispute resolution provider" or "collaborative DR provider" means an individual who assists the participants in a dispute resolution process to work together to develop a mutually acceptable resolution to a controversy. The collaborative DR provider may function as a mediator, facilitator, convenor, neutral fact-finder or other neutral. Arbitrators, investigators, customer service representatives and ombudspersons are not considered collaborative dispute resolution providers.

(5) "Disputants" means agencies, persons or entities, or their representatives, who have a direct interest in a controversy and does not include a collaborative DR provider or person involved only as a witness.

(6) "Mediation" means a process in which a collaborative DR provider assists two or more disputants in reaching a mutually acceptable resolution of the controversy. Mediation may also include facilitation or other processes in which a facilitator or other collaborative DR provider encourages and fosters discussions and negotiations aimed at reaching consensus among process participants.

(7) "Neutral fact-finder" means a third party who assists with the resolution of a controversy by conducting an investigation of critical facts and rendering non-binding, advisory findings.

(8) "Participants" means agencies, persons or entities involved in a dispute resolution proceeding, other than a collaborative DR provider or witness.

(9) "Agreement to collaborate" means the agreement specified in OAR 137-005-0030.

Stat. Auth.: ORS 183.341 & 183.502
Stats. Implemented: ORS 183.502
Hist.: 1AG 1-1981, f. & ef. 11-17-81; JD 2-1986, f. & ef. 1-27-86; JD 1-1997, f. 3-28-97, cert. ef. 4-1-97; JD 3-1997, f. 9-4-97, cert. ef. 9-15-97; DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

Rulemaking

137-001-0007
Public Input Prior to Rulemaking

(1) The agency may seek public input before giving notice of intent to adopt, amend, or repeal a rule. Depending upon the type of rulemaking anticipated, the agency may appoint an advisory committee, solicit the views of persons on the agency's mailing list maintained pursuant to ORS 183.335(8), or use any other means to obtain public views to assist the agency.

(2) If the agency appoints an advisory committee, the agency shall make a good faith effort to ensure that the committee's members represent the interests of persons likely to be affected by the rule. The meetings of the advisory committee shall be open to the public.

(3) If the advisory committee indicates that the rule will have a significant adverse impact on small businesses, the agency will seek the advisory committee's recommendations on compliance with ORS 183.540.

(4) The agency will consider recommendations from the advisory committee in preparing the statement of fiscal impact required by ORS 183.335(2)(b)(E).

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341 & 183.333
Hist.: JD 6-1993, f. 11-1-93, cert. ef. 11-4-93; JD 6-1995, f. 8-25-95, cert. ef. 9-9-95; JD 3-1997, f. 9-4-97, cert. ef. 9-15-97; DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 10-2005, f. 10-31-05, cert. ef. 1-1-06

137-001-0008
Assessment for Use of Collaborative Process in Rulemaking

(1) The agency may, in its discretion, conduct an assessment to determine if collaborative rulemaking is appropriate and, if so, under what conditions. The agency may consider any relevant factors, including whether:

(a) There is a need for a rulemaking action;

(b) The persons, interest groups or entities that will be significantly affected by any rulemaking action resulting from the collaborative rulemaking process:

(A) Are not so numerous that it would be impractical to convene a collaborative rulemaking committee;

(B) Can be readily identified;

(C) Are willing to participate in the collaborative rulemaking;

(D) Are willing to negotiate in good faith; and

(E) Have the time, resources and ability to participate effectively in a collaborative rulemaking process;

(c) The persons identified as representative of the interests of a group of persons or of an organization have sufficient authority to negotiate on behalf of the group or organization they represent;

(d) There is a reasonable likelihood that a committee will reach a consensus on the proposed rulemaking action within an appropriate period of time to avoid unreasonable delay in the agency's final rulemaking;

(e) The interest of the agency is in joint problem-solving, agreement or consensus which could best be met through collaborative rulemaking, and not solely in obtaining public comment, consultation or feedback, which may be addressed through an advisory committee;

(f) If the public involvement objectives of ORS 183.333 are best met through the use of a collaborative rulemaking process.

(g) The agency has adequate resources and is willing to commit such resources, including technical assistance, to the committee;

(h) The agency, to the extent consistent with its legal obligations, will use the consensus of the committee with respect to the proposed rulemaking action as the basis for a notice of intended adoption, amendment, or repeal of a rule pursuant to ORS 183.335; and

(i) Whether a collaborative rulemaking committee should also serve as an advisory committee under ORS 183.333(1).

(2) The agency may use the services of a convenor to assist the agency in conducting the assessment and in further identifying persons, interest groups or entities who will be significantly affected by a proposed rulemaking action and the issues of concern to them, and in ascertaining whether a collaborative rulemaking committee is feasible and appropriate for the particular rulemaking action. Upon

request of the agency, the convenor may ascertain the names of persons who are willing and qualified to represent interests that will be significantly affected by the proposed rule.

(3) Upon request of the agency, the convenor shall report findings in writing and may make recommendations to the agency. Any written report and recommendations of the convenor shall be made available to the public upon request.

(4) If the collaborative rulemaking committee also serves as an advisory committee under ORS 183.333(1), the committee will make recommendations about the fiscal impact of the proposed rule or rules, as required by ORS 183.333.

Stat. Auth.: ORS 183.341 & 183.502
Stats. Implemented: ORS 183.502, 183.333 & 183.341
Hist.: JD 1-1997, f. 3-28-97, cert. ef. 4-1-97; DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 10-2005, f. 10-31-05, cert. ef. 1-1-06

137-001-0009
Use of Collaborative Dispute Resolution in Rulemaking

(1) If, after consideration of the factors set out in OAR 137-001-0008, the agency establishes a collaborative rulemaking committee, the agency shall inform the committee regarding:

(a) The membership of the rulemaking committee;

(b) Whether or not the agency will be a member of the committee;

(c) A proposed agenda and schedule for completing the work of the committee, including a target date for publication by the agency of any intended rulemaking action pursuant to ORS 183.335; and

(d) Whether or not the rulemaking committee also serves as an advisory committee under ORS 183.333(1) and is therefore subject to 183.333(3) and (4).

(2) The agency may inform persons on the agency's mailing list maintained pursuant to ORS 183.335(8), those legislators designated in ORS 183.335(15) and any other persons of the subject and scope of rulemaking action that may result from the work of the collaborative rulemaking committee.

(3) The agency may limit membership on a collaborative rulemaking committee to ensure proper functioning of the committee or to achieve balanced membership. If the agency will be a member of the committee, the person or persons representing the agency may participate in the deliberations and activities of the committee with the same status as other members of the committee.

(4) A collaborative rulemaking committee established under this rule shall consider the matter proposed by the agency and attempt to reach a consensus concerning a proposed rulemaking action with respect to such matter.

(5) If the collaborative rulemaking committee established under this rule serves as an advisory committee under ORS 183.333(1), the committee shall comply with ORS 183.333(3) and (4).

(6) The agency shall explain to the committee the agency's expectations for using any consensus reached by the committee in any rulemaking action and explain the decision making process within the agency that would be necessary to bind the agency to any consensus reached by the committee.

(7) The agency may select a facilitator, subject to removal by the committee by consensus. In selecting a facilitator, the agency may consider the convenor or any qualified individual, including an agency employee. If the committee elects to remove the facilitator selected by the agency, the agency may select another facilitator or allow the committee to select a facilitator by consensus. An individual designated to represent the agency in substantive issues may not serve as a facilitator or otherwise chair the committee.

(8) A facilitator approved or selected by a collaborative rulemaking committee may chair the meetings of the committee, assist the members of the committee in conducting discussions and negotiations, or manage the keeping of minutes and records and such assistance, if any, shall be provided in an impartial manner.

(9) For purposes of a collaborative rulemaking, both convenors and facilitators are considered dispute resolution providers, except that the agency's personal services contract for convenors need not contain the elements listed in OAR 137-005-0040(6)(b).

(10) A collaborative rulemaking committee established under this rule may adopt procedures for the operation of the committee. If the committee reaches a consensus on a proposed rulemaking action, the committee shall transmit to the agency a report containing the proposed rulemaking action. If the committee does not reach a consensus on a proposed rulemaking action, the committee may transmit to the agency a report specifying any areas in which the committee did reach a consensus.

(11) If the agency chooses to proceed with a rulemaking action after receiving the report of the committee, the agency shall comply with the rulemaking procedures in ORS 183.325 to 183.355.

(12) The agency may request the committee to reconvene after a notice of proposed rulemaking action required by ORS 183.335(1) in order to consider any public comments received by the agency related to the rule. If the agency wishes to receive input from the committee after the deadline for comment on the proposed rulemaking action, the agency shall extend the comment deadline in order to receive such recommendations from the committee. The agency shall provide notice of the extended deadline to persons on the agency's mailing list maintained pursuant to 183.335(8), to those legislators designated in 183.335(15) and to persons identified in its notice rule adopted under 183.341(4).

(13) The collaborative rulemaking committee shall terminate upon the agency's adoption, amendment, or repeal of the final rule under consideration, unless the committee specifies an earlier termination date. The agency may terminate the collaborative rulemaking committee at any time.

(14) The members of a collaborative rulemaking committee are responsible for their own expenses of participation in the committee. If authorized by law, the agency may pay a member's reasonable travel and per diem expenses and other expenses as the agency deems appropriate.

Stat. Auth.: ORS 183.341 & 183.502
Stats. Implemented: ORS 183.502, 183.333 & 183.341
Hist.: JD 1-1997, f. 3-28-97, cert. ef. 4-1-97; JD 3-1997, f. 9-4-97, cert. ef. 9-15-97; DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 10-2005, f. 10-31-05, cert. ef. 1-1-06

137-001-0011
Permanent Rulemaking Notice

(1) The agency will give notice of proposed permanent rulemaking to those listed in the rule adopted under ORS 183.341(4) and to legislators specified by 183.335(15) by mailing, electronic mailing, or personally delivering a copy of the rule or rules as proposed and a copy of the notice required under 183.335(2). In lieu of providing a copy of the rule or rules as proposed, the agency may describe the subject matter of the rule or rules and state how and where a copy may be obtained on paper, via electronic mail, or from a specified web site. If the agency posts the rule or rules on a web site, the agency must provide a web address or link sufficient to enable a person to find the rules easily. Failure to provide a web address or link shall not affect the validity of any rule.

(2) Persons who have asked the agency to send notices of proposed rulemaking to them pursuant to ORS 183.335(8) may choose to receive copies of the proposed rule or rules and notice required under 183.335(2) by mail.

(3) If the agency offers it, persons who have asked the agency to send notices of proposed rulemaking to them pursuant to ORS 183.335(8) may choose to receive:

(a) An abbreviated form of mailed notice containing the caption, summary, and information about how to comment, required by ORS 183.335(2)(a), accompanied by a reference to a web site where copies of the proposed rule or rules and other information required by 183.335(2) are posted or

(b) Notice by electronic mail that either contains the proposed rule or rules and the notice required under ORS 183.335(2) as attachments or provides a reference to a web site where the notice and the rule(s) are posted.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.335 & 183.341
Hist.: JD 1-1988, f. & cert. ef. 3-3-88; JD 5-1989, f. 10-6-89, cert. ef. 10-15-89; JD 7-1991, f. & cert. ef. 11-4-91; JD 6-1993, f. 11-1-93, cert. ef. 11-4-93; JD 3-1997, f. 9-4-97, cert. ef. 9-15-97; DOJ 10-2005, f. 10-31-05, cert. ef. 1-1-06; DOJ 10-2007, f. 10-15-07 cert. ef. 1-1-08

137-001-0018
Limitation of Economic Effect on Small Businesses

(1) Before the adoption of a permanent rule, the agency will determine whether the economic effect upon small business is significantly adverse, based upon:

(a) The economic effect analysis under ORS 183.335(2)(b)(E);

(b) The statement of cost of compliance effect on small businesses described in ORS 183.336;

(c) Recommendations from any advisory committee appointed under ORS 183.333(1) or from any fiscal impact advisory committee, if any, appointed under ORS 183.333(5); and

(d) Comments made in response to its rulemaking notice.

(2) If the agency determines there is a significant adverse effect on a small business or small businesses, it shall modify the rule to reduce the rule's adverse economic impact on those businesses to the extent consistent with the public health and safety purposes of the rule, as provided in ORS 183.540.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341 & 183.540
Hist.: 1AG 1-1981, f. & ef. 11-17-81; JD 2-1986, f. & ef. 1-27-86; DOJ 10-2005, f. 10-31-05, cert. ef. 1-1-06; DOJ 10-2007, f. 10-15-07 cert. ef. 1-1-08

137-001-0030
Conduct of Rulemaking Hearings

(1) The hearing to consider a rule shall be conducted by and shall be under the control of the presiding officer. The presiding officer may be the chief administrative officer of the agency, a member of its governing body, or any other person designated by the agency.

(2) At the beginning of the hearing, any person wishing to be heard shall provide their name, address, and affiliation to the presiding officer. The presiding officer may also require that the person complete a form showing any other information the presiding officer deems appropriate. Additional persons may be heard at the discretion of the presiding officer.

(3) At the beginning of the hearing, the presiding officer must summarize, to the extent requested by any participant, the content of the notice given under ORS 183.335.

(4) Subject to the discretion of the presiding officer, the order of the presentation shall be:

(a) Statements of proponents;

(b) Statements of opponents; and

(c) Statements of other witnesses present and wishing to be heard.

(5) The presiding officer or any member of the agency may question any witness making a statement at the hearing. The presiding officer may permit other persons to question witnesses.

(6) There shall be no additional statement given by any witness unless requested or permitted by the presiding officer.

(7) The hearing may be continued with recesses as determined by the presiding officer until all listed witnesses have had an opportunity to testify.

(8) The presiding officer shall, when practicable, receive all physical and documentary evidence presented by witnesses. Exhibits shall be marked and shall identify the witness offering the exhibit. Any written exhibits shall be preserved by the agency pursuant to any applicable retention schedule for public records under ORS 192.001 et seq.

(9) The presiding officer may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious, or immaterial matter.

(10) The presiding officer shall make a record of the proceeding, by audio or video tape recording, stenographic reporting or minutes.

Stat. Auth.: ORS 183.341 & 183.390
Stats. Implemented: ORS 183.335(3) & 183.341
Hist.: 1AG 14, f. & ef. 10-22-75; 1AG 4-1979, f. & ef. 12-3-79; 1AG 1-1981, f. & ef. 11-17-81; JD 2-1986, f. & ef. 1-27-86; JD 1-1988, f. & cert. ef. 3-3-88; JD 5-1989, f. 10-6-89, cert. ef. 10-15-89; JD 7-1991, f. & cert. ef. 11-4-91; DOJ 10-2005, f. 10-31-05, cert. ef. 1-1-06; DOJ 10-2007, f. 10-15-07 cert. ef. 1-1-08

137-001-0040
Rulemaking Record

(1) The agency shall maintain a record of any data or views it receives in response to a notice of intent to adopt, amend, or repeal a rule.

(2) If a hearing is held, the agency may require the presiding officer, within a reasonable time after the hearing, to provide the agency a written summary of statements given and exhibits received and a report of the officer's observations of physical experiments, demonstrations, or exhibits. The presiding officer may make recommendations but such recommendations are not binding upon the agency.

(3) The rulemaking record shall be maintained by the rules coordinator. The agency shall make the rulemaking record available to members of the public upon request.

(4) The rulemaking record will include:

(a) The presiding officer's summary of or a recording of oral submissions received at the hearing, and the presiding officer's recommendation, if any;

(b) Any written comments received in response to the notice of rulemaking;

(c) The recommendations of an advisory committee or fiscal impact advisory committee, if any, appointed under ORS 183.333;

(d) The agency's statements of the objective of the rule, including how the agency will evaluate whether the rule accomplishes the objective, when required by ORS 183.335(3)(d);

(e) Any public comment received in response to the request for comments made pursuant to ORS 183.335(2)(b)(G);

(f) The notice of the agency's intended action, required by ORS 183.335(1) and (2); and

(g) A copy of the filing with the Secretary of State, required by ORS 183.355(1) or (3).

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.335(3), 183.341 & 183.355
Hist.: 1AG 14, f. & ef. 10-22-75; 1AG 1-1981, f. & ef. 11-17-81; JD 2-1986, f. & ef. 1-27-86; JD 6-1993, f. 11-1-93, cert. ef. 11-4-93; JD 7-1995, f. 8-25-95, cert. ef. 1-1-96; DOJ 10-2005, f. 10-31-05, cert. ef. 1-1-06

137-001-0050
Agency Rulemaking Action

At the conclusion of the hearing, or after receipt of the presiding officer's requested report and recommendation, if any, the agency may adopt, amend, or repeal rules covered by the notice of intended action. The agency shall fully consider all written and oral submissions.

Stat. Auth.: ORS 183
Stats. Implemented: ORS 183.335(3)
Hist.: 1AG 14, f. & ef. 10-22-75; 1AG 1-1981, f. & ef. 11-17-81; JD 2-1986, f. & ef. 1-27-86

137-001-0060
Secretary of State Rule Filing

(1) The agency shall file in the office of the Secretary of State a certified copy of each adopted or amended rule and each order repealing an agency rule.

(2) The rule or order shall be effective upon filing with the Secretary of State unless a different effective date is required by statute or specified in the rule or order.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341 & 183.355
Hist.: 1AG 14, f. & ef. 10-22-75; 1AG 17, f. & ef. 11-25-77; 1AG 4-1979, f. & ef. 12-3-79; JD 2-1986, f. & ef. 1-27-86; JD 5-1989, f. 10-6-89, cert. ef. 10-15-89; JD 3-1997, f. 9-4-97, cert. ef. 9-15-97; DOJ 10-2005, f. 10-31-05, cert. ef. 1-1-06

137-001-0070
Petition to Promulgate, Amend, or Repeal Rule

OAR 137-001-0070 was adopted by the Attorney General as required by ORS 183.390. Agencies must apply this rule without further adoption or amendment.

(1) An interested person may petition an agency to adopt, amend, or repeal a rule. The petition shall state the name and address of the petitioner and any other person known to the petitioner to be

interested in the rule. The petition shall be legible, signed by or on behalf of the petitioner, and shall contain a detailed statement of:

(a) The rule petitioner requests the agency to adopt, amend, or repeal. When a new rule is proposed, the petition shall set forth the proposed language in full. When an amendment of an existing rule is proposed, the rule shall be set forth in the petition in full with matter proposed to be deleted and proposed additions shown by a method that clearly indicates proposed deletions and additions;

(b) Facts or arguments in sufficient detail to show the reasons for and effects of adoption, amendment, or repeal of the rule;

(c) All propositions of law to be asserted by petitioner.

(2) If the petitioner requests the amendment or repeal of an existing rule, the petition must also contain comments on:

(a) Options for achieving the existing rule's substantive goals while reducing the negative economic impact on businesses;

(b) The continued need for the existing rule;

(c) The complexity of the existing rule;

(d) The extent to which the existing rule overlaps, duplicates, or conflicts with other state or federal rules and with local government regulations; and

(e) The degree to which technology, economic conditions, or other factors have changed in the subject area affected by the existing rule, since the agency adopted the rule.

(3) If a petition requests the amendment or repeal of a rule, before denying a petition, the agency must invite public comment upon the rule, including whether options exist for achieving the rule's substantive goals in a way that reduces the negative economic impact on businesses.

(4) The agency:

(a) May provide a copy of the petition, together with a copy of the applicable rules of practice, to all persons named in the petition;

(b) May schedule oral presentations;

(c) Shall, in writing, within 90 days after receipt of the petition, either deny the petition or initiate rulemaking proceedings.

Stat. Auth.: ORS 183.390
Stats. Implemented: ORS 183.390
Hist.: 1AG 14, f. & ef. 10-22-75; 1AG 1-1981, f. & ef. 11-17-81; JD 6-1983, f. 9-23-83, ef. 9-26-83; JD 2-1986, f. & ef. 1-27-86; JD 5-1989, f. 10-6-89, cert. ef. 10-15-89; JD 7-1991, f. & cert. ef. 11-4-91; JD 6-1995, f. 8-25-95, cert. ef. 9-9-95; DOJ 12-2003(Temp), f. & cert. ef. 10-10-03 thru 4-7-04; DOJ 13-2003, f. & cert. ef. 12-9-03; DOJ 10-2005, f. 10-31-05, cert. ef. 1-1-06

137-001-0080
Temporary Rulemaking Requirements

(1) If no notice has been provided before adoption of a temporary rule, the agency shall give notice of its temporary rulemaking to persons, entities, and media specified under ORS 183.335(1) by mailing, electronic mailing, or personally delivering to each of them a copy of the rule or rules as adopted and a copy of the statements required under 183.335(5). The agency may provide a summary of the rule or rules and state how and where a copy of the rule or rules may be obtained on paper, via electronic mail or from a specified web site. If the agency posts the rule or rules on a web site, the agency must provide a web address or link sufficient to enable a person to find the rules easily. Failure to give this notice shall not affect the validity of any rule.

(2) Persons who have asked the agency to mail notices of proposed rulemaking to them pursuant to ORS 183.335(8) may choose to receive notice by mail, and not electronically.

(3) The agency shall file with the Secretary of State a certified copy of the temporary rule and a copy of the statement required by ORS 183.335(5).

(4) A temporary rule is effective for 180 days, unless a shorter period is specified in the temporary rule or the certificate of filing for the temporary rule.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.335(5), 183.341 & 183.355
Hist.: 1AG 14, f. & ef. 10-22-75; 1AG 17, f. & ef. 11-25-77; 1AG 4-1979, f. & ef. 12-3-79; 1AG 1-1981, f. & ef. 11-17-81; JD 6-1983, f. 9-23-83, ef. 9-26-83; JD 2-1986, f. & ef. 1-27-86; JD 5-1989, f. 10-6-89, cert. ef. 10-15-89; JD 7-1991, f. & cert. ef. 11-4-91; JD 6-1993, f. 11-1-93, cert. ef. 11-4-93; JD 7-1995, f. 8-25-95, cert. ef. 1-1-96; DOJ 10-2005, f. 10-31-05, cert. ef. 1-1-06; DOJ 10-2007, f. 10-15-07 cert. ef. 1-1-08

137-001-0087
Objections to Statements of Fiscal Impact

(1) An objection to a fiscal impact statement must be filed in writing and must:

(a) Identify the fiscal impact statement to which objection is made;

(b) Identify the persons likely to be affected by the proposed rule on whose behalf the objection is filed or, if filed by an association, assert the number of members of the association who are likely to be affected by the proposed rule;

(c) Explain how the persons identified are likely to be affected by the proposed rule;

(d) Explain the objection or objections to the fiscal impact statement; and

(e) Be sent to the mailing address or electronic mail address identified in the notice of proposed rulemaking for the submission of written comments.

(2) An objection to a fiscal impact statement is deemed made for purposes of ORS 183.333(5) when received by the agency.

(3) If the agency appoints a fiscal impact advisory committee, the agency shall make a good faith effort to ensure that the committee's members represent the interests of persons likely to be affected by the rule. The meetings of the fiscal impact advisory committee shall be open to the public.

(4) If the agency determines that the original fiscal impact statement does not adequately reflect the proposed rule's fiscal impact, the agency will file an amended fiscal impact statement, extend the comment period as required by ORS 183.333(5), and give notice of the extended comment period to:

(a) The persons or organizations that have filed objections under section one of this rule;

(b) The persons specified in the agency's notice rule adopted in accordance with ORS 183.335(1)(a);

(c) The persons on the agency's mailing list maintained in accordance with ORS 183.335(8); and

(d) Legislators specified in ORS 183.335(15).

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.333(5) & 183.335(12)
Hist.: DOJ 10-2005, f. 10-31-05, cert. ef. 1-1-06

137-001-0095
Statement of the Objective of Proposed Rules

(1) A request for a statement of the agency's objective in proposing a rule must be submitted in writing and must identify the persons on whose behalf the request is made.

(2) Within ten days of receiving a request or requests for a statement of objective from at least five persons, the agency shall provide the statement, in writing, to the person or persons who submitted written requests. Failure to meet this deadline shall not affect the validity of any rule.

(3) The agency's written statement of the objective of the rule must include an explanation of how the agency will determine whether the rule accomplishes its objective.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.335(3)
Hist.: DOJ 10-2005, f. 10-31-05, cert. ef. 1-1-06

137-001-0100
Review of New Rules

(1) When conducting a review of a new rule as required by ORS 183.405 the agency may appoint an advisory committee to assist with the review, invite public comment upon the rule, or both.

(2) Notwithstanding ORS 183.405(4) & (5), the agency may review any amended rule under the criteria set forth in ORS 183.405(1).

(3) As part of the review under ORS 183.405(1), the agency may invite public comment upon the rules and give notice of the review to those parties identified in ORS 183.335(1)(a), (c), and (d). The notice will:

(a) Identify the rule or rules under review, describe the subject matter of the rule or rules under review, and invite comments on any or all of the factors identified in ORS 183.405(1);

(b) State the date by which written comments must be received by the agency and the mailing address or electronic mail address to which the comments should be sent; and

(c) Include the time and place of the hearing, if the agency provides a public hearing to receive oral comments.

Stat. Auth.: ORS 183.341 & 183.502
Stats. Implemented: ORS 183.333, 183.341, 183.502 &183.405
Hist.: DOJ 10-2005, f. 10-31-05, cert. ef. 1-1-06; DOJ 10-2007, f. 10-15-07 cert. ef. 1-1-08

DIVISION 2

MODEL RULES FOR AGENCY DECLARATORY RULINGS

NOTE: OAR 137-002-0010 to 137-002-0060 were adopted by the Attorney General as required by ORS 183.410. Agencies must apply these rules without further adoption or amendment.

137-002-0010
Petition for Declaratory Ruling

The petition to initiate proceedings for declaratory rulings shall contain:

(1) The rule or statute that may apply to the person, property, or state of facts;

(2) A detailed statement of the relevant facts; including sufficient facts to show petitioner's interest;

(3) All propositions of law or contentions asserted by petitioner;

(4) The questions presented;

(5) The specific relief requested; and

(6) The name and address of petitioner and of any other person known by petitioner to be interested in the requested declaratory ruling.

Stat. Auth.: ORS 183.410
Stats. Implemented: ORS 183.410
Hist.: 1AG 14, f. & ef. 10-22-75; JD 2-1986, f. & ef. 1-27-86; JD 5-1989, f. 10-6-89, cert. ef. 10-15-89

137-002-0020
Service of Declaratory Ruling Petition

(1) The petition shall be deemed filed when received by the agency.

(2) Within 60 days after the petition is filed the agency shall notify the petitioner in writing whether it will issue a ruling. If the agency decides to issue a ruling, it shall serve all persons named in the petition by mailing:

(a) A copy of the petition together with a copy of the agency's rules of practice; and

(b) Notice of any proceeding including the hearing at which the petition will be considered. (See OAR 137-002-0030 for contents of notice.)

(3) Notwithstanding section (2) of this rule, the agency may decide at any time that it will not issue a declaratory ruling in any specific instance. The agency shall notify the petitioner in writing when the agency decides not to issue a declaratory ruling.

Stat. Auth.: ORS 183.410
Stats. Implemented: ORS 183.410
Hist.: 1AG 14, f. & ef. 10-22-75; 1AG 17, f. & ef. 11-25-77; 1AG 1-1981, f. & ef. 11-17-81; JD 2-1986, f. & ef. 1-27-86; JD 5-1989, f. 10-6-89, cert. ef. 10-15-89

137-002-0025
Intervention in Declaratory Rulings

(1) Any person or entity may petition the agency for permission to participate in the proceeding as a party.

(2) The petition for intervention shall be in writing and shall contain:

(a) The rule or statute that may apply to the person, property, or state of facts;

(b) A statement of facts sufficient to show the intervenor's interest;

(c) A statement that the intervenor accepts the petitioner's statement of facts for purposes of the declaratory ruling;

(d) All propositions of law or contentions asserted by the intervenor;

(e) A statement that the intervenor accepts the petitioner's statement of the questions presented or a statement of the questions presented by the intervenor;

(f) A statement of the specific relief requested.

(3) The agency may, in its discretion, invite any person or entity to file a petition for intervention.

(4) The agency, in its discretion, may grant or deny any petition for intervention. If a petition for intervention is granted, the status of the intervenor(s) shall be the same as that of an original petitioner, i.e. the declaratory ruling, if any, issued by the agency shall be binding between the intervenor and the agency on the facts stated in the petition, subject to review as provided in ORS 183.410

(5) The decision to grant or deny a petition for intervention shall be in writing and shall be served on all parties.

Stat. Auth.: ORS 183.410
Stats. Implemented: ORS 183.410
Hist.: JD 5-1989, f. 10-5-89, cert. ef. 10-15-89; JD 6-1995, f. 8-25-95, cert. ef. 9-9-95

137-002-0030
Notice of Declaratory Ruling Hearing

The notice of hearing for a declaratory ruling shall:

(1) Be accompanied by a copy of the petition requesting the declaratory ruling and by a copy of any petition for intervention if copies of these petitions have not previously been served on the party;

(2) Set forth the time and place of the proceeding; and

(3) Identify the presiding officer.

Stat. Auth.: ORS 183.410
Stats. Implemented: ORS 183.410
Hist.: 1AG 14, f. & ef. 10-22-75; 1AG 1-1981, f. & ef. 11-17-81; JD 2-1986, f. & ef. 1-27-86; JD 5-1989, f. 10-6-89, cert. ef. 10-15-89

137-002-0040
Declaratory Ruling Procedure

(1) The proceeding shall be conducted by and shall be under the control of the presiding officer. The presiding officer may be the chief administrative officer of the agency, a member of its governing body or any other person designated by the agency.

(2) No testimony or other evidence shall be accepted at the hearing. The petition will be decided on the facts stated in the petition, except that the presiding officer may agree to accept, for consideration by the agency, a statement of alternative facts if such a statement has been stipulated to in writing by all parties to the proceeding, including any intervening parties.

(3) The parties and agency staff shall have the right to present oral argument. The presiding officer may impose reasonable time limits on the time allowed for oral argument. The parties and agency staff may file briefs in support of their respective positions. The presiding officer shall fix the time and order of filing briefs and may direct that the briefs be submitted prior to oral argument. The presiding officer may permit the filing of memoranda following the hearing.

(4) The proceeding may be conducted in person or by telephone.

(5) As used in this rule, "telephone" means any two-way electronic communication device.

Stat. Auth.: ORS 183.410
Stats. Implemented: ORS 183.410
Hist.: 1AG 14, f. & ef. 10-22-75; 1AG 1-1981, f. & ef. 11-17-81; JD 2-1986, f. & ef. 1-27-86; JD 5-1989, f. 10-6-89, cert. ef. 10-15-89; JD 6-1993, f. 11-1-93, cert. ef. 11-4-93; JD 6-1995, f. 8-25-95, cert. ef. 9-9-95

137-002-0050
Presiding Officer's Proposed Declaratory Ruling

(1) Except when the presiding officer is the decision maker, the presiding officer shall prepare a proposed declaratory ruling in accordance with OAR 137-002-0060 for consideration by the decision maker.

(2) When a proposed declaratory ruling is considered by the decision maker, the parties and agency staff shall have the right to present oral argument to the decision maker.

Stat. Auth.: ORS 183.410
Stats. Implemented: ORS 183.410
Hist.: 1AG 14, f. & ef. 10-22-75; JD 2-1986, f. & ef. 1-27-86; JD 5-1989, f. 10-6-89, cert. ef. 10-15-89

137-002-0060
Issuance of Declaratory Ruling

(1) The agency shall issue its declaratory ruling within 60 days of the close of the record.

(2) The ruling shall be in writing and shall include:

(a) The facts upon which the ruling is based;

(b) The statute or rule in issue;

(c) The agency's conclusion as to the applicability of the statute or rule to those facts;

(d) The agency's conclusion as to the legal effect or result of applying the statute or rule to those facts;

(e) The reasons relied upon by the agency to support its conclusions;

(f) A statement that under ORS 183.480 the parties may obtain judicial review by filing a petition with the Court of Appeals within 60 days from the date the declaratory ruling is served.

(3) The ruling shall be served by mailing a copy to the parties.

Stat. Auth.: ORS 183.410
Stats. Implemented: ORS 183.410
Hist.: 1AG 14, f. & ef. 10-22-75; 1AG 1-1981, f. & ef. 11-17-81; JD 2-1986, f. & ef. 1-27-86; JD 5-1989, f. 10-6-89, cert. ef. 10-15-89

DIVISION 3

MODEL RULES OF PROCEDURE FOR CONTESTED CASES

137-003-0000
Applicability of Rules in OAR 137, Division 3

(1) An agency that does not use an administrative law judge assigned from the Office of Administrative Hearings to conduct contested case hearings for the agency may choose to adopt any or all of the Model Rules for Contested Cases in OAR 137-003-0000 to 137-003-0092 or in 137-003-0501 to 137-003-0700. The agency may adopt these rules by reference without complying with the rulemaking procedures under ORS 183.335. Notice of such adoption shall be filed with the Secretary of State in the manner provided by ORS 183.355.

(2) When an administrative law judge assigned from the Office of Administrative Hearings conducts a contested case hearing for the agency, the proceedings shall be conducted pursuant to OAR 137-003-0501 to 137-003-0700, unless:

(a) The case is not subject to the procedural requirements for contested cases; or

(b) The Attorney General, by order, has exempted the agency or a category of the agency's cases from the application of such rules in whole or in part. These rules need not be adopted by the agency to be effective.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341 & OL 1999, Ch. 849
Hist: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

Non-Hearing Panel Rules

137-003-0001
Contested Case Notice

(1) The agency's contested case notice issued pursuant to ORS 183.415 shall include:

(a) A caption with the name of the agency and the name of the person or agency to whom the notice is issued;

(b) A short and plain statement of the matters asserted or charged and a reference to the particular sections of the statute and rules involved;

(c) A statement of the party's right to be represented by counsel and that legal aid organizations may be able to assist a party with limited financial resources;

(d) A statement of the party's right to a hearing;

(e) A statement of the agency's authority and jurisdiction to hold a hearing on the matters asserted or charged; and

(f) Either:

(A) A statement of the procedure and time to request a hearing, the agency address to which a hearing request should be sent, and a statement that if a request for hearing is not received by the agency within the time stated in the notice the person will have waived the right to a hearing; or

(B) A statement of the time and place of the hearing.

(g) A statement indicating whether and under what circumstances an order by default may be entered.

(2) A contested case notice may include either or both of the following:

(a) A statement that the record of the proceeding to date, including information in the agency file or files on the subject of the contested case and all materials submitted by the party, automatically becomes part of the contested case record upon default for the purpose of proving a prima facie case;

(b) A statement that a collaborative dispute resolution process is available as an alternative to a contested case hearing, if requested within the time period stated in the notice, and that choosing such a process will not affect the right to a contested case hearing if a hearing request is received by the agency within the time period stated in the notice and the matter is not resolved through the collaborative process.

Stat. Auth.: ORS 183.341 & 183.502
Stats. Implemented: ORS 183.341(1), 183.413, 183.415(7), 183.502 & 2007 HB 2423
Hist.: 1AG 14, f. & ef. 10-22-75; 1AG 17, f. & ef. 11-25-77; 1AG 4-1979, f. & ef. 12-3-79; JD 2-1986, f. & ef. 1-27-86; JD 1-1988, f. & cert. ef. 3-3-88; JD 7-1991, f. & cert. ef. 11-4-91; JD 1-1997, f. 3-28-97, cert. ef. 4-1-97; JD 3-1997, f. 9-4-97, cert. ef. 9-15-97; DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06; DOJ 9-2007, f. 10-15-07 cert. ef. 1-1-08

137-003-0002
Rights of Parties in Contested Cases

(1) In addition to the information required to be given in writing under ORS 183.413(2) and 183.415(2) and (3), before commencement of a contested case hearing, the agency shall inform a party, if the party is an agency, corporation, or an unincorporated association, that such party must be represented by an attorney licensed in Oregon, unless statutes applicable to the contested case proceeding specifically provide otherwise. This information may be given in writing or orally.

(2) Unless otherwise precluded by law, the agency and the parties may agree to use alternative methods of dispute resolution in contested case matters. Such alternative methods of resolution may include arbitration or any collaborative method designed to encourage the agency and the parties to work together to develop a mutually agreeable solution, such as negotiation, mediation, use of a facilitator or a neutral fact-finder or settlement conferences, but may not include arbitration that is binding on the agency.

(3) Final disposition of contested cases may be by a final order following hearing or, unless precluded by law, by stipulation, agreed settlement, consent order or final order by default. A stipulation, agreed settlement or consent order disposing of a contested case must be in writing and signed by the party or parties. By signing such an agreement, the party or parties waive the right to a contested case hearing and to judicial review. The agency shall incorporate the disposition into a final order. A copy of any final order incorporating an agreement must be delivered or mailed to each party and, if a party is represented by an attorney, to the party's attorney.

Stat. Auth.: ORS 183.341 & 183.502
Stats. Implemented: ORS 9.320, 183.341(1), 183.413, 183.415, 183.502 & 2007 HB 2423
Hist.: 1AG 1-1981, f. & ef. 11-17-81; JD 2-1986, f. & ef. 1-27-86; JD 6-1995, f. 8-25-95, cert. ef. 9-9-95; JD 1-1997, f. 3-28-97, cert. ef. 4-1-97; JD 3-1997, f. 9-4-97, cert. ef. 9-15-97; DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2007, f. 10-15-07 cert. ef. 1-1-08

137-003-0003
Late Filing

(1)(a) When a party requests a hearing after the time specified by the agency but before entry of a final order by default or, if a final

order by default is entered, on or before 60 calendar days after entry of the order, the agency may accept the late request only if the cause for failure to timely request the hearing was beyond the reasonable control of the party, unless other applicable statutes or agency rule provides a different timeframe or standard.

(b) If a final order by default has already been entered, the party requesting the hearing shall deliver or mail within a reasonable time a copy of the hearing request to all persons and agencies required by statute, rule or order to receive notice of the proceeding.

(c) In determining whether to accept a late hearing request, the agency may require the request to be supported by an affidavit and may conduct such further inquiry, including holding a hearing, as it deems appropriate.

(d) The agency by rule or in writing may provide a right to a hearing on whether the late filing of a hearing request should be accepted.

(e) If the late hearing request is allowed by the agency, it shall enter an order granting the request and schedule a hearing on the underlying matter. If the late hearing request is denied, the agency shall enter an order setting forth its reasons for the denial.

(f) Except as otherwise provided by law, if a final order by default has been entered, that order remains in effect during the agency's consideration of a late hearing request unless the final order is stayed under OAR 137-003-0090.

(g) When a party requests a hearing more than 60 calendar days (or other time period set by statute) after the agency has entered a final order by default, the agency shall not grant the request unless a statute or agency rule permits the agency to consider the request.

(2)(a) Unless otherwise provided by law, when a person fails to file any document, other than a hearing request, within the time specified by agency rules or these model rules of procedure, the late filing may be accepted if the agency or presiding officer determines that the cause for failure to file the document timely was beyond the reasonable control of the party.

(b) The agency may require a statement explaining the reasons for the late filing.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341
Hist.: JD 5-1989, f. 10-6-89, cert. ef. 10-15-89; JD 7-1991, f. & cert. ef. 11-4-91; DOJ 9-2001, f. & cert. ef. 10-3-01

137-003-0005
Participation as Party or Limited Party

(1) Persons who have an interest in the outcome of the agency's contested case proceeding or who represent a public interest in such result may request to participate as parties or limited parties.

(2) A person requesting to participate as a party or limited party shall file a petition with the agency at least 21 calendar days before the date set for the hearing and shall include a sufficient number of copies of the petition for service on all parties. Petitions untimely filed shall not be considered unless the agency determines that good cause has been shown for failure to file timely.

(3) The petition shall include the following:

(a) Names and addresses of the petitioner and of any organization the petitioner represents;

(b) Name and address of the petitioner's attorney, if any;

(c) A statement of whether the request is for participation as a party or a limited party, and, if as a limited party, the precise area or areas in which participation is sought;

(d) If the petitioner seeks to protect a personal interest in the outcome of the agency's proceeding, a detailed statement of the petitioner's interest, economic or otherwise, and how such interest may be affected by the results of the proceeding;

(e) If the petitioner seeks to represent a public interest in the results of the proceeding, a detailed statement of such public interest, the manner in which such public interest will be affected by the results of the proceeding, and the petitioner's qualifications to represent such public interest;

(f) A statement of the reasons why existing parties to the proceeding cannot adequately represent the interest identified in subsection (3)(d) or (e) of this rule.

(4) The agency shall serve a copy of the petition on each party personally or by mail. Each party shall have seven calendar days from the date of personal service or agency mailing to file a response to the petition.

(5) If the agency determines under OAR 137-003-0003 that good cause has been shown for failure to file a timely petition, the agency at its discretion may:

(a) Shorten the time within which responses to the petition shall be filed; or

(b) Postpone the hearing until disposition is made of the petition.

(6) If a person is granted participation as a party or a limited party, the agency may postpone or continue the hearing to a later date if necessary to avoid an undue burden to one or more of the parties in the case.

(7) In ruling on petitions to participate as a party or a limited party, the agency shall consider:

(a) Whether the petitioner has demonstrated a personal or public interest that could reasonably be affected by the outcome of the proceeding;

(b) Whether any such affected interest is within the scope of the agency's jurisdiction and within the scope of the notice of contested case hearing;

(c) When a public interest is alleged, the qualifications of the petitioner to represent that interest;

(d) The extent to which the petitioner's interest will be represented by existing parties.

(8) A petition to participate as a party may be treated as a petition to participate as a limited party.

(9) If the agency grants a petition, the agency shall specify areas of participation and procedural limitations as it deems appropriate.

(10) An agency ruling on a petition to participate as a party or as a limited party shall be by written order and served promptly on the petitioner and all parties. If the petition is allowed, the agency shall also serve petitioner with the notice of rights required by ORS 183.413(2).

Stat. Auth.: ORS 183.341 & 183.390
Stats. Implemented: ORS 183.341(1), 183.415(4) & 183.450(3)
Hist.: 1AG 17, f. & ef. 11-25-77; 1AG 4-1979, f. & ef. 12-3-79; JD 2-1986, f. & ef. 1-27-86; JD 1-1988, f. & cert. ef. 3-3-88; JD 5-1989, f. 10-6-89, cert. ef. 10-15-89; JD 7-1991, f. & cert. ef. 11-4-91; DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

137-003-0007
Agency Participation as Interested Agency or Party

(1) When an agency gives notice that it intends to hold a contested case hearing, it may also notify the parties that it intends to name any other agency that has an interest in the outcome of that proceeding as a party or as an interested agency, either on its own initiative or upon request by that other agency.

(2) Each party shall have seven days from the date of personal service or mailing of the notice to file objections.

(3) The agency decision to name an agency as a party of as an interested agency shall be by written order and served promptly on the parties and the named agency.

(4) An agency named as a party or as an interested agency has the same procedural rights and shall be given the same notices as any party in the proceeding. An interested agency, unlike a party, has no right to judicial review.

(5) An agency may not be named as a party under this rule without written authorization of the Attorney General.

Stat. Auth.: ORS 180, 183.341 & 183.390
Stats. Implemented: ORS 180.060, 180.220, 183.341(1) & 183.415(4)
Hist.: JD 2-1986, f. & ef. 1-27-86; JD 7-1991, f. & cert. ef. 11-4-91

137-003-0008
Authorized Representative in Designated Agencies

(1) For purposes of this rule, the following words and phrases have the following meaning:

(a) "Agency" means State Landscape Contractors Board, State Department of Energy and the Energy Facility Siting Council, Environmental Quality Commission and the Department of Environmental Quality; Insurance Division of the Department of Consumer

and Business Services for proceedings in which an insured appears pursuant to ORS 737.505; the Department of Consumer and Business Services and any other agency for the purpose of proceedings to enforce the state building code, as defined by 455.010; the State Fire Marshal in the Department of State Police; Division of State Lands for proceedings regarding the issuance or denial of fill or removal permits under ORS 196.800 to 196.825; Public Utility Commission; Water Resources Commission and the Water Resources Department; Land Conservation and Development Commission and the Department of Land Conservation and Development; State Department of Agriculture for purposes of hearings under 215.705; and the Bureau of Labor and Industries.

(b) "Authorized Representative" means a member of a partnership, an authorized officer or regular employee of a corporation, association or organized group, or an authorized officer or employee of a governmental authority other than a state agency;

(c) "Legal Argument" includes arguments on:

(A) The jurisdiction of the agency to hear the contested case;

(B) The constitutionality of a statute or rule or the application of a constitutional requirement to an agency;

(C) The application of court precedent to the facts of the particular contested case proceeding.

(d) "Legal Argument" does not include presentation of motions, evidence, examination and cross-examination of witnesses or presentation of factual arguments or arguments on:

(A) The application of the statutes or rules to the facts in the contested case;

(B) Comparison of prior actions of the agency in handling similar situations;

(C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case;

(D) The admissibility of evidence; and

(E) The correctness of procedures being followed in the contested case hearing.

(2) A party or limited party participating in a contested case hearing before an agency listed in subsection (1)(a) of this rule may be represented by an authorized representative as provided in this rule if the agency has by rule specified that authorized representatives may appear in the type of contested case hearing involved.

(3) Before appearing in the case, an authorized representative must provide the presiding officer with written authorization for the named representative to appear on behalf of a party or limited party.

(4) The presiding officer may limit an authorized representative's presentation of evidence, examination and cross-examination of witnesses, or presentation of factual arguments to insure the orderly and timely development of the hearing records, and shall not allow an authorized representative to present legal argument as defined in subsection (1)(c) of this rule.

(5) When an authorized representative is representing a party or limited party in a hearing, the presiding officer shall advise such representative of the manner in which objections may be made and matters preserved for appeal. Such advice is of a procedural nature and does not change applicable law on waiver or the duty to make timely objection. Where such objections may involve legal argument as defined in this rule, the presiding officer shall provide reasonable opportunity for the authorized representative to consult legal counsel and permit such legal counsel to file written legal argument within a reasonable time after conclusion of the hearing.

Stat. Auth.: ORS 183.457
Stats. Implemented: ORS 183.341(1), & 183.457 & OL 1999, Ch. 448 & Ch. 599
Hist.: JD 4-1987(Temp), f. & ef. 7-22-87; JD 1-1988, f. & cert. ef. 3-3-88; JD 7-1991, f. & cert. ef. 11-4-91; JD 6-1993, f. 11-1-93, cert. ef. 11-4-93; JD 6-1995, f. 8-25-95, cert. ef. 9-9-95; DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

137-003-0010
Emergency License Suspension, Refusal to Renew

(1) If the agency finds there is a serious danger to the public health or safety, it may, by order, immediately suspend or refuse to renew a license. For purposes of this rule, such an order is referred to as an emergency suspension order. An emergency suspension order must be in writing. It may be issued without prior notice to the licensee and without a hearing prior to the emergency suspension order.

(2)(a) When the agency issues an emergency suspension order, the agency shall serve the order on the licensee either personally or by registered or certified mail;

(b) The order shall include the following statements:

(A) The effective date of the emergency suspension order;

(B) Findings of the specific acts or omissions of the licensee that violate applicable laws and rules and are the grounds for revocation, suspension or refusal to renew the license in the underlying proceeding affecting the license;

(C) The reasons the specified acts or omissions seriously endanger the public's health or safety;

(D) A reference to the sections of the statutes and rules involved;

(E) That the licensee has the right to demand a hearing to be held as soon as practicable to contest the emergency suspension order; and

(F) That if the demand for hearing is not received by the agency within 90 calendar days of the date of notice of the emergency suspension order the licensee shall have waived its right to a hearing regarding the emergency suspension order.

(3)(a) If timely requested by the licensee, the agency shall hold a hearing on the emergency suspension order as soon as practicable.

(b) The agency may combine the hearing on the emergency suspension order with any underlying agency proceeding affecting the license.

(c) At the hearing regarding the emergency suspension order, the agency shall consider the facts and circumstances including, but not limited to:

(A) Whether the acts or omissions of the licensee pose a serious danger to the public's health or safety; and

(B) Whether circumstances at the time of the hearing justify confirmation, alteration or revocation of the order.

Stat. Auth.: ORS 183.341 & 183.390
Stats. Implemented: ORS 183.341(1) & 183.430
Hist.: 1AG 14, f. & ef. 10-22-75; 1AG 17, f. & ef. 11-25-77; JD 2-1986, f. & ef. 1-27-86; JD 1-1988, f. & cert. ef. 3-3-88; JD 7-1991, f. & cert. ef. 11-4-91; DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

137-003-0015
Use of Collaborative Dispute Resolution in Contested Cases Hearing

(1) When an agency issues a contested case notice, the agency and a party may agree to participate in a collaborative dispute resolution (DR) process to resolve any issues relevant to the notice. Neither the party's request, nor any agreement by the agency, to participate in such a process tolls the period for filing a timely request for a contested case hearing.

(2) If the agency agrees to participate in a collaborative DR process, the agency may establish a deadline for the conclusion of the process.

(3) The agency and the party may sign an agreement containing any of the provisions listed in OAR 137-005-0030 or such other terms as may be useful to further the collaborative DR process.

(4) If the agency has agreed to participate in a collaborative DR process and the party makes a timely request for a contested case hearing:

(a) The hearing shall be suspended until the collaborative DR process is completed, the agency or the party opts out of the collaborative DR process, or the deadline, if any, for the conclusion of the collaborative process is reached.

(b) The agency shall proceed to schedule the contested case hearing if the collaborative DR process terminates without settlement of the contested case, unless the party withdraws the hearing request.

(5) Any informal disposition of the contested case shall be consistent with ORS 183.415(5) and OAR 137-003-0002(4).

Stat. Auth.: ORS 183.341 & 183.502
Stats. Implemented: ORS 183.502
Hist.: JD 1-1997, f. 3-28-97, cert. ef. 4-1-97; JD 3-1997, f. 9-4-97, cert. ef. 9-15-97; DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

137-003-0025
Discovery in Contested Cases Hearing

(1) Discovery by the agency or any party may be permitted in appropriate contested cases at the discretion of the agency. Any party may petition the agency pursuant to the requirements in this rule for an order allowing discovery. Before requesting a discovery order, a party must seek the discovery through an informal exchange of information.

(2) Discovery may include but is not limited to one or more of the following methods:

(a) Depositions of a material witness;

(b) Disclosure of names and addresses of witnesses expected to testify at the hearing;

(c) Production of documents, which may but need not be limited to documents that the party producing the documents plans to offer as evidence;

(d) Production of objects for inspection;

(e) Permission to enter upon land to inspect land or other property;

(f) Requests for admissions;

(g) Written interrogatories;

(h) Prehearing conferences, as provided in OAR 137-003-0035.

(3)(a) A party seeking to take the testimony of a material witness by deposition shall file a written request with the agency, with a copy to all other parties. The request must include the name and address of the witness, a showing of the materiality of the witness's testimony, an explanation of why a deposition rather than informal or other means of discovery is necessary, and a request that the witness's testimony be taken before an individual named in the request for the purpose of recording testimony.

(b) For all other forms of discovery, a request for a discovery order must be in writing and must include a description of the attempts to obtain the requested discovery informally. The request must be mailed or delivered to the agency, with a copy to other parties.

(4) Any discovery request must be reasonably likely to produce information that is generally relevant to the case. If the relevance of the requested discovery is not apparent, the agency may require the party requesting discovery to explain how the request is likely to produce relevant information. If the request appears to be unnecessary, the agency may require an explanation of why the requested information is necessary or is likely to facilitate resolution of the case.

(5) The agency may, but is not required to, authorize the requested discovery. In making its decision, the agency shall consider any objections by the party from whom the discovery is sought. The agency shall issue an order granting or denying a discovery request in whole or in part.

(6) If the agency does authorize discovery, the agency shall control the methods, timing and extent of discovery. The agency may limit discovery to a list of witnesses and the principal documents upon which the agency and parties will rely;

(7) Only the agency may issue subpoenas in support of discovery. The agency may apply to the circuit court to compel obedience to a subpoena.

(8) The agency may delegate to a presiding officer its authority to order and control discovery. The delegation must be in writing, and it may be limited to specified forms of discovery.

(9) The presiding officer may refuse to admit evidence that was not disclosed in response to a discovery order, unless the party that failed to provide discovery offers a satisfactory reason for having failed to do so, or unless excluding the evidence would violate the duty to conduct a full and fair inquiry under ORS 183.415(10). If the presiding officer admits evidence that was not disclosed as ordered, the presiding officer may grant a continuance to allow an opportunity for the agency or other party to respond.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341(1), 183.415 & 183.425
Hist.: JD 7-1991, f. & cert. ef. 11-4-91; JD 3-1997, f. 9-4-97, cert. ef. 9-15-97; DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

137-003-0035
Prehearing Conferences

(1) Prior to hearing, the agency may, in its discretion, conduct one or more prehearing conferences to facilitate the conduct and resolution of the case. The agency may convene the conference on its own initiative or at a party's request.

(2) The purposes of a prehearing conference may include, but are not limited to the following:

(a) To facilitate discovery and to resolve disagreements about discovery;

(b) To identify, simplify and clarify issues;

(c) To eliminate irrelevant issues;

(d) To obtain stipulations of fact;

(e) To provide to the presiding officer, agency and parties, in advance of the hearing, copies of all documents intended to be offered as evidence at the hearing and the names of all witnesses expected to testify;

(f) To authenticate documents;

(g) To decide the order of proof and other procedural matters pertaining to the conduct of the hearing;

(h) To discuss the use of a collaborative dispute resolution process in lieu of or preliminary to holding the contested case hearing; and

(i) To discuss settlement or other resolution or partial resolution of the case.

(3) The prehearing conference may be conducted in person or by telephone.

(4) The agency must make a record of any stipulations, rulings and agreements. The agency may make an audio or stenographic record of the pertinent portions of the conference or may place the substance of stipulations, rulings and agreements in the record by written summary. Stipulations to facts and to the authenticity of documents and agreements to narrow issues shall be binding upon the agency and the parties to the stipulation unless good cause is shown for rescinding a stipulation or agreement.

(5) After the hearing begins, the presiding officer may at any time recess the hearing to discuss any of the matters listed in section (2) of this rule.

(6) The agency may delegate to the presiding officer the discretion to conduct prehearing conferences.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341(1), 183.415(9) & 183.462
Hist.: JD 7-1991, f. & cert. ef. 11-4-91; JD 1-1997, f. 3-28-97, cert. ef. 4-1-97; JD 3-1997, f. 9-4-97, cert. ef. 9-15-97; DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

137-003-0036
Individually Identifiable Health Information

(1) This rule is intended to facilitate the issuance of a Qualified Protective Order (QPO) by an administrative tribunal in a contested case proceeding. The process described in this rule may be used by an agency or party to a contested case proceeding to request information from Covered Entities by using a QPO. This rule is intended to comply with federal requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the HIPAA Privacy Rules in 45 CFR Parts 160 and 164 to protect the privacy of Protected Health Information. This rule should be construed to implement and not to alter the requirements of 45 CFR § 164.512(e).

(2) For purposes of this rule, capitalized terms used but not otherwise defined in this rule have the meaning given those terms in the HIPAA Privacy Rules in 45 CFR Parts 160 and 164.

(a) An agency or hearing officer who conducts a contested case hearing on behalf of an agency is an "administrative tribunal," as that term is used in 45 CFR § 164.512(e).

(b) The HIPAA Privacy Rules define "Covered Entity" to include the following entities, as further defined in the HIPAA Privacy Rules:

(A) A Health Insurer or the Medicaid program;

(B) A Health Care Clearinghouse; or

(C) A Health Care Provider that transmits any Individually Identifiable Health Information using Electronic Transactions covered by HIPAA.

(3) An administrative tribunal may issue a QPO at the request of a party, a Covered Entity, an Individual, or the agency.

(a) A request for a QPO may be accompanied by a copy of the subpoena, discovery request, or other lawful process that requests Protected Health Information from a Covered Entity.

(b) If the Individual has signed an authorization permitting disclosure of the Protected Health Information for purposes of the contested case proceeding, the administrative tribunal need not issue a QPO.

(4) A QPO is an order of the administrative tribunal that:

(a) Prohibits the use or disclosure of Protected Health Information by the agency or parties for any purpose other than the contested case proceeding or judicial review of the contested case proceeding;

(b) Requires that all copies of the Protected Health Information be returned to the Covered Entity or destroyed at the conclusion of the contested case proceeding, or judicial review of the contested case proceeding, whichever is later; and

(c) Includes such additional terms and conditions as may be appropriate to comply with federal or state confidentiality requirements that apply to the Protected Health Information.

(5) This rule addresses only the process for requesting a QPO from an administrative tribunal in a contested case hearing. This rule does not address any claims or defenses related to the admissibility or confidentiality of Protected Health Information for purposes of discovery or the hearing.

(6) The provisions of this rule do not supercede any other provisions of the HIPAA Privacy Rules that otherwise permit or restrict uses or disclosure of Protected Health Information without the use of a QPO.

(7) This rule applies to all contested cases that are either pending or initiated on or after April 14, 2003.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 183.341, HIPAA 1996, 45 CFR part 160 &164
Stats. Implemented: ORS 183.341 & OL 1999, Ch. 849
Hist.: DOJ 2-2003, f. 3-19-03, cert. ef. 4-1-03

137-003-0037
Qualified Interpreters

(1) For purposes of this rule:

(a) An "assistive communication device" means any equipment designed to facilitate communication by an individual with a disability;

(b) An "individual with a disability" means a person who cannot readily understand the proceedings because of deafness or a physical hearing impairment, or cannot communicate in the proceedings because of a physical speaking impairment;

(c) A "non-English speaking" person means a person who, by reason of place of birth or culture, speaks a language other than English and does not speak English with adequate ability to communicate effectively in the proceedings;

(d) A "qualified interpreter" means:

(A) For an individual with a disability, a person readily able to communicate with the individual with a disability, interpret the proceedings and accurately repeat and interpret the statements of the individual with a disability to the presiding officer;

(B) For a non-English speaking person, a person readily able to communicate with the non-English-speaking person and who can orally transfer the meaning of statements to and from English and the language spoken by the non-English speaking person. A qualified interpreter must be able to interpret in a manner that conserves the meaning, tone, level, style and register of the original statement, without additions or omissions. "Qualified interpreter" does not include a person who is unable to interpret the dialect, slang or specialized vocabulary used by the party or witness.

(2) If an individual with a disability is a party or witness in a contested case hearing:

(a) The presiding officer shall appoint a qualified interpreter and make available appropriate assistive communication devices whenever it is necessary to interpret the proceedings to, or to interpret the testimony of, the individual with a disability.

(b) No fee shall be charged to the individual with a disability for the appointment of an interpreter or use of an assistive communication device. No fee shall be charged to any person for the appointment of an interpreter or the use of an assistive communication device if appointment or use is made to determine whether the person is disabled for purposes of this rule.

(3) If a non-English speaking person is a party or witness in a contested case hearing:

(a) The presiding officer shall appoint a qualified interpreter whenever it is necessary to interpret the proceedings to a non-English speaking party, to interpret the testimony of a non-English speaking party or witness, or to assist the presiding officer in performing the duties of the presiding officer.

(b) No fee shall be charged to any person for the appointment of an interpreter to interpret the testimony of a non-English speaking party or witness, or to assist the presiding officer in performing the duties of the presiding officer. No fee shall be charged to a non-English speaking party who is unable to pay for the appointment of an interpreter to interpret the proceedings to the non-English speaking party. No fee shall be charged to any person for the appointment of an interpreter if an appointment is made to determine whether the person is unable to pay or non-English speaking for the purposes of this rule.

(c) A non-English speaking party shall be considered unable to pay for an interpreter for purposes of this rule if:

(A) The party makes a verified statement and provides other information in writing under oath showing financial inability to pay for a qualified interpreter and provides any other information required by the agency concerning the inability to pay for such an interpreter; and

(B) It appears to the agency that the party is in fact unable to pay for a qualified interpreter.

(d) The agency may delegate to the presiding officer the authority to determine whether the party is unable to pay for a qualified interpreter.

(4) When an interpreter for an individual with a disability or a non-English speaking person is appointed or an assistive communication device is made available under this rule:

(a) The presiding officer shall appoint a qualified interpreter who is certified under ORS 45.291 if one is available unless, upon request of a party or witness, the presiding officers deems it appropriate to appoint a qualified interpreted who is not so certified.

(b) The presiding officer may not appoint any person as an interpreter if the person has a conflict of interest with any of the parties or witnesses, is unable to understand or cannot be understood by the presiding officer, party or witness, or is unable to work cooperatively with the presiding officer, the person in need of an interpreter or the representative for that person. If a party or witness is dissatisfied with the interpreter selected by the presiding officer, a substitute interpreter may be used as provided in ORS 45.275(5).

(c) If a party or witness is dissatisfied with the interpreter selected by the presiding officer, the party or witness may use any certified interpreter except that good cause must be shown for a substitution if the substitution will delay the proceeding.

(d) Fair compensation for the services of an interpreter or the cost of an assistive communication device shall be paid by the agency except, when a substitute interpreter is used for reasons other than cause, the party requesting the substitute shall bear any additional costs beyond the amount required to pay the original interpreter.

(5) The presiding officer shall require any interpreter for a person with a disability or a non-English speaking person to state the interpreter's name on the record and whether he or she is certified under ORS 45.291. If the interpreter is not certified under 45.291, the interpreter must state or submit his or her qualifications on the record and must swear or affirm to make a true and impartial interpretation of the proceedings in an understandable manner using the interpreter's best skills and judgment in accordance with the standards and ethics of the interpreter profession.

(6) A person requesting an interpreter for a person with a disability or a non-English speaking person, or assistive listening device for an individual with a disability, must notify the agency or presiding officer as soon as possible, but no later than 14 calendar days before the proceeding, including the hearing or pre-hearing conference, for which the interpreter or device is requested.

(a) For good cause shown, the agency or presiding officer may waive the 14-day advance notice.

(b) Notification to the agency or presiding officer must include:

(A) The name of the person needing a qualified interpreter or assistive communication device;

(B) The person's status as a party or a witness in the proceeding; and

(C) If the request is in behalf of:

(i) An individual with a disability, the nature and extent of the individual's physical hearing or speaking impairment, and the type of aural interpreter, or assistive communication device needed or preferred; or

(ii) A non-English speaking person, the language spoken by the non-English speaking person.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341 & OL 1999, Ch. 1041 (SB 38), Ch. 849 & OL 2001, Ch. 242 (SB 76)
Hist.: DOJ 9-2001, f. & cert. ef. 10-3-01

137-003-0040
Conducting Contested Case Hearing

(1) The contested case hearing shall be conducted by and under the control of the presiding officer. The presiding officer may be the chief administrative officer of the agency, a member of its governing body, or any other person designated by the agency.

(2) If the presiding officer or any decision maker has an actual or potential conflict of interest as defined in ORS 244.020(1) or (14), that officer shall comply with the requirements of ORS Chapter 244 (e.g., ORS 244.120 and 244.130).

(3) The hearing shall be conducted, subject to the discretion of the presiding officer, so as to include the following:

(a) The statement and evidence of the proponent in support of its action;

(b) The statement and evidence of opponents, interested agencies, and other parties; except that limited parties may address only subjects within the area to which they have been limited;

(c) Any rebuttal evidence;

(d) Any closing arguments.

(4) Presiding officers or decision makers, agency representatives, interested agencies, and parties shall have the right to question witnesses. However, limited parties may question only those witnesses whose testimony may relate to the area or areas of participation granted by the agency.

(5) The hearing may be continued with recesses as determined by the presiding officer.

(6) The presiding officer may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious, or immaterial matter.

(7) Exhibits shall be marked and maintained by the agency as part of the record of the proceedings.

(8) If the presiding officer or any decision maker receives any written or oral ex parte communication on a fact in issue during the contested case proceeding, that person shall notify all parties and otherwise comply with the requirements of OAR 137-003-0055.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341(1), 183.415(9) & 183.462
Hist.: 1AG 14, f. & ef. 10-22-75; 1AG 4-1979, f. & ef. 12-3-79; JD 2-1986, f. & ef. 1-27-86; JD 7-1991, f. & cert. ef. 11-4-91; JD 6-1995, f. 8-25-95, cert. ef. 9-9-95

137-003-0045
Telephone Hearings

(1) Unless precluded by law, the agency may, in its discretion, hold a hearing or portion of a hearing by telephone. Nothing in this rule precludes an agency from allowing some parties or witnesses to attend by telephone while others attend in person.

(2) The agency may direct that a hearing be held by telephone upon request or on its own motion.

(3) The agency shall make an audio or stenographic record of any telephone hearing.

(4) If a hearing is to be held by telephone, each party and the agency shall provide, before commencement of the hearing, to all other parties and to the agency and hearing officer copies of the exhibits it intends to offer into evidence at the hearing. If a witness is to testify by telephone, the party or agency that intends to call the witness shall provide, before commencement of the hearing, to the witness, to the other parties and to the agency and hearing officer a copy of each document about which the witness will be questioned.

(5) Nothing in this rule precludes any party or the agency from seeking to introduce documentary evidence in addition to evidence described in section (4) during the telephone hearing and the presiding officer shall receive such evidence, subject to the applicable rules of evidence, if inclusion of the evidence in the record is necessary to conduct a full and fair hearing. If any evidence introduced during the hearing has not previously been provided to the agency and to the other parties, the hearing may be continued upon the request of any party or the agency for sufficient time to allow the party or the agency to obtain and review the evidence.

(6) The agency may delegate to the presiding officer the discretion to rule on issues raised under this rule.

(7) As used in this rule, "telephone" means any two-way electronic communication device, including video conferencing.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341(1)
Hist.: JD 6-1993, f. 11-1-93, cert. ef. 11-4-93; JD 3-1997, f. 9-4-97, cert. ef. 9-15-97; DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

137-003-0050
Evidentiary Rules

(1) Evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible.

(2) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, and privileges afforded by Oregon law shall be recognized by the presiding officer.

(3) All offered evidence, not objected to, will be received by the presiding officer subject to the officer's power to exclude irrelevant, immaterial, or unduly repetitious matter.

(4) Evidence objected to may be received by the presiding officer. Rulings on its admissibility, if not made at the hearing, shall be made on the record at or before the time a final order is issued.

(5) The presiding officer shall accept an offer of proof made for excluded evidence. The offer of proof shall contain sufficient detail to allow the reviewing agency or court to determine whether the evidence was properly excluded. The presiding officer shall have discretion to decide whether the offer of proof is to be oral or written and at what stage in the proceeding it will be made. The presiding officer may place reasonable limits on the offer of proof, including the time to be devoted to an oral offer or the number of pages in a written offer.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341(1), 183.415 & 183.450
Hist.: 1AG 14, f. & ef. 10-22-75; 1AG 17, f. & ef. 11-25-77; 1AG 4-1979, f. & ef. 12-3-7; 1AG 1-1981, f. & ef. 11-17-81; JD 2-1986, f. & ef. 1-27-86; JD1-1988, f. & cert. ef. 3-3-88; JD 5-1989, f. 10-6-89, cert. ef. 10-15-89; JD 7-1991, f. & cert. ef. 11-4-91; JD 3-1997, f. 9-4-97, cert. ef. 9-15-97; DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

137-003-0055
Ex Parte Communications

(1) An ex parte communication is an oral or written communication to an agency decision maker or the presiding officer not made in the presence of all parties to the hearing, concerning a fact in issue in the proceeding, but does not include communication from agency staff or counsel about facts in the record.

(2) If an agency decision maker or presiding officer receives an ex parte communication during the pendency of the proceeding, the officer shall:

(a) Give all parties notice of the substance of the communication, if oral, or a copy of the communication, if written; and

(b) Provide any party who did not present the ex parte communication an opportunity to rebut the substance of the ex parte communication at the hearing, at a separate hearing for the limited purpose of receiving evidence relating to the ex parte communication, or in writing.

(3) The agency's record of a contested case proceeding shall include:

(a) The ex parte communication, if in writing;

(b) A statement of the substance of the ex parte communication, if oral;

(c) The agency or presiding officer's notice to the parties of the ex parte communication; and

(d) Rebuttal evidence.

Stat. Auth.: ORS 183

Stats. Implemented: ORS 173.341(1), 183.415(9) & 183.462

Hist.: JD 2-1986, f. & ef. 1-27-86; JD 1-1988, f. & cert. ef. 3-3-88

Contested Cases — Orders and Default Orders — Rehearing and Reconsideration

137-003-0060
Proposed Orders in Contested Cases, Filing Exceptions

(1) If a majority of the officials who are to render the final order in a contested case have neither attended the hearing nor reviewed and considered the record, and the order is adverse to a party, a proposed order including findings of fact and conclusions of law shall be served upon the parties.

(2) When the agency serves a proposed order on the parties, the agency shall at the same time or at a later date notify the parties:

(a) When written exceptions must be filed to be considered by the agency; and

(b) When and in what form argument may be made to the officials who will render the final order.

(3) After receiving exceptions and argument, if any, the agency may adopt the proposed order or prepare a new order.

(4) Nothing in this rule prohibits the staff of a non-party agency from commenting on the proposed order.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341(1), 183.460 & 183.464

Hist.: 1AG 14, f. & ef. 10-22-75; 1AG 17, f. & ef. 11-25-75; 1AG 4-1979, f. & ef. 12-3-79; 1AG 1-1981, f. & ef. 11-17-81; JD 6-1983, f. 9-23-83, ef. 9-26-83; JD 2-1986, f. & ef. 1-27-86; JD 7-1991, f. & cert. ef. 11-4-91; JD 3-1997, f. 9-4-97, cert. ef. 9-15-97

137-003-0070
Final Orders in Contested Cases

(1) Final orders in contested cases shall be in writing.

(2) Except as provided in section (3) of this rule, final orders in contested cases shall include the following:

(a) Rulings on admissibility of offered evidence when the rulings are not set forth in the record;

(b) Findings of fact — those matters that are either agreed as fact or that, when disputed, are determined by the factfinder, on substantial evidence, to be facts over contentions to the contrary. A finding must be made on each fact necessary to reach the conclusions of law on which the order is based;

(c) Conclusion(s) of law — applications of the controlling law to the facts found and the legal results arising therefrom;

(d) Order — the action taken by the agency as a result of the facts found and the legal conclusions arising therefrom; and

(e) A citation of the statutes under which the order may be appealed.

(3) When informal disposition of a contested case is made by stipulation, agreed settlement or consent order as provided in OAR 137-003-0002(3), the final order need not comply with section (2) of this rule. However, the order must state the agency action and:

(a) Incorporate by reference the stipulation or agreed settlement signed by the party or parties agreeing to that action; or

(b) Be signed by the party or parties and

(c) A copy must be delivered or mailed to each party and the attorney of record for each party that is represented.

(4) The date of service of the order on the parties shall be specified in writing and be part of or be attached to the order on file with the agency, unless service of the final order is not required by statute.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341(1), 183.415, 183.470 & 2007 HB 2423

Hist.: 1AG 14, f. & ef. 10-22-75; 1AG 4-1979, f. & ef. 12-3-79; 1AG 1-1981, f. & ef. 11-17-81; JD 2-1986, f. & ef. 1-27-86; JD 1-1988, f. & cert. ef. 3-3-88; JD 7-1991, f. & cert. ef. 11-4-91; JD 3-1997, f. 9-4-97, cert. ef. 9-15-97; DOJ 9-2007, f. 10-15-07 cert. ef. 1-1-08

137-003-0075
Final Orders by Default

(1) The agency may issue a final order by default:

(a) When the agency gave a party an opportunity to request a hearing and the party failed to request a hearing within the time allowed to make a request;

(b) When the party that requested a hearing withdraws the request;

(c) Except as provided in section (2) of this rule, when the agency notified the party of the time and place of the hearing and the party fails to appear at the hearing; or

(d) When the agency notified the party of the time and place of the hearing in a matter in which only one party is before the agency and that party subsequently notifies the agency that the party will not appear at the hearing, unless the agency agreed to reschedule the hearing.

(2) If the party failed to appear at the hearing and, before issuing a final order by default, the agency finds that the failure of the party to appear was caused by circumstances beyond the party's reasonable control, the agency may not issue a final order by default under section (1)(c) of this rule but shall schedule a new hearing.

(3) The agency may issue a final order that is adverse to a party by default only after making a prima facie case on the record. The agency must find that the record, including all materials submitted by the party, contains evidence that persuades the agency of the existence of facts necessary to support the order. If the record on default consists solely of an application and other materials submitted by the party, the order shall so note. The record shall be made at a scheduled hearing on the matter or, if the hearing is canceled or not held, at an agency meeting or at the time the final order by default is issued, unless the agency designates the agency file as the record at the time the contested case notice is issued in accordance with OAR 137-003-0001(1). The record includes all materials submitted by the party.

(4) The record may consist of transcribed, recorded or reported oral testimony or written evidence or both oral testimony and written evidence.

(5) The agency shall notify a defaulting party of the entry of a final order by default by delivering or mailing a copy of the order. If the contested case notice contained an order that was to become effective unless a party requested a hearing, and designated the agency file as the record for purposes of default, that order becomes a final order by default if no hearing is requested, and no further order need be served upon any party.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341(1), 183.415(6), 183.470 & 2007 HB 2423

Hist.: JD 2-1986, f. & ef. 1-27-86; JD 7-1991, f. & cert. ef. 11-4-91; JD 6-1993, f. 11-1-93, cert. ef. 11-4-93; DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06; DOJ 9-2007, f. 10-15-07 cert. ef. 1-1-08

137-003-0080
Reconsideration and Rehearing — Contested Cases

(1) A party may file a petition for reconsideration or rehearing of a final order in a contested case with the agency within 60 calendar days after the order is served. A copy of the petition shall also be delivered or mailed to all parties or other persons and agencies required by statute, rule, or order to receive notice of the proceeding.

(2) The petition shall set forth the specific grounds for reconsideration or rehearing. The petition may be supported by a written argument.

(3) A rehearing may be limited by the agency to specific matters.

(4) The petition may include a request for stay of a final order if the petition complies with the requirements of OAR 137-003-0090(2).

(5) The agency may consider a petition for reconsideration or rehearing as a request for either or both. The petition may be granted or denied by summary order and, if no action is taken, shall be deemed denied as provided in ORS 183.482.

(6) Within 60 calendar days after the order is served, the agency may, on its own initiative, reconsider the final order or rehear the case. If a petition for judicial review has been filed, the agency must follow the procedures set forth in ORS 183.482(6) before taking further action on the order. The procedural and substantive effect of reconsideration or rehearing under this section shall be identical to the effect of granting a party's petition for reconsideration or rehearing.

(7) Reconsideration or rehearing shall not be granted after the filing of a petition for judicial review, except in the manner provided by ORS 183.482(6).

(8) A final order remains in effect during reconsideration or rehearing until stayed or changed.

(9) Following reconsideration or rehearing, the agency shall enter a new order, which may be an order affirming the existing order.

Stat. Authority: ORS 183.341
Stats. Implemented: ORS 183.341(1) & 183.482(1) & (3)
Hist.: 1AG 14, f. & ef. 10-22-75; 1AG 17, f. & ef. 11-25-77; 1AG 1-1981, f. & ef. 11-17-81; JD 2-1986, f. & ef. 1-27-86; JD 5-1989, f. 10-6-89, cert. ef. 10-15-89; JD 7-1991, f. & cert. ef. 11-4-91; DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

Contested Cases — Stay Proceedings

137-003-0090
Stay Request

(1) Any person who submits a hearing request after a final order by default has been issued or petitions for reconsideration, rehearing or judicial review may request the agency to stay the enforcement of the agency order that is the subject of the petition.

(2) The stay request shall contain:

(a) The name, address and telephone number of the person filing the request and of that person's attorney, if any;

(b) The full title of the agency decision as it appears on the order and the date of the agency decision;

(c) A summary of the agency decision;

(d) The name, address, and telephone number of each other party to the agency proceeding. When the party was represented by an attorney in the proceeding, then the name, address, and telephone number of the attorney shall be provided and the address and telephone number of the party may be omitted;

(e) A statement advising all persons whose names, addresses and telephone numbers are required to appear in the stay request as provided in subsection (2)(d) of this rule, that they may participate in the stay proceeding before the agency if they file a response in accordance with OAR 137-003-0091 within ten days from delivery or mailing of the stay request to the agency;

(f) A statement of facts and reasons sufficient to show that the stay request should be granted because:

(A) The petitioner will suffer irreparable injury if the order is not stayed;

(B) There is a colorable claim of error in the order; and

(C) Granting the stay will not result in substantial public harm.

(g) A statement identifying any person, including the public, who may suffer injury if the stay is granted. If the purposes of the stay can be achieved with limitations or conditions that minimize or eliminate possible injury to other persons, petitioner shall propose such limitations or conditions. If the possibility of injury to other persons cannot be eliminated or minimized by appropriate limitation or conditions, petitioner shall propose an amount of bond, irrevocable letter of credit or other undertaking to be imposed on the petitioner should the stay be granted, explaining why that amount is reasonable in light of the identified potential injuries;

(h) A description of additional procedures, if any, the petitioner believes should be followed by the agency in determining the appropriateness of the stay request;

(i) In a request for a stay of an order in a contested case, an appendix of affidavits containing evidence (other than evidence contained in the record of the contested case out of which the stay request arose) relied upon in support of the statements required under subsections (2)(f) and (g) of this rule. The record of the contested case out of which the stay request arose is a part of the record of the stay proceedings;

(j) In a request for stay of an order in other than a contested case, an appendix containing evidence relied upon in support of the statement required under subsections (2)(f) and (g) of this rule.

(3) The request must be delivered or mailed to the agency and on the same date a copy delivered or mailed to all parties identified in the request as required by subsection (2)(d) of this rule.

Stat. Auth.: ORS 183.341 & 183.390
Stats. Implemented: ORS 183.341(1) & 183.482(3)
Hist.: JD 6-1983, f. 9-23-83, ef. 9-26-83; JD 2-1986, f. & ef. 1-27-86; JD 5-1989, f. 10-6-89, cert. ef. 10-15-89; JD 7-1991, f. & cert. ef. 11-4-91; DOJ 9-2001, f. & cert. ef. 10-3-01

137-003-0091
Intervention in Stay Proceeding

(1) Any party identified under OAR 137-003-0090(2)(d) desiring to participate as a party in the stay proceeding may file a response to the request for stay.

(2) The response shall contain:

(a) The full title of the agency decision as it appears on the order;

(b) The name, address, and telephone number of the person filing the response, except that if the person is represented by an attorney, then the name, address, and telephone number of the attorney shall be included and the person's address and telephone number may be deleted;

(c) A statement accepting or denying each of the statements of facts and reasons provided pursuant to OAR 137-003-0090(2)(f) in the petitioner's stay request;

(d) A statement accepting, rejecting, or proposing alternatives to the petitioner's statement on the bond, irrevocable letter of credit or undertaking amount or other reasonable conditions that should be imposed on petitioner should the stay request be granted.

(3) The response may contain affidavits containing additional evidence upon which the party relies in support of the statement required under subsections (2)(c) and (d) of this rule.

(4) The response must be delivered or mailed to the agency and to all parties identified in the stay request within ten days of the date of delivery or mailing to the agency of the stay request.

Stat. Auth.: ORS 183.341 & 183.390
Stats. Implemented: ORS 183.341(1) & 183.482(3)
Hist.: JD 6-1983, f. 9-23-83, ef. 9-26-83; JD 2-1986, f. & ef. 1-27-86; JD 7-1991, f. & cert. ef. 11-4-91

137-003-0092
Stay Proceeding and Order

(1) The agency may conduct such further proceedings pertaining to the stay request as it deems desirable, including taking further evidence on the matter. Agency staff may present additional evidence in response to the stay request. The agency shall commence such proceedings promptly after receiving the stay request.

(2) The agency shall issue an order granting or denying the stay request within 30 calendar days after receiving it. The agency's order shall:

(a) Grant the stay request upon findings of irreparable injury to the petitioner and a colorable claim of error in the agency order and may impose reasonable conditions, including but not limited to, a bond, irrevocable letter of credit or other undertaking and that the petitioner file all documents necessary to bring the matter to issue before the Court of Appeals within a specified reasonable period of time; or

(b) Deny the stay request upon a finding that the petitioner failed to show irreparable injury or a colorable claim of error in the agency order; or

(c) Deny the stay request upon a finding that a specified substantial public harm would result from granting the stay, notwithstanding the petitioner's showing of irreparable injury and a colorable claim of error in the agency order; or

(d) Grant or deny the stay request as otherwise required by law.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341(1) & 183.482(3)

Hist.: JD 6-1983, f. 9-23-83, ef. 9-26-83; JD 2-1986, f. & ef. 1-27-86; JD 1-1988, f. & cert. ef. 3-3-88; JD 7-1991, f. & cert. ef. 11-4-91; DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

Office of Administrative Hearings

NOTE: Oregon Administrative Rule 471-060-0005 (Request for Change of Administrative Law Judge) explains how to ask for a different administrative law judge.

137-003-0501
Rules for Office of Administrative Hearings

(1) OAR 137-003-0501 to 137-003-0700 apply to the conduct of all contested case hearings conducted for an agency by an administrative law judge assigned from the Office of Administrative Hearings unless:

(a) The case is not subject to the procedural requirements for contested cases; or

(b) The Attorney General, after consultation with the Chief Administrative Law Judge, has exempted the agency or a category of the agency's cases, by order, from the application of these rules in whole or in part.

(2) Any procedural rules adopted by the agency related to the conduct of hearings shall not apply to contested case hearings conducted for the agency by an administrative law judge assigned from the Office of Administrative Hearings unless required by state or federal law or specifically authorized by these rules or by order of the Attorney General.

(3) An agency may have rules specifying the time for requesting a contested case hearing, the permissible scope of the hearing and timelines for issuance of a proposed or final order. A request for hearing will be deemed to be a general denial of the matters alleged in the notice, unless a more specific response is required by statute or by agency rule. An agency rule establishing a different requirement for the response must be based on the agency's determination that, due to the complexity of the program or category of cases, a more specific response is warranted. Such rules should also provide parties the opportunity to amend their responses except when doing so would be unduly prejudicial. The amendments to this subsection apply to all hearing requests filed after January 31, 2012.

(4) Agencies with authority to assess the costs of an action or proceeding against a party may have rules specifying procedures related to assessment of costs.

(5) The agency's substantive rules, including those allocating the burden of proof, shall apply to all of its hearings.

(6) If permitted by law, the agency may delegate to an administrative law judge any of the agency's functions under these rules, including the authority to issue a final order. This delegation must be in writing and may be for a category of cases or on a case-by-case basis.

(7) For purposes of OAR 137-003-0501 to 137-003-0700, "good cause" exists when an action, delay, or failure to act arises from an excusable mistake, surprise, excusable neglect, reasonable reliance on the statement of a party or agency relating to procedural requirements, or from fraud, misrepresentation, or other misconduct of a party or agency participating in the proceeding.

(8) OAR 471-060-0005, Request for Change of Administrative Law Judge, applies to contested cases conducted by the Office of Administrative Hearings.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341 & 183.630

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 9-2007, f. 10-15-07 cert. ef. 1-1-08; DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

137-003-0505
Contested Case Notice

(1) When the agency is required to issue a contested case notice pursuant to ORS 183.415, the notice shall include:

(a) A caption with the name of the agency and the name of the person or agency to whom the notice is issued;

(b) A short and plain statement of the matters asserted or charged and a reference to the particular sections of the statute and rules involved;

(c) A statement of the party's right to be represented by counsel and that legal aid organizations may be able to assist a party with limited financial resources;

(d) A statement of the party's right to a hearing;

(e) A statement of the authority and jurisdiction under which a hearing is to be held on the matters asserted or charged;

(f) Either:

(A) A statement of the procedure and time to request a hearing, the agency address to which a hearing request should be sent, and a statement that if a request for hearing is not received by the agency within the time stated in the notice the person will have waived the right to a contested case hearing; or

(B) A statement of the time and place of the hearing;

(g) A statement indicating whether and under what circumstances an order by default may be entered;

(h) If the party is an agency, corporation, partnership, limited liability company, trust, government body or an unincorporated association, a statement that the party must be represented by an attorney licensed in Oregon, unless statutes applicable to the contested case proceeding specifically provide otherwise;

(i) If the agency proposes a sanction, the sanction that the agency proposes based on the facts alleged in the notice. If the proposed sanction is not the maximum potential sanction, the agency may also state the maximum potential sanction for each violation and that the agency may impose up to the maximum potential sanction provided in the notice, without amending the notice; and,

(j) Any other information required by law.

(2) A contested case notice may include either or both of the following:

(a) A statement that the record of the proceeding to date, including information in the agency file or files on the subject of the contested case and all materials submitted by a party, automatically become part of the contested case record upon default for the purpose of proving a prima facie case;

(b) A statement that a collaborative dispute resolution process is available as an alternative to a contested case hearing, if requested within the time period stated in the notice, and that choosing such a process will not affect the right to a contested case hearing if a hearing request is received by the agency within the time period stated in the notice and the matter is not resolved through the collaborative process.

(3) The notice requirements imposed in subsections (1)(h) and (1)(i) apply to all notices issued after January 31, 2012.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341, 183.413, 183.415, 183.630 & 183.675

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2007, f. 10-15-07 cert. ef. 1-1-08; DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12; DOJ 4-2014(Temp), f. 1-31-14, cert. ef. 2-1-14 thru 7-31-14; DOJ 6-2014, f. & cert. ef. 4-1-14

137-003-0510
Rights of Parties in Contested Cases

(1) The agency may request the administrative law judge to provide to each party written notice of any or all of the information required to be given under ORS 183.413(2) before the commencement of the hearing. The administrative law judge shall provide any such written notice personally or by mail.

(2) Unless otherwise precluded by law, the party and the agency, if participating in the contested case hearing, may agree to use alternative methods of dispute resolution in contested case matters. Such alternative methods of resolution may include arbitration or any collaborative method designed to encourage the agency and the parties to work together to develop a mutually agreeable solution, such as negotiation, mediation, use of a facilitator or a neutral fact-find-

er or settlement conferences, but may not include arbitration that is binding on the agency.

(3) Final disposition of contested cases may be by a final order following hearing or, unless precluded by law, by stipulation, agreed settlement, consent order or final order by default.

(4) A stipulation, agreed settlement or consent order disposing of a contested case must be in writing and signed by the party or parties. By signing such an agreement, the party or parties waive the right to a contested case hearing and to judicial review. The agency or administrative law judge shall incorporate the disposition into a final order. A copy of any final order incorporating an agreement must be delivered or mailed to each party and, if a party is represented by an attorney, to the party's attorney.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341, 183.413, 183.415, 183.630 & 183.675
Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 9-2007, f. 10-15-07 cert. ef. 1-1-08; DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

137-003-0515
Agency Referral to Office of Administrative Hearings

(1) When referring a contested case to the Office of Administrative Hearings, the agency shall provide written notice of the referral to the Office of Administrative Hearings that includes the name of the agency and the name and address of each party and its counsel. The notice may also include the agency case number, the name and address of the agency staff person or the assigned assistant attorney general, if any, upon whom pleadings and other papers should be served, and any other information requested by the Office of Administrative Hearings.

(2) The agency referral notice must be accompanied by a copy of the agency's contested case notice in the case, a copy of any request for hearing and copies of motions or petitions filed with the agency and orders issued by the agency in the contested case.

(3) The agency shall provide a copy of the referral notice to each party or their counsel, if any. The agency may include additional copies of documents already sent to or received from the parties or their counsel with the copy of the referral notice.

(4) After a case has been referred by the agency to the Office of Administrative Hearings, the agency may withdraw the case from the Office of Administrative Hearings if the agency notifies the parties in writing that:

(a) The agency is withdrawing its contested case notice;

(b) All of the issues in the case have been resolved without the need to hold a hearing; or

(c) The agency has determined that it is not appropriate for the case to proceed to a hearing at that time and the reason therefor.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341 & OL 1999, Ch. 849
Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06

137-003-0520
Filing and Providing Copies of Documents in Contested Case

(1) Notwithstanding any other provision of these rules, a hearing request is considered filed when actually received by the agency.

(2) Unless otherwise provided by these rules, any documents filed for the record in the contested case shall be filed as follows:

(a) Before the case is referred by the agency to the Office of Administrative Hearings, with the agency;

(b) After the case is referred to the Office of Administrative Hearings and before the assigned administrative law judge issues a proposed order, with the administrative law judge;

(c) After the assigned administrative law judge issues a proposed order, with the agency, or with the administrative law judge if the administrative law judge will issue the final order or if the document is required to be filed with the administrative law judge pursuant to OAR 137-003-0650.

(3) The agency and the Office of Administrative Hearings shall refer any document to the correct entity.

(4) Filing may be accomplished by hand delivery, facsimile or mail or by any other method permitted by the agency or administrative law judge.

(5) A party or agency filing any document for the record shall at the same time provide copies of the documents to the agency and the parties, or their counsel if the agency or party is represented.

(6) The agency may by rule or in writing waive the right to receive copies of documents filed under this rule if the administrative law judge is authorized to issue the final order or if the agency is not a participant in the contested case hearing.

(7) Each party shall notify all other parties, the agency and the administrative law judge of any change in the party's address or withdrawal or change of the party's representatives, including legal counsel. If an attorney withdraws from representing a party, the attorney shall provide written notice of the withdrawal to the administrative law judge, all other parties and the agency, unless the agency has waived the right to receive notice.

(8) The agency shall notify all parties and the administrative law judge of any change in the agency's address or withdrawal or change of the agency's representatives, including legal counsel.

(9) Documents sent through the U.S. Postal Service to the agency, Office of Administrative Hearings or assigned administrative law judge shall be considered filed on the date postmarked. Documents sent by facsimile or hand-delivered are considered filed when received by the agency, Office of Administrative Hearings or assigned administrative law judge. If the agency permits or the administrative law judge directs alternative means of filing, the agency or the administrative law judge should determine when filing is effective for each alternative method permitted or directed.

(10) Documents sent through the U.S. Postal Service by regular mail are presumed to have been received by the addressee, subject to evidence to the contrary.

(11) In computing any period of time prescribed or allowed by OAR 137-003-0501 through 137-003-0700, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the time period shall be included, unless it is a scheduled day of office closure, in which event the time period runs until the end of the next day that the office is open. Scheduled days of office closure include, but are not limited to, Saturdays and the legal holidays identified in ORS 187.010 and 187.020, including Sundays.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341 & 183.630
Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06; DOJ 9-2007, f. 10-15-07 cert. ef. 1-1-08; DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

137-003-0525
Scheduling Hearings

(1) Subject to the approval of the agency, the Office of Administrative Hearings or assigned administrative law judge shall:

(a) Set the date and time of the hearing, including a postponed or continued hearing;

(b) Determine the location of the hearing; and

(c) Determine whether cases shall be consolidated or bifurcated, except that, in accordance with OAR 137-003-0560(5), emergency suspension hearings shall not be consolidated with any related agency proceedings affecting the license, unless the party agrees to the consolidation.

(2) Unless otherwise provided by law, the Office of Administrative Hearings or assigned administrative law judge may postpone or continue a hearing:

(a) For good cause; or

(b) By agreement of the parties and the agency, if the agency is participating in the hearing.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341 & 183.630
Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 2-2000, f. & cert. ef. 3-27-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 9-2007, f. 10-15-07 cert. ef. 1-1-08; DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

137-003-0528
Late Hearing Requests

(1)(a) The agency must accept a properly addressed hearing request that was not timely filed if it was postmarked within the time specified for timely filing, unless any of the following applies:

(A) A statute prohibits the agency from accepting it;

(B) The agency has adopted an administrative rule exempting itself from this requirement based on operational conflicts; or

(C) The agency receives the request 60 calendar days or more after the entry of the final order by default or other deadline established by applicable statute or agency rule.

(b) The agency may accept any other late hearing request only if:

(A) There was good cause for the failure to timely request the hearing, unless other applicable statutes or agency rules provide a different standard; and

(B) The agency receives the request before the entry of a final order by default or before 60 calendar days after the entry of the final order by default, unless other applicable statutes or agency rules provide a different timeframe.

(c) If a final order by default has already been entered, the party requesting the hearing shall deliver or mail within a reasonable time a copy of the hearing request to all persons and agencies required by statute, rule or order to receive notice of the proceeding.

(d) In determining whether to accept a late hearing request, the agency may require the request to be supported by an affidavit or other writing that explains why the request for hearing is late and may conduct such further inquiry as it deems appropriate.

(e) Before granting a party's late hearing request, the agency will provide all other parties, if any, an opportunity to respond to the late hearing request.

(f) The requirement imposed in subsection (1) of this rule and the good cause standard adopted in subsection (2) shall apply to hearing requests on notices issued after January 31, 2012.

(2) If a party files a request for a hearing that the agency finds is untimely and the party disputes the agency finding of the date that the request was received or postmarked or that the agency mailed or delivered the notice, then the agency will refer the matter to the Office of Administrative Hearings to provide a right to a hearing on that factual dispute. The administrative law judge will issue a proposed order recommending that the agency find that the hearing request is either timely filed or late.

(3) If the agency or another party disputes the facts contained in the explanation of why the request for hearing is late, the agency will provide a right to a hearing on the reasons why the hearing request is late. The administrative law judge will issue a proposed order recommending that the agency grant or deny the late hearing request.

(4) In addition to the right to a hearing provided in (2) and (3) of this rule, the agency by rule or in writing may provide in any case or class of cases a right to a hearing on whether the late filing of a hearing request should be accepted. If a hearing is held, it must be conducted pursuant to these rules by an administrative law judge from the Office of Administrative Hearings.

(5) If the late hearing request is allowed by the agency, the agency will enter an order granting the request and refer the matter to the Office of Administrative Hearings to hold a hearing on the underlying matter. If the late hearing request is denied by the agency, the agency shall enter an order setting forth reasons for the denial.

(6) Except as otherwise provided by law, if a final order by default has been entered, that order remains in effect during consideration of a late hearing request unless the final order is stayed under OAR 137-003-0690.

(7) When a party requests a hearing more than 60 calendar days (or other time period set by statute) after the agency or administrative law judge has entered a final order by default, the agency shall not grant the request unless a statute or agency rule permits the agency to consider the request.

Stat. Auth: ORS 183.341
Stats. Implemented: ORS 183.341 & 183.630
Hist.: DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06; DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

137-003-0530
Late Filing and Amendment of Documents

(1) Unless otherwise provided by law, when a party or agency fails to file any document for the contested case proceeding, except a hearing request, within the time specified by agency rules or these rules of procedure, the late filing may be accepted if the agency or administrative law judge determines that there was good cause for failure to file the document within the required time.

(2) The decision whether a late filing will be accepted shall be made:

(a) By the agency if OAR 137-003-0520 requires the document to be filed with the agency; or

(b) By the administrative law judge if OAR 137-003-0520 requires the document to be filed with the Office of Administrative Hearings or the assigned administrative law judge.

(3) The agency or administrative law judge may require a statement explaining the reasons for the late filing.

(4) Notwithstanding any other provision of these rules, after the notice required by ORS 183.415 is issued:

(a) An agency may issue an amended notice:

(A) Before the hearing; or,

(B) During the hearing, but before the evidentiary record closes, if the administrative law judge determines that permitting the amendment will not unduly delay the proceeding or unfairly prejudice the parties.

(b) If an agency issues an amended notice, any party may obtain, upon request, a continuance determined to be reasonably necessary to respond to any new material contained in the amended notice. This subsection ((4)(b)) does not apply to implied consent proceedings conducted pursuant to ORS Chapter 813. The amendments to subsection (4) of this rule apply to all notices issued after January 31, 2012.

(5) Unless otherwise provided by law, when a party or agency files any document for the contested case proceeding, the agency or the administrative law judge may permit the party or agency to file an amended document if the agency or administrative law judge determines that permitting the amendment will not unduly delay the proceeding or unfairly prejudice the parties or the agency.

(6) The decision whether an amended document will be accepted shall be made:

(a) By the agency if OAR 137-003-0520(2) requires the document to be filed with the agency; or

(b) By the administrative law judge if OAR 137-003-0520(2) requires the document to be filed with the Office of Administrative Hearings or the assigned administrative law judge.

(7) The agency or administrative law judge may require a statement explaining the reasons for the amendment.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341 & 183.630
Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

137-003-0535
Participation as Party or Limited Party

(1) The agency may by rule or in writing identify persons or entities who shall be parties or limited parties.

(2) Persons who have an interest in the outcome of the agency's contested case proceeding or who represent a public interest in such result may request to participate as parties or limited parties. Unless otherwise provided by law, a person requesting to participate as a party or limited party shall file a petition with the agency and shall include a sufficient number of copies of the petition for service on all parties.

(3) The petition shall be filed at least 21 calendar days before the date set for the hearing, unless the agency by rule has set a different deadline or unless the agency and the parties agree to a different deadline. Petitions untimely filed shall not be considered

unless the agency determines that good cause has been shown for failure to file within the required time.

(4) The petition shall include the following:

(a) Names and addresses of the petitioner and of any organization the petitioner represents;

(b) Name and address of the petitioner's attorney, if any;

(c) A statement of whether the request is for participation as a party or a limited party, and, if as a limited party, the precise area or areas in which participation is sought;

(d) If the petitioner seeks to protect a personal interest in the outcome of the agency's proceeding, a detailed statement of the petitioner's interest, economic or otherwise, and how such interest may be affected by the results of the proceeding;

(e) If the petitioner seeks to represent a public interest in the results of the proceeding, a detailed statement of such public interest, the manner in which such public interest will be affected by the results of the proceeding, and the petitioner's qualifications to represent such public interest;

(f) A statement of the reasons why existing parties to the proceeding cannot adequately represent the interest identified in subsection (4)(d) or (e) of this rule.

(5) The agency shall serve a copy of the petition on each party personally or by mail. Each party shall have seven calendar days from the date of personal service or agency mailing to file a response to the petition.

(6) If the agency determines under OAR 137-003-0530 that good cause has been shown for failure to file a timely petition, the agency at its discretion may:

(a) Shorten the time within which responses to the petition shall be filed; or

(b) Postpone the hearing until disposition is made of the petition.

(7) If a person is granted participation as a party or a limited party, the hearing may be postponed or continued to a later date if necessary to avoid an undue burden to one or more of the parties in the case.

(8) In ruling on petitions to participate as a party or a limited party, the agency shall consider:

(a) Whether the petitioner has demonstrated a personal or public interest that could reasonably be affected by the outcome of the proceeding;

(b) Whether any such affected interest is within the scope of the agency's jurisdiction and within the scope of the notice of contested case hearing;

(c) When a public interest is alleged, the qualifications of the petitioner to represent that interest;

(d) The extent to which the petitioner's interest will be represented by existing parties.

(9) The agency may treat a petition to participate as a party as if it were a petition to participate as a limited party.

(10) If the agency grants a petition, the agency shall specify areas of participation and procedural limitations as it deems appropriate.

(11) An agency ruling on a petition to participate as a party or as a limited party shall be by written order and served promptly on the petitioner, all parties and the Office of Administrative Hearings or assigned administrative law judge. If the petition is allowed, the agency shall also provide petitioner with the notice of rights required by ORS 183.413(2) or request the administrative law judge to do so.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341, 183.415(4), 183.450(3) & OL 1999, Ch. 849
Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

137-003-0540
Agency Participation as Interested Agency or Party

(1) At any time after an agency refers a contested case to the Office of Administrative Hearings, the agency may also notify the parties that it intends to name any other agency that has an interest in the outcome of that proceeding as a party or as an interested agency, either on its own initiative or upon request by that other agency.

(2) Each party shall have seven calendar days from the date of service of the notice to file objections. The agency may establish a shorter or longer period of time for filing objections.

(3) The agency decision to name an agency as a party or as an interested agency shall be by written order and served promptly on the parties, the named agency and the Office of Administrative Hearings or assigned administrative law judge.

(4) An agency named as a party or as an interested agency has the same procedural rights and shall be given the same notices as any party in the proceeding. An interested agency, unlike a party, has no right to judicial review.

(5) An agency may not be named as a party under this rule without written authorization of the Attorney General.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 180.060, 180.220, 183.341, 183.415(4) & OL 1999, Ch. 849
Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

137-003-0545
Representation of Agency by Attorney General or Agency Representative

(1) An agency may be represented at a contested case hearing by the Attorney General.

(2) An agency may be represented at a contested case hearing by an officer or employee of the agency if the Attorney General has consented to that representation in a particular hearing or class of hearings and the agency, by rule, has authorized an agency representative to appear on its behalf in the particular type of contested case hearing involved.

(3) The administrative law judge shall not allow an agency representative appearing under section (2) of this rule to present legal argument as defined in this rule.

(a) "Legal Argument" includes arguments on:

(A) The jurisdiction of the agency to hear the contested case;

(B) The constitutionality of a statute or rule or the application of a constitutional requirement to an agency;

(C) The application of court precedent to the facts of the particular contested case proceeding.

(b) "Legal Argument" does not include presentation of motions, evidence, examination and cross-examination of witnesses or presentation of factual arguments or arguments on:

(A) The application of the statutes or rules to the facts in the contested case;

(B) Comparison of prior actions of the agency in handling similar situations;

(C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case;

(D) The admissibility of evidence; and

(E) The correctness of procedures being followed in the contested case hearing.

(4) If the administrative law judge determines that statements or objections made by an agency representative appearing under section (2) involve legal argument as defined in this rule, the administrative law judge shall provide reasonable opportunity for the agency representative to consult the Attorney General and permit the Attorney General to present argument at the hearing or to file written legal argument within a reasonable time after conclusion of the hearing.

(5) An agency representative appearing under section (2) must read and be familiar with the Code of Conduct for Non-Attorney Representatives at Administrative Hearings dated June 1, 2011, as amended October 1, 2011, which is maintained by the Oregon Department of Justice and available on its website at http://www.doj.state.or.us.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341, 183.452 & 183.630
Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

137-003-0550
Representation of Parties; Out-of-state Attorneys

(1) Natural persons who are parties in a contested case may represent themselves or may be represented by an attorney or other representative as authorized by federal or state law, including ORS 183.458.

(2) Corporations, partnerships, limited liability companies, unincorporated associations, trusts and government bodies must be represented by an attorney except as provided in OAR 137-003-0555 or as otherwise authorized by law.

(3) Unless otherwise provided by law, an out-of-state attorney may not represent a party to a contested case unless the out-of-state attorney is granted permission to appear in the matter pursuant to Oregon Uniform Trial Court Rule 3.170. Local counsel who obtained the order on behalf of the out-of-state attorney must participate meaningfully in the contested case in which the out-of-state attorney appears.

(4) Even if section (2) applies, a request for hearing will not be deemed to be invalid solely because it was not signed by a person licensed to practice law in Oregon as long as an attorney ratifies the request, in writing, within 28 days of the date that the request was received by the agency. The filing date will be determined by the date the hearing request was received, not by the ratification date. This requirement applies to hearing requests received after January 31, 2012.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 9.320, 183.341, 183.458 & 183.630
Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06; DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

137-003-0555
Authorized Representative of Parties Before Designated Agencies

(1) For purposes of this rule, the following words and phrases have the following meaning:

(a) "Agency" means State Landscape Contractors Board, Office of Energy and the Energy Facility Siting Council, Environmental Quality Commission and the Department of Environmental Quality; Insurance Division of the Department of Consumer and Business Services for proceedings in which an insured appears pursuant to ORS 737.505; the Department of Consumer and Business Services and any other agency for the purpose of proceedings to enforce the state building code, as defined by 455.010; the State Fire Marshal in the Department of State Police; Division of State Lands for proceedings regarding the issuance or denial of fill or removal permits under 196.800 to 196.990; Public Utility Commission; Water Resources Commission and the Water Resources Department; Land Conservation and Development Commission and the Department of Land Conservation and Development; State Department of Agriculture for purposes of hearings under 215.705; and the Bureau of Labor and Industries.

(b) "Authorized Representative" means a member of a partnership, an authorized officer or regular employee of a corporation, association or organized group, an authorized officer or employee of a governmental authority other than a state agency or other authorized representatives recognized by state or federal law;

(c) "Legal Argument" includes arguments on:

(A) The jurisdiction of the agency to hear the contested case;

(B) The constitutionality of a statute or rule or the application of a constitutional requirement to an agency;

(C) The application of court precedent to the facts of the particular contested case proceeding.

(d) "Legal Argument" does not include presentation of motions, evidence, examination and cross-examination of witnesses or presentation of factual arguments or arguments on:

(A) The application of the statutes or rules to the facts in the contested case;

(B) Comparison of prior actions of the agency in handling similar situations;

(C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case;

(D) The admissibility of evidence; and

(E) The correctness of procedures being followed in the contested case hearing.

(2) A party or limited party participating in a contested case hearing before an agency listed in subsection (1)(a) of this rule may be represented by an authorized representative as provided in this rule if the agency has by rule specified that authorized representatives may appear in the type of contested case hearing involved.

(3) Before appearing in the case, an authorized representative must provide the administrative law judge with written authorization for the named representative to appear on behalf of a party or limited party.

(4) The administrative law judge may limit an authorized representative's presentation of evidence, examination and cross-examination of witnesses, or presentation of factual arguments to insure the orderly and timely development of the hearing records, and shall not allow an authorized representative to present legal argument as defined in subsection (1)(c) of this rule.

(5) When an authorized representative is representing a party or limited party in a hearing, the administrative law judge shall advise such representative of the manner in which objections may be made and matters preserved for appeal. Such advice is of a procedural nature and does not change applicable law on waiver or the duty to make timely objection. Where such objections may involve legal argument as defined in this rule, the administrative law judge shall provide reasonable opportunity for the authorized representative to consult legal counsel and permit such legal counsel to file written legal argument within a reasonable time after conclusion of the hearing.

(6) An authorized representative must read and be familiar with the Code of Conduct for Non-Attorney Representatives at Administrative Hearings dated June 1, 2011, as amended October 1, 2011, which is maintained by the Oregon Department of Justice and available on its website at http://www.doj.state.or.us.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341, 183.457 & 183.630
Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

137-003-0560
Emergency License Suspension, Refusal to Renew

(1) If the agency finds there is a serious danger to the public health or safety, it may, by order, immediately suspend or refuse to renew a license. For purposes of this rule, such an order is referred to as an emergency suspension order. An emergency suspension order must be in writing. It may be issued without prior notice to the licensee and without a hearing prior to the emergency suspension order.

(2)(a) When the agency issues an emergency suspension order, the agency shall serve the order on the licensee either personally or by registered or certified mail;

(b) The order shall include the following statements:

(A) The effective date of the emergency suspension order;

(B) Findings of the specific acts or omissions of the licensee that violate applicable laws and rules and are the grounds for revocation, suspension or refusal to renew the license in the underlying proceeding affecting the license;

(C) The reasons the specified acts or omissions seriously endanger the public's health or safety;

(D) A reference to the sections of the statutes and rules involved;

(E) That the licensee has the right to demand a hearing to be held as soon as practicable to contest the emergency suspension order; and

(F) That if the demand for hearing is not received by the agency within 90 calendar days of the date of notice of the emergency suspension order the licensee shall have waived its right to a hearing regarding the emergency suspension order.

(3) If the licensee files a timely request, the matter shall be referred to the Office of Administrative Hearings, the hearing on an emergency suspension held, and the order issued as soon as practicable, and, unless a delay is explained in the final order as required by subsection (7) of this rule, in no event later than:

(a) Within seven calendar days of receiving a timely request for hearing, the agency shall refer the matter to the Office of Administrative Hearings to hold a hearing on the emergency suspension order;

(b) Within 30 calendar days of receiving a referral for a hearing on an emergency suspension order, the Office of Administrative Hearings shall complete the hearing and close the evidentiary record;

(c) Within 15 calendar days of the close of the evidentiary record in the hearing, the Office of Administrative Hearings shall issue a proposed order or a final order, if the agency has delegated authority to issue a final order;

(d) Within 15 calendar days of receiving a proposed order from the Office of Administrative Hearings, the agency shall issue a final order.

(4) The time limits established in section (3) of this rule may be waived or extended with the agreement of the agency and the licensee.

(5) The hearing on the emergency suspension order may be combined with any related agency proceeding affecting the license only with the agreement of the party.

(6) At the hearing regarding the emergency suspension order, the administrative law judge shall consider the facts and circumstances including, but not limited to:

(a) Whether the acts or omissions of the licensee pose a serious danger to the public health or safety; and

(b) Whether circumstances at the time of the hearing justify confirmation, alteration or revocation of the order.

(7) The administrative law judge shall issue a proposed order consistent with OAR 137-003-0645 unless the administrative law judge has authority to issue a final order without first issuing a proposed order. Any proposed order shall contain a recommendation whether the emergency suspension order should be confirmed, altered or revoked. The final order shall be consistent with 137-003-0665 and shall be based upon the criteria in section (6) of this rule. If any of the deadlines specified in section (3) of this rule are not met, the final order shall state the reason.

(8) The amendments to this rule apply to all emergency suspension orders issued after January 31, 2012.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341, ORS 183.430 & 183.630
Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

137-003-0565
Use of Collaborative Dispute Resolution in Contested Case Hearing

(1) When an agency issues a contested case notice, the party(ies) and the agency, if participating in the contested case hearing, may agree to participate in a collaborative dispute resolution (DR) process to resolve any issues relevant to the notice. Neither a party's request, nor any agreement by the agency, to participate in such a process tolls the period for filing a timely request for a contested case hearing.

(2) The agency, if participating in the contested case hearing, or the administrative law judge, if the agency is not participating in the contested case hearing, may establish a deadline for the conclusion of the collaborative DR process,

(3) The participants in the collaborative DR process may sign an agreement containing any of the provisions listed in OAR 137-005-0030 or such other terms as may be useful to further the collaborative DR process.

(4) If the party(ies), and the agency if participating in the contested case hearing, have agreed to participate in a collaborative DR process and a party makes a timely request for a contested case hearing, the hearing shall be suspended until the collaborative DR process is completed, the agency or the party opts out of the collaborative DR process, or the deadline, if any, for the conclusion of the collaborative process is reached.

(5) Collaborative dispute resolution may occur at any time before issuance of a final order. Any informal disposition of the contested case shall be consistent with ORS 183.415(5) and OAR 137-003-0510(4).

Stat. Auth.: ORS 183.341 & 183.502
Stats. Implemented: ORS 183.341, 183.415(5) & 183.502
Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

137-003-0566
Discovery in Contested Case Hearing — Methods

(1) Before the hearing, upon request by the agency or by a party, the agency and each party must provide:

(a) The names, telephone numbers, and addresses of witnesses expected to testify at the hearing, except rebuttal witnesses;

(b) Documents that the party or agency plans to offer as evidence;

(c) Objects for inspection, if the party or agency plans to offer the objects as evidence:

(d) Responses to no more than 20 requests for admission (each subpart to count as a separate request) unless otherwise authorized, limited, or prohibited by the administrative law judge; and,

(e) Responses to no more than 20 written interrogatories (each subpart to count as a separate interrogatory), unless otherwise authorized, limited, or prohibited by the administrative law judge.

(2) An agency may provide by rule that some or all discovery methods under this section do not apply to a specified program or category of cases if: it finds that the availability of discovery would unduly complicate or interfere with the hearing process in the program or cases, because of the volume of the applicable caseload and the need for speed and informality in that process, and that alternative procedures for the sharing of relevant information are sufficient to ensure the fundamental fairness of the proceedings.

(3) An agency may, by rule, limit a party's ability to obtain discovery from the agency when the agency merely is providing a forum for the parties and is not an active participant in the case.

(4) This rule is not intended to limit or otherwise conflict with a party's statutory right to obtain public records upon request. If a party knows or expects that a public record request relates to the proceeding, the party shall provide a copy of the public record request to the attorney or representative for the agency at the time the request is made.

(5) This rule is not intended to limit or otherwise conflict with the statutory authority, if any, of the agency to investigate.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341 & 183.630
Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06; Renumbered from 137-003-0570 by DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

137-003-0567
Discovery in Contested Case Hearing — Standard

Any discovery request must be reasonably likely to produce information that is generally relevant and necessary to the case, or is likely to facilitate resolution of the case.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341 & 183.630
Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06; Renumbered from 137-003-0570 by DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

137-003-0568
Discovery in Contested Case Hearing — Procedure

(1) Before filing a motion for an order requiring discovery, a party or the agency must make a good faith effort to obtain the information from the party, agency or person who has the information, unless the effort would pose a risk to any person or would be futile.

(2) A motion for an order requiring discovery should be filed with and decided by the agency or the administrative law judge, as required by OAR 137-003-0520(2) and 137-003-0630.

(3) Any party seeking an order from the administrative law judge requiring discovery shall send a copy of the motion to the agency, unless the agency has waived notice, and to all other parties. If the agency seeks an order requiring discovery, the agency shall send a copy of the motion to all parties. A request for an order requiring discovery must include a description of the attempts to obtain the

requested discovery informally, or an explanation why no such attempt was made, and an explanation of how the discovery is likely to produce information that is generally relevant and necessary to the case.

(4) The agency or the administrative law judge may authorize the requested discovery if the agency or the administrative law judge determines that the requested discovery is reasonably likely to produce information that is generally relevant to the case and necessary or likely to facilitate resolution of the case. Upon request of a party, a witness, or the agency, the agency or the administrative law judge may deny, limit, or condition discovery to protect any party, any witness, or the agency from annoyance, embarrassment, oppression, undue burden or expense, or to limit the public disclosure of information that is confidential or privileged by statute or rule. In making a decision, the agency or administrative law judge shall consider any objections by the party, the witness or the agency from whom the discovery is sought.

(5) If the agency or the administrative law judge authorizes discovery, the agency or the administrative law judge shall control the methods, timing and extent of discovery. Upon request of a party or the agency, the administrative law judge or the agency may issue a protective order limiting the public disclosure of information that is confidential or privileged by law.

(6) Only the agency may issue subpoenas in support of a discovery order. The agency or the party requesting the discovery may apply to the circuit court to compel obedience to a subpoena. (Subpoenas for attendance of witnesses or production of documents at the hearing are controlled by OAR 137-003-0585.)

(7) A party or agency dissatisfied with an administrative law judge's discovery order may ask the Chief Administrative Law Judge for immediate review of the order. A request for review by the Chief Administrative Law Judge must be made in writing within 10 days of the date of the discovery order. The Chief Administrative Law Judge shall review the order and independently apply the criteria set out in OAR 137-003-0567. The Chief Administrative Law Judge's order shall be in writing and shall explain any significant changes to the discovery order.

(8) The Chief Administrative Law Judge or the agency may designate in writing a person to exercise their respective responsibilities under this rule.

(9) In addition to or in lieu of any other discovery method, a party may ask an agency for records under the Public Records Law. The party making a public records request of the agency before which the contested case is pending should serve a copy of the public records request upon the agency representative or the attorney representing the agency.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341 & 183.630
Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06; Renumbered from 137-003-0570 by DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

137-003-0569
Discovery in Contested Case Hearing — Enforcement

(1) The administrative law judge may refuse to admit evidence that was not disclosed in response to a discovery order or discovery request, unless the party or agency that failed to provide discovery offers a satisfactory reason for having failed to do so, or unless excluding the evidence would violate the duty to conduct a full and fair inquiry under ORS 183.417(8). If the administrative law judge admits evidence that was not disclosed as ordered or requested, the administrative law judge must, upon request, grant a continuance to allow an opportunity for the agency or other party to respond to the undisclosed evidence. The requirement to grant continuances shall not apply in implied consent proceedings conducted pursuant to ORS chapter 813.

(2) Failure to respond to a request for admissions required by a discovery order shall be deemed an admission of matters that are the subject of the request for admissions, unless the party or agency failing to respond offers a satisfactory reason for having failed to do so, or unless excluding additional evidence on the subject of the request for admissions would violate the duty to conduct a full and fair inquiry under ORS 183.417(8). If the administrative law judge does not treat failure to respond to the request for admissions as admissions, the administrative law judge may grant a continuance to enable the parties and the agency to develop the record as needed.

(3) Nothing in OAR chapter 137, division 3, shall be construed to require the agency or any party to provide information that is confidential or privileged under state or federal law, except that upon request the agency or any party must disclose all documents that the agency or party intends to introduce at the hearing.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341 & 183.630
Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06; Renumbered from 137-003-0570 by DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

137-003-0572
Depositions in Contested Cases

(1) Depositions may not be taken in contested cases without agency authorization.

(2) A party or an attorney representing the agency may petition the agency for an order to take a deposition of a witness. A copy of the petition shall be sent to all other parties and the administrative law judge. The petition shall include the name and address of the witness, explain why the witness's testimony is material to the proceedings and explain why no other means of obtaining the witness's testimony for the hearing is adequate. As used in this rule, materiality means the testimony sought tends to make the existence of any fact that is of consequence to the determination of the issues more or less probable.

(3) The agency shall consider the petition and issue a written order either granting or denying the deposition. If the agency grants the deposition, the deposition shall be taken on such terms as the agency may order including, but not limited to, location, manner of recording, time of day, persons permitted to be present and duration.

(4) Examination and cross-examination of deponents may proceed as permitted at hearing.

(5) The testimony of the deponent shall be recorded.

(6) All objections made at the time of the examination shall be noted on the record.

(7) At any time during the taking of a deposition, upon motion and a showing by a party, the agency or a deponent that the deposition is being conducted or hindered in bad faith or in a manner not consistent with these rules or in such manner as unreasonably to annoy, embarrass or oppress the deponent, the agency or any party, the agency may order the examination to cease or may limit the scope or manner of the taking of the deposition. The taking of the deposition shall be suspended for the time necessary to make a motion under this subsection.

(8) Documents and things produced for inspection during the examination of the witness shall, upon the request of a party or the agency, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party or the agency.

(9) Deposition of a non-party may be compelled by a subpoena issued by the agency. The agency or the party requesting the deposition may apply to circuit court to compel obedience to a subpoena issued to compel a deposition.

(10) Unless otherwise prohibited by law, the agency may delegate to the administrative law judge its authority to authorize or limit depositions. Unless expressly required by law or expressly stated in the delegation by the agency, an administrative law judge may not require the agency to pay for any deposition taken by a party.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341, 183.425 & OL 1999, Ch. 849
Hist.: DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

137-003-0573
Individually Identifiable Health Information

(1) This rule is intended to facilitate the issuance of a Qualified Protective Order (QPO) by an administrative tribunal in a contest-

ed case proceeding. The process described in this rule may be used by an agency or party to a contested case proceeding to request information from Covered Entities by using a QPO. This rule is intended to comply with federal requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the HIPAA Privacy Rules in 45 CFR Parts 160 and 164 to protect the privacy of Protected Health Information. This rule should be construed to implement and not to alter the requirements of 45 CFR § 164.512(e).

(2) For purposes of this rule, capitalized terms used but not otherwise defined in this rule have the meaning given those terms in the HIPAA Privacy Rules in 45 CFR Parts 160 and 164.

(a) An agency or administrative law judge who conducts a contested case hearing on behalf of an agency is an "administrative tribunal," as that term is used in 45 CFR § 164.512(e).

(b) The HIPAA Privacy Rules define "Covered Entity" to include the following entities, as further defined in the HIPAA Privacy Rules:

(A) A Health Insurer or the Medicaid program;

(B) A Health Care Clearinghouse; or

(C) A Health Care Provider that transmits any Individually Identifiable Health Information using Electronic Transactions covered by HIPAA.

(3) An administrative tribunal may issue a QPO at the request of a party, a Covered Entity, an Individual, or the agency.

(a) A request for a QPO may be accompanied by a copy of the subpoena, discovery request, or other lawful process that requests Protected Health Information from a Covered Entity.

(b) If the Individual has signed an authorization permitting disclosure of the Protected Health Information for purposes of the contested case proceeding, the administrative tribunal need not issue a QPO.

(4) A QPO is an order of the administrative tribunal that:

(a) Prohibits the use or disclosure of Protected Health Information by the agency or parties for any purpose other than the contested case proceeding or judicial review of the contested case proceeding;

(b) Requires that all copies of the Protected Health Information be returned to the Covered Entity or destroyed at the conclusion of the contested case proceeding, or judicial review of the contested case proceeding, whichever is later; and

(c) Includes such additional terms and conditions as may be appropriate to comply with federal or state confidentiality requirements that apply to the Protected Health Information.

(5) This rule addresses only the process for requesting a QPO from an administrative tribunal in a contested case hearing. This rule does not address any claims or defenses related to the admissibility or confidentiality of Protected Health Information for purposes of discovery or the hearing.

(6) The provisions of this rule do not supercede any other provisions of the HIPAA Privacy Rules that otherwise permit or restrict uses or disclosure of Protected Health Information without the use of a QPO.

(7) This rule applies to all contested cases that are either pending or initiated on or after April 14, 2003.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 183.341, HIPAA 1996, 45 CFR part 160 &164

Stats. Implemented: ORS 183.341 & OL 1999, Ch. 849

Hist.: DOJ 2-2003, f. 3-19-03, cert. ef. 4-1-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

137-003-0575
Prehearing Conferences

(1) Prior to hearing, the administrative law judge may conduct one or more prehearing conferences to facilitate the conduct and resolution of the case. The administrative law judge may convene the conference on the initiative of the administrative law judge or at the agency's or a party's request.

(2) Prior to the conference, the administrative law judge shall notify the party and the agency, if participating, of the purposes of the conference and the matters to be considered. The agency or any party may request that additional matters be considered at the conference by providing notice in writing to the administrative law judge, the parties and the agency.

(3) The party and the agency, if participating in the contested case hearing, shall appear at a prehearing conference through legal counsel or through persons authorized to represent the party or the agency in the contested case hearing.

(4) The purposes of a prehearing conference may include, but are not limited to the following:

(a) To facilitate discovery and to resolve disagreements about discovery;

(b) To identify, simplify and clarify issues;

(c) To eliminate irrelevant or immaterial issues;

(d) To obtain stipulations of fact and to admit documents into evidence;

(e) To provide to the administrative law judge, agency and parties, in advance of the hearing, copies of all documents intended to be offered as evidence at the hearing and the names of all witnesses expected to testify;

(f) To authenticate documents;

(g) To decide the order of proof and other procedural matters pertaining to the conduct of the hearing;

(h) To assist in identifying whether the case might be appropriate for settlement or for a collaborative dispute resolution process and, if the agency agrees that the case is appropriate, to refer the case to the agency for settlement discussions or for exploration or initiation of a collaborative dispute resolution process;

(i) To schedule the date, time and location of the hearing or for any other matters connected with the hearing, including dates for prefiled testimony and exhibits and exchange of exhibits and witness lists; and

(j) To consider any other matters that may expedite the orderly conduct of the proceeding.

(5) The prehearing conference may be conducted in person or by telephone.

(6) The failure of a party or the agency to appear at a prehearing conference convened by the administrative law judge shall not preclude the administrative law judge from making rulings on any matters identified by the administrative law judge in the notice issued under section (2) of this rule, and discussion of any of these matters at the conference in the absence of the agency or a party notified of the conference does not constitute an ex parte communication with the administrative law judge.

(7) The administrative law judge conducting the prehearing conference must make a record of any stipulations, rulings and agreements. The administrative law judge shall either make an audio or stenographic record of the pertinent portions of the conference or shall place the substance of stipulations, rulings and agreements in the record by written summary. Stipulations to facts and to the authenticity of documents and agreements to narrow issues shall be binding upon the agency and the parties to the stipulation unless good cause is shown for rescinding a stipulation or agreement.

(8) After the hearing begins, the administrative law judge may at any time recess the hearing to discuss any of the matters listed in section (4) of this rule.

(9) Nothing in this rule precludes the agency and parties from engaging in informal discussions of any of the matters listed in section (4) of this rule without the participation of the administrative law judge. Any agreement reached in an informal discussion shall be submitted to the administrative law judge in writing or presented orally on the record at the hearing.

(10) An agency may adopt rules regarding the exchange of exhibits and a list of witnesses before the hearing for cases where there are no prehearing conferences.

Stat. Auth.: ORS 183.341 & 183.502

Stats. Implemented: ORS 183.341, 183.502 & 183.630

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

137-003-0580
Motion for Summary Determination

(1) Not less than 28 calendar days before the date set for hearing, the agency or a party may file a motion requesting a ruling in favor of the agency or party on any or all legal issues (including claims and defenses) in the contested case. The motion, accompanied by any affidavits or other supporting documents, shall be served on the agency and parties in the manner required by OAR 137-003-0520.

(2) Within 14 calendar days after service of the motion, the agency or a party may file a response to the motion. The response may be accompanied by affidavits or other supporting documents and shall be served on the agency and parties in the manner required by OAR 137-003-0520.

(3) The administrative law judge may establish longer or shorter periods than those under section (1) and (2) of this rule for the filing of motions and responses.

(4) The agency by rule may elect not to make available this process for summary determination.

(5) The party and the agency may stipulate to a record, including a record limited to documents, upon which a summary determination shall be made.

(6) The administrative law judge shall grant the motion for a summary determination if:

(a) The pleadings, affidavits, supporting documents (including any interrogatories and admissions) and the record in the contested case show that there is no genuine issue as to any material fact that is relevant to resolution of the legal issue as to which a decision is sought; and

(b) The agency or party filing the motion is entitled to a favorable ruling as a matter of law.

(7) The administrative law judge shall consider all evidence in a manner most favorable to the non-moving party or non-moving agency.

(8) Each party or the agency has the burden of producing evidence on any issue relevant to the motion as to which that party or the agency would have the burden of persuasion at the contested case hearing.

(9) A party or the agency may satisfy the burden of producing evidence through affidavits. Affidavits shall be made on personal knowledge, establish that the affiant is competent to testify to the matters stated therein and contain facts that would be admissible at the hearing.

(10) When a motion for summary determination is made and supported as provided in this rule, a non-moving party or non-moving agency may not rest upon the mere allegations or denials contained in that party's or agency's notice or answer, if any. When a motion for summary determination is made and supported as provided in this rule, the administrative law judge or the agency must explain the requirements for filing a response to any unrepresented party or parties.

(11) The administrative law judge's ruling may be rendered on a single issue and need not resolve all issues in the contested case.

(12) If the administrative law judge's ruling on the motion resolves all issues in the contested case, the administrative law judge shall issue a proposed order in accordance with OAR 137-003-0645 incorporating that ruling or a final order in accordance with 137-003-0665 if the administrative law judge has authority to issue a final order without first issuing a proposed order.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341 & 183.630
Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06; DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

137-003-0585
Subpoenas

(1) Subpoenas for the attendance of witnesses or the production of documents at the hearing may be issued as follows:

(a) By an agency on its own motion or by an Assistant Attorney General on behalf of the agency;

(b) By the agency or administrative law judge upon the request of a party to a contested case upon a showing of general relevance and reasonable scope of the evidence sought; and

(c) By an attorney representing a party on behalf of that party.

(2) A motion to quash a subpoena must be presented in writing to the administrative law judge, with service on the agency and any other party in the manner required by OAR 137-003-0520.

(a) The agency and any party may respond to the motion to quash within seven calendar days of receiving the motion. Any response must be in writing and served on the agency and any other party in the manner required by OAR 137-003-0520.

(b) The administrative law judge shall rule on the motion to quash within 14 calendar days of receiving the motion.

(3) If a person fails to comply with a properly issued subpoena, the agency, administrative law judge or party may apply to any circuit court judge to compel obedience with the requirements of the subpoena.

(4) The administrative law judge may establish longer or shorter periods than those under section (2) of this rule for the filing of motions and responses.

(5) The agency shall be responsible for paying any mileage or fees required by ORS 44.415 for witnesses subpoenaed to a hearing under subsection (1)(a) of this rule. The party shall be responsible for paying any mileage or fees required by 44.415 for witnesses subpoenaed to a hearing under subsections (1)(b) or (c) of this rule.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 44.415, 183.341, 183.440, 183.445 & OL 1999, Ch. 849
Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

137-003-0590
Qualified Interpreters

(1) For purposes of this rule:

(a) An "assistive communication device" means any equipment designed to facilitate communication by an individual with a disability;

(b) An "individual with a disability" means a person who cannot readily understand the proceedings because of deafness or a physical hearing impairment, or cannot communicate in the proceedings because of a physical speaking impairment;

(c) A "non-English speaking" person means a person who, by reason of place of birth or culture, speaks a language other than English and does not speak English with adequate ability to communicate effectively in the proceedings;

(d) A "qualified interpreter" means:

(A) For an individual with a disability, a person readily able to communicate with the individual with a disability, interpret the proceedings and accurately repeat and interpret the statements of the individual with a disability;

(B) For a non-English speaking person, a person readily able to communicate with the non-English speaking person and who can orally transfer the meaning of statements to and from English and the language spoken by the non-English speaking person. A qualified interpreter must be able to interpret in a manner that conserves the meaning, tone, level, style and register of the original statement, without additions or omissions. "Qualified interpreter" does not include a person who is unable to interpret the dialect, slang or specialized vocabulary used by the party or witness.

(2) If an individual with a disability is a party or witness in a contested case hearing:

(a) The administrative law judge shall appoint a qualified interpreter and make available appropriate assistive communication devices whenever it is necessary to interpret the proceedings to, or to interpret the testimony of, the individual with a disability.

(b) No fee shall be charged to the individual with a disability for the appointment of an interpreter or use of an assistive communication device. No fee shall be charged to any person for the appointment of an interpreter or the use of an assistive communication device if appointment or use is made to determine whether the person is disabled for purposes of this rule.

(3) If a non-English speaking person is a party or witness in a contested case hearing:

(a) The administrative law judge shall appoint a qualified interpreter whenever it is necessary to interpret the proceedings to a non-English speaking party, to interpret the testimony of a non-English speaking party or witness, or to assist the administrative law judge in performing the duties of the administrative law judge.

(b) No fee shall be charged to any person for the appointment of an interpreter to interpret the testimony of a non-English speaking party or witness, or to assist the administrative law judge in performing the duties of the administrative law judge. No fee shall be charged to a non-English-speaking party who is unable to pay for the appointment of an interpreter to interpret the proceedings to the non-English speaking party. No fee shall be charged to any person for the appointment of an interpreter if an appointment is made to determine whether the person is unable to pay or non-English speaking for the purposes of this rule.

(c) A non-English speaking party shall be considered unable to pay for an interpreter for purposes of this rule if:

(A) The party makes a verified statement and provides other information in writing under oath showing financial inability to pay for a qualified interpreter and provides any other information required by the agency concerning the inability to pay for such an interpreter; and

(B) It appears to the agency that the party is in fact unable to pay for a qualified interpreter.

(d) The agency may delegate to the administrative law judge the authority to determine whether the party is unable to pay for a qualified interpreter.

(4) When an interpreter for an individual with a disability or a non-English speaking person is appointed or an assistive communication device is made available under this rule:

(a) The administrative law judge shall appoint a qualified interpreter who is certified under ORS 45.291 if one is available unless, upon request of a party or witness, the administrative law judge deems it appropriate to appoint a qualified interpreter who is not so certified.

(b) The administrative law judge may not appoint any person as an interpreter if the person has a conflict of interest with any of the parties or witnesses, is unable to understand or cannot be understood by the administrative law judge, party or witness, or is unable to work cooperatively with the administrative law judge, the person in need of an interpreter or the representative for that person. If a party or witness is dissatisfied with the interpreter selected by the administrative law judge, a substitute interpreter may be used as provided in ORS 45.275(5).

(c) If a party or witness is dissatisfied with the interpreter selected by the administrative law judge, the party or witness may use any certified interpreter except that good cause must be shown for a substitution if the substitution will delay the proceeding.

(d) Fair compensation for the services of an interpreter or the cost of an assistive communication device shall be paid by the agency except, when a substitute interpreter is used for reasons other than cause, the party requesting the substitute shall bear any additional costs beyond the amount required to pay the original interpreter.

(5) The administrative law judge shall require any interpreter for a person with a disability or a non-English speaking person to state the interpreter's name on the record and whether he or she is certified under ORS 45.291. If the interpreter is not certified under 45.291, the interpreter must state or submit his or her qualifications on the record and must swear or affirm to make a true and impartial interpretation of the proceedings in an understandable manner using the interpreter's best skills and judgment in accordance with the standards and ethics of the interpreter profession.

(6) A person requesting an interpreter for a person with a disability or a non-English speaking person, or assistive communication device for an individual with a disability, must notify the administrative law judge as soon as possible, but no later than 14 calendar days before the proceeding, including the hearing or pre-hearing conference, for which the interpreter or device is requested.

(a) For good cause, the administrative law judge may waive the 14-day advance notice.

(b) The notice to the administrative law judge must include:

(A) The name of the person needing a qualified interpreter or assistive communication device;

(B) The person's status as a party or a witness in the proceeding; and

(C) If the request is in behalf of;

(i) An individual with a disability, the nature and extent of the individual's physical hearing or speaking impairment, and the type of aural interpreter, or assistive communication device needed or preferred; or

(ii) A non-English speaking person, the language spoken by the non-English speaking person.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341, 45.275, 45.285, 45.288 & OL 1999, Ch. 849
Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

137-003-0595
Public Attendance; Exclusion of Witnesses; Removal of Disruptive Individuals

(1) Unless otherwise required by law, contested case hearings are open to the public unless the agency by rule or in writing determines that the hearing will be closed to non-participants in the hearing.

(2) The administrative law judge may exclude witnesses from the hearing, except for a party, a party's authorized representative, expert witnesses, the agency representative, one agency officer or employee and any persons authorized by statute to attend.

(3) An administrative law judge may expel any person from the contested case hearing if that person engages in conduct that disrupts the hearing.

(4) Any party, party's representative, agency or agency's representative, having knowledge or reasonable belief that any person participating in the hearing may present a danger or may be a threat to anyone involved in the hearing, should immediately notify the Office of Administrative Hearings or the assigned administrative law judge, if any, the agency and the parties or their representatives, if appropriate, of the potential danger.

(5) An administrative law judge, the Office of Administrative Hearings, or the agency may take any other measures reasonably required to ensure the safety and security of the participants in the hearing.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341 & OL 1999, Ch. 849
Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 2-2000, f. & cert. ef. 3-27-00; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 9-2007, f. 10-15-07 cert. ef. 1-1-08

137-003-0600
Conducting the Contested Case Hearing

(1) The contested case hearing shall be conducted by and under the control of the administrative law judge assigned from the Office of Administrative Hearings.

(2) If the administrative law judge has an actual or potential conflict of interest as defined in ORS 244.020(1) or (12), that administrative law judge shall comply with the requirements of ORS Chapter 244 (e.g., 244.120 and 244.130).

(3) At the commencement of the hearing, the administrative law judge shall explain the issues involved in the hearing and the matters that the parties must either prove or disprove.

(4) The hearing shall be conducted so as to include the following:

(a) The statement and evidence of the proponent in support of its action;

(b) The statement and evidence of opponents, interested agencies, and other parties; except that limited parties may address only subjects within the area to which they have been limited;

(c) Any rebuttal evidence; and

(d) Any closing arguments.

(5) The administrative law judge, the agency through an agency representative or assistant attorney general, interested agencies through an assistant attorney general, and parties or their attorneys or authorized representatives shall have the right to question witnesses. However, limited parties may question only those

witnesses whose testimony may relate to the area or areas of participation granted by the agency.

(6) The hearing may be continued with recesses as determined by the administrative law judge.

(7) The administrative law judge may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious, irrelevant or immaterial matter.

(8) Exhibits shall be marked and maintained by the administrative law judge as part of the record of the proceedings.

(9) If the administrative law judge receives any written or oral ex parte communication during the contested case proceeding, the administrative law judge shall notify all parties and otherwise comply with the requirements of OAR 137-003-0625.

(10) The administrative law judge may request that any closing arguments be submitted in writing or orally.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341, 183.417(9) and (10), 183.450(3), 183.630 & 183.695
Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06; DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

137-003-0605
Telephone Hearings

(1) Unless precluded by law, the administrative law judge may hold a hearing or portion of a hearing by telephone and may permit a party or witness to appear at a hearing by telephone.

(2) If a hearing is to be held by telephone, each party and the agency, if participating in the contested case hearing, shall provide, before the commencement of the hearing, to all other parties, to the agency and to the administrative law judge copies of the exhibits it intends to offer into evidence at the hearing.

(3) If a witness is to testify by telephone, the party or agency that intends to call the witness shall provide, before commencement of the hearing, to the witness, to the other parties, to the agency, if participating in the contested case hearing, and to the administrative law judge a copy of each document about which the witness will be questioned.

(4) Nothing in this rule precludes any party or the agency from seeking to introduce documentary evidence in addition to evidence described in section (2) during the telephone hearing. The administrative law judge shall receive such evidence, subject to the applicable rules of evidence, if inclusion of the evidence in the record is necessary to conduct a full and fair hearing. If any evidence introduced during the hearing has not previously been provided to the agency and to the other parties, the hearing must be continued upon the request of any party or the agency for sufficient time to allow the party or the agency to obtain and review the evidence.

(5) The administrative law judge shall make an audio or stenographic record of any telephone hearing.

(6) As used in this rule, "telephone" means any two-way or multi-party electronic communication device, including video conferencing.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341 & 183.630
Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

137-003-0610
Evidentiary Rules

(1) Evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible.

(2) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, and privileges afforded by Oregon law shall be recognized by the administrative law judge.

(3) All offered evidence, not objected to, will be received by the administrative law judge subject to the administrative law judge's power to exclude irrelevant, immaterial, or unduly repetitious matter.

(4) Evidence objected to may be received by the administrative law judge. If the administrative law judge does not rule on its admissibility at the hearing, the administrative law judge shall do so either on the record before a proposed order is issued or in the proposed order. If the administrative law judge has authority to issue a final order without first issuing a proposed order, the administrative law judge may rule on the admissibility of the evidence in the final order.

(5) The administrative law judge shall accept an offer of proof made for excluded evidence. The offer of proof shall contain sufficient detail to allow the reviewing agency or court to determine whether the evidence was properly excluded. The administrative law judge shall have discretion to decide whether the offer of proof is to be oral or written and at what stage in the proceeding it will be made. The administrative law judge may place reasonable limits on the offer of proof, including the time to be devoted to an oral offer or the number of pages in a written offer.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341, 183.450 & OL 1999, Ch. 849
Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

137-003-0615
Judicial Notice and Official Notice of Facts

(1) The administrative law judge may take notice of judicially cognizable facts on the record before issuance of the proposed order or in the proposed order or, if the administrative law judge has authority to issue a final order without first issuing a proposed order, before the final order is issued. The agency or party(ies) may present rebuttal evidence.

(2) The administrative law judge may take official notice of general, technical or scientific facts within the specialized knowledge of the administrative law judge.

(a) If the administrative law judge takes official notice of general, technical or scientific facts, the administrative law judge shall provide such notice to the parties and the agency, if the agency is participating in the contested case hearing, before the issuance of the proposed order or, if the administrative law judge has authority to issue a final order without first issuing a proposed order, before the final order is issued.

(b) The agency or a party may object or may present rebuttal evidence in response to the administrative law judge's official notice of general, technical or scientific facts.

(c) If an objection is made or if rebuttal evidence is presented, the administrative law judge shall rule before the issuance of the proposed order or in the proposed order or, if the administrative law judge has authority to issue a final order, in the final order on whether the noticed facts will be considered as evidence in the proceeding.

(3) Before the issuance of the proposed order or a final order issued by an administrative law judge, the agency may take notice of judicially cognizable facts and may take official notice of general, technical or scientific facts within the specialized knowledge of the agency as follows:

(a) The agency shall provide notice of judicially cognizable facts or official notice of general, technical or scientific facts in writing to the administrative law judge and parties to the hearing.

(b) A party may present rebuttal evidence in response to agency notice of judicially cognizable facts or official notice of general, technical or scientific facts.

(c) If a party presents rebuttal evidence, the administrative law judge shall rule on whether the noticed facts will be considered as evidence in the proceeding.

(4) After the issuance of a proposed order, the agency may take notice of judicially cognizable facts and may take official notice of general, technical or scientific facts within the specialized knowledge of the agency as follows:

(a) The agency shall provide notice of judicially cognizable facts or official notice of general, technical or scientific facts in writing to the parties to the hearing and, if authorized to issue a final order, to the administrative law judge.

(b) A party may object in writing to agency notice of judicially cognizable facts or official notice of general, technical or scientific facts with service on any other parties, the agency and, if authorized to issue a final order, on the administrative law judge in the manner required by OAR 137-003-0520. A party may request that

the agency or, if authorized to issue a final order, the administrative law judge provide an opportunity for the party to present written or non-written rebuttal evidence.

(c) The agency may request the administrative law judge to conduct further hearing proceedings under OAR 137-003-0655 as necessary to permit a party to present rebuttal evidence.

(d) If a party presents rebuttal evidence, the agency or, if authorized to issue a final order, the administrative law judge shall rule in the final order on whether the noticed facts were considered as evidence.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341, 183.450(4) & OL 1999, Ch. 849
Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06

137-003-0625
Ex Parte Communications with Administrative Law Judge

(1) For purposes of this rule, an ex parte communication is:

(a) An oral or written communication;

(b) By a party, a party's representative or legal adviser, any other person who has a direct or indirect interest in the outcome of the proceeding, any other person with personal knowledge of the facts relevant to the proceeding, or any officer, employee or agent of the agency;

(c) That relates to a legal or factual issue in the contested case proceeding;

(d) Made directly or indirectly to the administrative law judge;

(e) While the contested case proceeding is pending;

(f) That is made without notice and opportunity for the agency and all parties to participate in the communication.

(2) If an administrative law judge receives an ex parte communication during the pendency of the contested case proceeding, the administrative law judge shall place in the record:

(a) The name of each individual from whom the administrative law judge received an ex parte communication;

(b) A copy of any ex parte written communication received by the administrative law judge;

(c) A memorandum reflecting the substance of any ex parte oral communication made to the administrative law judge;

(d) A copy of any written response made by the administrative law judge to any ex parte oral or written communication; and

(e) A memorandum reflecting the substance of any oral response made by the administrative law judge to any ex parte oral or written communication.

(3) The administrative law judge shall advise the agency and all parties in the proceeding that an ex parte communication has been made a part of the record. The administrative law judge shall allow the agency and parties an opportunity to respond to the ex parte communication. Any responses shall be made part of the record.

(4) The provisions of this rule do not apply to:

(a) Communications made to an administrative law judge by other administrative law judges; or

(b) Communications made to an administrative law judge by any person employed by the Office of Administrative Hearings to assist the administrative law judge.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341, 183.630, 183.685 & Or Laws 2009, ch 866 § 9
Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

137-003-0630
Motions

(1) A request for any order or other relief may be made by filing a motion in writing. The motion need not be in any particular form.

(2) Before filing any motion, the moving party or agency should make a good faith effort to confer with any non-moving party or agency regarding the order or relief sought to seek agreement about the subject of the motion. The moving party or agency need not make an effort to confer if efforts to confer would pose a risk to any person or would be futile. Any motion must describe the effort to confer and the result of the effort, or explain why the moving party or agency made no effort to confer with the non-moving party or agency.

(3) Unless otherwise provided by statute or rule, all motions shall be filed in writing at least 14 calendar days before the date set for the hearing and a copy provided to the parties and to the agency in the manner required by OAR 137-003-0520 except:

(a) Motions seeking to intervene or to be granted party status under OAR 137-003-0535,

(b) Motions made in a pre-hearing conference,

(c) Motions for a ruling on legal issues under OAR 137-003-0580; and

(d) Motions to continue a scheduled conference or hearing,

(e) Motions to quash a subpoena under OAR 137-003-0585 when the subpoena is served less than 14 days before the date set for the hearing.

(4) The agency or a party may file a response to a motion.

(a) Responses to motions filed 14 or more calendar days before the date of the hearing shall be in writing with service to the parties and to the agency in the manner required by OAR 137-003-0520 and shall be filed and served within seven calendar days after receipt of the motion.

(b) Responses to motions filed fewer than 14 calendar days before the date of the hearing may be in writing or presented orally at the hearing. If the response is in writing, the response must be filed and served on the parties or the agency in the manner required by OAR 137-003-0520 before the start of the hearing.

(5) Responses to late-filed motions may be presented orally or in writing at the contested case hearing.

(6) At the request of a party or the agency, or on the administrative law judge's own motion, the administrative law judge may establish longer or shorter periods than those under sections (2) and (3) of this rule for the filing of motions and responses. The administrative law judge may also consider motions presented orally at the contested case hearing. In exercising discretion under this subsection, the administrative law judge shall consider the duty to ensure a full and fair inquiry into the facts and the likelihood of undue delay or unfair prejudice.

(7) The mere filing or pendency of a motion, even if uncontested, does not alter or extend any time limit or deadline established by statute, rule or order.

(8) The administrative law judge shall rule on all motions on the record before issuance of a proposed order or in the proposed order or, if the administrative law judge has authority to issue a final order without first issuing a proposed order, in the final order.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341 & OL 1999, Ch. 849
Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 9-2007, f. 10-15-07 cert. ef. 1-1-08

137-003-0635
Transmittal of Questions to the Agency

(1) Questions regarding the following issues may be transmitted to the agency:

(a) The agency's interpretation of its rules and applicable statutes; or

(b) Which rules or statutes apply to a proceeding.

(2) At the request of a party, the agency, or their representatives, or on the administrative law judge's own motion, the administrative law judge may transmit a question to the agency unless the agency by rule or in writing elects not to make available this process for transmittal of questions to the agency.

(3) The administrative law judge shall submit any transmitted question in writing to the agency. The submission shall include a summary of the matter in which the question arises and shall be served on the agency representative and parties in the manner required by OAR 137-003-0520.

(4) The agency may request additional submissions by a party or the administrative law judge in order to respond to the transmitted question.

(5) Unless prohibited by statute or administrative rules governing the timing of hearings, the administrative law judge may stay

the proceeding and shall not issue the proposed order or the final order, if the administrative law judge has authority to issue the final order, until the agency responds to the transmitted question.

(6) The agency shall respond in writing to the transmitted question within a reasonable time. The agency's response must be signed by a person with authority to speak on the question transmitted.

(7) The agency's response shall be made a part of the record of the contested case hearing. The agency's response may be to decline to answer the transmitted question. The agency shall provide its response to the administrative law judge and to each party. The parties may reply to the agency's response within a reasonable time.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341 & 183.630
Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06; DOJ 12-2007, f. 10-30-07, cert. ef. 11-2-07; DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

137-003-0640
Immediate Review by Chief Administrative Law Judge

(1) Before issuance of a proposed order or before issuance of a final order if the administrative law judge has authority to issue a final order, the agency or a party may seek immediate review by the Chief Administrative Law Judge of the administrative law judge's decision on any of the following:

(a) A ruling on a motion to quash a subpoena under OAR 137-003-0585;

(b) A ruling refusing to consider as evidence judicially or officially noticed facts presented by the agency under OAR 137-003-0615 that is not rebutted by a party;

(c) A ruling on the admission or exclusion of evidence based on a claim of the existence or non-existence of a privilege.

(2) The agency by rule or in writing may elect not to make available this process of immediate review by the Chief Administrative Law Judge.

(3) The agency or a party may file a response to the request for immediate review. The response shall be in writing and shall be filed with the Chief Administrative Law Judge within five calendar days after receipt of the request for review with service on the administrative law judge, the agency representative, if any, and any other party.

(4) The mere filing or pendency of a request for the Chief Administrative Law Judge's immediate review, even if uncontested, does not alter or extend any time limit or deadline established by statute, rule, or order.

(5) The Chief Administrative Law Judge shall rule on all requests for immediate review in writing.

(6) The request and ruling shall be made part of the record of the proceeding.

(7) The Chief Administrative Law Judge may designate in writing a person to exercise his or her responsibilities under this rule.

(8) Beginning February 1, 2016, agencies, rather than the Chief Administrative Law Judge, will be responsible for providing the immediate review set out in this rule.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341 & 183.630
Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12; DOJ 4-2014(Temp), f. 1-31-14, cert. ef. 2-1-14 thru 7-31-14; DOJ 6-2014, f. & cert. ef. 4-1-14

137-003-0645
Proposed Orders in Contested Cases

(1) Unless the administrative law judge is authorized or required to issue a final order without first issuing a proposed order, the administrative law judge shall prepare a proposed order.

(2) The proposed order shall be based exclusively on:

(a) The pleadings, including the contested case notice, and motions;

(b) The applicable law;

(c) Evidence and arguments;

(d) Stipulations;

(e) Ex parte written communications received by the administrative law judge, memoranda prepared by the administrative law judge reflecting the substance of any ex parte oral communications made to the administrative law judge, written responses made by the administrative law judge and any memoranda prepared by the administrative law judge reflecting the substance of any oral responses made by the administrative law judge;

(f) Judicially cognizable facts and matters officially noticed;

(g) Proposed findings of fact and written argument submitted by a party or the agency;

(h) Intermediate orders or rulings by the administrative law judge or Chief Administrative Law Judge; and

(i) Any other material made part of the record of the hearing.

(3) The proposed order shall fully dispose of all issues presented to the administrative law judge that are required to resolve the case. The proposed order shall be in writing and shall include:

(a) The case caption;

(b) The name of the administrative law judge(s), the appearances of the parties and identity of witnesses;

(c) A statement of the issues;

(d) References to specific statutes or rules at issue;

(e) Rulings on issues presented to the administrative law judge, such as admissibility of offered evidence, when the rulings are not set forth in the record;

(f) Findings as to each issue of fact and as to each ultimate fact required to support the proposed order, along with a statement of the underlying facts supporting each finding;

(g) Conclusions of law based on the findings of fact and applicable law;

(h) An explanation of the reasoning that leads from the findings of fact to the legal conclusion(s);

(i) The action the administrative law judge recommends the agency take as a result of the facts found and the legal conclusions arising there from; and

(j) The name of the administrative law judge who prepared the proposed order and the date the order was issued.

(4) The agency by rule may provide that the proposed order will become a final order if no exceptions are filed within the time specified in the agency rule unless the agency notifies the parties and the administrative law judge that the agency will issue the final order. If the agency adopts such a rule, the proposed order shall include a statement to this effect.

(5) If the recommended action in the proposed order is adverse to any party, the proposed order shall also include a statement that the party may file exceptions and present argument to the agency or, if authorized to issue the final order, to the administrative law judge. The proposed order shall include information provided by the agency as to:

(a) Where and when written exceptions must be filed to be considered by the agency; and

(b) When and in what form argument may be made to the official(s) who will render the final order.

(6) The administrative law judge shall serve the proposed order on the agency and each party.

(7) The proposed order shall include a certificate of service, documenting the date the proposed order was served on the agency and each party.

(8) The administrative law judge shall transmit the hearing record to the agency when the proposed order is served or, if the administrative law judge has authority to issue a final order, when the final order is served.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341, 183.460, 183.464, 183.630 & 183.685
Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

137-003-0650
Exceptions to Proposed Order

(1) If the recommended action in the proposed order is adverse to any party or the agency, the party or agency may file exceptions and present argument to the agency or, if authorized to issue a final order, to the administrative law judge.

(2) The agency shall by rule or in writing describe:

(a) Where and when written exceptions must be filed to be considered by the agency; and

(b) When and in what form argument may be made to the official(s) who will render the final order.

(3) The agency may request the administrative law judge to review any written exceptions received by the agency and request the administrative law judge either to provide a written response to the exceptions to be made a part of the record or to revise the proposed order as the administrative law judge considers appropriate to address any exceptions. The administrative law judge shall not consider new or additional evidence unless, pursuant to OAR 137-003-0655(2), the agency requests the administrative law judge to conduct further hearing. The administrative law judge's response must be in writing, either in the form of a response to the exceptions or a revised proposed order, and sent to all parties and the agency.

(4) Agency staff may comment to the agency or the administrative law judge on the proposed order, and the agency or the administrative law judge may consider such comments, subject to OAR 137-003-0625 and 137-003-0660.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341, 183.460, 183.464 & OL 1999, Ch. 849
Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

137-003-0655
Further Hearing and Issuance of Final Order

(1) After issuance of the proposed order, if any, the administrative law judge shall not hold any further hearing or revise or amend the proposed order except at the request of the agency, except as provided in this subsection. The administrative law judge may withdraw a proposed order for correction within three working days of issuance of the proposed order. If the administrative law judge withdraws a proposed order for correction, the time for filing exceptions shall begin on the date the administrative law judge issues the corrected proposed order.

(2) If the agency requests the administrative law judge to conduct a further hearing under section (1) of this rule, the agency shall specify the scope of the hearing and the issues to be addressed. After further hearing, the administrative law judge shall issue a proposed order.

(3) If the administrative law judge's proposed order recommended a decision favorable to a party and the agency intends to reject that recommendation and issue an order adverse to that party, the agency shall issue an amended proposed order if:

(a) The official(s) who are to render the final order have not considered the record; or

(b) The changes to the proposed order are not within the scope of any exceptions or agency comment to which there was an opportunity to respond.

(4) Any amended proposed order issued under section (3) of this rule shall comply with OAR 137-003-0665(3) and (4) and shall include a statement that the party may file exceptions and present argument to the agency. The agency shall serve the amended proposed order on each party to the contested case proceeding.

(5) The agency or, if authorized to issue a final order, administrative law judge shall consider any timely exceptions and argument before issuing a final order. If exceptions are received, the agency or the administrative law judge may not consider new or additional evidence unless the agency requests the administrative law judge to conduct further hearings under section (1) of this rule. The agency or administrative law judge may issue an amended proposed order in light of any exceptions or argument.

(6) The agency or, if authorized, the administrative law judge shall issue a final order in accordance with OAR 137-003-0665. The agency may adopt the proposed order as the final order, or modify the proposed order and issue the modified order as the final order.

(7) An agency should issue an amended proposed order or a final order within 90 days of the date of the proposed order. When an agency will not issue an amended proposed order or final order within 90 days of the proposed order, the agency shall give written notice to the administrative law judge and all parties of the date by which the agency expects to issue the amended proposed order or the final order. This rule does not apply to proceedings under ORS chapters 539 and 537.670 through 537.700. An agency may adopt a rule exempting classes of cases from the requirements of this subsection upon the agency's determination that, due to the nature of the cases, 90 days normally is an insufficient time in which to issue an amended proposed or final order. The requirements of this subsection apply to all orders for which the proposed order is issued after January 31, 2012.

(8) If an agency decision maker has an actual or potential conflict of interest as defined in ORS 244.020(1) or (7), that decision maker shall comply with the requirements of ORS Chapter 244, including but not limited to 244.120 and 244.130.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341 & 183.630
Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06; DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

137-003-0660
Ex Parte Communications to Agency during Review of Contested Case

(1) For purposes of this rule, an ex parte communication is an oral or written communication to an agency decision maker during its review of the contested case not made in the presence of all parties to the hearing, concerning a fact in issue in the proceeding, but does not include communication from agency staff or counsel about legal issues or about facts in the record.

(2) If an agency decision maker receives an ex parte communication during its review of a contested case, the decision maker shall:

(a) Give all parties notice of the substance of the communication, if oral, or a copy of the communication, if written; and

(b) Provide any party who did not present the ex parte communication an opportunity to rebut the substance of the ex parte communication.

(3) The agency shall include in the record of the contested case proceeding:

(a) The ex parte communication, if in writing;

(b) A statement of the substance of the ex parte communication, if oral;

(c) The agency's notice to the parties of the ex parte communication; and

(d) Rebuttal evidence, if any.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341, 183.462 & OL 1999, Ch. 849
Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

137-003-0665
Final Orders in Contested Cases

(1) Final orders in contested cases shall be in writing.

(2) Except as provided in section (5) of this rule, all final orders in contested cases shall include the following:

(a) Each of the elements identified in OAR 137-003-0645(3)(a)–(h),

(b) An Order stating the action taken by the agency as a result of the facts found and the legal conclusions arising there from; and

(c) A citation of the statutes under which the order may be appealed.

(3) If the agency modifies the proposed order issued by the administrative law judge in any substantial manner, the agency must identify the modification and explain to the parties why the agency made the modification. For purposes of this provision, an agency modifies a proposed order in a "substantial manner" when the effect of the modification is to change the outcome or the basis for the order or to change a finding of fact.

(4) The agency may modify a finding of historical fact made by the administrative law judge only if the agency determines that there is clear and convincing evidence in the record that the finding made by the administrative law judge was wrong. For purposes of this provision, an administrative law judge makes a finding of historical fact if the administrative law judge determines that an event did or did

not occur in the past or that a circumstance or status did or did not exist either before the hearing or at the time of the hearing.

(5) When informal disposition of a contested case is made by stipulation, agreed settlement or consent order as provided in OAR 137-003-0510(4), the final order need not comply with section (2) of this rule. However, the order must state the agency action and:

(a) Incorporate by reference a stipulation or agreed settlement signed by the party or parties agreeing to that action; or

(b) Be signed by the party or parties; and

(c) A copy must be delivered or mailed to each party and the attorney of record for each party that is represented.

(6) The final order shall be served on each party and, if the party is represented, on the party's attorney.

(7) The date of service of the final order on the parties or, if a party is represented, on the party's attorney shall be specified in writing and be part of or be attached to the order on file with the agency, unless service of the final order is not required by statute.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341, 183.417(3), 183.470, 183.630, 183.650(3) & Or Laws 2009, ch 866, § 7
Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 9-2007, f. 10-15-07 cert. ef. 1-1-08; DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

137-003-0670
Default in Cases Involving a Notice of Proposed Action that Does Not Become Final Without a Hearing or Default

(1) This rule applies when the agency issues a notice of proposed action that does not become final in the absence of a request for hearing. The agency or, if authorized, the administrative law judge may issue a final order by default:

(a) When the agency gave a party an opportunity to request a hearing and the party failed to request a hearing within the time allowed to make the request;

(b) When the party that requested a hearing withdraws the request;

(c) Except as provided in section (2) of this rule, when the agency or administrative law judge notified the party of the time and place of the hearing and the party fails to appear at the hearing; or

(d) When the agency or administrative law judge notified the party of the time and place of the hearing in a matter in which only one party is before the agency and that party subsequently notifies the agency or administrative law judge that the party will not appear at the hearing, unless the agency or administrative law judge agreed to reschedule the hearing.

(2) If the party failed to appear at the hearing and, before issuing a final order by default, the agency or administrative law judge finds that the party had good cause for not appearing, the agency or administrative law judge may not issue a final order by default under section (1)(c) of this rule. In this case, the administrative law judge shall schedule a new hearing. If the reasons for the party's failure to appear are in dispute, the administrative law judge shall schedule a hearing on the reasons for the party's failure to appear.

(3)(a) An agency or administrative law judge may issue an order adverse to a party upon default under section (1) of this rule only upon a prima facie case made on the record. The agency or administrative law judge must find that the record contains evidence that persuades the agency or administrative law judge of the existence of facts necessary to support the order.

(b) Except as provided in subsection (c) of this section, if the agency designated the agency file in a matter as the record when a contested case notice for the matter was issued in accordance with OAR 137-003-0505 and no further testimony or evidence is necessary to establish a prima facie case, the agency file, including all materials submitted by a party, shall constitute the record. No hearing shall be conducted. The agency or, if authorized, the administrative law judge shall issue a final order by default under section (1) of this rule in accordance with 137-003-0665.

(c) If the agency determines that testimony or evidence is necessary to establish a prima facie case or if more than one party is before the agency and one party appears at the hearing, the administrative law judge shall conduct a hearing and, unless authorized to issue a final order without first issuing a proposed order, the administrative law judge shall issue a proposed order in accordance with OAR 137-003-0645. The agency or, if authorized, the administrative law judge shall issue a final order by default in accordance with 137-003-0665.

(4) The agency or administrative law judge shall notify a defaulting party of the entry of a final order by default by delivering or mailing a copy of the order.

(5) If a final order by default is entered because a party did not request a hearing within the time specified by the agency, the party may make a late hearing request as provided in OAR 137-003-0528.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341, 183.417(4), 183.450, 183.470 & 183.630
Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06; DOJ 9-2007, f. 10-15-07 cert. ef. 1-1-08; DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

137-003-0672
Default in Cases Involving an Agency Order that May Become Final Without a Request for Hearing

(1) This rule applies when the agency has issued a contested case notice containing an order that was to become effective unless a party requested a hearing, has designated the agency file, including all materials submitted by a party, as the record, and the record constitutes a prima facie case.

(2) When the agency gives a party an opportunity to request a hearing and the party fails to request a hearing within the time allowed to make the request, the agency order is final and no further order need be served upon the party. The party may make a late hearing request as provided in OAR 137-003-0528.

(3) After a party requests a hearing, the agency or the administrative law judge will dismiss the request for hearing, and the agency order is final as if the party never requested a hearing if:

(a) The party that requested a hearing withdraws the request;

(b) The agency or administrative law judge notifies the party of the time and place of the hearing and the party fails to appear at the hearing; or

(c) In a matter in which only one party is before the agency, the agency or administrative law judge notifies the party of the time and place of the hearing, and the party notifies the agency or administrative law judge that the party will not appear at the hearing, unless the agency or administrative law judge agrees to reschedule the hearing.

(4) If the party fails to appear at the hearing and, before dismissing the request for hearing, the administrative law judge finds that the party had good cause for failing to appear, the administrative law judge may not dismiss the request for hearing under section (3)(b) of this rule. In this case, the administrative law judge shall schedule a new hearing. If the reasons for the party's failure to appear are in dispute, the administrative law judge shall schedule a hearing on the reasons for the party's failure to appear.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341, 183.417(4) 183.470, & 183.630
Hist.: DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06; DOJ 9-2007, f. 10-15-07 cert. ef. 1-1-08; DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

137-003-0675
Reconsideration and Rehearing — Contested Cases

(1) Unless otherwise provided by statute, a party may file a petition for reconsideration or rehearing of a final order in a contested case with the agency within 60 calendar days after the order is served. A copy of the petition shall also be delivered or mailed to all parties or other persons and agencies required by statute, rule or order to receive notice of the proceeding.

(2) The agency may, by rule, require a party to file a petition for reconsideration or rehearing as a condition of judicial review. The agency may, by rule or in writing, require any petition for reconsideration or rehearing to be filed with the administrative law judge.

(3) The petition shall set forth the specific grounds for reconsideration or rehearing. The petition may be supported by a written argument.

(4) The petition may include a request for stay of a final order if the petition complies with the requirements of OAR 137-003-0690(3).

(5) Within 60 calendar days after the order is served, the agency may, on its own initiative, reconsider the final order or rehear the case. If a petition for judicial review has been filed, the agency must follow the procedures set forth in ORS 183.482(6) before taking further action on the order. The procedural and substantive effect of reconsideration or rehearing under this section shall be identical to the effect of granting a party's petition for reconsideration or rehearing.

(6) The agency may consider a petition for reconsideration or rehearing as a request for either or both. The petition may be granted or denied by summary order and, if no action is taken, shall be deemed denied as provided in ORS 183.482.

(a) If the agency determines that reconsideration alone is appropriate, the agency shall enter a new final order in accordance with OAR 137-003-0665, which may be an order affirming the existing order.

(b) If the agency determines that rehearing is appropriate, the agency shall decide upon the scope of the rehearing. The agency shall request the administrative law judge to conduct further hearing on such issues as the agency specifies and to prepare a proposed order as appropriate. The agency shall issue a new final order in accordance with OAR 137-003-0665. The agency may adopt the proposed order prepared by the administrative law judge as the final order, or modify the proposed order and issue the modified order as the final order.

(7) Reconsideration or rehearing shall not be granted after the filing of a petition for judicial review, except in the manner provided by ORS 183.482(6).

(8) Unless otherwise provided by law, a final order remains in effect during reconsideration or rehearing until stayed or changed.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341, 183.482 & OL 1999, Ch. 849
Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 2-2000, f. & cert. ef. 3-27-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

137-003-0690
Stay Request — Contested Case

(1) Unless otherwise provided by law, any person who submits a hearing request after a final order by default has been issued or petitions for reconsideration, rehearing or judicial review may request the agency to stay the enforcement of the agency order that is the subject of the petition.

(2) The agency may, by rule or in writing, require the stay request to be filed with the administrative law judge.

(3) The stay request shall contain:

(a) The name, address and telephone number of the person filing the request and of that person's attorney or representative, if any;

(b) The full title of the agency decision as it appears on the order and the date of the agency decision;

(c) A summary of the agency decision;

(d) The name, address and telephone number of each other party to the agency proceeding. When the party was represented by an attorney or representative in the proceeding, then the name, address and telephone number of the attorney or representative shall be provided and the address and telephone number of the party may be omitted;

(e) A statement advising all persons whose names, addresses and telephone numbers are required to appear in the stay request as provided in subsection (3)(d) of this rule, that they may participate in the stay proceeding before the agency if they file a response in accordance with OAR 137-003-0695 within ten calendar days from delivery or mailing of the stay request to the agency;

(f) A statement of facts and reasons sufficient to show that:

(A) The petitioner will suffer irreparable injury if the order is not stayed; and,

(B) There is a colorable claim of error in the order;

(g) A statement explaining why granting the stay will not result in substantial public harm;

(h) A statement identifying any person, including the public, who may suffer injury if the stay is granted. If the purposes of the stay can be achieved with limitations or conditions that minimize or eliminate possible injury to other persons, petitioner shall propose such limitations or conditions. If the possibility of injury to other persons cannot be eliminated or minimized by appropriate limitation or conditions, petitioner shall propose an amount of bond, irrevocable letter of credit or other undertaking to be imposed on the petitioner should the stay be granted, explaining why that amount is reasonable in light of the identified potential injuries;

(i) A description of additional procedures, if any, the petitioner believes should be followed by the agency in determining the appropriateness of the stay request; and

(j) An appendix of affidavits containing evidence (other than evidence contained in the record of the contested case out of which the stay request arose) relied upon in support of the statements required under subsections (3)(f), (g) and (h) of this rule. The record of the contested case out of which the stay request arose is a part of the record of the stay proceedings.

(4) The request must be delivered or mailed to the agency and on the same date a copy delivered or mailed to all parties identified in the request as required by subsection (3)(d) of this rule.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341,183.482(3) & 183.630
Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06; DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

137-003-0695
Intervention in Stay Proceeding

(1) Any party identified under OAR 137-003-0690(3)(d) desiring to participate as a party in the stay proceeding may file a response to the request for stay.

(2) The agency may, by rule or in writing, require the response to be filed with the administrative law judge.

(3) The response shall contain:

(a) The full title of the agency decision as it appears on the order;

(b) The name, address, and telephone number of the person filing the response, except that if the person is represented by an attorney, then the name, address, and telephone number of the attorney shall be included and the person's address and telephone number may be deleted;

(c) A statement accepting or denying each of the statements of facts and reasons provided pursuant to OAR 137-003-0690(3)(f) in the petitioner's stay request; and

(d) A statement accepting, rejecting, or proposing alternatives to the petitioner's statement on the bond, irrevocable letter of credit or undertaking amount or other reasonable conditions that should be imposed on petitioner should the stay request be granted.

(4) The response may contain affidavits containing additional evidence upon which the party relies in support of the statement required under subsections (3)(c) and (d) of this rule.

(5) The response must be delivered or mailed to the agency and to all parties identified in the stay request within 10 calendar days of the date of delivery or mailing to the agency of the stay request.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341, 183.482(3) & OL 1999, Ch. 849
Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

137-003-0700
Stay Proceeding and Order

(1) The agency may conduct such further proceedings pertaining to the stay request as it deems desirable, including taking further evidence on the matter. Agency staff may present additional evidence in response to the stay request. The agency shall commence such proceedings promptly after receiving the stay request.

(2) The agency shall issue an order granting or denying the stay request within 30 calendar days after receiving it. The agency's order shall:

(a) Grant the stay request upon findings of irreparable injury to the petitioner and a colorable claim of error in the agency order and may impose reasonable conditions, including but not limited to, a bond, irrevocable letter of credit or other undertaking and that the

petitioner file all documents necessary to bring the matter to issue before the Court of Appeals within a specified reasonable period of time; or

(b) Deny the stay request upon a finding that the petitioner failed to show irreparable injury or a colorable claim of error in the agency order; or

(c) Deny the stay request upon a finding that a specified substantial public harm would result from granting the stay, notwithstanding the petitioner's showing of irreparable injury and a colorable claim of error in the agency order; or

(d) Grant or deny the stay request as otherwise required by law.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341, 183.482(3) & OL 1999, Ch. 849
Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

DIVISION 4

MISCELLANEOUS, ORDERS IN OTHER THAN CONTESTED CASE

137-004-0010
Unacceptable Conduct

A presiding officer may expel a person from an agency proceeding if that person engages in conduct that disrupts the proceeding.

Stat. Auth.: ORS 183
Stats. Implemented: ORS 183.341(1)
Hist.: 1AG 1-1981, f. & ef. 11-17-81; JD 6-1983, f. 9-23-83, ef. 9-26-83; JD 2-1986, f. & ef. 1-27-86

137-004-0050
Qualified Interpreters

(1) This rule applies to any hearing conducted by an agency in which the individual legal rights, duties or privileges of specific parties are determined if that determination is subject to judicial review by a circuit court or by the Court of Appeals.

(2) For purposes of this rule:

(a) An "assistive communication device" means any equipment designed to facilitate communication by a disabled person;

(b) An "individual with a disability" means a person who cannot readily understand the proceedings because of deafness or a physical hearing impairment, or cannot communicate in the proceedings because of a physical speaking impairment;

(c) A "non-English speaking" person means a person who, by reason of place of birth or culture, speaks a language other than English and does not speak English with adequate ability to communicate effectively in the proceedings;

(d) A "qualified interpreter" means:

(A) For an individual with a disability, a person readily able to communicate with the individual with a disability, interpret the proceedings and accurately repeat and interpret the statements of the individual with a disability to the presiding officer;

(B) For a non-English speaking person, a person readily able to communicate with the non-English speaking person and who can orally transfer the meaning of statements to and from English and the language spoken by the non-English speaking person. A qualified interpreter must be able to interpret in a manner that conserves the meaning, tone, level, style and register of the original statement, without additions or omissions. "Qualified interpreter" does not include a person who is unable to interpret the dialect, slang or specialized vocabulary used by the party or witness.

(3) If an individual with a disability is a party or witness in a hearing:

(a) The presiding officer shall appoint a qualified interpreter and make available appropriate assistive communication devices whenever it is necessary to interpret the proceedings to, or to interpret the testimony of, the individual with a disability.

(b) No fee shall be charged to the individual with a disability for the appointment of an interpreter or use of an assistive communication device. No fee shall be charged to any person for the appointment of an interpreter or the use of an assistive communication device if appointment or use is made to determine whether the person is disabled for purposes of this rule.

(4) If a non-English speaking person is a party or witness in a hearing:

(a) The presiding officer shall appoint a qualified interpreter whenever it is necessary to interpret the proceedings to a non-English speaking party, to interpret the testimony of a non-English speaking party or witness, or to assist the presiding officer in performing the duties of the presiding officer.

(b) No fee shall be charged to any person for the appointment of an interpreter to interpret the testimony of a non-English speaking party or witness, or to assist the presiding officer in performing the duties of the presiding officer. No fee shall be charged to a non-English-speaking party who is unable to pay for the appointment of an interpreter to interpret the proceedings to the non-English speaking party. No fee shall be charged to any person for the appointment of an interpreter if an appointment is made to determine whether the person is unable to pay or non-English speaking for the purposes of this rule.

(c) A non-English speaking party shall be considered unable to pay for an interpreter for purposes of this rule if:

(A) The party makes a verified statement and provides other information in writing under oath showing financial inability to pay for a qualified interpreter and provides any other information required by the agency concerning the inability to pay for such an interpreter; and

(B) It appears to the agency that the party is in fact unable to pay for a qualified interpreter.

(d) The agency may delegate to the presiding officer the authority to determine whether the party is unable to pay for a qualified interpreter.

(5) When an interpreter for an individual with a disability or a non-English speaking person is appointed or an assistive communication device is made available under this rule:

(a) The presiding officer shall appoint a qualified interpreter who is certified under ORS 45.291 if one is available unless, upon request of a party or witness, the presiding officer deems it appropriate to appoint a qualified interpreted who is not so certified.

(b) The presiding officer may not appoint any person as an interpreter if the person has a conflict of interest with any of the parties or witnesses, is unable to understand or cannot be understood by the presiding officer, party or witness, or is unable to work cooperatively with the presiding officer, the person in need of an interpreter or the representative for that person. If a party or witness is dissatisfied with the interpreter selected by the presiding officer, a substitute interpreter may be used as provided in ORS 45.275(5).

(c) If a party or witness is dissatisfied with the interpreter selected by the presiding officer, the party or witness may use any certified interpreter except that good cause must be shown for a substitution if the substitution will delay the proceeding.

(d) Fair compensation for the services of an interpreter or the cost of an assistive communication device shall be paid by the agency except, when a substitute interpreter is used for reasons other than cause, the party requesting the substitute shall bear any additional costs beyond the amount required to pay the original interpreter.

(6) The presiding officer shall require any interpreter for a person with a disability or a non-English speaking person to state the interpreter's name on the record and whether he or she is certified under ORS 45.291. If the interpreter is not certified under ORS 45.291, the interpreter must state or submit his or her qualifications on the record and must swear or affirm to make a true and impartial interpretation of the proceedings in an understandable manner using the interpreter's best skills and judgment in accordance with the standards and ethics of the interpreter profession.

(7) A person requesting an interpreter for a person with a disability or a non-English speaking person, or assistive listening device for the individual with a disability, must notify the agency or presiding officer as soon as possible, but no later than five business days before the proceeding.

(a) For good cause shown, the agency or presiding officer may waive the five-day advance notice.

(b) Notification to the agency or presiding officer must include:

(A) The name of the person needing a qualified interpreter or assistive communication device;

(B) The person's status as a party or a witness in the proceeding; and

(C) If the request is in behalf of;

(i) An individual with a disability, the nature and extent of the individual's physical hearing or speaking impairment, and the type of aural interpreter, or assistive communication device needed or preferred; or

(ii) A non-English speaking person, the language spoken by the non-English speaking person.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341 & OL 1999, Ch. 1041 (SB 38), Ch. 849 & OL 2001, Ch. 242 (SB 76)
Hist.: DOJ 9-2001, f. & cert. ef. 10-3-01

137-004-0080
Reconsideration — Orders in Other than Contested Case

(1) A person entitled to judicial review under ORS 183.484 of a final order in other than a contested case may file a petition for reconsideration of a final order in other than a contested case with the agency within 60 calendar days after the date of the order. A copy of the petition shall also be delivered or mailed to all other persons and agencies required by statute or rule to be notified.

(2) The petition shall set forth the specific grounds for reconsidera-tion. The petition may be supported by a written argument.

(3) The petition may include a request for a stay of a final order if the petition complies with the requirements of OAR 137-003-0090(2).

(4) The petition may be granted or denied by summary order, and, if no action is taken, shall be deemed denied as provided by ORS 183.484(2).

(5) Within 60 calendar days after the date of the order, the agency may, on its own initiative, reconsider the final order. If a petition for judicial review has been filed, the agency must follow the procedures set forth in ORS 183.484(4) before taking further action on the order. The procedural and substantive effect of granting reconsideration under this subsection shall be identical to the effect of granting a party's petition for reconsideration.

(6) Reconsideration shall not be granted after the filing of a petition for judicial review, unless permitted by the court.

(7) A final order remains in effect during reconsideration until stayed or changed.

(8) Following reconsideration, the agency shall enter a new order, which may be an order affirming the existing order.

Stat. Authority: ORS 183.341
Stats. Implemented: ORS 183.484(2) & OL 1999, Ch. 113
Hist.: JD 5-1989, f. 10-6-89, cert. ef. 10-15-89; JD 7-1991, f. & cert. ef. 11-4-91; JD 6-1993, f. 11-1-93, cert. ef. 11-4-93; DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

137-004-0090
Stay Request — Orders in Other than Contested Case

(1) Unless otherwise provided by law, any person who petitions for reconsideration may request the agency to stay the enforce-ment of the agency order that is the subject of the petition.

(2) The stay request shall contain:

(a) The name, address and telephone number of the person filing the request and of that person's attorney, if any;

(b) If the agency order was in writing, the full title of the agency decision as it appears on the order and the date of the agency decision;

(c) A summary of the agency decision; and

(d) The name, address and telephone number of each other party to the agency proceeding. When the party was represented by an attorney in the proceeding, then the name, address and telephone number of the attorney shall be provided and the address and telephone number of the party may be omitted.

(e) A statement advising all persons whose names, addresses and telephone numbers are required to appear in the stay request as provided in subsection (2)(d) of this rule, that they may participate in the stay proceeding before the agency if they file a response in accordance with OAR 137-004-0095 within ten calendar days from delivery or mailing of the stay request to the agency;

(f) A statement of facts and reasons sufficient to show that the stay request should be granted because:

(A) The petitioner will suffer irreparable injury if the order is not stayed;

(B) There is a colorable claim of error in the order; and

(C) Granting the stay will not result in substantial public harm.

(g) A statement identifying any person, including the public, who may suffer injury if the stay is granted. If the purposes of the stay can be achieved with limitations or conditions that minimize or eliminate possible injury to other persons, petitioner shall propose such limitations or conditions. If the possibility of injury to other persons cannot be eliminated or minimized by appropriate limitation or conditions, petitioner shall propose an amount of bond, irrevocable letter of credit or other undertaking to be imposed on the petitioner should the stay be granted, explaining why that amount is reasonable in light of the identified potential injuries;

(h) A description of additional procedures, if any, the petitioner believes should be followed by the agency in determining the appropriateness of the stay request;

(i) An appendix containing evidence relied upon in support of the statement required under subsections (2)(f) and (g) of this rule.

(3) The request must be delivered or mailed to the agency and on the same date a copy delivered or mailed to all parties identified in the request as required by subsection (2)(d) of this rule.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341
Hist.: DOJ 9-2001, f. & cert. ef. 10-3-01

137-004-0091
Intervention in Stay Proceeding — Orders in Other than Contested Case

(1) Any party identified under OAR 137-004-0090(2)(d) desiring to participate as a party in the stay proceeding may file a response to the request for stay.

(2) The response shall contain:

(a) The full title of the agency decision as it appears on the stay request;

(b) The name, address, and telephone number of the person filing the response, except that if the person is represented by an attorney, then the name, address, and telephone number of the attorney shall be included and the person's address and telephone number may be deleted;

(c) A statement accepting or denying each of the statements of facts and reasons provided pursuant to OAR 137-004-0090(2)(f) in the petitioner's stay request; and

(d) A statement accepting, rejecting, or proposing alternatives to the petitioner's statement on the bond, irrevocable letter of credit or undertaking amount or other reasonable conditions that should be imposed on petitioner should the stay request be granted.

(3) The response may contain affidavits containing additional evidence upon which the party relies in support of the statement required under subsections (2)(c) and (d) of this rule.

(4) The response must be delivered or mailed to the agency and to all parties identified in the stay request within 10 calendar days of the date of delivery or mailing to the agency of the stay request.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341
Hist.: DOJ 9-2001, f. & cert. ef. 10-3-01

137-004-0092
Stay Proceeding and Order — Orders in Other than Contested Case

(1) The agency may conduct such further proceedings pertaining to the stay request as it deems desirable, including taking further evidence on the matter. Agency staff may present additional evidence in response to the stay request. The agency shall commence such proceedings promptly after receiving the stay request.

(2) The agency shall issue an order granting or denying the stay request within 30 calendar days after receiving it. The agency's order shall:

(a) Grant the stay request upon findings of irreparable injury to the petitioner and a colorable claim of error in the agency order and may impose reasonable conditions, including but not limited to, a bond, irrevocable letter of credit or other undertaking; or

(b) Deny the stay request upon a finding that the petitioner failed to show irreparable injury or a colorable claim of error in the agency order; or

(c) Deny the stay request upon a finding that a specified substantial public harm would result from granting the stay, notwithstanding the petitioner's showing of irreparable injury and a colorable claim of error in the agency order; or

(d) Grant or deny the stay request as otherwise required by law.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341
Hist.: DOJ 9-2001, f. & cert. ef. 10-3-01

137-004-0800
Public Records Personal Safety Exemption

(1) An individual may request that a public body not disclose the information in a specified public record that indicates the home address, personal telephone number or personal electronic mail address of the individual. If the individual demonstrates to the satisfaction of the public body that the personal safety of the individual or the personal safety of a family member residing with the individual is in danger if the home address, personal telephone number or personal electronic mail address remains available for public inspection, the public body may not disclose that information from the specified public record, except in compliance with a court order, to a law enforcement agency at the request of the law enforcement agency, or with the consent of the individual.

(2) A request under subsection (1) of this rule shall be submitted to the custodian of public records for the public record that is the subject of the request. The request shall be in writing, signed by the requestor, and shall include:

(a) The name or a description of the public record sufficient to identify the record;

(b) A mailing address for the requestor;

(c) Evidence sufficient to establish to the satisfaction of the public body that disclosure of the requestor's home address, personal telephone number or personal electronic mail address would constitute a danger to the personal safety of the requestor or of a family member residing with the requestor. Such evidence may include the following documents:

(A) Documentary evidence, including a written statement, that establishes to the satisfaction of the public body that disclosure of the requestor's home address, personal telephone number or personal electronic mail address would constitute a danger to the personal safety of the requestor or of a family member residing with the requestor;

(B) A citation or an order issued under ORS 133.055 for the protection of the requestor or a family member residing with the requestor;

(C) An affidavit or police reports showing that a law enforcement officer has been contacted concerning domestic violence, other physical abuse or threatening or harassing letters or telephone calls directed at the requestor or a family member residing with the requestor;

(D) A temporary restraining order or other no-contact order to protect the requestor or a family member residing with the requestor from future physical abuse;

(E) Court records showing that criminal or civil legal proceedings have been filed regarding physical protection for the requestor or a family member residing with the requestor;

(F) A citation or a court's stalking protective order pursuant to ORS 163.735 or 163.738, issued or obtained for the protection of the requestor or a family member residing with the requestor;

(G) An affidavit or police reports showing that the requestor or a family member residing with the requestor has been a victim of a person convicted of the crime of stalking or of violating a court's stalking protective order;

(H) A conditional release agreement issued under ORS 135.250–260 providing protection for the requestor or a family member residing with the requestor;

(I) A protective order issued pursuant to ORS 135.873 or 135.970 protecting the identity or place of residence of the requestor or a family member residing with the requestor;

(J) An affidavit from a district attorney or deputy district attorney stating that the requestor or a family member residing with the requestor is scheduled to testify or has testified as a witness at a criminal trial, grand jury hearing or preliminary hearing and that such testimony places the personal safety of the witness in danger;

(K) A court order stating that the requestor or a family member residing with the requestor is or has been a party, juror, judge, attorney or involved in some other capacity in a trial, grand jury proceeding or other court proceeding and that such involvement places the personal safety of that individual in danger; or

(L) An affidavit, medical records, police reports or court records showing that the requestor or a family member residing with the requestor has been a victim of domestic violence.

(3) A public body receiving a request under this rule promptly shall review the request and notify the requestor, in writing, whether the evidence submitted is sufficient to demonstrate to the satisfaction of the public body that the personal safety of the requestor or of a family member residing with the requestor would be in danger if the home address, personal telephone number or personal electronic mail address remains available for public inspection. The public body may request that the requestor submit additional information concerning the request.

(4) If a public body grants the request for exemption with respect to records other than a voter registration record, the public body shall include a statement in its notice to the requestor that:

(a) The exemption remains effective for five years from the date the public body received the request, unless the requestor submits a written request for termination of the exemption before the end of the five years; and

(b) The requestor may make a new request for exemption at the end of the five years. If a public body grants the request for exemption with respect to a voter registration record, the public body shall include a statement in its notice to the requestor that:

(A) The exemption remains effective until the requestor must update the individual's voter registration, unless the requestor submits a written request for termination of the exemption before that time; and

(B) The requestor may make a new request for exemption from disclosure at that time.

(5) A person who has requested that a public body not disclose his or her home address, personal telephone number or personal electronic mail address may revoke the request by notifying, in writing, the public body to which the request was made that disclosure no longer constitutes a danger to personal safety. The notification shall be signed by the person who submitted the original request for nondisclosure of the home address, personal telephone number or personal electronic mail address.

(6) This rule does not apply to county property and lien records.

(7) As used in this rule:

(a) "Custodian" has the meaning given that term in ORS 192.410(1);

(b) "Public body" has the same meaning given that phrase in ORS 192.410(3).

Stat. Auth.: ORS 192.445
Stats. Implemented: ORS 192.445
Hist.: JD 6-1993, f. 11-1-93, cert. ef. 11-4-93; JD 8-1995, 8-25-95, cert. ef. 9-9-95; DOJ 8-2001, f. & cert. ef. 10-3-01, Renumbered from 137-004-0100; DOJ 14-2003, f. & cert. ef. 12-9-03; DOJ 12-2005, f. 10-31-05, cert. ef. 1-1-06

137-004-0900
Public Records Requests for Concealed Handgun License Records or Information

(1) A public body, except the Judicial Department, may not disclose records or information that identifies a person as a current or former holder of, or applicant for, a concealed handgun license, unless:

(a) The disclosure is made to another public body and is necessary for criminal justice purposes;

(b) A court enters an order in a criminal or civil case directing the public body to disclose the records or information;

(c) The holder of, or applicant for, the concealed handgun license consents to the disclosure in writing;

(d) The public body determines that a compelling public interest requires disclosure in the particular instance and the disclosure is limited to the name, age and county of residence of the holder or applicant;

(e)(A) The disclosure is limited to confirming or denying that a person convicted of a person crime, or restrained by a protective order, is a current holder of a concealed handgun license;

(B) The disclosure is made to a victim of the person crime or to a person who is protected by the protective order, in response to a request for disclosure that provides the public body with the name and age of the person convicted of the person crime or restrained by the protective order; and

(C) The person seeking disclosure provides the public body with written proof that the person is a victim of the person crime or is protected by the protective order; or

(f)(A) The disclosure is limited to confirming or denying that a person convicted of a crime involving the use or possession of a firearm is a current holder of a concealed handgun license;

(B) The disclosure is made to a bona fide representative of the news media in response to a request for disclosure that provides the name and age of the person convicted of the crime involving the use or possession of a firearm; and

(C) The person seeking disclosure provides the public body with written proof that the person is a bona fide representative of the news media.

(2) Requests seeking records or information on the basis of a compelling public interest pursuant to subsection (1)(d) shall:

(a) Be considered by public bodies on a case-by-case basis;

(b) Be made in writing and signed by the requestor;

(c) Be addressed to the custodian of public records of the public body that possesses the records or information;

(d) Identify the records or information being sought;

(e) State with specificity the reasons why the requestor contends that a compelling public interest requires disclosure of the requested records or information; and

(f) Include any documentation (including but not limited to written materials, pictures, video, other media, etc.) that supports the requestor's contention that a compelling public interest requires disclosure.

(3) Notwithstanding any other provision of law, a public body that receives a request for disclosure under subsection (1)(e) or (1)(f) of this rule may conduct an investigation, including a criminal records check, to determine whether a person described in paragraph (1)(e)(A) or (1)(f)(A) of this rule has been convicted of a person crime or a crime involving the use or possession of a firearm or is restrained by a protective order.

(4) As used in this rule:

(a) "Convicted" does not include a conviction that has been reversed, vacated or set aside or a conviction for which the person has been pardoned.

(b) "Custodian" has the meaning given that term in ORS 192.410.

(c) "Person crime" means a person felony or person Class A misdemeanor, as those terms are defined in the rules of the Oregon Criminal Justice Commission, or any other crime constituting domestic violence, as defined in ORS 135.230.

(d) "Protective order" has the meaning given that term in ORS 135.886.

(e) "Victim" has the meaning given that term in ORS 131.007.

Stat. Auth.: 2012 OL Ch. 93, §2(4)
Stats. Implemented: 2012 OL Ch. 93, §2(4)
Hist.: DOJ 14-2012(Temp), f. & cert. ef. 8-21-12 thru 2-8-13; DOJ 16-2012, f. 12-21-12, cert. ef. 1-2-13

DIVISION 5

COLLABORATIVE DISPUTE RESOLUTION MODEL RULES

137-005-0010
Use of Collaborative Dispute Resolution Processes

(1) Unless otherwise precluded by law, the agency may, in its discretion, use a collaborative dispute resolution process in contested cases, rulemaking proceedings, judicial proceedings, and any other decision-making or policy development process or controversy involving the agency. Collaborative dispute resolution may be used to prevent or to minimize the escalation of disputes and to resolve disputes once they have occurred.

(2) Nothing in this rule limits innovation and experimentation with collaborative or alternative forms of dispute resolution, with negotiated rulemaking or with other procedures or dispute resolution practices not otherwise prohibited by law.

(3) The collaborative means of dispute resolution may be facilitated negotiation, mediation, facilitation or any other method designed to encourage the agency and the other participants to work together to develop a mutually agreeable solution. The agency may also consider using neutral fact-finders in an advisory capacity.

(4) The agency shall not agree to any dispute resolution process in which its ultimate settlement or decision making authority is given to a third party, including arbitration or fact-finding, without prior written authorization from the Attorney General.

(5) Nothing in this rule obligates the agency to offer funds to settle any case, to accept a particular settlement or resolution of a dispute, to alter its standards for accepting settlements, to submit to binding arbitration, or to alter any existing delegation of settlement or litigation authority.

Stat. Auth.: ORS 183.341 & 183.502
Stats. Implemented: ORS 183.502
Hist.: JD 1-1997, f. 3-28-97, cert. ef. 4-1-97

137-005-0020
Assessment for Use of Collaborative DR Process

(1) Before instituting a collaborative dispute resolution process, the agency may conduct an assessment to determine if a collaborative process is appropriate for the controversy and, if so, under what conditions.

(2) A collaborative DR process may be appropriate if:

(a) The relationship between the parties will continue beyond the resolution of the controversy and a collaborative DR process is likely to have a favorable effect on the relationship;

(b) There are outcomes or solutions that are only available through a collaborative process;

(c) There is a reasonable likelihood that a collaborative process will result in an agreement;

(d) The implementation and durability of any resolution to the controversy will likely require ongoing, voluntary cooperation of the participants;

(e) A candid or confidential discussion among the disputants may help resolve the controversy, and OAR 137-005-0050 may provide for such candor or confidentiality;

(f) Direct negotiations between the parties have been unsuccessful or could be improved with the assistance of a collaborative DR provider;

(g) No single agency or jurisdiction has complete control over the issue and a collaborative process is likely to be effective in reconciling conflicts over jurisdiction and control; or

(h) The agency has limited time or other resources, and a collaborative process would use less agency resources, take less time or be more efficient than another type of process.

(3) A collaborative DR process may not be appropriate if:

(a) The outcome of the controversy is important for its precedential value, and a collaborative DR process is unlikely to be accepted as an authoritative precedent;

(b) There are significant unresolved legal issues in this controversy, and a collaborative DR process is unlikely to be effective if those legal issues are not resolved first;

(c) The controversy involves significant questions of agency policy, and it is unlikely that a collaborative DR process will help develop or clarify agency policy;

(d) Maintaining established policies and consistency among decisions is important, and a collaborative DR process likely would result in inconsistent outcomes for comparable matters;

(e) The controversy significantly affects persons or organizations who are not participants in the process or whose interests are not adequately represented by participants;

(f) A public record of the proceeding is important, and a collaborative DR process cannot provide such a record;

(g) The agency must maintain authority to alter the disposition of the matter because of changed circumstances, and a collaborative DR process would interfere with the agency's ability to do so;

(h) The agency must act quickly or authoritatively to protect the public health or safety, and a collaborative dispute resolution process would not provide the necessary speed and authority to do this.

(i) The agency has limited time or other resources, and a collaborative process would use more agency resources, take longer or be less efficient than another type of process; or

(j) None of the factors in section (2) apply.

(4) The assessment may also be used to:

(a) Determine or clarify the nature of the controversy or the issues to be resolved;

(b) Match a dispute resolution process to the objectives and interests of the disputants;

(c) Determine who will participate in the process;

(d) Estimate the time and resources needed to implement a collaborative DR process;

(e) Assess the potential outcomes of a collaborative DR process and the desirability of those outcomes;

(f) Determine the likely means for enforcing any agreement or settlement that may result;

(g) Determine the compensation, if any, of the dispute resolution provider;

(h) Determine the ground rules for the collaborative DR process; and

(i) Determine the degree to which the parties and the agency wish, and are legally able, to keep the proceedings confidential.

(5) The agency may contract with a collaborative DR provider pursuant to OAR 137-005-0040 to assist the agency in conducting the assessment and may request that the provider prepare a written report summarizing the results of the assessment.

Stat. Auth.: ORS 183.341 & 183.502
Stats. Implemented: ORS 183.502
Hist.: JD 1-1997, f. 3-28-97, cert. ef. 4-1-97; DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01

137-005-0022
Assessment for Use of Collaborative DR Process in Complex Public Policy Controversies

(1) For the purposes of this rule, "complex public policy controversy" means a multi-party controversy that includes at least one governmental participant and that affects the broader public, rather than only a single group or individual.

(2) Before using a collaborative process to resolve a complex public policy controversy, the agency may conduct an assessment to determine if a collaborative DR process is appropriate and, if so, under what conditions. In addition to the factors in OAR 137-005-0020, the agency may use the assessment to consider if:

(a) The agency is interested in joint problem solving or in reaching a consensus among participants, and not solely in obtaining public comment, consultation or feedback, which may be addressed through other processes;

(b) The persons, interest groups or entities significantly affected by the controversy or by any agreement resulting from the collaborative DR process

(A) Can be readily identified;

(B) Are willing to participate in a collaborative process; and

(C) Have the time, resources and ability to participate effectively in a collaborative process and in the implementation of any agreement that may result from the collaborative process;

(c) The persons identified as representing the interests of a group of persons or of an organization have sufficient authority to negotiate a durable agreement on behalf of the group or organization they represent; or

(d) There are ongoing or proposed legislative, political or legal activities that would significantly undermine the value of the collaborative process or the durability of any collaborative agreement.

(3) The agency may contract with a collaborative DR provider pursuant to OAR 137-005-0040 to assist the agency in conducting all or part of the assessment under section (1) and may request that the provider prepare a written report summarizing the results of the assessment.

Stat. Auth.: ORS 183.341 & 183.502
Stats. Implemented: ORS 183.502
Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

137-005-0030
Agreement to Collaborate

In preparation for, or in the course of, a collaborative DR process the agency and the other participants may enter into a written agreement to collaborate. This agreement may include:

(1) A brief description of the dispute or the issues to be resolved;

(2) A list of the participants;

(3) A description of the proposed collaborative DR process;

(4) An estimated starting date and ending date for the process;

(5) A statement whether the collaborative DR provider will receive compensation and, if so, who will be responsible for its payment;

(6) A description of the process, including, but not limited to: the role of witnesses, and whether and how counsel may participate in the process;

(7) Consistent with applicable statute and rules, a statement regarding the degree to which the proceedings or communications made during the course of the collaborative DR process are confidential; and

(8) A description of the likely means of enforcing any agreement or settlement that may result.

Stat. Auth.: ORS 183.341 & 183.502
Stats. Implemented: ORS 183.502
Hist.: JD 1-1997, f. 3-28-97, cert. ef. 4-1-97; DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01

137-005-0040
Selection and Procurement of Dispute Resolution Providers

(1) The agency may select the collaborative DR provider or may opt to select the provider by consensus of the participants.

(2) A collaborative DR provider who has a financial interest in the subject matter of the dispute, who is an employee of an agency in the dispute, who has a financial relationship with any participant in the collaborative DR process or who otherwise may not be impartial is considered to have a potential bias. If, before or during the dispute resolution process, a provider has or acquires a potential bias, the provider shall so inform all the participants. Any participant may disqualify a provider who has a potential bias if the participant believes in good faith that the potential bias will undermine the ability of the provider to be impartial throughout the process.

(3) If the collaborative DR provider is a public official as defined by ORS 244.020(15), the provider shall comply with the requirements of ORS Chapter 244.

(4) If the agency procures the services of a collaborative DR provider, the agency must comply with all procurement and contracting rules provided by law. A roster of collaborative DR providers and a simplified mediator and facilitator procurement process developed by the Department of Justice may be used by the agency when selecting a collaborative DR provider.

(5) If the collaborative DR provider is a mediator or facilitator who is not an employee of the agency, the participants shall share the costs of the provider, unless the participants agree otherwise or the provider is retained solely by the agency or by a non-participant.

(6) Whenever the agency compensates a provider who is not an employee of the agency, the state must execute a personal services contract with the provider. If the agency and the other participants choose to share the cost of the collaborative DR provider's services,

the non-agency participants may enter into their own contract with the provider or may be a party to the contract between the agency and the provider, at the discretion of the agency. The agency's contract with a provider must state:

(a) The name and address of the provider and the contracting agency;

(b) The nature of the dispute, the issues being submitted to the collaborative DR process and the identity of the participants, as well as is known at the time the contract is signed;

(c) The services the provider will perform (scope of work);

(d) The compensation to be paid to the provider and the maximum contract amount;

(e) The beginning and ending dates of the contract and that the contract may be terminated by the agency or the provider upon mutual written consent, or at the sole discretion of the agency upon 30 calendar days notice to the provider or immediately if the agency determines that the DR process is unable to proceed for any reason.

(7) A student, intern or other person in training or assisting the provider may function as a co-provider in a dispute resolution proceeding. The co-provider shall sign and be bound by the agreement to collaborate specified in OAR 137-005-0030, if any, and, if compensated by the agency, a personal services contract as specified in section (6) of this rule.

Stat. Auth.: ORS 183.341 & 183.502
Stats. Implemented: ORS 183.502
Hist.: JD 1-1997, f. 3-28-97, cert. ef. 4-1-97; DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 13-2005, f & cert. ef. 10-31-05; DOJ 11-2007, f. 10-15-07 cert. ef. 1-1-08

137-005-0050
Confidentiality of Collaborative Dispute Resolution Communications

(1) For the purposes of this rule,

(a) "Agreement to mediate" means a written agreement to mediate executed by the parties establishing the terms and conditions of the mediation, which may include provisions specifying the extent to which mediation communications will be confidential.

(b) "Mediation" means a process in which a mediator assists and facilitates two or more parties to a controversy in reaching a mutually acceptable resolution of the controversy and includes all contacts between a mediator and any party or agent of a party, until such time as a resolution is agreed to by the parties or the mediation process is terminated.

(c) "Mediation agreement" means an agreement arising out of a mediation, including any term or condition of the agreement.

(d) "Mediation communication" means:

(A) All communications that are made, in the course of or in connection with a mediation, to a mediator, a mediation program or a party to, or any other person present at, the mediation proceedings; and

(B) All memoranda, work products, documents and other materials, including any draft mediation agreement, that are prepared for or submitted in the course of or in connection with a mediation or by a mediator, a mediation program or a party to, or any other person present at, mediation proceedings.

(e) "Mediator" means a third party who performs mediation. Mediator includes agents and employees of the mediator or mediation program.

(f) "Party" means a person or agency participating in a mediation who has a direct interest in the controversy that is the subject of the mediation. A person or agency is not a party to a mediation solely because the person or agency is conducting the mediation, is making the mediation available or is serving as an information resource at the mediation.

(2) If the agency is a party to a mediation or is mediating a dispute as to which the agency has regulatory authority:

(a) The agency may choose to adopt either or both the Model Rule for Confidentiality and Inadmissibility of Mediation Communications in OAR 137-050-0052 or the Model Rule for Confidentiality and Inadmissibility of Workplace Interpersonal Mediation Communications in 137-050-0054, in which case mediation communications shall be confidential to the extent provided in those rules. The agency may adopt the rules by reference without complying with the rulemaking procedures under ORS 183.335. Notice of such adoption shall be filed with the Secretary of State in the manner provided by ORS 183.355 for the filing of rules.

(b) If the agency has not adopted confidentiality rules pursuant to ORS 36.220 to 36.238, mediation communications shall not be confidential unless otherwise provided by law, and the agency shall inform the parties in the mediation of that fact in an agreement to collaborate pursuant to OAR 137-005-0030 or other document.

(3) If the agency is mediating a dispute as to which the agency is not a party and does not have regulatory authority, mediation communications are confidential, except as provided in ORS 36.220 to 36.238. The agency and the other parties to the mediation may agree in writing that all or part of the mediation communications are not confidential. Such an agreement may be made a part of an agreement to collaborate authorized by OAR 137-005-0030.

(4) If the agency and the other participants in a collaborative DR process other than a mediation wish to make confidential the communications made during the course of the collaborative DR process:

(a) The agency, the other participants and the collaborative DR provider, if any, shall sign an agreement to collaborate pursuant to OAR 137-005-0030 or any other document that expresses their intent with respect to:

(A) Disclosures by the agency and the other participants of communications made during the course of the collaborative DR process;

(B) Disclosures by the collaborative DR provider of communications made during the course of the collaborative DR process;

(C) Any restrictions on the agency's use of communications made during the course of the collaborative DR process in any subsequent administrative proceeding of the agency; and

(D) Any restrictions on the ability of the agency or the other participants to introduce communications made during the course of the collaborative DR process in any subsequent judicial or administrative proceeding relating to the issues in controversy with respect to which the communication was made.

(b) Notwithstanding any agreement under subsection (4)(a) of this rule, communications made during the course of a collaborative DR process:

(A) May be disclosed if the communication relates to child abuse and is made to a person who is required to report abuse under ORS 419B.010 to the extent the person is required to report the communication;

(B) May be disclosed if the communication relates to elder abuse and is made to a person who is required to report abuse under ORS 124.050 to 124.095 to the extent the person is required to report the communication;

(C) May be disclosed if the communication reveals past crimes or the intent to commit a crime;

(D) May be disclosed by a party to a collaborative DR process to another person if the party's communication with that person is privileged under ORS Chapter 40 or other provision of law;

(E) May be used by the agency in any subsequent proceeding to enforce, modify or set aside an agreement arising out of the collaborative DR process;

(F) May be disclosed in an action for damages or other relief between a party to a collaborative DR process and a DR provider to the extent necessary to prosecute or defend the matter; and

(G) Shall be subject to the Public Records Law, ORS 192.410 to 192.505, and the Public Meetings Law, ORS 192.610 to 192.690.

(c) If a demand for disclosure of a communication that is subject to an agreement under this section is made upon the agency, any other participant or the collaborative DR provider, the person receiving the demand for disclosure shall make reasonable efforts to notify the agency, the other participants and the collaborative DR provider.

Stat. Authority: ORS 183.341 & 183.502; OL 2015, ch 114 (SB 189)
Stats. Implemented: ORS 36.110 & 36.220 - 36.238; 2015 SB 189
Hist.: JD 3-1997, f. 9-4-97, cert. ef. 9-15-97; DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 7-2015(Temp), f. 5-22-15, cert. ef. 5-26-15 thru 11-21-15; DOJ 13-2015, f. & cert. ef. 10-27-15

137-005-0052
Confidentiality and Inadmissibility of Mediation Communications

(1) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not they are confidential under this or other rules of the agency, mediation communications are exempt from disclosure under the Public Records Law to the extent provided in ORS 192.410 to 192.505.

(3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which the agency has regulatory authority. This rule does not apply when the agency is acting as the "mediator" in a matter in which the agency also is a party as defined in ORS 36.234.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (8) of this rule.

(5) Mediations Excluded. Sections (6) (9) of this rule do not apply to:

(a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials, unless a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed; or

(b) Mediation in which the person acting as the mediator will also act as the hearings officer in a contested case involving some or all of the same matters; or

(c) Mediation in which the only parties are public bodies; or

(d) Mediation in which two or more public bodies and a private entity are parties if the laws, rule or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential; or

(e) Mediation involving 15 or more parties if the agency has designated that another mediation confidentiality rule adopted by the agency may apply to that mediation.

(6) Disclosures by Mediator. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c)–(d), (j)–(l), (o)–(p) and (r)–(s) of section (8) of this rule.

(7) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in section (8) of this rule, mediation communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding so long as:

(a) The parties to the mediation sign an agreement to mediate specifying the extent to which mediation communications are confidential; and,

(b) If the mediator is the employee of or acting on behalf of a state agency, the mediator or an authorized representative of the agency signs the agreement.

(8) Exceptions to Confidentiality and Inadmissibility.

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any document that, before its use in a mediation, was a public record as defined in ORS 192.410 remains subject to disclosure to the extent provided by ORS 192.410 to 192.505 and may be introduced into evidence in a subsequent proceeding.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law or court rule is not confidential and may be disclosed to the extent necessary to make such a report.

(e) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(f) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS Chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under this subsection is bound by the same confidentiality requirements as apply to the parties to the mediation.

(h) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(i) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(j) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(k) When a mediation is conducted as part of the negotiation of a collective bargaining agreement, the following mediation communications are not confidential and such communications may be introduced into evidence in a subsequent administrative, judicial or arbitration proceeding:

(A) A request for mediation, or

(B) A communication from the Employment Relations Board Conciliation Service establishing the time and place of mediation, or

(C) A final offer submitted by the parties to the mediator pursuant to ORS 243.712, or

(D) A strike notice submitted to the Employment Relations Board.

(l) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(m) Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:

(A) Attorney client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege, or

(B) Attorney work product prepared in anticipation of litigation or for trial, or

(C) Prepared exclusively for the mediator or in a caucus session and not given to another party in the mediation other than a state agency, or

(D) Prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation, or

(E) Settlement concepts or proposals, shared with the mediator or other parties.

(n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent the agency director, administrator or board determines that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law.

(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from disclosure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under ORS 17.095 or state or federal law requires the terms to be confidential.

(p) In any mediation in a case that that has been filed in court or when a public body's role in a mediation is solely to make mediation available to the parties the mediator may report the disposition of the mediation to that public body or court at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency conducting the mediation or making the mediation available or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232.

(q) An agreement to mediate is not confidential and may be introduced into evidence in a subsequent proceeding.

(r) Any mediation communication relating to child abuse that is made to a person required to report child abuse under ORS 419B.010 is not confidential to the extent that the person is required to report the communication.

(s) Any mediation communication relating to elder abuse that is made to a person who is required to report elder abuse under ORS 124.050 to 124.095 is not confidential to the extent that the person is required to report the communication.

(9) When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. The agreement to mediate also must refer to this rule. Violation of this provision does not waive confidentiality or inadmissibility.

Stat. Auth.: ORS 36.224, OL 2015, ch 114 (SB 189)

Stats. Implemented: ORS 36.224, 36.228, 36.230, 36.232, OL 2015, ch 114 (SB 189)

Hist.: DOJ 7-2015(Temp), f. 5-22-15, cert. ef. 5-26-15 thru 11-21-15; DOJ 13-2015, f. & cert. ef. 10-27-15

137-005-0054
Confidentiality and Inadmissibility of Workplace Interpersonal Mediation Communications

(1) This rule applies to workplace interpersonal disputes, which are disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials. This rule does not apply to disputes involving the negotiation of labor contracts or matters about which a tort claim notice or a lawsuit has been filed.

(2) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(3) Nothing in this rule affects any confidentiality created by other law.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) Disclosures by Mediator. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or,

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c) or (h)–(l) of section (7) of this rule.

(6) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in section (7) of this rule, mediation communications in mediations involving workplace interpersonal disputes are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced into evidence by the parties or the mediator in any subsequent proceeding so long as:

(a) The parties to the mediation and the agency have agreed in writing to the confidentiality of the mediation; and

(b) The person agreeing to the confidentiality of the mediation on behalf of the agency:

(A) Is neither a party to the dispute nor the mediator; and

(B) Is designated by the agency to authorize confidentiality for the mediation; and

(C) Is at the same or higher level in the agency than any of the parties to the mediation or who is a person with responsibility for human resources or personnel matters in the agency, unless the agency head or member of the governing board is one of the persons involved in the interpersonal dispute, in which case the Governor or the Governor's designee.

(7) Exceptions to Confidentiality and Inadmissibility.

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(e) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS Chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation

communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(f) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(g) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(h) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements

(i) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(j) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232.

(k) Any mediation communication relating to child abuse that is made to a person required to report abuse under ORS 419B.010 is not confidential to the extent that the person is required to report the communication.

(l) Any mediation communication relating to elder abuse that is made to a person who is required to report abuse under ORS 124.050 to 124.095 is not confidential to the extent that the person is required to report the communication.

(8) The terms of any agreement arising out of the mediation of a workplace interpersonal dispute are confidential so long as the parties and the agency so agree in writing. Any term of an agreement that requires an expenditure of public funds, other than expenditures of $1,000 or less for employee training, employee counseling or purchases of equipment that remain the property of the agency, may not be made confidential.

(9) When a mediation is subject to section (6) of this rule, the agency will provide to all parties to the mediation and to the mediator a copy of this rule or an explanation of where a copy of the rule may be obtained. The mediation confidentiality agreement must also refer to this rule. Violation of this provision does not waive confidentiality or inadmissibility.

Stat. Auth.: ORS 36.224, OL 2015, ch 114 (SB 189)
Stats. Implemented: ORS 36.230(4), OL 2015, ch 114 (SB 189)
Hist.: DOJ 7-2015(Temp), f. 5-22-15, cert. ef. 5-26-15 thru 11-21-15; DOJ 13-2015, f. & cert. ef. 10-27-15

137-005-0060
Mediation

(1) Unless otherwise provided by law, mediation is a voluntary process from which the agency and other participants may withdraw at any time.

(2) The mediator does not represent the interests of any of the participants or offer legal advice. Likewise, the mediator is not a judge and has no decision making power to impose a settlement on the participants or to render decisions.

(3) The person participating in the mediation on behalf of the agency shall be knowledgeable about the issues in dispute and have authority to effectively recommend settlement options to the agency.

Stat. Auth.: ORS 183.341 & 183.502
Stats. Implemented: ORS 183.502
Hist.: JD 1-1997, f. 3-28-97, cert. ef. 4-1-97; JD 3-1997, f. 9-4-97, cert. ef. 9-15-97

137-005-0070
Contract Clauses Specifying Dispute Resolution

(1) The agency may specify or require any form of dispute resolution except binding arbitration as a condition of a contract.

(2) The agency may specify binding arbitration by contract only if the Attorney General has approved the contract containing the clause specifying binding arbitration and the clause itself for legal sufficiency.

(3) The agency may provide for the resolution of technical, scientific or accounting matters of fact by requiring the submission of such matters to a neutral fact finder selected and appointed as specified in a contract clause.

(4) The specification of a method of dispute resolution in a contract clause does not:

(a) Remove the requirement to provide notices or filings or to meet deadlines otherwise required by law, regulation or contract provision;

(b) Constitute a waiver of the sovereign immunity of the State of Oregon; or

(c) Prohibit the participants from entering into an agreement to use any other method of dispute resolution that appears to be more suitable for the particular dispute in lieu of or in addition to the method specified by contract.

Stat. Auth.: ORS 183.341 & 183.502
Stats. Implemented: ORS 183.502
Hist.: JD 1-1997, f. 3-28-97, cert. ef. 4-1-97

DIVISION 7

CRIMINAL RECORDS CHECK AND FITNESS DETERMINATION RULES

137-007-0200
Statement of Purpose and Statutory Authority

"**Purpose**" These rules control the Department's acquisition of information about a subject individual's criminal history through criminal records checks or other means and its use of that information to determine whether the subject individual is fit to provide services to the Department as an employee, volunteer, or contractor covered by OAR 137-007-0220. The fact that the Department approves a subject individual as fit does not guarantee the individual a position as a Department employee, volunteer, or contractor.

Stat. Auth.: ORS 181.534, 180.267
Stats. Implemented: ORS 181.534(9)
Hist.: DOF 6-2007, f. & cert ef. 9-5-07

137-007-0210
Definitions

As used in OAR chapter 137, division 007, unless the context of the rule requires otherwise, the following definitions apply:

(1) "**Approved**" means that, pursuant to a preliminary fitness determination under OAR 137-007-0240 or a final fitness determination under 137-007-0260, an authorized designee has determined that the subject individual is fit to be an employee, volunteer, or contractor in a position covered by 137-007-0220(2)(a)–(c).

(2) "**Authorized Designee**" means a Department employee authorized to obtain and review criminal offender information and other relevant information about a subject individual through criminal records checks and other means, and to conduct a fitness determination in accordance with these rules.

(3) "**Conviction**" or "**Convicted of**" means that a court of law has entered a final judgment on a verdict or a finding of guilty, a plea of guilty, or a plea of nolo contendere (no contest) against a subject individual in a criminal case, unless that judgment has been reversed or set aside by a subsequent court decision.

(4) "**Criminal Offender Information**" means records and related data as to physical description and vital statistics, fingerprints received and compiled by the Oregon Department of State Police

Bureau of Criminal Identification for purposes of identifying criminal offenders and alleged offenders, records of arrests and the nature and disposition of criminal charges, including conviction, pleas, sentencing, confinement, probation, parole, and release.

(5) "**Crime Relevant to a Fitness Determination**" means a crime listed or described in OAR 137-007-0270.

(6) "**Criminal Records Check and Fitness Determination Rules**" or "**These Rules**" means OAR chapter 137, division 007.

(7) "**Criminal Records Check**" or "**CRC**" means one or more of the following three processes undertaken to check the criminal history of a subject individual:

(a) A name-based check of criminal offender information and motor vehicle registration and driving records conducted through use of the Law Enforcement Data System (LEDS) maintained by the Oregon Department of State Police, in accordance with the rules adopted and procedures established by the Oregon Department of State Police (LEDS Criminal Records Check);

(b) A check of Oregon criminal offender information, including through fingerprint identification, conducted by the Oregon Department of State Police at the Department's request (Oregon Criminal Records Check); or

(c) A nationwide check of federal criminal offender information, including through fingerprint identification, conducted by the Oregon Department of State Police through the Federal Bureau of Investigation or otherwise at the Department's request (Nationwide Criminal Records Check).

(8) "**Denied**" means that, pursuant to a preliminary fitness determination under OAR 137-007-0240 or a final fitness determination under 137-007-0260, an authorized designee has determined that the subject individual is not fit to be an employee, volunteer, or contractor in a position covered by 137-007-0220(2)(a)–(c).

(9) "**Department**" means the Department of Justice or any subdivision thereof. "Department" does not include a criminal justice agency as defined in ORS 181.534(1)(a)(B).

(10) "**False Statement**" means that, in association with an activity governed by these rules, a subject individual either:

(a) Provided the Department with materially false information about his or her criminal history, such as, but not limited to, materially false information about his or her identity or conviction record; or

(b) Failed to provide to the Department information material to determining his or her criminal history.

(11) "**Fitness Determination**" means a determination made by an authorized designee pursuant to the process established in OAR 137-007-0240 (preliminary fitness determination) or 137-007-0260 (final fitness determination) that a subject individual is or is not fit to be a Department employee in a position covered by 137-007-0220(2)(a)–(c).

(12) "**Family Member**" means a spouse, domestic partner, natural parent, foster parent, adoptive parent, stepparent, child, foster child, adopted child, stepchild, sibling, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew or first cousin.

(13) "**Subject Individual**" means an individual identified in OAR 137-007-0220 as someone from whom the Department may require fingerprints for the purpose of conducting a criminal records check.

Stat. Auth.: ORS 181.534, 180.267
Stats. Implemented: ORS 181.534(9)
Hist.: DOF 6-2007, f. & cert ef. 9-5-07

137-007-0220
Subject Individual

"**Subject Individual**" means a person from whom the Department may require fingerprints for the purpose of conducting a criminal records check because the person:

(1)(a) Is applying for employment with the Department; or

(b) Provides services or seeks to provide services to the Department as a volunteer or contractor; and

(2) Is, or will be, working or providing services in a position in which the person:

(a) Is providing information technology services and has control over, or access to, information technology systems that would allow the person to harm the information technology systems or the information contained in the systems;

(b) Has access to information, the disclosure of which is prohibited by state or federal laws, rules or regulations or information that is defined as confidential under state or federal laws, rules or regulations; or

(c) Has access to personal information about employees or members of the public including Social Security numbers, dates of birth, driver license numbers, medical information, personal financial information or criminal history information.

Stat. Auth.: ORS 181.534, 180.267
Stats. Implemented: ORS 181.534(9)
Hist.: DOF 6-2007, f. & cert ef. 9-5-07

137-007-0230
Criminal Records Check Process

(1) Disclosure of Information by Subject Individual:

(a) Preliminary to a criminal records check, a subject individual, if requested, shall complete and sign the Department of Justice Criminal Records Request form and, if requested by the Department, a fingerprint card. The Criminal Records Request form shall require the following information: name, Social Security Number, driver's license or identification card number, prior residency in other states, and any other identifying information deemed necessary by the authorized designee. The Department of Justice Criminal Records Request form may also require details concerning any circumstance listed in OAR 137-007-0240(3)(a)–(f);

(b) A subject individual shall complete and submit to the Department the Department of Justice Criminal Records Request form and, if requested, a fingerprint card within three business days of receiving the forms. An authorized designee may extend the deadline for good cause;

(c) The Department shall not request a fingerprint card from a subject individual under the age of 18 years unless the Department also requests the written consent of a parent or guardian. In such case, such parent or guardian and youth must be informed that they are not required to consent. Failure to consent, however, may be construed as a refusal to consent under OAR 137-007-0260(3)(d)(B);

(d) Within a reasonable period of time as established by an authorized designee, a subject individual shall disclose additional information as requested by the Department in order to resolve any issue(s) hindering the completion of a criminal records check.

(2) When a Criminal Records Check is Conducted. An authorized designee may conduct, or request that a criminal records check be conducted when:

(a) An individual meets the definition of "subject individual;" or

(b) Required by federal law or regulation, or as a condition of federal funding, by state law or administrative rule, or by contract or written agreement with the Department.

(3) Which Criminal Records Check(s) is Conducted. When an authorized designee determines under subsection (2) of this rule that a criminal records check is needed, the authorized designee shall proceed as follows:

(a) LEDS Criminal Records Check. The authorized designee shall conduct or request a LEDS criminal records check as part of any fitness determination conducted in regard to a subject individua;.

(b) Oregon Criminal Records Check. The authorized designee may request that the Oregon Department of State Police conduct an Oregon criminal records check when:

(A) The authorized designee determines that an Oregon criminal records check is warranted after review of the information provided by the subject individual, the results of a LEDS criminal records check, or review of any other information deemed relevant to the inquiry; or

(B) The authorized designee requests a nationwide criminal records check.

(c) Nationwide Criminal Records Check. The authorized designee may request that the Oregon Department of State Police

conduct a nationwide criminal records check when:

(A) A subject individual has lived outside Oregon for 60 or more consecutive days during the previous three (3) years;

(B) Information provided by the subject individual or the results of a LEDS or Oregon criminal records check provide reason to believe, as determined by an authorized designee, that the subject individual has a criminal history outside of Oregon;

(C) As determined by an authorized designee, there is reason to question the identity of, or information provided by, a subject individual. Reasonable grounds to question the information provided by a subject individual include, but are not limited to: the subject individual fails to disclose a Social Security Number; the subject individual discloses a Social Security Number that appears to be invalid; or the subject individual does not have an Oregon driver's license or identification card; or

(D) A check is required by federal law or regulation, by state law or administrative rule, or by contract or written agreement with the Department.

Stat. Auth.: ORS 181.534, 180.267
Stats. Implemented: ORS 181.534(9)
Hist.: DOF 6-2007, f. & cert ef. 9-5-07

137-007-0240
Preliminary Fitness Determination

(1) An authorized designee may conduct a preliminary fitness determination if the Department is interested in hiring or appointing a subject individual on a preliminary basis, pending a final fitness determination.

(2) If an authorized designee elects to make a preliminary fitness determination about a subject individual, pending a final fitness determination, the authorized designee shall make that preliminary fitness determination based on information disclosed by the subject individual under OAR 137-007-0230(1) and a LEDS criminal records check.

(3) The authorized designee shall approve a subject individual as fit on a preliminary basis if the authorized designee has no reason to believe that the subject individual has made a false statement and the information available to the authorized designee does not disclose that the subject individual:

(a) Has pled nolo contendere (or no contest) to, been convicted of, found guilty except for insanity (or comparable disposition) of, or has a pending indictment for a crime listed under OAR 137-007-0270;

(b) Has been arrested for or charged with a crime listed under OAR 137-007-0270;

(c) Is being investigated for, or has an outstanding warrant for a crime listed under OAR 137-007-0270;

(d) Is currently on probation, parole, or any form of post-prison supervision for a crime listed under OAR 137-007-0270;

(e) Has a deferred sentence or conditional discharge or is participating in a diversion program in connection with a crime listed under OAR 137-007-0270; or

(f) Has been adjudicated in a juvenile court and found to be within the court's jurisdiction for an offense that would have constituted a crime listed in OAR 137-007-0270 if committed by an adult.

(4) If the information available to the authorized designee discloses one or more of the circumstances identified in section (3), the authorized designee may nonetheless approve a subject individual as fit on a preliminary basis if the authorized designee concludes, after evaluating all available information, that hiring or appointing the subject individual on a preliminary basis does not pose a risk of harm to the Department, its client entities, the State, or members of the public.

(5) If a subject individual is either approved or denied on the basis of a preliminary fitness determination, an authorized designee thereafter shall conduct a fitness determination under OAR 137-007-0260.

(6) A subject individual may not appeal a preliminary fitness determination, under the processes provided under OAR 137-007-0300 or otherwise.

Stat. Auth.: ORS 181.534, 180.267
Stats. Implemented: ORS 181.534(9)
Hist.: DOF 6-2007, f. & cert ef. 9-5-07

137-007-0250
Hiring or Appointing on a Preliminary Basis

(1) The Department may hire or appoint a subject individual on a preliminary basis if an authorized designee has approved the subject individual on the basis of a preliminary fitness determination under OAR 137-007-0240.

(2) A subject individual hired or appointed on a preliminary basis under this rule may participate in training, orientation, or work activities as assigned by the Department.

(3) A subject individual hired or appointed on a preliminary basis is deemed to be on trial service and, if terminated before completion of a final fitness determination under OAR 137-007-0260, may not appeal the termination under the processes provided under 137-007-0300.

(4) If a subject individual hired or appointed on a preliminary basis is denied upon completion of a final fitness determination, as provided under OAR 137-007-0260(3)(d), then the Department shall immediately terminate the subject individual's employment in or appointment to a position covered by 137-007-220(a)(c).

Stat. Auth.: ORS 181.534, 180.267
Stats. Implemented: ORS 181.534(9)
Hist.: DOF 6-2007, f. & cert ef. 9-5-07

137-007-0260
Final Fitness Determination

(1) If the Department elects to conduct a criminal records check, an authorized designee shall make a fitness determination about a subject individual based on information provided by the subject individual under OAR 137-007-0230(1), the criminal records check(s) conducted, if any, and any false statements made by the subject individual.

(2) In making a fitness determination about a subject individual, an authorized designee shall also consider the factors in subsections (a)–(f) in relation to information provided by the subject individual under OAR 137-007-0230(1), any LEDS report or criminal offender information obtained through a criminal records check, and any false statement made by the subject individual. To assist in considering these factors, the authorized designee may obtain any other information deemed relevant from the subject individual or any other source, including law enforcement and criminal justice agencies or courts within or outside of Oregon. To acquire other relevant information from the subject individual, an authorized designee may request to meet with the subject individual, to receive written materials, or both. The subject individual shall meet with the authorized designee if requested and provide additional information within a reasonable period of time, as established by the authorized designee. The authorized designee will use all collected information in considering:

(a) Whether the subject individual has been arrested, pled nolo contendere (or no contest) to, been convicted of, found guilty except for insanity (or a comparable disposition) of, or has a pending indictment for a crime listed in OAR 137-007-0270;

(b) The nature of any crime identified under subsection (a);

(c) The facts that support the arrest, conviction, finding of guilty except for insanity, or pending indictment;

(d) The facts that indicate the subject individual made a false statement;

(e) The relevance, if any, of a crime identified under subsection (a) or of a false statement made by the subject individual to the specific requirements of the subject individual's present or proposed position, services or employment; and

(f) Intervening circumstances, to the extent that they are relevant to the responsibilities and circumstances of the services or employment for which the fitness determination is being made, including, but not limited to, the following:

(A) The passage of time since the commission or alleged commission of a crime identified under subsection (a);

(B) The age of the subject individual at the time of the commission or alleged commission of a crime identified under subsection (a);

(C) The likelihood of a repetition of offenses or of the commission of another crime;

(D) The subsequent commission of another crime listed in OAR 137-007-0270;

(E) Whether a conviction identified under subsection (a) has been set aside or pardoned, and the legal effect of setting aside the conviction or of a pardon; and

(F) A recommendation of an employer.

(3) Possible Outcomes of a Final Fitness Determination:

(a) Automatic Approval. An authorized designee shall approve as fit a subject individual if the information described in sections (1) and (2) shows none of the following:

(A) Evidence that the subject individual has pled nolo contendere (or no contest) to, been convicted of, or found guilty except for insanity (or comparable disposition) of a crime listed in OAR 137-007-0270;

(B) Evidence that the subject individual has a pending indictment for any crime listed in OAR 137-007-0270;

(C) Evidence that the subject individual has been arrested for any crime listed in OAR 137-007-0270;

(D) Evidence of the subject individual having made a false statement; or

(E) Any discrepancy between the criminal offender information and other information obtained from the subject individual.

(b) Evaluative Approval. If a fitness determination under this rule shows evidence of any of the factors identified in paragraphs (3)(a)(A)–(E) of this rule, an authorized designee may approve as fit the subject individual only if, in evaluating the information described in sections (1) and (2), the authorized designee determines (i) that the evidence is not credible; or (ii) that the subject individual acting in the position for which the fitness determination is being conducted would not pose a risk of harm to the Department, its client entities, the State, or members of the public;

(c) Restricted Approval:

(A) If an authorized designee approves as fit a subject individual under subsection (3)(b) of this rule, the authorized designee may restrict the approval to specific activities or locations;

(B) An authorized designee shall complete a new criminal records check and fitness determination under this rule on the subject individual prior to removing a restriction.

(d) Denial:

(A) If a fitness determination under this rule shows credible evidence of any of the factors identified in paragraphs (3)(a)(A)–(E) of this rule and, after evaluating the information described in sections (1) and (2) of this rule, an authorized designee concludes that the subject individual acting in the position for which the fitness determination is being conducted would pose a risk of harm to the Department, its client entities, the State, or members of the public, the authorized designee shall deny the subject individual as not fit for the position;

(B) Refusal to Consent. If a subject individual refuses to submit or consent to a criminal records check including fingerprint identification, the authorized designee shall deny the subject individual as not fit without further assessment under the fitness determination process;

(C) If a subject individual is denied as not fit, the subject individual may not be employed by or provide services as a volunteer or contractor to the Department in a position covered by OAR 137-007-0220(2)(a)–(c).

(4) Expunged Juvenile Record. Under no circumstances shall a subject individual be denied under these rules on the basis of the existence or contents of a juvenile record that has been expunged pursuant to ORS 419A.260 and 419A.262.

(5) Final Fitness Determination. A completed final fitness determination is final unless the affected subject individual appeals by requesting a contested case hearing as provided by OAR 137-007-0300(2).

Stat. Auth.: ORS 181.534, 180.267
Stats. Implemented: ORS 181.534(9)
Hist.: DOF 6-2007, f. & cert ef. 9-5-07

137-007-0270
Crimes Relevant to a Fitness Determination

(1) Crimes Relevant to a Fitness Determination:

(a) All felonies;

(b) All Class A misdemeanors;

(c) ORS 167.315 (Animal Abuse II); 167.325 (Animal Neglect II); 418.630 (operating uncertified foster home); and 418.250(1) (relating to the supervision of child-care agencies);

(d) Any crime, in the State of Oregon or in any other jurisdiction, that is the substantial equivalent of any of the crimes listed in this subsection (1)(c), as determined by the Department;

(e) Any United States Military crime or international crime;

(f) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this section (1) pursuant to ORS 161.405, 161.435, or 161.450;

(g) Any crime based on criminal liability for conduct of another pursuant to ORS 161.155, when the underlying crime is listed in this section (1).

(2) Evaluation Based on Oregon and Other Laws. An authorized designee shall evaluate a crime on the basis of Oregon laws and, if applicable, federal laws or the laws of any other jurisdiction in which a criminal records check indicates a subject individual may have committed a crime, as those laws are in effect at the time of the fitness determination.

Stat. Auth.: ORS 181.534, 180.267
Stats. Implemented: ORS 181.534(9)
Hist.: DOF 6-2007, f. & cert ef. 9-5-07

137-007-0280
Incomplete Fitness Determination

(1) The Department will close a preliminary or final fitness determination as incomplete when:

(a) Circumstances change so that a person no longer meets the definition of a "subject individual" under OAR 137-007-0220;

(b) The subject individual does not provide materials or information under OAR 137-007-0230(1) within the timeframes established under that rule;

(c) An authorized designee cannot locate or contact the subject individual;

(d) The subject individual fails or refuses to cooperate with an authorized designee's attempts to acquire other relevant information under OAR 137-007-0260(2);

(e) The Department determines that the subject individual is not eligible or not qualified for the position of employee, volunteer, or contractor for a reason unrelated to the fitness determination process; or

(f) The position is no longer open.

(2) A subject individual does not have a right to a contested case hearing under OAR 137-007-0300 to challenge the closing of an incomplete fitness determination.

Stat. Auth.: ORS 181.534, 180.267
Stats. Implemented: ORS 181.534(9)
Hist.: DOF 6-2007, f. & cert ef. 9-5-07

137-007-0300
Appealing a Fitness Determination

(1) Model Rules of Procedure. In addition to the Model Rules of Procedure adopted by the Attorney General, the procedures set forth in this rule shall apply.

(2) Process:

(a) A subject individual may appeal a final fitness determination by submitting a written request for a contested case hearing to the address provided in the final fitness determination. Any such request for a hearing must be received by the Department within 14 calendar days of the date of the notice;

(b) When a timely request is received by the Department under subsection (a), a contested case hearing shall be conducted by a hearing officer appointed by the Attorney General.

(3) Time and Place of Hearings. The time and place of hearing will be set by the hearing officer. Notice of the hearing shall be served on the Director of Human Resources and interested parties at least ten days in advance of the hearing date.

(4) Discovery. The Department or the hearing officer may protect information made confidential by ORS 181.534(15) or other applicable laws and rules as provided in OAR 137-003-0570(7) or (8).

(5) Disclosure of LEDS Information. Information obtained through LEDS shall be disclosed only in a manner consistent with Oregon State Police rules and regulations.

(6) No Public Attendance. Contested case hearings on fitness determinations are closed to non-participants.

(7) Proposed Order, Exceptions and Default:

(a) Proposed Order. After a hearing, the person appointed by the Attorney General shall issue a proposed order;

(b) Exceptions. Exceptions, if any, shall be filed within 14 calendar days after service of the proposed order. The proposed order shall provide an address to which exceptions must be sent;

(c) Default. A completed final fitness determination made under OAR 137-007-0260 becomes final:

(A) Unless the subject individual makes a timely request for hearing; or

(B) When a party withdraws a hearing request, notifies the agency or the hearing officer that the party will not appear, or fails to appear for the hearing.

(8) Remedy. The only remedy that may be awarded is a determination that the subject individual is fit, or fit with restrictions pursuant to OAR 137-007-0260(3)(c), and that, at the request of the subject individual, the subject individual's employment application will be kept on file. The Department shall not be required to place a subject individual in any position or to enter into a contract or otherwise accept services.

(9) Challenging Criminal Offender Information. A subject individual may not use the appeals process established by this rule to challenge the accuracy or completeness of information provided by the Oregon Department of State Police, the Federal Bureau of Investigation, or agencies reporting information to the Oregon Department of State Police or the Federal Bureau of Investigation:

(a) To challenge the accuracy or completeness of information identified in this subsection (9), a subject individual may use any process made available by the agency that provided the information;

(b) If the subject individual successfully challenges the accuracy or completeness of information provided by the Oregon Department of State Police, the Federal Bureau of Investigation, or an agency reporting information to the Oregon Department of State Police or the Federal Bureau of Investigation, the subject individual may request that the Department conduct a new criminal records check and re-evaluate the original fitness determination made under OAR 137-007-0260 by submitting a new Department of Justice Criminal Records Request form.

(10) Appealing a fitness determination under subsection (2) of this rule, challenging criminal offender information with the agency that provided the information, or requesting a new criminal records check and re-evaluation of the original fitness determination under subsection (9) of this rule, will not delay or postpone the Department's hiring process or employment decisions except when the authorized designee in consultation with the Human Resources Section decides that a delay or postponement should occur.

Stat. Auth.: ORS 181.534, 180.267
Stats. Implemented: ORS 181.534(9)
Hist.: DOF 6-2007, f. & cert ef. 9-5-07

137-007-0310
Recordkeeping and Confidentiality

(1) An authorized designee shall document a preliminary or final fitness determination, or the closing of a fitness determination due to incompleteness, in writing.

(2) Records Received from the Department's Criminal Justice Division and the Oregon Department of State Police:

(a) Records the Department receives from the Department's Criminal Justice Division and the Oregon Department of State Police resulting from a criminal records check, including but not limited to LEDS reports and state or federal criminal offender information originating with the Oregon Department of State Police or the Federal Bureau of Investigation, are confidential pursuant to ORS 181.534(15) and federal laws and regulations;

(b) Only the Department's authorized designees shall have access to records the Department receives from the Department's Criminal Justice Division and the Oregon Department of State Police resulting from a criminal records check;

(c) An authorized designee shall have access to records received from the Department's Criminal Justice Division and the Oregon Department of State Police in response to a criminal records check only if the authorized designee has a demonstrated and legitimate need to know the information contained in the records;

(d) Authorized designees shall maintain and disclose records received from the Department's Criminal Justice Division and the Oregon Department of State Police resulting from a criminal records check in accordance with applicable requirements and restrictions in ORS Chapter 181 and other applicable federal and state laws, rules adopted by the Oregon Department of State Police pursuant thereto, these rules, federal regulations, and any written agreement between the Department and the Oregon Department of State Police;

(e) If a fingerprint-based criminal records check was conducted with regard to a subject individual, the Department shall permit that subject individual to inspect his or her own state and federal criminal offender information, unless prohibited by federal law;

(f) If a subject individual with a right to inspect criminal offender information under subsection (e) Requests, the Department shall provide the subject individual with a copy of the individual's own state and federal criminal offender information, unless prohibited by federal law. The Department shall require sufficient identification from the subject individual to determine his or her identity prior to providing this criminal offender information to him or her. The Department shall require that the subject individual sign a receipt confirming his or her receipt of the criminal offender information.

(3) Other Records:

(a) The Department shall treat all criminal offender information received or created under these rules that concern the criminal history of a subject individual, other than records covered under section (2) of this rule, including Department of Justice Criminal Records Request forms and fingerprint cards, as confidential pursuant to ORS 181.534(15);

(b) Within the Department, only authorized designees shall have access to the records identified under subsection (a);

(c) An authorized designee shall have access to records identified under subsection (a) only if the authorized designee has a demonstrated and legitimate need to know the information contained in the records;

(d) Except as otherwise provided by law, a subject individual shall have access to records identified under subsection (a) pursuant to and only to the extent required by the terms of the Public Records Law.

Stat. Auth.: ORS 181.534, 180.267
Stats. Implemented: ORS 181.534(9)
Hist.: DOF 6-2007, f. & cert ef. 9-5-07

137-007-0320
Authorized Designees

(1) Appointment:

(a) The Attorney General or the Attorney General's designee shall designate the positions that include the responsibilities of an authorized designee;

(b) Appointments shall be made by the Attorney General or the Attorney General's designee at his or her sole discretion.

(2) The Attorney General and the Deputy Attorney General may also serve as authorized designees.

(3) Conflict of Interests. An authorized designee shall not participate in a fitness determination or review any information associated with a fitness determination for a subject individual if either of the following is true:

(a) The authorized designee is a family member of the subject individual; or

(b) The authorized designee has a financial or close personal relationship with the subject individual. If an authorized designee is uncertain of whether a relationship with a subject individual quali-

fies as a financial or close personal relationship under this subsection (b), the authorized designee shall consult with his or her supervisor prior to taking any action that would violate this rule if such a relationship were determined to exist.

(4) Termination of Authorized Designee Status:

(a) When an authorized designee's employment in a designated position ends, his or her status as an authorized designee is automatically terminated;

(b) An authorized designee shall immediately report to his or her supervisor if he or she is arrested for or charged with, is being investigated for, or has an outstanding warrant or pending indictment for a crime listed in OAR 137-007-0270. Failure to make the required report is grounds for termination of the individual's appointment to a designated position and thereby termination of his or her status as an authorized designee.

Stat. Auth.: ORS 181.534, 180.267
Stats. Implemented: ORS 181.534(9)
Hist.: DOF 6-2007, f. & cert ef. 9-5-07

137-007-0330
Fees

The Department may charge a fee for acquiring criminal offender information for use in making a fitness determination. In any particular instance, the fee shall not exceed the fee(s) charged the Department by the Oregon Department of State Police and the Federal Bureau of Investigation to obtain criminal offender information on the subject individual.

Stat. Auth.: ORS 181.534, 180.267
Stats. Implemented: ORS 181.534(9)
Hist.: DOF 6-2007, f. & cert ef. 9-5-07

DIVISION 8

PROCEDURAL RULES

137-008-0000
Notice of Proposed Rule

(1) Prior to the adoption, amendment, or repeal of any permanent rule, including the Model Rules, the Attorney General shall give notice of the proposed adoption, amendment, or repeal:

(a) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days before the effective date of the rule;

(b) By mailing or emailing a copy of the Notice to persons on the Attorney General's mailing list established pursuant to ORS 183.335(8) at least 28 days before the effective date of the rule;

(c) By mailing or emailing a copy of the Notice to the legislators specified in ORS 183.335(15) at least 49 days before the effective date of the rule; and

(d) By mailing, emailing, or furnishing a copy of the Notice to:

(A) The Oregon State Bar;

(B) The Associated Press; and

(C) The Capitol Press Room.

(2) When the Department of Justice adopts, amends or repeals rules specifically applicable to one of its programs listed below, notice in addition to that required by section (1) of this rule shall be provided by mailing or emailing a copy of the notice to the individual(s) or organization(s) listed in this section for the program:

(a) For the Crime Victims' Compensation Program, to:

(A) The Workers' Compensation Board;

(B) Each district attorney in the state; and

(C) Each person on the program's mailing list established pursuant to ORS 183.335(8).

(b) For the Crime Victims Assistance Program to:

(A) Each city attorney that has a certified, comprehensive victims assistance program;

(B) Each district attorney in the state; and

(C) Each person on the program's mailing list established pursuant to ORS 183.335(8).

(c) For the Division of Child Support to:

(A) Legal Aid Services of Oregon;

(B) Multnomah County Office of Legal Aid Services of Oregon;

(C) Oregon District Attorneys Association;

(D) Each Division of Child Support branch office, to be posted in the area most frequently visited by the public;

(E) The Child Support Section of the Department of Human Resources; and

(F) Each person on the Division's mailing list established pursuant to ORS 183.335(8).

(d) For the Charitable Activities Section:

(A) For professional fund raising regulation, to all professional fund raising firms registered pursuant to ORS 128.821;

(B) For charitable organization regulation, to all charitable corporations and trusts registered pursuant to ORS 128.650;

(C) For bingo game regulation, to all bingo licensees licensed pursuant to ORS 167.118 and 464.250, et seq.;

(D) For raffle game regulation, to all raffle licensees licensed pursuant to ORS 167.118 and 464.250 et seq.;

(E) For Monte Carlo regulation, to all Monte Carlo licensees licensed pursuant to ORS 167.118 and 464.250, et seq.; and

(F) Each person on the section's mailing list established pursuant to ORS 183.335(8) for the appropriate program identified in A-E above.

(e) For the Criminal Intelligence Unit, Organized Crime Section, of the Criminal Justice Division:

(A) Each District Attorney in the state;

(B) Each Sheriff in the state;

(C) Each Chief of Police in the state;

(D) The Superintendent of the Oregon State Police; and

(E) Each attendee of the Basic Officer's Intelligence Course conducted by the Criminal Justice Division.

(f) For the Child Abuse Multidisciplinary Intervention Account:

(A) Persons on the Advisory Council on Child Abuse Assessment;

(B) All county multidisciplinary child abuse teams receiving money from the Child Abuse Multidisciplinary Intervention Account;

(C) The Oregon network of child abuse intervention centers;

(D) The regional assessment centers; and

(E) Each person on the Child Abuse Multidisciplinary Intervention Account's mailing list established pursuant to ORS 183.335(8).

Stat. Auth.: ORS 183.341(2) & 183.341(4)
Stats. Implemented: ORS 183.341(4)
Hist.: 1AG 13, f. & ef. 10-21-75; JD 3-1983, f. & ef. 6-22-83; JD 8-1983, f. & ef. 11-10-83; JD 7-1989, f. 12-21-89, cert. ef. 12-20-89; JD 6-1994, f. 10-31-94, cert. ef. 11-1-94; JD 1-1998, f. & cert. ef. 2-4-98; DOJ 9-1999, f. & cert. ef. 12-8-99; DOJ 1-2003, f. 2-28-03, cert. ef. 3-1-03; DOJ 15-2003, f. & cert. ef. 12-9-03; DOJ 8-2008, f. 4-29-08, cert .ef. 5-1-08

137-008-0005
Model Rules of Procedure

Pursuant to ORS 183.341, the Attorney General adopts the Attorney General's Model Rules of Procedure under the Administrative Procedures Act as amended and effective January 1, 2008.

Stat. Auth.: ORS 183.341(2) & 183.341(4)
Stats. Implemented: ORS 183.341(2), 183.341(4) & 183.390
Hist.: 1AG 5-1979, f. & ef. 12-3-79; JD 7-1989, f. 12-21-89, cert. ef. 12-20-89; JD 6-1994, f. 10-31-94, cert. ef. 11-1-94; JD 1-1998, f. & cert. ef. 2-4-98; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 17-2005, f. 11-30-05, cert. ef. 1-1-06; DOJ 8-2008, f. 4-29-08, cert .ef. 5-1-08

137-008-0010
Fees for Public Records and Publications

(1)(a) The Department of Justice may charge a fee reasonably calculated to reimburse the department for costs of providing and conveying copies of public records. The department shall charge 25¢ per page for the first 20 pages and 15¢ per page thereafter for black and white copies and 70¢ per page for the first 20 pages and 60¢ per page thereafter for color copies to recover the costs of photocopying and normal and reasonable staff time to locate, separate, photocopy and return document(s) to file and to prepare/mail public record(s) to requestors. If, for operational or other reasons, the Department uses the services of an outside facility or contractor to photocopy requested records, the department shall charge the actual costs incurred.

(b) "Page" refers to the number of copies produced, either 8 1/2 x 11 or 8 1/2 x 14. Staff will not reduce the copy size or otherwise manipulate records in order to fit additional records on a page, unless staff concludes that it would be the most effective use of their time. Consistent with ORS 192.240, all copies will be double-sided. A double-sided copy consists of two pages. Because of the increased staff time involved in double-sided copying, there is no reduction in the per page fee.

(c) "Normal and reasonable" staff time is 10 minutes or less per request.

(2) Additional charges for staff time may be made when responding to record requests that require more than the "normal and reasonable" time for responding to routine record requests. Staff time shall be charged at the department's hourly billing rate, by position, as follows:

(a) Assistant Attorney General: $143/hr;

(b) Alternative Dispute Resolution Coordinator: $93/hr;

(c) Investigator: $108/hr;

(d) Paralegal or Information Technology Staff: $79/hr;

(e) Law Clerk: $39/hr;

(f) General Clerical: $47/hr;

(g) These charges are for staff time in excess of 10 minutes spent locating, compiling, sorting and reviewing records to prepare them for inspection, as well as all time required to segregate or redact exempt information or to supervise inspection of documents. The Department shall not charge for time spent by Assistant Attorneys General in determining the application of the provisions of ORS 192.410 to 192.505.

(3) The Department shall notify a requestor of the estimated costs of making records available for inspection or providing copies of records to the requestor. If the estimated costs exceed $25, the Department shall provide written notice and shall not act further to respond to the request unless and until the requestor confirms that the requestor wants the Department to proceed with making the public records available. All estimated fees and charges must be paid before public records will be made available for inspection or copies provided.

(4) The Department may charge a fee reasonably calculated to reimburse the department for costs of department publications, Oregon District Attorneys Association publications prepared by the Department and other Department materials intended for distribution. A listing of such available publications and materials shall be maintained by the Department librarian. The Department shall charge the following for its regular publications:

(a) Attorney General's Public Law Conference Papers: $65;

(b) Attorney General's Administrative Law Manual and Uniform and Model Rules of Procedure Under the APA: $65;

(c) Attorney General's Public Contracts Manual: $65;

(d) Attorney General's Public Records and Meetings Manual: $25;

(e) Attorney General Opinions:

(A) Bound Volumes; Volume 20 (1940-42) through Volume 49 (1997-2001) including 2-volume index: $921;

(B) Future Bound Volumes: $70;

(C) Slip Opinion Service (yearly): $60;

(D) Letters of Advice Index, 1969–83: $20;

(E) Letters of Advice Index, 1983–88: $40;

(F) Letters of Advice Index, 1988–93: $40;

(G) Future Letters of Advice Indices: $40.

(f) Core Mediation Training Manual: $95.

Stat. Auth.: ORS 192.430(2) & 192.440(4)
Stats. Implemented: ORS 192.440(4)
Hist.: JD 1-1982, f. & ef. 1-7-82; JD 1-1983(Temp), f. & ef. 5-3-83; JD 7-1983, f. & ef. 11-2-83; JD 4-1984(Temp), f. & ef. 11-7-84; JD 1-1985, f. & ef. 1-23-85; JD 3-1986, f. & ef. 1-27-86; JD 2-1990, f. & cert. ef. 2-14-90; JD 6-1994, f. 10-31-94, cert. ef. 11-1-94; JD 1-1998, f. & cert. ef. 2-4-98; DOJ 9-1999, f. & cert. ef. 12-8-99; DOJ 11-2001, f. & cert. ef. 12-10-01; DOJ 16-2003, f. & cert. ef. 12-9-03; DOJ 18-2003(Temp), f. & cert. ef. 12-10-03 thru 6-1-04; DOJ 13-2004(Temp), f. & cert. ef. 11-1-04 thru 1-31-05; DOJ 1-2005, f. & cert. ef. 1-13-05; DOJ 2-2005, f. & cert. ef. 2-1-05; DOJ 15-2005(Temp), f. & cert. ef. 11-2-05 thru 4-29-06; DOJ 21-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 8-2008, f. 4-29-08, cert. ef. 5-1-08; DOJ 11-2009, f. & cert. ef. 9-8-09; DOJ 7-2012, f. 6-27-12, cert. ef. 7-1-12

137-008-0015
Fees for Mailing, Faxing Records

(1) The Department of Justice may charge requestors to recover actual postage costs for mailing of records. When mailing voluminous records or responding to special requests, the department shall charge, in accordance with OAR 137-008-0010(2), for staff time required to prepare the records for mailing, in addition to actual postage.

(2) When faxing records to requestors, the Department of Justice shall charge $1 per page for in-state faxes. The department shall charge $5 for the first page of out-of-state faxes and $1 per page thereafter. The department limits the number of pages it will fax to 30 pages.

Stat. Auth.: ORS 192.430(2) & 192.440(3)
Stats. Implemented: ORS 192.440(3)
Hist.: JD 6-1994, f. 10-31-94, cert. ef. 11-1-94; JD 1-1998, f. & cert. ef. 2-4-98

137-008-0020
Fees for Electronic Reproduction of Records

(1) The Department of Justice shall charge $45 per hour, with a $15.00 minimum, for the staff time required to fill public record requests that require electronic reproduction. Charges include time spent locating, downloading, formatting, copying, scanning, and transferring records to media.

(2) The department will provide reproduction media at the following rates:

(a) DVDs or CDs: $1/ea.

(b) Video Cassettes, 2 hours: $6/ea.

(c) Audio Cassettes: $2/ea.

(3) Due to the threat of computer viruses, the department will not permit requestors to provide flash drives or other electronic media for electronic reproduction of computer records.

Stat. Auth.: ORS 192.430(2) & 192.440(3)
Stats. Implemented: ORS 192.440(3)
Hist.: JD 6-1994, f. 10-31-94, cert. ef. 11-1-94; JD 1-1998, f. & cert. ef. 2-4-98; DOJ 8-2008, f. 4-29-08, cert. ef. 5-1-08; DOJ 11-2009, f. & cert. ef. 9-8-09

137-008-0100
Confidentiality and Inadmissibility of Mediation Communications

(1) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not they are confidential under this or other rules of the agency, mediation communications are exempt from disclosure under the Public Records Law to the extent provided in 192.410 to 192.505.

(3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which the agency has regulatory authority. This rule does not apply when the agency is acting as the "mediator" in a matter in which the agency also is a party as defined in ORS 36.234.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) Mediations Excluded. Sections (6)–(10) of this rule do not apply to:

(a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials, unless a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed; or

(b) Mediation in which the person acting as the mediator will also act as the hearings officer in a contested case involving some or all of the same matters;

(c) Mediation in which the only parties are public bodies;

(d) Mediation involving two or more public bodies and a private party if the laws, rule or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential;

(e) Mediation involving 15 or more parties if the agency has designated that another mediation confidentiality rule adopted by the agency may apply to that mediation; or

(f) Mediation in which the mediator is acting within the scope of his or her employment with the Department of Justice except to the extent the parties and the employee agree in writing that mediation communications shall be confidential pursuant to this rule.

(6) Disclosures by Mediator. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure;

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c)–(d), (j)–(l) or (o)–(p) of section (9) of this rule; or

(c) The mediator reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that immediately threatens the health or safety of a child.

(7) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in sections (8)–(9) of this rule, mediation communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding.

(8) Written Agreement. Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be confidential and/or nondiscoverable and inadmissible. If the mediator is the employee of and acting on behalf of a state agency, the mediator or an authorized agency representative must also sign the agreement. The parties' agreement to participate in a confidential mediation must be in substantially the following form. This form may be used separately or incorporated into an "agreement to mediate." [Form not included. See ED. NOTE.]

(9) Exceptions to confidentiality and inadmissibility:

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding;

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law;

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person;

(d) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law or court rule is not confidential and may be disclosed to the extent necessary to make such a report;

(e) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law;

(f) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS Chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree;

(g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under this subsection is bound by the same confidentiality requirements as apply to the parties to the mediation;

(h) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure;

(i) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement;

(j) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements;

(k) When a mediation is conducted as part of the negotiation of a collective bargaining agreement, the following mediation communications are not confidential and such communications may be introduced into evidence in a subsequent administrative, judicial or arbitration proceeding:

(A) A request for mediation; or

(B) A communication from the Employment Relations Board Conciliation Service establishing the time and place of mediation; or

(C) A final offer submitted by the parties to the mediator pursuant to ORS 243.712; or

(D) A strike notice submitted to the Employment Relations Board.

(l) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute;

(m) Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:

(A) Attorney-client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege; or

(B) Attorney work product prepared in anticipation of litigation or for trial; or

(C) Prepared exclusively for the mediator or in a caucus session and not given to another party in the mediation other than a state agency; or

(D) Prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation; or

(E) Settlement concepts or proposals, shared with the mediator or other parties.

(n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent the Attorney General or the Deputy Attorney General determines that disclosure of the communication is necessary to prevent or mitigate a serious

danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law;

(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from disclosure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under 17.095 or state or federal law requires the terms to be confidential;

(p) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4);

(q) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that immediately threatens the health or safety of a child. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of any crime involving physical violence to a person or a crime involving the health or safety of a child.

(10) When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 36.224

Stats. Implemented: ORS 36.224, 36.228, 36.230 & 36.232

Hist.: DOJ 6-1998(Temp), f. & cert. ef. 8-12-98 thru 12-12-98; DOJ 8-1998, f. 11-24-98, cert. ef. 12-1-98; DOJ 2-1999, f. & cert. ef. 1-25-99

137-008-0120
Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications

(1) This rule applies to workplace interpersonal disputes, which are disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials. This rule does not apply to disputes involving the negotiation of labor contracts or matters about which a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed.

(2) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(3) Nothing in this rule affects any confidentiality created by other law.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) Disclosures by Mediator. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c) or (h)–(j) of section (7) of this rule.

(6) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in section (7) of this rule, mediation communications in mediations involving workplace interpersonal disputes are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced into evidence by the parties or the mediator in any subsequent proceeding so long as:

(a) The parties to the mediation and the agency have agreed in writing to the confidentiality of the mediation; and

(b) The person agreeing to the confidentiality of the mediation on behalf of the agency:

(A) Is neither a party to the dispute nor the mediator;

(B) Is designated by the agency to authorize confidentiality for the mediation; and

(C) Is at the same or higher level in the agency than any of the parties to the mediation or who is a person with responsibility for human resources or personnel matters in the agency, unless the agency head or member of the governing board is one of the persons involved in the interpersonal dispute, in which case the Governor or the Governor's designee.

(7) Exceptions to confidentiality and inadmissibility:

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(e) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS Chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(f) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(g) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(h) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(i) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(j) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(8) The terms of any agreement arising out of the mediation of a workplace interpersonal dispute are confidential so long as the parties and the agency so agree in writing. Any term of an agreement that requires an expenditure of public funds, other than expenditures of $1,000 or less for employee training, employee counseling or purchases of equipment that remain the property of the agency, may not be made confidential.

(9) When a mediation is subject to section (6) of this rule, the agency will provide to all parties to the mediation and to the mediator a copy of this rule or an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

Stat. Auth.: ORS 36.224
Stats. Implemented: ORS 36.230(4)
Hist.: DOJ 6-2005(Temp), f. & cert. ef. 8-5-05 thru 2-1-06; DOJ 14-2005, f. 10-31-05, cert. ef. 2-2-06

DIVISION 9

SCREENING AND SELECTION PROCEDURES FOR PERSONAL SERVICE CONTRACTS FOR ATTORNEYS

137-009-0125
Purpose

The Department may contract for the services of special legal assistants or private counsel to provide legal services otherwise required by law to be performed by the Attorney General. These rules specify the screening and selection procedures the Department will use to select individuals or entities to perform such services.

Stat. Auth.: ORS 180.140(5), 183.310(9) & 279A.025(2)(j)
Stats. Implemented: ORS 180.140(5) & 279A.025(2)(j)
Hist.: DOJ 3-2005(Temp), f. & cert. ef. 3-18-05 thru 9-2-05; DOJ 7-2005, f. 8-16-05, cert. ef. 9-2-05

137-009-0130
Definitions

For purposes of OAR chapter 137, division 009, these terms have the following meanings:

(1) "Advocate" means the Advocate for Minority, Women and Emerging Small Businesses as defined in OAR Chapter 125.

(2) "Attorney General" means the Attorney General of the State of Oregon.

(3) "Contractor" means an individual or entity that is obligated under a contract with the Department to provide legal services required by law to be performed by the Attorney General.

(4) "Department" means the Department of Justice of the State of Oregon.

(5) "Deputy" means the Deputy Attorney General, appointed by the Attorney General to that position pursuant to ORS 180.130.

(6) "Designated Practice Areas" means subject matter areas generally recognized within the legal profession as requiring specialized knowledge of a particular field of law.

(7) "Lowest Overall Cost" means the lowest cost to the state taken as a whole including the prospective Contractor's hourly rates (or other billing methods), available resources, expertise, and ability to accomplish an optimal, timely outcome to a particular matter.

(8) "Master Agreement" means a document that contains contractual provisions that will be included in certain future contracts between the parties. Each future contract will provide detail on scope of services, delivery terms, not-to-exceed amounts and other items necessary to establish a definite contract. A Master Agreement is not a contract, but is a document of understanding between the Department and an individual or entity.

(9) "ORPIN" means the on-line electronic Oregon Procurement Information Network administered by the State Procurement Office, as further defined on OAR 125-246-0500, or its successor.

(10) "Self Search" means a search of the Advocate's list of certified firms for firms that meet the Solicitation requirements, using the Advocate's Self Search tool which is available at: http://www4.cbs.state.or.us/ex/dir/omwesb/.

(11) "Solicitation" means a written or oral request for offers, proposals, statements of qualifications, or other information from individuals or entities.

Stat. Auth.: ORS 180.140(5), 183.310(9) & 279A.025(2)(j)
Stats. Implemented: ORS 180.140(5) & 279A.025(2)(j)
Hist.: DOJ 3-2005(Temp), f. & cert. ef. 3-18-05 thru 9-2-05; DOJ 7-2005, f. 8-16-05, cert. ef. 9-2-05; DOJ 4-2008, f. 1-29-08, cert. ef. 2-1-08

Guidelines

137-009-0135
Policy

The policy of the Department is to select Contractors in an expeditious and efficient manner that is consistent with the goal of delivering highly competent legal services at the Lowest Overall Cost to the State of Oregon.

Stat. Auth.: ORS 180.140(5), 183.310(9) & 279A.025(2)(j)
Stats. Implemented: ORS 180.140(5) & 279A.025(2)(j)
Hist.: DOJ 3-2005(Temp), f. & cert. ef. 3-18-05 thru 9-2-05; DOJ 7-2005, f. 8-16-05, cert. ef. 9-2-05

137-009-0140
Methods for Selecting Contractors

(1) The Department will use one of the following methods to select a Contractor:

(a) The Department may select a Contractor from a list of individuals or entities established for a Designated Practice Area as set forth in OAR 137-009-0145.

(b) The Department may select a Contractor from a group of proposers within a Designated Practice Area as set forth in OAR 137-009-0147.

(c) The Department may select a Contractor from a group of proposers to a specific matter Solicitation as set forth in OAR 137-009-0150.

(d) The Department may select a Contractor through direct negotiation as set forth in OAR 137-009-0160.

(2) Nothing in this section shall prevent the Department from entering into an amendment to a contract for legal services according to its terms.

Stat. Auth.: ORS 180.140(5), 183.310(9) & 279A.025(2)(j)
Stats. Implemented: ORS 180.140(5) & 279A.025(2)(j)
Hist.: DOJ 3-2005(Temp), f. & cert. ef. 3-18-05 thru 9-2-05; DOJ 7-2005, f. 8-16-05, cert. ef. 9-2-05; DOJ 4-2008, f. 1-29-08, cert. ef. 2-1-08

137-009-0145
Procedure to Develop Lists of Individuals or Entities under Master Agreements

(1) The Department may use a Solicitation to request proposals or information that describes general or specific legal services to be performed within a defined period of time. The purpose of such a Solicitation is to establish a list of individuals or entities under Master Agreements for a specified period of time to provide legal services within Designated Practice Areas as requested by the Department and agreed to by the individual or entity.

(a) The Department shall provide notice of the Solicitation on ORPIN or in any other manner the Department deems appropriate to provide notice to a sufficient number of individuals or entities to develop adequate lists of available individuals or entities.

(b) The Department shall provide notice of the Solicitation to the Advocate in accordance with ORS 200.035 and this subsection. The Department may satisfy the requirement for notice to the Advocate by posting the notice on ORPIN for at least five calendar days prior to selection. The Department may also provide notice to the Advocate by any of the following Advocate approved methods:

(A) Faxing notice of Solicitation to the Advocate; or

(B) E-mailing notice of Solicitation to the Advocate; or

(C) Performing a Self Search with notice of results to the Advocate.

The notice form is available at: http://www.governor.oregon.gov/Gov/MWESB/index.shtml.

No waiting period is imposed, prior to selection, when using the fax or e-mail method.

(2) The evaluation criteria in the Solicitation may include, without limitation, consideration of the following factors:

(a) Availability and capability to perform the work;

(b) Fees or costs, including proposed discounts from rates generally charged other clients;

(c) Geographic proximity to the location where the legal services will primarily be performed;

(d) Ethical considerations, such as the existence of conflicts of interest;

(e) Recommendations of subject matter experts, such as client agency representatives with special knowledge or insights into necessary or desirable non-legal knowledge or background;

(f) Any other criteria the Department determines relevant to the provision of legal services.

(3) In weighing the factors set forth above, no single factor shall be determinative. But if one factor strongly suggests the Department should enter into a Master Agreement with a proposer with respect to a Designated Practice Area, it may outweigh one or more other factors that favor other proposers.

(4) The Department may either sign a Master Agreement with qualified individuals or entities in particular Designated Practice Areas or cancel the Solicitation.

Stat. Auth.: ORS 180.140(5), 183.310(9) & 279A.025(2)(j)
Stats. Implemented: ORS 180.140(5), 200.035 & 279A.025(2)(j)
Hist.: DOJ 3-2005(Temp), f. & cert. ef. 3-18-05 thru 9-2-05; DOJ 7-2005, f. 8-16-05, cert. ef. 9-2-05; DOJ 4-2008, f. 1-29-08, cert. ef. 2-1-08

137-009-0147
Solicitation to Engage a Contractor to Provide Legal Services within a Designated Practice Area

The Department may use a Solicitation to request proposals to provide legal services within a Designated Practice Area:

(1) The Department may provide notice of the Solicitation in any manner the Department deems appropriate to provide notice to a sufficient number of individuals or entities, but in no event shall notice of a Solicitation under this section be provided to fewer than three prospective proposers.

(2) The Department shall provide notice of the Solicitation to the Advocate in accordance with ORS 200.035 and subsection (1)(b) of OAR 137-009-0145.

Stat. Auth.: ORS 180.140(5), 183.310(9) & 279A.025(2)(j)
Stats. Implemented: ORS 180.140(5), 200.035 & 279A.025(2)(j)
Hist.: DOJ 4-2008, f. 1-29-08, cert. ef. 2-1-08

137-009-0150
Solicitation to Engage a Contractor to Provide Legal Services for a Specific Matter

The Department may use a Solicitation to request proposals to provide legal services on a specific matter:

(1) The Department may provide notice of the Solicitation in any manner the Department deems appropriate to provide notice to a sufficient number of individuals or entities, but in no event shall notice of a Solicitation under this section be provided to fewer than three prospective proposers.

(2) The Department shall provide notice of the Solicitation to the Advocate in accordance with ORS 200.035 and subsection (1)(b) of OAR 137-009-0145.

Stat. Auth.: ORS 180.140(5), 183.310(9) & 279A.025(2)(j)
Stats. Implemented: ORS 180.140(5), 200.035 & 279A.025(2)(j)
Hist.: DOJ 3-2005(Temp), f. & cert. ef. 3-18-05 thru 9-2-05; DOJ 7-2005, f. 8-16-05, cert. ef. 9-2-05; DOJ 4-2008, f. 1-29-08, cert. ef. 2-1-08

137-009-0155
Criteria for Selection of Contractor under OAR 137-009-0145, 137-009-0147, and 137-009-0150

(1) If the Department decides to select a Contractor from a list of individuals or entities developed pursuant to OAR 137-009-0145, or from among the proposers to a Solicitation under 137-009-0147 or 137-009-0150, the Department will use the evaluation process described in this section.

(2) The Department will make its selection decision based on an evaluation of factors that the Department determines appropriate in any particular instance, which may include, without limitation:

(a) The experience and level of expertise of Contractor and Contractor's available personnel, as determined by the Department, in the Designated Practice Area and for the type of legal services the Department requires;

(b) Whether the Contractor's available personnel possess any required licenses or certifications required to perform the legal services for the specific matter, such as licenses to practice law in the appropriate jurisdiction, or licenses to appear in a certain forum;

(c) The legal and business constraints or requirements, if any, imposed by particular characteristics of the matter for which the Department seeks legal services;

(d) The extent and nature of any likely conflicts of interest that exist or could arise if Contractor provided legal services with respect to a particular matter;

(e) The training, expertise, temperament, style and experience of the particular Contractor personnel available to perform work on the specific matter and the training, expertise, temperament, style and experience of the particular State of Oregon agency personnel that will be working on the matter with the Contractor's personnel;

(f) Recommendations of subject matter experts, such as client agency representatives with special knowledge or insights into necessary or desirable non-legal knowledge or background.

(g) Lowest Overall Cost; or

(h) Other factors the Department considers relevant to the selection of a Contractor to provide particular legal services.

(3) In weighing the evaluation factors, no single factor shall be determinative, but Lowest Overall Cost always will be considered.

(4) To reduce the Lowest Overall Cost to the state, the Department should select a Contractor from the list of firms established under OAR 137-009-0145 when the work is within an individual's or entity's Designated Practice Area under a Master Agreement and the Department determines:

(a) The administrative cost of selecting a Contractor under OAR 137-009-0150 outweighs potential cost savings under that process;

(b) The services are likely to be integrally related to other services provided by the Contractor under a Master Agreement, resulting in greater economy and efficiency; or

(c) The Department's need for services is of such urgency that selecting a Contractor under OAR 137-009-0147 or 137-009-0150 would result in unacceptable delay.

Stat. Auth.: ORS 180.140(5), 183.310(9) & 279A.025(2)(j)
Stats. Implemented: ORS 180.140(5) & 279A.025(2)(j)
Hist.: DOJ 3-2005(Temp), f. & cert. ef. 3-18-05 thru 9-2-05; DOJ 7-2005, f. 8-16-05, cert. ef. 9-2-05; DOJ 4-2008, f. 1-29-08, cert. ef. 2-1-08

137-009-0160
Direct Negotiation and Contracting

(1) The Department may directly negotiate and enter into contracts with Contractors to provide legal services without following the procedures set forth in OAR 137-009-0145 through 137-009-0155 in the following circumstances:

(a) The contract's maximum consideration does not exceed $25,000;

(b) The subject matter of the representation is highly confidential, and there is a substantial risk that the interests of the State of Oregon or the Department would be adversely affected by a more public Solicitation;

(c) The subject matter of the representation is highly time sensitive, and there is a substantial risk that the interests of the State of Oregon or the Department would be adversely affected by any delay in obtaining a Contractor;

(d) The cost of the representation will be borne in whole or in part by a nonstate entity and the nonstate entity has a legal right to influence selection of legal counsel; or

(e) Any other situation in which the Attorney General or the Deputy determines that the interests of the Department or the State of Oregon are best served by direct negotiation and contracting with Contractors.

(2) In directly negotiating and entering into a contract with a Contractor, the Department shall consider Lowest Overall Cost.

Stat. Auth.: ORS 180.140(5), 183.310(9) & 279A.025(2)(j)
Stats. Implemented: ORS 180.140(5) & 279A.025(2)(j)
Hist.: DOJ 3-2005(Temp), f. & cert. ef. 3-18-05 thru 9-2-05; DOJ 7-2005, f. 8-16-05, cert. ef. 9-2-05

137-009-0165
Repealed Rules

As required by Or Laws 2003, chapter 794, section 334, OAR 137-009-0000, 137-009-0005, 137-009-0010, 137-009-0045, 137-009-0060, 137-009-0065, 137-009-0100 and 137-009-0120 are repealed.

Stat. Auth.: ORS 180.140(5), 183.310(9) & 279A.025(2)(j)
Stats. Implemented: ORS 180.140(5) & 279A.025(2)(j)
Hist.: DOJ 3-2005(Temp), f. & cert. ef. 3-18-05 thru 9-2-05; DOJ 7-2005, f. 8-16-05, cert. ef. 9-2-05

DIVISION 10

GENERAL CHARITABLE ORGANIZATION REGISTRATION AND REPORTING REQUIREMENTS

137-010-0005
General Registration

(1) Charitable organizations, including trustees of charitable remainder trusts, which hold property for charitable purposes over which the State or the Attorney General has enforcement or supervisory power are required to register with the Charitable Activities Section of the office of the Attorney General.

(2) Charitable organizations are not required to register under this section if:

(a) The charitable organization is exempt under ORS 128.640; or

(b) The charitable organization has not received property for charitable purposes; or

(c) The organization is an educational institution which does not hold property in this state and solicitations of individuals residing in this state are confined to alumni of the institution; or

(d) A trustee of a charitable remainder trust is also the sole charitable beneficiary of the trust estate.

(3) Registration shall be on forms provided or accepted by the Attorney General and shall be accompanied by a copy of the articles of incorporation and bylaws, trust agreement, or other instruments governing the charitable organization. In the case of a testamentary trust, the attachments shall include a copy of the decree of distribution.

Stat. Auth.: ORS 128.876
Stats. Implemented: ORS 128.640 & 128.650
Hist.: 1AG 2, f. 2-17-64; 1AG 5, f. 8-3-72, ef. 8-15-72; 1AG 15, f. & ef. 5-27-76; 1AG 1-1979, f. & ef. 2-1-79; 1AG 2-1981, f. & ef. 12-1-81; JD 2-1982, f. & ef. 12-30-82; JD 1-1990, f. & cert. ef. 1-25-90; DOJ 8-2015, f. & cert. ef. 7-1-15

137-010-0010
Contents of General Registration Statement

Every registration statement filed pursuant to the general registration and reporting provisions of ORS Chapter 128 shall set forth in detail the following information to the extent requested by the Attorney General:

(1) Name and contact information for the charitable organization subject to the Act, including mailing address, telephone number, facsimile number, email address, and website address.

(2) Employer Identification Number.

(3) Type of organization and type of instrument creating or governing the charitable organization, date of instrument, and where filed, including date and state of filing of articles of incorporation. Governing documents shall be attached and identified by title in the registration statement.

(4) Names, position, and contact information for trustees, corporate officers and directors, key officials or employees, or other charitable fiduciaries, including telephone number, mailing address, and email address.

(5) Purpose of the charitable organization.

(6) Accounting year adopted by the charitable organization.

(7) Names and addresses of beneficiaries designated by the instrument governing the charitable organization.

(8) The charitable organization's primary county of operations, principle place of business or administration, or similar information.

(9) Information about the organization's tax-exempt status, including the status of any IRS application and a copy of any IRS determination letter.

(10) Information about any fundraising contracts to which the charitable organization is a party and any charitable gaming activity conducted by the charitable organization.

(11) Information about whether the organization or its fiduciaries are parties to any voluntary agreements, administrative actions, or legal actions relating to charitable solicitations, charitable administration, or fiduciary practices.

Stat. Auth.: ORS 128.876
Stats. Implemented: ORS 128.650
Hist.: 1AG 2, f. 2-17-64; 1AG 15, f. & ef. 5-27-76; 1AG 2-1981, f. & ef. 12-1-81; JD 2-1982, f. & ef. 12-30-82; JD 1-1990, f. & cert. ef. 1-25-90; DOJ 8-2015, f. & cert. ef. 7-1-15

137-010-0015
General Reporting Requirements

(1) Charitable organizations required to register under OAR 137-010-0005 shall submit annual reports to the Charitable Activities Section of the office of the Attorney General.

(2) Charitable organizations are not required to complete and file a financial reporting form as described in OAR 137-010-0020 if the reporting requirements have been suspended by the Attorney General as to a particular charitable organization pursuant to ORS 128.670(3).

(3) When a charitable organization is terminated or dissolved, a final report shall be filed with the Attorney General showing the disposition of all remaining assets.

(4) The annual reports shall be on forms as specified in OAR 137-010-0020.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 128.670
Stats. Implemented: ORS 128.670
Hist.: 1AG 2, f. 2-17-64; 1AG 3, f. 12-31-68; 1AG 5, f. 8-3-72, ef. 8-15-72; 1AG 6, f. 8-3-72, ef. 8-15-72; 1AG 1-1979, f. & ef. 2-1-79; 1AG 2-1981, f. & ef. 12-1-81; JD 2-1982, f. & ef. 12-30-82; JD 1-1990, f. & cert. ef. 1-25-90; DOJ 4-1998, f. & cert. ef. 4-2-98; DOJ 8-2015, f. & cert. ef. 7-1-15

137-010-0020
Contents of Annual Reports

(1) A complete annual report for a charitable organization incorporated, headquartered, or organized in a state other than Oregon, including outside of the United States, shall include a completed Attorney General's form CT-12F.

(2) A complete annual report for a trust with both charitable and non-charitable beneficiaries shall include a completed Attorney General's form CT-12S.

(3) A complete annual report for a charitable organization incorporated, organized, or headquartered in Oregon or not described in OAR 137-010-0020(1) or (2) shall include a completed Attorney General's form CT-12.

(4) A complete annual report is required to also include:

(a) A copy of all year-end, federal reporting forms, schedules and attachments filed with the Internal Revenue Service for the same period, such as a form 990, 990EZ, 990PF, or 5227. Organizations are not required to provide copies of a 990N (epostcard) filing if they otherwise provide confirmation that a 990N return was filed with the IRS.

(b) A copy of the independent auditor's report on the corporation's financial records and accompanying financial statements and other attachments if such an audit was prepared.

(c) Updates to information requested in the registration statement, information regarding legal actions as described in OAR 137-010-0010(1), information on whether the organization is ceasing operations in Oregon, and information related to a determination of applicable filing requirements under ORS 128.610 to 128.769.

(d) Information related to revenues, expenditures, and assets, including information necessary to the determination or calculation of applicable fees.

(5) In the event the charitable organization has total annual gross receipts of $50,000 or more or total assets of $100,000 or more, but the organization did not file with the IRS an IRS form 990, 990EZ, 990PF, or 5227 for the reporting period because the organization does not hold tax exempt status, because the organization is eligible to file the 990N, or for some other reason, such organization is required to complete for purposes of its Oregon annual report, an IRS form 990 or 990EZ, including all applicable schedules. If the organization's annual gross receipts are less than $200,000, it may use IRS 990EZ. Otherwise, the organization is required to use IRS form 990. If the IRS form was not filed with the IRS but is provided in connection with Oregon's annual report requirements, the form is required to be clearly labeled as for Oregon purposes only or otherwise identify that the form has not been filed with the IRS. Organizations may request a waiver of this requirement by submitting a written request for a waiver with their annual report, along with an income statement and balance sheet, or statements containing similar information.

(6) Charitable organizations are required to file annual reports covering all time periods preceding the date that the organization requested closure of its registration file or notified the Department that it ceased operations.

(7) A charitable organization is not required to submit as part of its annual report to the Attorney General a copy of any IRS form 990 Schedule B listing of contributors that would be exempt from disclosure under federal law.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 128.670

Stats. Implemented: ORS 128.670

Hist.: 1AG 2, f. 2-17-64; 1AG 5, f. 8-3-72, ef. 8-15-72; 1AG 2-1981, f. & ef. 12-1-81; JD 2-1982, f. & ef. 12-30-82; JD 1-1990, f. & cert. ef. 1-25-90; DOJ 4-1998, f. & cert. ef. 4-2-98; DOJ 8-2015, f. & cert. ef. 7-1-15

137-010-0025
Reporting Period

(1) Annual reports required by ORS Chapter 128 shall be on a calendar or fiscal year basis selected by the charitable organization, but such fiscal year must coincide with the reporting period used by the organization on returns prepared for the Internal Revenue Service.

(2) Annual reports shall be submitted not later than four months and 15 days following the close of each calendar or fiscal year adopted by the charitable organization.

(3) When the filing day as specified in section (2) of this rule falls on a Saturday, Sunday, or a legal holiday, the due date is the next business day following such Saturday, Sunday, or legal holiday.

(4) Any change in the accounting year should be reported to the Charitable Activities Section, Department of Justice. A short period report is required to be filed with a change of accounting year, covering the financial transactions from the day after the close of the former accounting period to the day before the beginning of the new accounting period. This short period report is treated the same as any report required by the Act, and is due not later than four months and 15 days following the close of the period.

(5) An extension of time may be granted by the Attorney General for a reasonable period for filing a report upon written application filed by or on behalf of the charitable organization stating, if requested, the reason that additional time should be allowed for filing the report beyond the ordinary due date. The request should be submitted on or before the due date for filing the report. An extension of time for filing any required information return with the Internal Revenue Service does not extend the time for filing the report with the Attorney General. However, if the charitable organization intends to file a copy of the federal reporting form as part of the report to the Attorney General and if a request for an extension of time has been submitted to the Internal Revenue Service, a signed copy of the federal extension request may be furnished as the form of similar request for an extension of time for filing the complete report with the Attorney General if provided to the Charitable Activities Section, Department of Justice, on or before the original due date for the annual report. The maximum length of any extension for filing an annual report will be no more than six months from the original due date of the report.

(6) The Attorney General shall not consider an annual report or extension as timely filed if the annual report or extension was received by the Charitable Activities Section, Department of Justice, more than 5 business days after the due date described in this rule unless the organization furnishes proof that the annual report or extension was delivered to the Charitable Activities Section on or before the due date for the annual report or extension.

Stat. Auth.: ORS 128.670

Stats. Implemented: ORS 128.670

Hist.: 1AG 2, f. 2-17-64; 1AG 5, f. 8-3-72, ef. 8-15-72; 1AG 1-1979, f. & ef. 2-1-79; 1AG 2-1981, f. & ef. 12-1-81; JD 2-1982, f. & ef. 12-30-82; JD 1-1990, f. & cert. ef. 1-25-90; DOJ 4-1998, f. & cert. ef. 4-2-98; DOJ 8-2015, f. & cert. ef. 7-1-15

137-010-0030
Payment of Fees

(1) Each charitable organization filing a report required by this Act shall pay to the Department of Justice, with each such report, a fee based in part on the total amount of the organization's income and receipts during the period covered by the report and in part on its fund balance at the close of the report period as provided in the schedule set forth below. References to "total amount of its income and receipts" shall mean total revenue or income as defined by Internal Revenue Service form 990, 990-EZ, 990-PF or 1041-A, and, if no financial return is filed, shall mean the total amount of revenue the organization received from all sources. References to "fund balance" shall mean net assets or fund balances as defined by Internal Revenue Service form 990, 1041-A, 990-EZ or 990-PF.

(a) The fee based on total amount of income and receipts is as follows: [Table not included. See ED. NOTE.]

(b) The fee based on the organization's fund balance is one-hundredth of one percent of the fund balance at the close of the calendar or fiscal year covered by the report. Fund balances in excess of $10 million or less than $50,000 shall not be subject to the fund balance fee. A charitable organization's fixed assets used for operations are excluded from its fund balance. The fee shall be rounded off to whole dollars; amounts under 50 cents shall be dropped and amounts from 50 cents to 99 cents shall be increased to the next dollar.

(2) If the report fees are not paid when due or if the chartable corporation, trustee or other charitable organization fails to file a report by the date due, a delinquency fee shall be paid to the Department of Justice in accordance with the schedule set forth below, except that if a written request for an extension of time is submitted on or prior to the due date for filing the report and is approved, the delinquency fee will not be due unless the report or fee are not filed within the extended period granted for filing the report. If the extension request is denied, the delinquency fee will not be due if the report and fee are filed within ten days after the denial is received by the charitable organization or the filing has subsequently been completed by the ordinary due date for filing the report. The delinquency fees apply automatically and increase based upon the length of time a report or payment remains delinquent. The delinquency fees are as follows:

(a) A delinquency fee of $20 applies if the report or applicable fees are not received by the due date, including failing to file a request for an extension on or before the initial due date, provided the delinquent report is filed and payment is made no later than 13 months from the close of the organization's report year;

(b) A delinquency fee of $50 applies if the report or applicable fees are received more than 13 months after the close of the organization's report year, provided the delinquent report is filed and payment is made no later than 16 months from the close of the organization's report year; and

(c) A delinquency fee of $100 applies if the report or applicable fees are received more than 16 months after the close of the organization's report year.

(3) The filing fee paid with the filing of a short period report, due to a change of accounting year, shall be based on the organiza-

tion's reported net assets or fund balance at the end of the period, prorated for the number of months covered by the report, and the organization's reported total revenue for the period covered by the report.

(4) A foreign charitable corporation, trustee, or other charitable organization subject to the reporting requirements of this Act shall pay fees based on the same fee schedules identified in this rule. The report fees shall be based on the organization's total Oregon revenue and its net assets or fund balance held in Oregon at the end of the reporting period. If, for any reporting period, the organization cannot determine the amount of total revenue derived in Oregon, the revenue fee shall be computed on the total revenue for the organization. If for any reporting period, the organization cannot determine the exact amount of net assets or fund balance or the fixed assets for use in the organization's charitable operations held in Oregon, the fund balance fee shall be computed on the organization's total net assets or fund balance.

(5) Split interests trusts shall pay a fee based on the total fund balance of the trust plus a fee based on the amount of the charitable deduction reported on the Internal Revenue Service form 1041-A for the reporting period.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 128.670, 128.876

Stats. Implemented: ORS 128.670, SB 109 (2007)

Hist.: 1AG 5, f. 8-2-72, ef. 8-15-72; 1AG 6, f. 8-2-72, ef. 8-15-72; 1AG 11, f. 3-29-74, ef. 4-25-74; 1AG 1-1979, f. & ef. 2-1-79; 1AG 2-1981, f. & ef. 12-1-81; JD 1-1990, f. & cert. ef. 1-25-90; DOJ 4-1998, f. & cert. ef. 4-2-98; DOJ 18-2005, f. 12-5-05, cert. ef. 12-31-05; DOJ 7-2008, f. & cert. ef. 4-22-08

137-010-0032
Disqualification Orders

Pursuant to ORS 128.760, the Attorney General may issue an order disqualifying a charitable organization from receiving contributions that are deductible as charitable donations for the purpose of Oregon income tax and corporate excise tax if the Attorney General finds that the organization has failed to expend at least 30 percent of the organization's total annual functional expenses on program services when those expenses are averaged over the most recent three fiscal years for which the Attorney General has reports containing expense information.

(1) The calculation of program services expenses and total functional expenses shall be based on the amounts of program services expenses and total functional expenses identified by the organization in the organization's Internal Revenue Service ("IRS") form 990 return or equivalent return required to be filed as part of the organization's report to the Attorney General.

(2) Pursuant to ORS 128.760, a disqualification order may not be issued if the organization meets any of the following criteria:

(a) The organization is a private foundation as defined in section 509 of the Internal Revenue Code, as in effect on October 7, 2013.

(b) The organization is a community trust or foundation operating as described in 26 C.F.R. 1.170A-9(f)(10) and (11), as in effect on October 7, 2013.

(c) The organization is a qualified charitable remainder trust described in section 664 of the Internal Revenue Code, as in effect on October 7, 2013.

(d) The organization does not qualify to receive tax deductible contributions. This includes organizations that hold IRS 501(c)(4) status.

(e) The organization is not required to file annual reports with the Attorney General.

(f) The organization is not required to file an Internal Revenue Service form 990 return or an equivalent Internal Revenue Service return.

(g) The organization receives less than 50 percent of the organization's total annual revenues from contributions or grants identified in accordance with Internal Revenue Service form 990 or an equivalent form.

(h) The organization has been in existence for less than four years, based upon the date of incorporation or organization.

(3) In addition to the exemptions outlined in OAR 137-010-0032(2) and notwithstanding a finding that the charitable organization's program services expenses fall below the minimum percentage specified in OAR 137-010-0032(1), the Attorney General may decline to issue a disqualification order if the organization establishes:

(a) That the organization made payments to affiliates that should be considered in calculating the organization's program services expenses;

(b) That the organization is accumulating revenue or charitable assets for a specific program purpose consistent with representations in solicitations. Such purposes may include a capital campaign, conservation campaign, development of an endowment fund, or similar purposes that result in the significant accumulation of charitable assets relative to program or other expenditures.

(c) The organization supports a related organization or is closely affiliated with another charitable organization such that the IRS form 990 reflects administrative or fundraising expenses incurred on behalf of the related or affiliated organization's charitable programs. The making of grants to another organization is not sufficient to establish that the organization is related or closely affiliated to the recipient organization. The fact that the organizations have consolidated financial statements is relevant to establishing that the organizations are closely affiliated.

(d) The majority of the organization's revenues are from sources that are not eligible for treatment as tax deductible charitable donations, including investment income, program service income, or payments from governmental entitites, or if the organization's revenues from charitable donations average less than $200,000 per year.

(e) The organization's IRS form 990 report contains typographical errors or other errors in its completion that would result in a program service expenditures of at least 30 percent if the errors were corrected.

(f) The organization has experienced unusual fluctuations in revenues or expenditures such that the program service calculation described in OAR 137-010-0032(1) does not fairly reflect the organization's historic expenditures on charitable programs.

(4) If an organization is registered with the Attorney General, has not yet filed at least three or the three most recent IRS form 990 returns with the Charitable Activities Section, but has filed such returns with the IRS, the Attorney General may utilize the IRS returns in connection with the calculation described in ORS 128.760 and OAR 137-010-0032(1).

(5) A disqualification order may not be issued if an organization was eligible to and filed an IRS form 990EZ or 990N, rather than the full IRS form 990, for any one of its most recent three fiscal years or if the organization would have been eligible to file a form 990EZ or 990N for any one of its most recent three fiscal years, but voluntarily filed the full IRS form 990.

(6) If during the period under review, the organization changes its fiscal year such that it files an IRS form 990 for less than a full year, the Attorney General may make appropriate adjustments to ensure that the calculation described in OAR 137-010-0032(1) includes at least three full years' of expenditure information.

(7) For purposes of determining whether to issue a disqualification order or whether an organization has established that it should not be subject to a disqualification order, information contained in an organization's reports filed with the Charitable Activities Section, the organization's IRS form 990 returns, the organization's website or other public sources of information, information provided by the organization, and any other sources of relevant information may be considered.

(8) A charitable organization may request a contested case hearing within 60 days after notification from the Attorney General that the Attorney General proposes to issue a disqualification order.

(9) When a disqualification order is issued, the charitable organization that is the subject of the order does not qualify for and may not claim exemption from taxation under ORS 307.130 for the tax year following the tax year in which the order went into effect and subsequent tax years in which the order remains in effect.

(10) A disqualification order issued pursuant to ORS 128.760 and these rules remains in effect until such time as the charitable organization submits sufficient information to the Attorney General to demonstrate that the organization's program services expens-

es meet the minimum percentage specified in ORS 128.760. A charitable organization may submit information under this subsection no earlier than one year after the disqualification order becomes final, and may not submit information under this subsection more than once each year after the initial submission is made. The information submitted under this subsection must include all Internal Revenue Service form 990 returns, or equivalent Internal Revenue Service returns, filed by the organization after the disqualification order became final.

Stat. Auth.: ORS 128.670
Stats. Implemented: ORS 128.670
Hist.: DOJ 8-2015, f. & cert. ef. 7-1-15

137-010-0033
Imposition of Civil Penalty

(1) In addition to any other action allowed by law, the Attorney General may impose a civil penalty of not more than $2,000 in connection with any violation of ORS 128.610 to 128.769 or related rules, including but not limited to:

(a) Failing to file the registration statement required under ORS 128.660;

(b) Failing to file an annual report required under ORS 128.670, including any required attachments;

(c) Failing to pay any fee required under ORS 128.670;

(d) Willfully making a false or misleading statement in a registration statement, annual report, or other document required to be filed under ORS 128.610 to 128.769;

(e) Willfully failing to provide the Attorney General, in a timely manner, upon request, documents or information necessary for the Attorney General to:

(A) Substantiate representations, statements, or information contained in a registration statement, annual report or other document filed pursuant to ORS 128.610 to 128.769;

(B) Establish and maintain the register required under ORS 128.650; or

(C) Establish that a charitable organization has properly applied charitable funds received by the organization; or

(f) Failing to appear or otherwise comply with an order issued under ORS 128.690.

(2) Civil penalties for violations of ORS 128.610 to 128.769 or related rules may be imposed against the charitable organization or upon a charitable fiduciary responsible for the violation.

(3) The charitable organization or charitable fiduciary receiving a notice of imposition of civil penalty shall, upon written request be entitled to a contested case hearing before the Attorney General or his designee to dispute the imposition of the penalty or to submit evidence in mitigation. The hearing shall be held and the Attorney General's order may be appealed in accordance with the procedure for contested cases provided in ORS Chapter 183.

(4) The Attorney General may file a certified copy of the original notice assessing civil penalties, or of the order entered after hearing, with the clerk of any circuit court in the state, after expiration of the time to request a hearing, or expiration of the time in which to appeal, or after final determination of the matter on appeal, whichever is appropriate, and such notice or order shall be docketed in the judgment docket and may be enforced in the same manner as a judgment.

Stat. Auth.: ORS 128. 670, 128.876
Stats. Implemented: ORS 128.670(8), SB 109 (2007)
Hist.: 1AG 15, f. & ef. 5-27-76; 1AG 2-1981, f. & ef. 12-1-81; JD 1-1990, f. & cert. ef. 1-25-90; DOJ 7-2008, f. & cert. ef. 4-22-08; DOJ 8-2015, f. & cert. ef. 7-1-15

137-010-0034
Mitigating and Aggravating Factors to be Considered

In establishing the amount of any civil penalty to be imposed, the Attorney General may consider the following factors and shall cite those found applicable:

(1) The past history of the charitable organization or charitable fiduciary in connection with compliance with the requirements of ORS 128.610 to 128.769 and timely filing of required reports or documentation.

(2) Whether the cause of the violation was unavoidable, or was due to negligence or the willful or intentional act of the charitable organization or charitable fiduciary.

(3) The opportunity and degree of difficulty to correct the violation.

(4) The cooperativeness and efforts made by the charitable organization or charitable fiduciary to correct the violation for which the civil penalty is to be imposed.

(5) The cost to the Department of Justice and time involved in investigation and correspondence prior to the time the violation is actually corrected.

(6) Any other relevant factor.

Stat. Auth.: ORS 128.876
Stats. Implemented: ORS 128.670(8)
Hist.: 1AG 15, f. & ef. 5-27-76; 1AG 1-1981, f. & ef. 12-1-81; JD 1-1990, f. & cert. ef. 1-25-90; DOJ 8-2015, f. & cert. ef. 7-1-15

Miscellaneous

137-010-0040
Place of Filing

Registration and annual reports required under ORS Chapter 128 shall be submitted to the Charitable Activities Section, Oregon Department of Justice, 1515 S.W. 5th, Suite 410, Portland, Oregon 97201-5451.

Stat. Auth.: ORS 128.876
Stats. Implemented: ORS 128.650, 128.660, 128.670, 128.802, 128.804, 128.807, 128.812, 128.821, 128.826 & 128.841
Hist.: JD 2-1982, f. & ef. 12-30-82; JD 1-1990, f. & cert. ef. 1-25-90; DOJ 8-2015, f. & cert. ef. 7-1-15

137-010-0041
Model APA Rules and Definitions

(1) The Attorney General's Model Rules of Procedure Under the Administrative Procedures Act, effective March 2015, are by this reference adopted as the rules and procedures for carrying out the applicable administrative provisions of the Charitable Solicitations Act (ORS 128.801 to 128.898 and 128.995) and ORS 128.610 to 128.769 and 128.896), except as otherwise specifically provided herein.

(2) As used in the Charitable Solicitations Act and these rules, solicitation "campaign" means the day the first solicitation, as defined in ORS 128.801(6), is made until the later of the following dates:

(a) The last day a solicitation is made; or

(b) The day that an entertainment event, if any, occurs in conjunction with the solicitations.

(3) As used in ORS 128.821(3), "personal address" means the street address of a person's dwelling, house or usual place of abode.

(4) As used in the Charitable Solicitations Act, "clear and conspicuous" means that a message is conveyed in a manner that is readily noticeable and will be readily understood by a person being solicited. The location of a written statement on the reverse side of a document is rebuttably presumed not to be conspicuous.

Stat. Auth.: ORS 128.876
Stats. Implemented: ORS 128.670(8)(b), 128.801(6), 128.821(3) & 128.871
Hist.: JD 1-1990, f. & cert. ef. 1-25-90; JD 5-1991, f. & cert. ef. 10-22-91; DOJ 8-2015, f. & cert. ef. 7-1-15

137-010-0043
Denial of Registration or Revocation of Registration of Commercial Fund Raising Firm or Professional Fund Raising Firm

(1) After notice and opportunity for hearing as provided in ORS 183.310 et seq., the Attorney General may deny registration or revoke any registration issued to a commercial fund raising firm or professional fund raising firm. The Attorney General shall deny the registration within ten days of receipt of a completed application or the registration shall be deemed to be approved. A hearing shall be granted within 30 days of receipt of a written request for a hearing from the applicant.

(2) The Attorney General may revoke a firm's registration or deny a registration application if the Attorney General finds:

(a) A material misrepresentation or false statement in the application for registration or other statement filed with the Attorney General, as provided in the Charitable Solicitations Act or these rules; or

(b) Any material violation of ORS 128.821 to 128.861, 128.886 and 128.891 or the rules adopted by the Attorney General pursuant to the Charitable Solicitations Act.

(3) A "material misrepresentation" or a "material violation" will be determined on the facts in each individual case. However, the following circumstances shall always constitute material violations:

(a) The failure to complete and file a fund raising notice with the Attorney General as required by ORS 128.826 or Section 18, Chapter 532, Oregon Laws 1991, prior to making solicitations;

(b) The use of solicitation materials in the course of a solicitation campaign which do not contain the disclosures required by Sections 6 or 20, Chapter 532, Oregon Laws 1991.

(4) A false statement is any statement contrary to truth or fact.

Stat. Auth.: ORS 128.876
Stats. Implemented: ORS 128.871
Hist.: JD 1-1990, f. & cert. ef. 1-25-90; JD 5-1991, f. & cert. ef. 10-22-91

137-010-0044
Refund of Fees

Any refund of $10 or less of a filing fee paid pursuant to the Charitable Solicitations Act or the Charitable Trust and Corporation Act shall be made only upon a written request from a representative of the organization which overpaid the fee. Unless the Department of Justice, in its discretion, agrees to waive the fee, the department shall retain a fee of $25 to process refunds of overpayments of fees paid pursuant to ORS 128.670(7). The department is not required to process refunds as described above, if the amount of the refund due does not exceed $25.

Stat. Auth.: ORS 128.876
Stats. Implemented: ORS 128.670
Hist.: JD 1-1990, f. & cert. ef. 1-25-90; JD 5-1991, f. & cert. ef. 10-22-91

Charitable Solicitation Registration and Reporting Requirements

137-010-0045
Professional Fund Raising Firm Status

(1) "Professional fund raising firm" means any sole proprietorship, partnership, corporation or any other legal entity, organized for profit or as a nonprofit mutual benefit corporation, who, for compensation or other consideration, manages or conducts the solicitation of funds, not including commercial fund raising solicitations, on behalf of any nonprofit organization.

(2) Professional fund raising firm status is evidenced by one or more of the following characteristics:

(a) Access to contributions or other receipts from a solicitation and/or authority to pay expenses associated with the solicitation, including amounts owed to the professional fund raising firm or third party vendors;

(b) Conducting direct solicitations of prospective donors, whether in person or by telephone and whether such solicitations are performed personally or through employees or agents;

(c) Advising nonprofit organizations with regard to the volume, targeting, duration or content of a direct mail solicitation campaign and also having primary responsibility for the campaign's production.

Stat. Auth.: ORS 128.876
Stats. Implemented: ORS 128.801(5)
Hist.: JD 5-1991, f. & cert. ef. 10-22-91

137-010-0050
Professional Fund Raising Firm Registration and Reports

(1) Any person required by Section 17, Chapter 532, Oregon Laws 1991 to register as a professional fund raising firm shall pay an annual registration fee as provided in that section and shall complete and file Form PF-20, "State of Oregon Annual Registration Statement of Professional Fund Raising Firm" with the Attorney General. This procedure shall apply to both new registrations and registration renewals. In addition to the items listed in Section 17, a completed form shall include a confirmation that the applicant has registered with the Oregon Secretary of State's Corporation Division, if it is a foreign corporation, and has registered any assumed business names with that same office, if such registrations are required by ORS 60.701.

(2) At least ten days prior to undertaking each solicitation campaign, a professional fund raising firm shall complete and file Form PF-21, "Professional Fund Raising Firm Solicitation Campaign Notice," as required by Section 18, Chapter 532, Oregon Laws 1991.

(3) Professional fund raising firms required by Section 21, Chapter 532, Oregon Laws 1991, to file financial reports shall complete and file Form PF-22, "Professional Fund Raising Firm Solicitation Campaigns Financial Reports" with the Attorney General.

(4) A person who conducts activities as both a commercial fund raising firm and a professional fund raising firm may operate under either registration.

[ED. NOTE: Forms referenced available from the agency.]
Stat. Auth.: ORS 128.876
Stats. Implemented: ORS 128.802, 128.804 & 128.812
Hist.: JD 5-1991, f. & cert. ef. 10-22-91

137-010-0055
Commercial Fund Raising Firm Registration and Reports

(1) Any person required by ORS 128.821 to register as a commercial fund raising firm shall pay an annual registration fee as provided in 128.821 and shall complete and file Form PF-10, "State of Oregon Annual Registration Statement of Commercial Fund Raising Firm," with the Attorney General. This procedure shall apply to both new registrations and registration renewals. In addition to the items listed in 128.821(3) a completed form shall include a confirmation that the applicant has registered with the Oregon Secretary of State's Corporation Division, if it is a foreign corporation, and has registered any assumed business names with that same office.

(2) At least ten days prior to undertaking each solicitation campaign, a commercial fund raising firm shall complete and file Form PF-11, "Commercial Fund Raising Firm Solicitation Campaign Notice," as required by ORS 128.826.

(3) Commercial fund raising firms required by ORS 128.841 to file financial reports shall complete and file Form PF-12, "Commercial Fund Raising Firm Solicitation Campaign Financial Report," with the Attorney General.

(4) A person who conducts activities as both a commercial fund raising firm and a professional fund raising firm may operate under either registration.

[ED. NOTE: Forms referenced available from the agency.]
Stat. Auth.: ORS 128.876
Stats. Implemented: ORS 128.821, 128.826 & 128.841
Hist.: JD 1-1990, f. & cert. ef. 1-25-90; JD 5-1991, f. & cert. ef. 10-22-91, Renumbered from 137-010-0039

DIVISION 15

NONPROFIT HOSPITAL CONVERSION

137-015-0005
Transfer of Nonprofit Hospital Assets

The party to whom a hospital transfer is to be made, as described in ORS 65.803(1), shall pay to the Attorney General an application fee, which shall accompany the application, for costs in reviewing and evaluating the proposed transaction. No application shall be considered by the Attorney General until the appropriate fee is received. The amount of the fee shall be calculated as described in paragraphs (1) and (2).

(1) For each of the following types of transactions the fee shall be:

(a) For a transfer or exchange as described in ORS 65.803(1)(a) or (b) from one charitable entity to another existing unrelated charitable entity — $7,500;

(b) For a whole hospital joint venture between two unrelated charitable entities — $10,000;

(c) For a transfer or exchange as described in ORS 65.803(1)(a) or (b) from a charitable entity to a noncharitable entity — $30,000; and

(d) For a whole hospital joint venture between a charitable entity and a noncharitable entity — $50,000.

(2) The fees described in paragraph (1) are based on the transfer of one hospital facility as described in ORS 442.015(19)(a). The fees described in paragraph (1) shall be increased by 30% for each additional facility to be transferred as part of the transaction.

(3) The application fees collected pursuant to paragraphs (1) and (2) are intended to pay for the Attorney General's costs in reviewing the proposed transaction, preparing an order approving, or disapproving the transaction, evaluating/insuring initial compliance (for a period not to exceed six months) and relating to any appeal from the proceeding.

(4) The application fee is intended to pay for the direct costs of the functions described in paragraph (3) including, but not limited to, the cost for all the Attorney General office personnel and employee time at the billing rates used by the Department of Justice, costs of travel, printing costs and all costs incurred in the noticing and conduct of public meetings.

(5) After the Attorney General has been paid for all of the costs identified in paragraph (4), the Attorney General shall reimburse the applicant for any remaining funds from the application fee, without interest. The funds shall be reimbursed no later than six months after an order is entered or an appeal from such an order is decided or within 30 days of withdrawal if the applicant withdraws the application to approve the transfer.

(6) The Attorney General shall maintain a record of the costs described in paragraph (4) and that record shall be made available, upon request, to the applicant.

Stat. Auth.: ORS 65.815
Stats. Implemented: ORS 65.813(3)
Hist.: DOJ 4-2006, f. & cert. ef. 5-5-06

137-015-0010
Amendment of the Hospital Transfer Order

Pursuant to ORS 65.809(2), the Attorney General may approve a proposed hospital transaction with conditions. In the event the party to whom the transfer is made determines that, due to unforeseen circumstances, the conditions of the order should be amended, the party shall make application to the Attorney General for amendment of the prior order.

(1) The application for amendment shall be accompanied by an application fee equal to 10% of the original application fee or $1,000, whichever is greater. The terms for payment of the fee to the Attorney General and reimbursement of any excess fee to the applicant shall be the same as provided in OAR 137-015-0005.

(2) A request for an amendment shall include a description of each proposed amendment, a description of the change in circumstance requiring each such amendment, a description of how each such amendment is consistent with the Attorney General's conditioned approval of the transaction, and a description of the efforts of the entity making the request to avoid the need for amendment.

(3) In considering whether to grant the request for amendment, the Attorney General shall follow the same public hearing procedures as described in ORS 65.807 and shall issue an order according to the same time constraints as provided in ORS 65.809(1) with regard to the initial application.

Stat. Auth.: ORS 65.815
Stats. Implemented: ORS 65.813(3)
Hist.: DOJ 4-2006, f. & cert. ef. 5-5-06

DIVISION 20

MISLEADING PRICE REPRESENTATIONS

137-020-0010
Trade Practices Act

(1) Purpose: It is the purpose of this rule to declare as an unlawful trade practice certain representations relating to price reductions.

(2) Scope: At present, it is unlawful under ORS 646.608(1)(j) to make "false or misleading representations of fact concerning the reasons for, existence of, or amounts of price reductions." This rule is intended to define types of price comparisons which are in violation of that section, by establishing permissible types of reference price advertising. The rule does not address misrepresentations regarding the "reasons for" price reductions. The Examples provided in this rule are for illustrative purposes only.

(3) Authority: This rule is adopted pursuant to ORS Chapter 183 on authority granted to the Attorney General by ORS 646.608(1)(s) and (4).

(4) Effective Date: This rule applies to all advertisements (other than catalogues) printed, distributed, or broadcast, or offers for sale made, after September 1, 1976. Subsection (6)(e) of this rule applies to all catalogues distributed in Oregon after January 1, 1977.

(5) Definitions: As used in this rule:

(a) The definitions of terms set forth in ORS 646.605(1975) are applicable;

(b) "Catalogue" means a multi-page solicitation in which a person offers more than one specific type of goods for sale from which a consumer can order goods directly without going to the seller's place of business, and which is distributed to consumers by means other than by inclusion in a newspaper;

(c) "Competitor" means a retail outlet in the person's geographic market area with whom the person in fact competes for sales;

(d) "Offering Price" means the price at which a person represents that goods will be sold or leased, whether stated as a definite sum of money or as a determinate reduction from a reference price;

(e) "Reference Price" means any price, whether stated in dollars, in terms of a percentage or faction, or by any other method, to which a person compares the currently represented offering price of its own goods. Examples of "reference prices" include manufacturer's suggested list or suggested retail prices; a competitor's offering price for the same or similar goods; a price at which the person formerly offered for sale or sold the same or similar goods; and an unspecified price at which the person formerly offered for sale or sold the same or similar goods suggested by the use of terms such as "on sale," "reduced to," "_____% off," or the like;

(f) "Readily Ascertainable Reference Price" means a reference price which is capable of being determined, from a stated offering price, by means of a simple arithmetic computation;

(g) "Similar Goods" mean goods associated with a reference price which are similar in each significant aspect, including size, grade, quality, quantity, ingredients, utility and operating characteristics, to the offered goods.

(6) Unfair or Deceptive Use of Reference Prices: A person engages in conduct which unfair or deceptive in trade or commerce when it represents that goods are available for sale or lease by it at an offering price less than a reference price *unless* such reference price comes within any one of the following exceptions:

(a) The reference price is stated or readily ascertainable, and is a price at which the person, in the regular course of its business, made good faith sales of the same or similar goods or, if no sales were made, offered in good faith to make sales of the same or similar goods, either:

(A) Within the preceding 30 days; or

(B) At any other time in the past which is identified.

EXAMPLE: This exception is intended to identify the most common price comparison — to a former price charged by the seller himself. The former price must be one which was used in good faith to make or offer to make sales. Good faith is absent if the person raises his price for the purpose of subsequently claiming reductions. Comparisons to "a" legitimate former price are allowed. Thus, if a chain store reduces its price in one or two outlets to meet localized competition, its price throughout the rest of the chain can be used as a reference price. Seasonal comparisons from year-to-year are also permitted.

(b) The reference price is the price at which the person will offer the same or similar goods for sale in the future, provided that:

(A) The reference price is stated or readily ascertainable; and

(B) If the reference price will not be put into effect for more than 90 days after the representation, the effective date of the reference price is stated; and

(C) Such reference price is actually put into effect for the purpose of offering in good faith to make sales.

EXAMPLE: This exception permits introductory offering prices and the like.

(c) The reference price is stated or readily ascertainable, and is a price at which an identified or identifiable competitor is or has in the recent regular course of its business offered to make good faith sales of the same or similar goods.

EXAMPLE: A person may rely upon the recent advertised price of a competitor for the same or similar goods, if he reasonably believes the competitor was attempting to make sales at that price. Alternatively, a person can "shop" his competitor to determine the latter's recent offering price.

(d) The reference price is stated or readily ascertainable, and is required by federal or Oregon law to be affixed to the goods, and clear disclosure is made in the same representation that all sales of such goods are not necessarily made at such reference price, if such is in fact the case.

EXAMPLE: This rule is directed at claimed price reductions from the "sticker prices" of automobiles. If a person makes such a price comparison and in fact similar automobiles are sold at less than the "sticker price," that fact must be disclosed clearly in the same representation.

(e) The reference price is stated in a catalogue, so long as the person employing such reference price includes a statement, printed in a manner which a reader of the catalogue is likely to notice, explaining:

(A) The source of the reference price; and

(B) That the reference prices may not continue to be in effect during the entire life of the catalogue, if such is in fact the case. The requirements of this section are satisfied by a single disclosure statement, which applies to the catalogue as a whole, made in conjunction with the explanation to the reader of how to make a purchase from the catalogue.

(f) The reference price is stated and is a price, such as a manufacturer's list price, which the person can document as having been employed in good faith offers to sell the same or similar goods within his market area during the preceding 30 days.

EXAMPLE: Comparing one's current offering price to a manufacturer's list price is valid if the offerer can substantiate that goods have been offered or sold, in good faith, at that list price during the preceding 30 days.

(g) Notwithstanding subsections (6)(a) through (f) of this rule, a person may represent a general price reduction on a variety of merchandise without using a stated or readily ascertainable reference price, so long as:

(A) The amount of reduction is stated expressly, either in terms of a dollar amount or a percentage;

(B) The reduction is from a price or prices at which the person made good faith sales of the same or similar goods at a time in the past which is identified; and

(C) The represented reduction is true as to each item offered for sale.

EXAMPLE: This would permit advertising seasonal clearance sales and the like by means of a general representation as to price reductions, without stating specifically either the reference price or the offering price.

Stat. Auth.: ORS 646
Stats. Implemented: ORS 646.608(1)(u)
Hist.: 1AG 16, f. 7-21-76, ef. 9-1-76

137-020-0015
Misleading Use of "Free" Offers and Rebates

(1) Definitions: As used in this rule:

(a) The definitions of terms set forth in ORS 646.605 and OAR 137-020-0020 are applicable;

(b) "Free" means without charge or cost, monetary or otherwise, to the recipient and includes terms of essentially identical import, such as "at no additional cost," "1¢ sale," "2 for the price of 1" and "give away" and, in the case of real estate, goods or services described in subsection (2)(a), an offer of any combination of real estate, goods or services at a single price. A free offer in conjunction with the sale or lease of real estate, goods or services is one that conveys to consumers the message that real estate, goods, services, gift certificates, gift cards, cash cards, or any other things of value, are offered at no cost in conjunction with the purchase of other real estate, goods or services for no more than their regular price;

OFFICIAL COMMENTARY: Offers may be subject to this rule even if they do not specifically use the word "free." Any time an advertisement or solicitation is made that gives anything of value away in conjunction with the sale or lease of real estate, goods or services, the person making the offer should carefully analyze the offer to ensure compliance with this rule. Use of the term "included in the price" may be considered a "free" offer depending upon the terms and conditions of the offer, including, but not limited to, if the real estate, goods or services that are "included in the price" are usually and customarily included with the sale of similar real estate, goods or services. A merchant may not force a consumer to unknowingly purchase other goods and services simply by listing them as "included in the price." Conversely, it is not unlawful to sell a product with an accessory included in the price, particularly if the price of the accessory is individually disclosed and a consumer knows (s)he is paying an additional amount for the accessory.There is no bright line on this issue and each offer will be evaluated in its entirety to determine if the combination of real estate, goods or services is a legitimate "free" offer. All factors will be taken into consideration, including, but not limited to, whether the consumer could purchase a similar product without the additional purchase of other goods and services or if the free item is of de minimis value, such as batteries in a toy or flashlight.

(c) "Real estate, goods or services" has the meaning given that term in ORS 646.605(6). For the purpose of this rule, it does not include loans made by a financial institution or the opening of an account that is subject to the federal Truth in Savings Act of 1991, 12 U.S.C. 4301 et seq., and implementing regulations issued by the Federal Reserve Board or the National Credit Union Administration, including, but not limited to, a savings or checking account, money market account, share certificate or certificate of deposit;

(d) "Rebate" means the return of any part of a payment made by a consumer in conjunction with the sale or lease of real estate, goods or services and includes, but is not limited to, an offer of a future cash refund, a direct or indirect payment of money to a consumer or a voucher for a future payment;

(e) "Regular Price" means the price, in the same quantity, quality and with the same service, at which the seller or advertiser of the product or service has openly and actively sold or leased the product or service in Oregon in the most recent and regular course of business, for a reasonably substantial period of time, i.e. a 30-day period, prior to the offer. For consumer products or services which fluctuate in price, if the price change was due to changes in the cost of the goods or services by the supplier or the price change is due to price reductions inherent in the pricing of seasonal or perishable goods, the "regular price" shall be the lowest price at which substantial sales were made during a reasonably substantial period of time. Except in the case of introductory offers, if no substantial sales were made, in fact, at the "regular price," the price will be presumed to be arrived at through bargaining with potential purchasers; and

(f) "Verifiable retail value" means:

(A) A price at which an offeror can demonstrate that a substantial number of free items have been sold at retail in Oregon by a person other than the offeror; or

(B) If substantiation described in this section is not available to an offeror, no more than one and one-half times the amount an offeror paid for a free item.

OFFICIAL COMMENTARY: If substantiation of verifiable retail value, as required by paragraph (2)(b)(C), is not available, and the offeror pays $10 for a free item, the verifiable retail value of that free item would be $15.

(2) Unfair or Deceptive Use of "Free" Offers: A person engages in conduct which is unfair or deceptive in trade or commerce:

(a) When the person makes a free offer in conjunction with the purchase or lease of real estate, goods or services:

(A) The price, size, quantity, or quality of which is normally arrived at through bargaining with potential purchasers, unless the "free" item is offered by a manufacturer or another party that is not the seller and there is no direct cost to the seller;

(B) When the item to be purchased or leased can be purchased or leased for a lesser price without the "free" item;

(C) At a price that is higher than the "regular price;"

(D) That is deceptive or misleading; or

(E) During a home solicitation as defined by ORS 83.710(1), unless:

(i) Exempted by ORS 83.710(2);

(ii) The goods or services are sold or leased by a person or entity that has a franchise to operate and sell or lease its goods or services by a unit of local government and pays franchise fees;

(iii) The rates or prices of the goods or services are regulated by local, state or federal government; or

(iv) The merchant making the home solicitation maintains a regular place of business where goods or services are sold or leased at

a regular price and the goods or services for sale or lease during the home solicitation are being sold at their regular price or less.

OFFICIAL COMMENTARY: No advertisement or promotion for real estate, goods or services shall offer any free item in conjunction with the purchase or lease of real estate, goods or services, the price, size, quantity, or quality of which is normally determined by that seller or offeror by bargaining with potential consumers. It is the express intent of this section to prohibit the practice of advertising or offering something as "free," when in fact, the cost of the "free" item can be passed on to the consumer, in whole or in part, by raising the price of the real estate, goods or services that must be purchased in conjunction with the "free" offer or by decreasing the quality or quantity of merchandise that must be purchased in conjunction with the "free" offer. Such "free" offers are illusory.

Examples of violations of this section include, but are not limited to:

(I) A vinyl siding company offering "free" installation with the purchase of any home siding project;

(II) A construction company offering one "free" window with every other two windows purchased;

(III) A manufactured home dealer offering a "free" vacation with the purchase of a manufactured home;

(IV) A motor vehicle dealer offering a "free" car with the purchase of another car;

(V) An offer of a "free" television with the purchase of a vacuum cleaner sold during a home solicitation;

(VI) A men's clothing store offering a "free" tie with the purchase of a shirt priced at $50.00 that has a regular price of $35.00; or

(VII) A bridal dress store, selling its dresses at a convention center wedding show, marks up all of its dresses at the show by 10% over the regular price at which they are sold at the store and offers "free" flowers for the wedding of anyone who purchases a dress at the show.

(b) When the person makes a free offer and in order to qualify for the offer, the recipient will be given a presentation intended to result in the promotion of a business or sale or lease of real estate, goods or services unless the offer contains a clear and conspicuous disclosure:

(A) Identifying the business promoted and the goods or services offered for sale or lease;

(B) That the recipient must listen to a sales or promotional presentation in order to receive the free offer or that the recipient is entitled to receive the free offer after refusing to listen to the presentation, whichever is the case. If the free item described is not immediately available for delivery to the recipient after the recipient has listened to a sales or promotional presentation, the recipient shall be given the verifiable retail value of the free item in cash or by a valid check;

(C) Describing each potentially free item and its verifiable retail value;

(D) That includes, if the free item is one or more of a larger group and is received on a random basis, (in addition to compliance with subsection (2)(d)) a description of the actual odds of receiving each item based on the initial odds and revised to reflect actual current odds at the beginning of each month of use of the free promotion; if not on a random basis, a description of the method of selection used. The description of the initial odds and the current odds shall include a statement of the total number of each free item to be given away by the offeror and the total number of chances to obtain the free item being distributed by the offeror. If the promotion utilizing the free item involves distribution by more than one offeror or sponsor, the description of the initial odds and the actual current odds must also include a statement of the total number of each free item to be given away by all offerors or sponsors and the total number of chances to obtain the free item being distributed by all offerors or sponsors. The odds and verifiable retail value shall be printed in the same size type as the principal description of each free item and shall appear immediately adjacent to said description; and

(E) In a telephone or door-to-door solicitation, that includes the information required by ORS 646.608(1)(n) within 30 seconds after beginning the conversation.

(c) When the person makes a free offer in conjunction with the purchase or lease of real estate, goods or services and, in order to receive the "free" offer, the recipient is required to pay money, in addition to the cost of the real estate, goods or services purchased or leased, to the offeror, promoter or any other person in order to accept or use the "free" offer, including, but not limited to, postage, shipping, storage, handling, processing, registration or verification;

OFFICIAL COMMENTARY: An offer is not "free" if the recipient must pay a fee, over and above the actual cost of the real estate, goods or services, in order to receive the "free" offer. Examples of violations of this section include, but are not limited to:

(A) Offering "free" computer software on the internet that requires the recipient to pay a postage and handling fee in order to receive the "free" software; or

(B) Offering a "free" vacation with the sale of a living room furniture set that requires the recipient to pay a registration fee with the vacation company in order to reserve the future use of the "free" vacation.

(d) In the case of all free goods or services offered on a random basis as described in paragraph (2)(b)(D), unless it retains for at least one year a list of the names and addresses of all persons receiving free goods or services with a verifiable retail value of $10 or more; and

(e) When a person makes a free offer in conjunction with the purchase or lease of real estate, goods or services, which is subject to any terms, conditions or limitations in order to accept or use the "free" offer, and the person fails:

(A) To clearly and conspicuously display in an advertisement of the "free" offer all material terms, conditions, and limitations of accepting the "free" offer;

(B) To clearly and conspicuously disclose to the consumer all terms, conditions, and limitations of accepting the "free" offer prior to consummating any transaction; and

(C) To afford the consumer a meaningful opportunity to reject the offer.

OFFICIAL COMMENTARY: All material terms, conditions and limitations of a "free" offer must be set forth clearly and conspicuously in any advertisement in close proximity to the "free" offer. Disclosure of the terms of the offer, referenced by an asterisk and placed in a footnote at the bottom of the offer is not clear and conspicuous. Likewise, if the offer is on the internet, reference to the material terms, conditions and limitations of the offer by use of a hyperlink or only disclosing them during the checkout process is not clear and conspicuous. The definition of "clear and conspicuous" set forth in OAR 137-020-0020 has been incorporated by this rule and should be reviewed before advertising any "free" offer to ensure compliance. The complete offer, including all terms, conditions and limitations, must be fully explained to the consumer before the transaction is consummated and the consumer must be given a meaningful opportunity to reject the offer before committing to the transaction. Examples of violations of this section include, but are not limited to:

(i) A consumer shopping for an engagement ring is told he would receive a fully paid "free" vacation for two to Mexico with the purchase of a diamond ring that costs over $10,000.00. No other information is given the consumer. The consumer and his new bride are, in fact, flown to the destination for free. However, the new bride and groom are booked into a dirty, unsafe and uncomfortable hotel with poor food. Once there, the new couple is told that if they check out they will not be able to use their return tickets. The consumer is given the choice of staying in the miserable accommodations or paying an exorbitant "upgrade" fee to get into a reasonable hotel;

(ii) An electronics store advertises a "free" 3-day Caribbean Cruise for two with the purchase of a complete home entertainment center package. The advertisement fails to clearly and conspicuously disclose that the consumer must purchase his/her own airfare through the cruise company, that there are many blackout dates when the cruise is not available and that the price of a cruise with additional days is at a cost that is 50% more than the price of a comparable cruise.

(iii) A computer software company, through television advertisements, offers two "free" compact discs of educational software. The advertisements do not disclose that the consumer must actually accept delivery of three CDs in order to get the "free" offer. If, within 15 days, the consumer does not mail back the third CD that is not "free," the consumer is billed $79.95, the total regular cost of three CDs. All three examples may be violations of paragraph (2)(a)(D) because they are deceptive and misleading.

(3) Unfair or Deceptive Use of "Rebate" Offers: A person engages in conduct which is unfair or deceptive in trade or commerce when the person makes a rebate offer in conjunction with the purchase or lease of real estate, goods or services:

(a) By offering rebates that are deceptive or misleading;

(b) The price, size, quantity, or quality of which is normally arrived at through bargaining with potential purchasers, unless the rebate is offered by a manufacturer or another party that is not also the seller, independent of the seller and without the seller's participation; or

(c) When the advertisement or solicitation of the rebate fails to clearly and conspicuously display in close proximity to the rebate

offer all material terms, conditions, limitations and costs of receiving the rebate.

OFFICIAL COMMENTARY: Examples of misleading or deceptive rebate offers include, but are not limited to:

(A) A motor vehicle dealer or construction company purchases cash vouchers from a third party and advertises that the voucher reduces the cost of real estate, goods or services. Strict criteria of the marketer for filing and later claiming the rebate are so onerous that it is almost impossible for the average consumer to receive anything. In addition, the amount of money retained in trust by the marketer for claims is only a small fraction of the total amount of the vouchers issued.

(B) Advertising these vouchers as rebates is misleading and deceptive because:

(i) Consumers are led to believe they are actually going to get a rebate on the cost of their purchase; and

(ii) The promotion is intentionally designed to make the consumers fail in either the initial submission of the voucher application or the claim process, which in some cases may not occur for four to five years from the initial transaction. Further, it is very possible that there will be insufficient funds to pay the entire amount of the "rebate" claims years later when the vouchers mature.In this particular example, offering such a voucher would also be an unlawful "free" offer pursuant to paragraph (2)(a)(A) because both motor vehicle sales and construction contracts are negotiable price transactions.

(C) A retail store advertises rebates for home computer systems and fails to clearly and conspicuously disclose the material terms, conditions and limitations of the rebate in close proximity to the rebate offer. Examples of such material terms, conditions and limitations include, but are not limited to:

(i) Rebates must be submitted within 7 days of purchase;

(ii) To qualify for a rebate, the consumer must subscribe for a two year internet subscription with XYZ Corp;

(iii)The rebate will not be for cash, but only merchandise from the manufacturer;

(iv) In order to qualify for the rebate, the consumer must purchase a printer at the same time (s)he buys the computer;

(v) The consumer must finance the computer system with ABC Finance Company to be eligible for the rebate;

(vi) To receive the entire rebate, the consumer must submit four different rebate forms to four different companies (in this example, the advertisement must clearly and conspicuously contain the terms for all four rebates to not be misleading or deceptive);

(vii) The rebate is limited to only one per address or household; or

(viii) The disclosure of material terms of the rebate are not in close proximity to the advertised rebate offer in the newspaper, but placed at the bottom of the page and referenced by an asterisk.

Stat. Auth.: ORS 646.608(4)

Stats. Implemented: ORS 646.608(1)(u)

Hist.: 1AG 16, f. 7-21-76, ef. 9-1-76; 1AG 2-1979, f. 6-22-79, ef. 8-1-79; JD 1-1987, f. 2-5-87, ef. 2-15-87; JD 5-1990, f. 7-5-90, cert. ef. 9-1-90; DOJ 14-2007, f. 12-20-07, cert. ef. 1-2-08

137-020-0020
Motor Vehicle Price and Sales Disclosure

(1) Purpose: The purpose of this rule is to declare as unfair or deceptive in trade or commerce certain motor vehicle pricing and sales practices. Nothing in this rule, or the administrative rules to which it applies, modifies or diminishes the applicability of exemptions or limitations on enforcement of the Oregon Unlawful Trade Practices Act, including, but not limited to, those specified in ORS 646.605 and 646.612.

(2) Definitions: For purposes of this rule, the following definitions shall apply:

(a) "Advertisement," including the terms "advertise" and "advertising," means any oral, written, pictorial or graphic notice given in a manner designed to attract public attention and includes, but is not limited to, public broadcasts, mailings, publications, internet sites, other internet applications, email, facsimiles and published notices. It includes, but is not limited to, any statement or representation made in a newspaper, magazine, or other publication; or made on radio, television or internet; or appearing in any notice, handbill, sign, billboard, banner, poster, display, circular, pamphlet, letter, or other printed material; or contained in any window sticker or price tag;

(b) "Advertiser" means the person on whose behalf any advertising material is published and includes the advertising agent (if any) used by the advertiser;

(c) "Advertising agent" means any person who produces, promotes or assists in the sale, production, or placement of any advertisement or participates in a sales event directly or through its employees or agents, on behalf of any person;

(d) An "average" person, viewer or listener means a person other than one allied with or employed by the motor vehicle industry;

(e) "Broker" means a motor vehicle broker as defined by ORS 822.047;

(f) "Buy-down rate" means a financing rate which, due to a dealer's payment of finance charges to a third party, is below the prevailing market financing rate;

(g) "Buy-rate" means the lowest interest rate quoted to a dealer or broker by a financial organization for which a consumer qualifies, based upon the consumer's credit history;

(h) "Capitalized cost" means the amount the offeror places on a vehicle as the vehicle's value for the purpose of offering the vehicle for lease to the public, not including any capitalized cost reductions or taxes, title, license fees, lease acquisition, Department of Environmental Quality fees, Dealer Title and Registration Document Preparation Service Fee, insurance premiums, warranty charges, and any other product, service, or amount amortized in the lease. The capitalized cost for the purpose of this definition is the equivalent of the "offering price" for the purchase of a motor vehicle in a sales transaction;

(i) "Capitalized cost reduction" means the total amount of any rebate, cash payment, net trade-in allowance or non-cash credit that reduces the capitalized cost;

(j) "Clear and conspicuous," including the terms "clearly" and "conspicuously," means that a message, statement, information, representation or term is conveyed in a manner that is readily noticeable, will be easily understood by the audience to whom it is directed, and is in a meaningful sequence. In order for a message to be considered "clear and conspicuous," it shall, at a minimum:

(A) Not contradict or substantially alter any terms it purports to clarify, to explain or to which it otherwise relates;

(B) Be in close proximity to the message, statement, information, representation or term it clarifies, modifies or explains, or to which it otherwise relates;

(C) Use abbreviations or terms only if they are commonly understood by the average person or approved by federal or state law;

OFFICIAL COMMENTARY: Each advertisement shall be evaluated for its overall impression. The public should not have to weigh each word, hunt for the hidden meaning of each statement, or search for inconspicuous disclaimers. Advertisements which place material disclosures in small print, inconspicuously buried at the bottom of the advertisement, are not clear and conspicuous. If, on the other hand, the information does not materially change, limit or alter the offer being made, it can be placed at the bottom of an advertisement.

(D) In the case of radio advertising:

(i) Include the information required to be disclosed by law and all disclaimers, conditions and limitations shall be spoken with sufficient deliberateness, clarity, speed and volume so as to be audible and understandable by the average radio listener;

(ii) Not be obscured by sounds which interfere with or distract from the disclosure; and

(iii) Provide all necessary information regarding leases. Any information required in radio advertising by the Federal Consumer Leasing Act and Oregon law and administrative rules shall be deemed to be clear and conspicuous if the advertisement complies with 15 USC § 1667c(c) and also discloses the capitalized cost of the lease.

OFFICIAL COMMENTARY: 15 USC § 1667c(c) allows certain required lease disclosures to be given to a consumer in a radio advertisement by referring the audience to either a toll free telephone number or a written advertisement that appears in a publication in general circulation in the community served by the radio station on which such advertisement is broadcast. All lease advertisements on radio must include the following disclosures to comply with Oregon and Federal law:

(I) That the transaction advertised is a lease;

(II) The total amount of any initial payments required on or before consummation of the lease or delivery of the property, whichever is later;

(III) The number, amounts, due dates or periods of scheduled payments, and the total of such payments under the lease; and

(IV) The capitalized cost (Oregon requirement).

Before advertising a motor vehicle lease on the radio, an advertiser should review 15 USC § 1667c in its entirety to ensure compliance with Oregon

and Federal law. The toll free telephone number or written advertisement must include all other disclosures required by both OAR 137-020-0050 and 15 USC § 1667c.

(E) In the case of television advertising:

(i) Include the information required to be disclosed by law and shall be completely disclosed audibly, visually, or using a combination thereof;

(ii) If a visual message, be presented unobscured by other images and in a size and time sufficient to allow an average viewer to read with reasonable ease;

(iii) If an audible message, be presented with sufficient deliberateness, clarity, and volume so as to be understood by the average television listener unobscured by other sounds which interfere with or distract from the disclosure;

(iv) Have as a minimum height for required superimposed written copy ("super") in a television advertisement or advertisements in any other audio-visual medium:

(I) For Standard Definition Television — no less than 22 video scanlines for capital and lower case letters together, or no less than 18 video scanlines for use of capital letters only;

(II) For High Definition Television — no less than double the scanlines required for Standard Definition Television; and

(III) The supers must appear on the screen for a duration sufficient to allow a viewer to have a reasonable opportunity to read and understand the statement, representation or term.

(v) Be sufficient if the super on-screen display time is no less than three seconds for the first line of text and one second for each additional line. This is a rebuttable presumption.

(F) In the case of printed advertising:

(i) Include the information required to be disclosed by law and shall be in close proximity to the terms it purports to clarify, to explain or to which it otherwise relates; and

(ii) Be of sufficient prominence in terms of print style, size and contrast as compared with the remainder of the advertisement so as to be readily noticeable to an average person in the audience to whom it is directed. Print size which is 8 point type or larger in display advertisements which are less than 200 square inches in size or print size which is 10 point type or larger in display advertisements which are larger than 200 square inches in size shall be rebuttably presumed to be of sufficient size to be readily noticeable.

(G) In the case of internet advertising:

(i) Include the information required to be disclosed by law near, and when technologically possible, on the same screen as the triggering claim;

(ii) Use text or visual cues to direct consumers to scroll down a Web page when it is necessary to view information;

(iii) When using hyperlinks to lead to information required to be disclosed by law:

(I) Ensure that hyperlinks are obvious;

(II) Ensure that hyperlinks appropriately convey the importance, nature and relevance of the information they lead to;

(III) Include consistent hyperlink styles and format;

(IV) Ensure that all hyperlinks are placed in close proximity to relevant information; and

(V) Ensure that hyperlinks take consumers directly to the information on the click-through page.

(iv) Be displayed prominently prior to purchase;

(v) Be prominently displayed so the information is noticeable to consumers in relation to the size, color and graphic treatment of other parts of the Web page;

(vi) Repeat information on lengthy Web sites when there are multiple or repeated claims;

(vii) Include audio disclosures when audio claims are made on the Web site and the audio disclosures must be presented in a volume and speed so that consumers can hear and understand them;

(viii) Include visual disclosures that are displayed for a duration sufficient for consumers to notice, read and understand them; and

(ix) Use clear language and syntax in such a manner that an ordinary consumer can understand the information required to be disclosed by law.

OFFICIAL COMMENTARY: For more clarification and explanation regarding internet advertising go to the Federal Trade Commission website titled "Dot Com Disclosures" at http://www.ftc.gov/bcp/conline/pubs/buspubs/dotcom/.

(k) "Dealer" means a person who buys, sells, trades or exchanges, leases, displays or offers to buy, sell, trade or exchange motor vehicles either outright or by means of any conditional sale, bailment, lease, security interest, consignment or otherwise or who is a broker. "Dealer" does not include any person excluded by ORS 822.015;

(L) "Dealer Title and Registration Document Preparation Service Fee" means any monies or other thing of value, in an amount which is authorized by the Oregon Driver and Motor Vehicle Services Division of the Oregon Department of Transportation (DMV), which a dealer charges for preparing or processing title and registration documents and collecting DMV fees on behalf of a consumer;

OFFICIAL COMMENTARY: Oregon law and administrative rules permit dealers to act as DMV agents and dealers may elect to prepare, submit, or prepare and submit documents necessary to issue or transfer a certificate of title for a vehicle, register a vehicle or transfer registration of a vehicle, or issue a registration plate. For providing this service, dealers may charge a purchaser of a vehicle a fee for the preparation of those documents, not to exceed the amount established by DMV. See OAR 735-150-0050. Further, this fee is always negotiable; otherwise it could be classified as a tax. While a dealer has a right to prepare the DMV documents and charge the fee, the consumer may choose not to do business with a dealer who refuses to sell a vehicle without charging a Dealer Title and Registration Document Preparation Service Fee. Of course, the dealer can process the documents without charging a fee. In addition to the Dealer Title and Registration Document Preparation Service Fee, dealers may offer consumers the option of electronically filing their title and registration documents using an integrator. Dealers may charge consumers an additional fee for this service, subject to any limitations established by DMV. Consumers must knowingly agree to pay the additional fee for this electronic filing service. If a consumer does not agree to pay the additional fee for the electronic filing service, a dealer may still electronically submit title and registration documents at no additional cost to the consumer.

(m) "Extension sticker" means a label (other than a Monroney sticker or other label bearing the manufacturer's suggested retail price), affixed to a new motor vehicle, displaying the offering price of the motor vehicle;

(n) "False advertisement" means any advertisement which is false, misleading or deceptive in a material respect. In determining whether any advertisement is false, misleading or deceptive, not only representations made or suggested by statement, word, design, device, sound or any combination thereof will be taken into account, but also the extent to which the advertisement fails to reveal facts material in light of representations made;

(o) "Financial Organization" means any person who finances a sale or lease of a motor vehicle;

(p) "Manufacturer" means any entity which:

(i) Manufactures or assembles new motor vehicles for sale or distribution;

(ii) Distributes new motor vehicles through franchised dealerships;

(iii) Is engaged in the business of importing new motor vehicles for sale or distribution to dealers, through distributors, or to factory branches; or

(iv) Is a subsidiary of a manufacturer including one that offers motor vehicle financing.

(q) "Manufacturer's Suggested Retail Price" or "MSRP" means the Monroney price, or if there is no Monroney sticker, then the total price of the vehicle after all factory installed options and factory costs have been added together, less any option package savings offered by the manufacturer;

(r) "Monroney sticker" means the label required by the Automobile Information Disclosure Act, 15 USC § 1232;

(s) "Motor Vehicle" means any self-propelled vehicle normally obtained for personal, family, or household purposes, including all terrain vehicles, snowmobiles, self-propelled motor homes, personal watercraft, boats and, for the purposes of this definition, any motor home, recreational vehicle or trailer pulled by a self-propelled vehicle. Motor vehicle does not include aircraft;

(t) "Negative equity" means the amount by which an existing lien on a trade-in vehicle exceeds the true market value of the trade-in vehicle;

OFFICIAL COMMENTARY: In layman's terms, if a consumer has negative equity on his/her vehicle, it means the consumer owes more on the vehicle than it is actually worth. While the "true market value" of a

vehicle may vary, it can be determined by using Kelly Blue Book or NADA Book values and the average sale price of the vehicle at regional vehicle auctions. While these publications are relevant, they are not determinative. Depending upon the supply and demand for a given vehicle, it could be worth more or less than its "book" value.

(u) "Negative equity adjustment" means an equal amount which is added to both the purchase or lease price of a vehicle and the trade-in allowance for the trade-in vehicle in a transaction;

OFFICIAL COMMENTARY: Negative equity adjustments have become a common business practice in motor vehicle transactions. The practice is used when a consumer has negative equity in a trade-in and often is unable to qualify for financing without making a down payment. There are a number of possible reasons a dealer or broker may want to inflate the trade-in value on a vehicle with negative equity:

(A) to make the consumer think (s)he is receiving more for his/her trade-in than it is actually worth;

(B) to make it appear to a financial organization that the consumer is more creditworthy than is true; or

(C) to create a down payment from trade-in equity when none exists. While a dealer is free to determine the actual cash value (ACV) on a vehicle taken as a trade-in, if the ACV exceeds the true market value, it could be an indication that the dealer has engaged in a negative equity adjustment and be a reason for further scrutiny of the transaction.

(v) "Offering price" means the full cash price for which a dealer will sell or lease a motor vehicle to every consumer or member of the general public without exception, excluding only taxes, license and registration costs, Department of Environmental Quality (DEQ) fees and a Dealer Title and Registration Document Preparation Service fee;

OFFICIAL COMMENTARY: Examples of correctly calculated offering prices are as follows:

(A) A car's MSRP is $10,000, license and registration are $100, undercoat is $100, dealer-added options are $2,000 and the Dealer Title and Registration Document Preparation Service fee is $50. A financial organization offers a $1,000 rebate to qualified consumers. The offering price of the vehicle is $12,100. The offering price cannot include the $50 service fee or the $1,000 rebate that is not available to all consumers without exception.

(B) A motorcycle's MSRP is $5,000, license and registration are $50, delivery, assembly and setup costs the dealer $250, custom accessories are $500 and the Dealer Title and Registration Document Preparation Service fee is $50. The offering price of the vehicle is $5,750. The costs of delivery, assembly, setup and all accessories must be included in the offering price in any advertisement or quoted offering price given during the sales negotiation of the motorcycle and cannot be added in as fees or extras after the selling price of the motorcycle is agreed upon between the dealer and consumer. The advertised offering price does not need to include the license and registration or Dealer Title and Registration Document Preparation Service fee. While the dealer may now choose to prepare title and registration documents and may charge a fee for this service, nothing in this or any other rule requires a dealer to charge any Title and Registration Preparation Service fee. Whether the consumer will pay any fee for this service and, if so, its amount, up to the maximum allowed by law, is always negotiable between the consumer and the dealer.

(w) "Person" means natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity except bodies or officers acting under statutory authority of this state or the United States and includes, but is not limited to, dealers, brokers, manufacturers, publishers, advertisers or advertising agents;

(x) "Personal Watercraft" means a jet ski or other aquatic device of similar design;

(y) "Publish" means to disseminate, mail, or otherwise make available to the public at large, or any section of the public, in whatever form and by whatever means any information;

(z) "Publisher" means any person who publishes any advertisement;

(aa) "Rebate" means:

(i) The payment of money to a consumer or payment to a person on behalf of a consumer on the condition that the consumer purchase or lease a motor vehicle; or

(ii) The return of any part of a payment made by a consumer in conjunction with the sale or lease of real estate, goods or services and includes, but is not limited to, an offer of a future cash refund, a direct or indirect payment of money to a consumer or a voucher for future payments.

(bb) "Recreational vehicle" has the meaning given that term in ORS 650.300;

(cc) "Sale," "Sell" or "Buy" means any transaction for the sale, purchase, trade, exchange or lease of a motor vehicle;

(dd) "Spot Delivery" or "Spot Delivered" means that a consumer has taken possession of a motor vehicle from a dealer or broker and the consumer has committed to buy or lease the vehicle, whether or not there is a finalized transaction or final approval of financing;

OFFICIAL COMMENTARY: Spot delivery occurs when a consumer signs a purchase order, installment sales contract or lease agreement for a motor vehicle and the consumer takes possession of the vehicle "on the spot," prior to the consumer being approved by a financial organization to pay for the transaction.

(ee) "Taxes, license and registration costs" means those usual taxes, charges and fees payable to or collected on behalf of governmental agencies and necessary for the transfer of any interest in a motor vehicle or for the use of a motor vehicle;

(ff) "Used vehicle" means any vehicle which has been previously:

(i) Delivered to any person for his/her discretionary use for personal or business purposes and for more than a test drive before a contemplated purchase or preparation for sale;

(ii) Titled or registered to any person, whether or not it was used for the person's own discretionary personal or business purposes; or

(iii) Spot delivered.

OFFICIAL COMMENTARY: Vehicles that would be considered "used" include, but are not limited to:

(a) New vehicles that are delivered to a consumer on a purchase order, lease agreement or retail installment contract or spot delivered, then subsequently returned to the dealer for any reason, including, but not limited to, the inability to obtain financing;

(b) Demonstrators and company cars that have never been sold to a retail customer, but have been driven for purposes other than test drives or moving, including use by the dealer, the dealer's employees, the dealer's corporate officers or anyone else; and

(c) All vehicles that have been driven more than the limited use necessary in moving or test driving a new vehicle prior to purchase or delivery to a consumer. The intent of this definition is to conform the applicability of the rule to the maximum extent permitted by ORS 646.608 and Weigel v. Ron Tonkin Chevrolet Co., 298 Or 127, 690 P2d 488 (1984).

(gg) "Vehicle identification number" or "VIN" means a number, a letter, a character, a datum, a derivative, or a combination thereof, used by the manufacturer or a Department of Motor Vehicles for the purpose of uniquely identifying a motor vehicle. For the purpose of this definition, any time a motor vehicle advertisement requires the publication of a "vehicle identification number," use of the last six numbers, letters or other characters will constitute compliance with the rule;

OFFICIAL COMMENTARY: Requiring the use of only the actual vehicle identification number or its last six numbers or characters in all advertising ensures positive identification of all advertised vehicles. Some deceptive advertisements have used fictitious stock numbers to advertise vehicles that did not exist. The implementation of this change will allow any consumer to identify a specific advertised vehicle at a dealership simply by looking in the vehicle's front window.

(hh) "Wholesale" means the sale of motor vehicles, goods or services for resale by a dealer, broker or other person, as opposed to the sale of motor vehicles, goods or services to the ultimate consumer;

(ii) "Yield Spread Premium" means the difference between a higher interest rate quoted to a consumer by a dealer or broker and the buy rate offered to the dealer or broker by a financial organization.

(3) Violations: Failure by a person, in the course of the person's business, vocation or occupation, to comply with this rule constitutes unfair or deceptive conduct in trade or commerce.

(a) Mandatory Posting of Offering Price — Any motor vehicle offered for sale or lease in an advertisement that states an offering price or capitalized cost for the motor vehicle shall have affixed to it a clear and conspicuous label or extension sticker that states the advertised offering price of the motor vehicle listed in the advertisement. If a motor vehicle bears a label which states a MSRP and the MSRP is the offering price or capitalized cost for the vehicle, no additional label or extension sticker is required;

OFFICIAL COMMENTARY: This rule requires every dealer who advertises an offering price for a motor vehicle in any media to post the advertised offering price on the vehicle in a clear and conspicuous manner.

(b) Extension Sticker — Any motor vehicle offered for sale bearing a Monroney sticker or a label stating a MSRP shall have an extension sticker affixed stating the offering price of the vehicle if the offering price is greater than the Monroney sticker price or the stated MSRP;

(c) Offering Price — Any price stated in an advertisement or in a written or oral price quotation given to a consumer shall be the offering price, excluding only taxes, license, registration costs, DEQ fees and a Dealer Title and Registration Document Preparation Service fee;

OFFICIAL COMMENTARY: The purpose of this rule is to ensure that dealers do not add in hidden or undisclosed costs after the price for a vehicle has been advertised or negotiated with a consumer. Examples of potential violations are as follows:

(A) A vehicle is advertised or offered for sale at the dealership for $10,000. After the consumer accepts the dealer's offer and agrees to purchase the vehicle, the dealer learns that the consumer has a poor credit history. The lending company charges the dealer a premium of $500 to accept the retail installment contract. The dealer then tries to add this $500 to the contract with the consumer as a "loan fee." This practice is unlawful;

(B) A person advertises a vehicle for $20,000 in the local newspaper. The vehicle has $1,500 worth of after-market accessories on the vehicle. When the consumer arrives at the dealership and wants to purchase the vehicle, the salesperson tells the consumer that the price is $21,500 with the added accessories. This practice is unlawful. If the dealer wants reimbursement for these options, the dealer should ensure that amount is included in any advertised price; and

(C) A motorcycle dealer charges $350 to set up and assemble a motorcycle. This amount must be included in any offering price advertised and cannot be noted only by disclosure at the bottom of the advertisement with the use of an asterisk. Further, any price displayed on the motorcycle or price quoted to a consumer during negotiations must include this amount.

(d) Limitations on Offering Price — An extension sticker shall accurately itemize and describe the charge(s) added to or subtracted from the MSRP to reach the offering price. No charge may be added for goods or services not actually provided. No charge may be added for services required by the manufacturer or distributor which are performed by a dealer prior to delivery of a motor vehicle to a retail consumer. No charge may be added for any overhead expense such as warehousing, flooring, advertising, and clerical costs. No charge may be added for transportation costs charged by the manufacturer or distributor to the dealer and included in the MSRP. In the case of inland freight, setup and dealer preparation, the charge listed must be the dealer's actual cost for freight from the port of entry to the dealership, and the actual cost of setup and dealer preparation and not included in the MSRP;

(e) Additional Dealer Mark-up — If the offering price is greater than the MSRP, the portion of the difference shown on the extension sticker between the offering price and the MSRP not representing additional goods or services shall be described as "additional dealer profit," "additional mark-up" or by a term of similar import;

(f) Unconscionable Add-on Pricing — A person may not make false or misleading representations concerning the nature or amounts of charges for additional goods, accessories, services, products or insurance sold in conjunction with the sale or lease of a motor vehicle by selling them at a price which is unconscionably higher than the price used by the person for the sale of the same or substantially similar goods, accessories, services, products or insurance to other consumers;

OFFICIAL COMMENTARY: While the average consumer knows that a motor vehicle is a negotiated price item, many expect that the cost of extended service contracts, protective coating products, credit life insurance or other additional products are sold at fixed non-negotiable prices. Some unscrupulous dealers and brokers, however, have charged as much for these products as they can, based upon the susceptibility of the customer. Unfortunately, sometimes the most vulnerable consumers, such as those with problems such as illiteracy, a physical infirmity, a mental handicap, an inability to understand the English language or other limitations, are charged well in excess of the fair market value. This rule does not limit a dealer's ability to mark up or down the selling price of a product or service in the normal course of business. This includes offering special discounts to repeat customers or volume discounts to purchasers of large quantities of products or services.

(g) Disclosing Document Fee — The Dealer Title and Registration Document Preparation Service fee may be separately stated in all advertisements and sales documents. If separately stated, the disclosure shall be clear and conspicuous;

(h) Document Fee Not Government Required — A person shall not represent a Dealer Title and Registration Document Preparation Service fee as a governmental fee or one required by government;

(i) Vehicle Availability — A dealer or broker may not advise prospective customers that an advertised vehicle is available when the vehicle is not available for sale, or that an advertised vehicle is not available for sale when the vehicle is available for sale;

(j) Undisclosed Price Packing — A dealer or broker may not sell or lease a motor vehicle to a consumer with the cost of any additional goods, accessories, services, products or insurance added to the sale or lease, without the consumer's actual knowledge, written consent and individual itemization of all such additional costs listed on any purchase or lease agreement;

(k) Undisclosed Fee Payments — A dealer who sells or leases a motor vehicle to a consumer and makes any payment to any non-employee third-party in conjunction with the sale or lease, other than a referral fee of $100 or less (also known as a "bird-dog" payment), must specifically itemize such payment on the consumer's lease or purchase agreement;

(L) False Representations Regarding Financing or Goods — A person may not falsely represent to a consumer that the person:

(A) Will not sell or lease a motor vehicle to the consumer; or

(B) Cannot provide financing for the consumer unless the consumer purchases additional goods, accessories, services, products or insurance or that such additional goods, accessories, services, products or insurance are free or included in the price of a motor vehicle or the financing;

OFFICIAL COMMENTARY: Due to many changes in the motor vehicle industry, including lower profit margins on the actual motor vehicle transaction, dealers and brokers have had to focus more on higher profits in the sale of additional goods, accessories, services, products or insurance. This rule ensures a consumer is not misled into purchasing anything other than the motor vehicle, without the consumer's informed knowledge and consent. Nothing in this rule prohibits a dealer from ensuring that a consumer has motor vehicle insurance required by law or according to the terms of financing in order to protect the collateral financed. No person, however, can make false statements regarding any requirement to purchase products or services. This rule does not prohibit dealers from adding accessories, which enhance the value and marketability of a vehicle to some of their inventory, and including them in the offering price of the vehicle. If a dealer adds high profit aftermarket products, including, but not limited to, paint protector, door edge guards and glass etching, to its vehicles which do not correspondingly increase the actual cash value of the vehicles, such practice would be carefully scrutinized as a possible violation of this rule.

(m) Payment Price Packing — During negotiations for the sale or lease of a motor vehicle, a dealer or broker may not quote to a consumer a monthly payment or total price for the sale or lease of a motor vehicle that includes the cost of any additional goods, accessories, services, products or insurance, including, but not limited to, extended warranties, security products, protectants, credit life or gap insurance, that are sold in conjunction with the sale or lease of a motor vehicle, unless the dealer or broker also clearly and conspicuously separately discloses in writing, during negotiations and prior to any purchase or lease agreement being executed by a customer:

(A) The individual price of each additional good, accessory, service, product or insurance; and

(B) The total cost of the lease or sale of the vehicle and the monthly payment, without such additional items included.

OFFICIAL COMMENTARY: This rule addresses the practice that is commonly referred to as "packing," or the "presumptive sale." "Packing" is the deceptive practice of misrepresenting monthly payments or total cost of a vehicle to consumers during motor vehicle sales and lease negotiations in order to surreptitiously facilitate the sale of additional motor vehicle related goods, accessories, services, products or insurance. Consumers are entitled to be dealt with in a fair and non-deceptive manner during negotiations to buy or lease a motor vehicle, including the right to receive timely, accurate and non-misleading information about the cost of the vehicle and all related goods, accessories, services, products or insurance they are buying or leasing. Some dealers have used "packed" payment schemes and poor disclosures to trick consumers into believing that services such as credit insurance, vehicle service contracts, chemical protection, and security devices are included at no additional cost or provided "free" in the purchase or lease agreement; or that they are discounted when they are not. Others have quoted monthly payments calculated upon interest rates far in excess of what they believe will be the final interest rate or simply add an extra $40 or more to the monthly payment than what is needed to cover the price of the vehicle. They use this inflated quote in order to build in some

"legroom" to later add other optional products and services to the transaction with the extra cost hidden or appearing lower to the consumer. Because the monthly payment does not increase and because the consumer believes the products are "free" or discounted, most consumers do not object when the products are included in the final contract.

(n) Disclosure of Service Contract Coverage — A dealer may not misrepresent or fail to clearly and conspicuously disclose the following terms or conditions of an extended service contract sold in conjunction with the sale or lease of a motor vehicle: the length of the coverage, what parts or systems of the vehicle are covered by the contract, any exclusions in the coverage, and that there may be an existing manufacturer's warranty which provides the same or similar coverage. If the dealer advertises that a vehicle has an existing manufacturer's warranty or the dealer knows a vehicle has an existing manufacturer's warranty, the dealer must disclose the terms of the remaining warranty coverage;

(o) Disclosure of Material Nonconformities and Defects — A dealer or broker shall disclose existing material nonconformities and defects about which the dealer or broker knows or negligently disregarded when the dealer or broker should have known, prior to sale or lease of a motor vehicle;

OFFICIAL COMMENTARY: Unless explicitly disclosed prior to a sale or lease, a motor vehicle that is offered for sale or lease to the public is represented, either directly or by implication, to be roadworthy when it is sold, to have an unbranded title and to have no undisclosed material defects. The dealer is in a superior position to inspect and determine the condition of a vehicle prior to marketing the vehicle. It is an easy matter, through a number of industry and internet sources, for a dealer or broker to review a vehicle's title, damage and ownership history. The intent of this rule is to conform its applicability to the maximum extent permitted by ORS 646.608 and the holding in State ex rel. Redden v. Discount Fabrics, Inc., 289 Or 375, 615 P2d 1034 (1980): "Under the terms [of the Unlawful Trade Practices Act] a defendant is liable for misrepresentations made negligently, without evidence that it was attended by either conscious ignorance or reckless indifference to its truth or falsity, whereas evidence that a misrepresentation was made negligently is insufficient in an action for common law fraud. In other words, the term 'wilful,' as defined by § 646.60, requires no more than proof of ordinary negligence by a defendant in not knowing, when it should have known, that a representation made by him was not true." ORS 646.608 (2) states: "A representation under subsection (1) of this section or ORS 646.607 may be any manifestation of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact." This rule does not change the existing laws regarding warranties on used vehicles nor does it place any new requirements on dealers or brokers. Dealers and brokers should understand, however, that simply because they comply with the FTC "As-Is" rule it does not relieve them of their obligation to disclose material defects they knew or should have known about. A dealer is not required to guarantee, warrant or represent that a used vehicle will not have any mechanical problems or undetected material defects once the vehicle is sold. Further, a dealer need not create an exhaustive list of every ding, paint scratch, fabric tear or discoloration clearly visible upon inspection by an average consumer. Examples of negligent disregard of some things that should put a dealer on notice and trigger its duty to disclose might include, but is not limited to, a large pool of oil or antifreeze under the vehicle, dark colored smoke coming from an exhaust pipe, water stains on carpet or doors, a different color paint than the body under the hood or in the trunk or tires that are worn very unevenly.

(p) False or Unsubstantiated Representations — A dealer or broker may not make a misrepresentation or a false or incomplete statement of fact in conjunction with the sale or lease of a motor vehicle, or any other representation or statement which the dealer or broker does not have sufficient information upon which a reasonable belief in the truth of the representation could be based;

(q) False Statement of Broker Fees — A broker may not misrepresent the source or nature of any profit, compensation or fee which the broker will receive for its services or cause a consumer to believe the services are free or at no cost to the consumer, when they are not;

OFFICIAL COMMENTARY: Brokers are a fiduciary of a consumer on whose behalf they have agreed to negotiate the purchase or lease of a vehicle. Unlike a dealer, a broker is not engaging in an "arm's length" transaction. Brokers market their services to act in the consumer's best interest. They are in an agency relationship. The consumer has a right to rely on that relationship. For example, a broker who tells a consumer that the broker may be receiving compensation from a dealer as part of the transaction, when the funds for that payment were part of the total amount paid by the consumer as part of the purchase or lease, is misrepresenting the nature of the transaction and making a false statement as to the source of the funds the broker will be receiving. The correct disclosure would be that the broker has added its fee to the price which it negotiated with the seller on behalf of the consumer. While ORS 822.047 does not require the broker to disclose the amount of its profit, once the broker undertakes to act on behalf of a consumer, or do anything that could cause a consumer to believe the broker is acting on the consumer's behalf, the dealer or broker may no longer engage in self-dealing, but must act in the consumer's best interest. Further, if a consumer asks what the fee is for the service, the broker may not misrepresent the amount of the fee being charged. In no case may the broker misrepresent the nature of the charge, the amount of the fee or in what way the fee for the broker's service is paid.

(r) Disclosure of Dealer/Broker Status — A dealer or broker may not misrepresent or fail to disclose whether it is acting as a dealer or broker when it has done anything to cause a consumer to believe it is acting as a broker for the consumer in the purchase or lease of a motor vehicle;

OFFICIAL COMMENTARY: It is well established in law that a broker is in a fiduciary relationship with its client. Fiduciary duties can be grouped into three categories:

(A) Duty of Loyalty. A fiduciary must act in accordance with the interests of the beneficiary, and not his own interests;

(B) Duty of Candor. A fiduciary must not withhold information from the beneficiary, particularly with respect to the fiduciary's dealings with the beneficiary; and

(C) Duty of Care. A fiduciary must act with some degree of care with respect to the beneficiary. This is usually formulated as a duty to exercise the care that an ordinarily prudent person would in similar circumstances. When representing a consumer, a broker acts as an agent for the consumer and is in a fiduciary relationship with the consumer. As such, a broker occupies a position of such power and confidence with regard to the property of another that the law requires brokers to act solely in the interest of the person whom they represent and in good faith. In Oregon, only one type of dealer license is required, whether the licensee acts as a dealer or broker. This can lead to confusion by a consumer. If the consumer believes the person the consumer contacted was a broker, the consumer expects that person to act in the consumer's best interest. Brokers have an obligation to ensure the consumer knows what the broker's business status is in relation to the transaction and whether the consumer is dealing with it as a broker or a dealer. Some non-franchised dealers have added to the confusion by simultaneously advertising that they are new and used vehicle dealers and brokers. Such advertising places the burden upon such a business to ensure it clearly discloses in what capacity it is dealing with the consumer. If a consumer first contacts a dealer who does not have a vehicle in its own inventory that the consumer wishes to buy or lease, and the dealer agrees to find, negotiate or arrange the purchase or lease of a specific vehicle for the consumer from a third party, a broker relationship may be created. If the dealer, without placing any obligations on the consumer, finds the desired vehicle, purchases it and places it into the dealer's own inventory, the dealer may thereafter negotiate and sell or lease the vehicle to the consumer and still remain a dealer. However, a dealer may become a broker under several circumstances, including, but not limited to, the following: the dealer places a contractual or monetary obligation on the consumer in order to arrange or negotiate the purchase or lease of the vehicle; the dealer makes any statement which could cause an average consumer to believe the dealer was acting as an agent of the consumer (such as saying the dealer would negotiate the best price for the transaction); or the dealer arranges the transaction for the consumer through another dealer and receives any compensation from the consumer or other dealer.

(s) False Credit Applications — No person shall for any motor vehicle transaction:

(A) Knowingly prepare, participate or assist in the preparation or submission of a false, misleading or deceptive credit application;

(B) Direct any person to prepare or submit a false, misleading or deceptive credit application;

(C) Request or allow a consumer to sign a blank or incomplete credit application; or

(D) Knowingly accept or submit a false, misleading or deceptive credit application.

(t) Illusory or Deferred Down-Payments — Hold Check Agreements — In any transaction for a motor vehicle:

(A) No person shall request or accept from a consumer as payment for any part of a purchase or lease, or list the same as a down payment on any purchase order, lease agreement, retail installment contract, or credit application, any of the following:

(i) A promissory note for future payment, without clearly disclosing on the purchase order, lease agreement, retail installment contract, or credit application: the amount of the promissory note given by the consumer, the terms of repayment, any interest rate and that such amount is in the form of a promissory note;

(ii) A check that the person knows or should have known is drawn upon an account with insufficient funds, without clearly dis-

closing on the purchase order, lease agreement, retail installment contract, or credit application: the amount of such check, the terms of repayment, that there were insufficient funds in the checking account at the time the check was drawn and the date the check is expected to have sufficient funds available for its payment; or

(iii) A post-dated check that the consumer has given the person for payment at a future date, without clearly disclosing on the purchase order, lease agreement, retail installment contract, or credit application: the amount of such check, that the check is post-dated, and the date the check is due and payable.

(B) No person shall accept any check listed in (t)(A)(ii) or (iii) above without having a written hold check agreement, clearly disclosing on the purchase order, lease agreement or retail installment contract all terms and conditions of the hold check agreement, and disclosing the fact that there is a hold check agreement to any financial organization to which credit is requested;

(C) No person shall accept any payment listed in (t)(A)(i), (ii) or (iii) above without properly listing and identifying such payment in any retail installment contract or lease agreement; and

(D) No deferred portion of a down payment may be treated as part of the down payment if it is payable later than the due date of the second otherwise regularly scheduled payment and is not subject to a finance charge.

OFFICIAL COMMENTARY: This rule addresses appropriate disclosure in accordance with the single document rule (ORS 83.020), Regulation Z, specifically 12 CFR §226.2(a)(18), and Regulation M. It also ensures that the actual nature and terms of any deferred payment made on a purchase or lease of a motor vehicle are clearly disclosed on not only the purchase or lease agreement and retail installment contract, but also on any credit application. Sometimes when a consumer does not have sufficient funds, which may be required as a down payment from a financial organization, a dealer will request a promissory note or a post-dated check from a consumer. It is not uncommon for the check to be drawn on an account with insufficient funds at the time it is written. The promissory note or check is then listed as a down payment on a purchase or lease agreement and/or the credit application without disclosing the actual form of the payment to the potential lender. This makes it falsely appear that the consumer has paid a sum certain at the time of the transaction when the dealer or broker has not yet received those funds. Often the consumer also gives the dealer or broker explicit instructions not to deposit the check until some date in the future. This may be done in order to make the consumer appear more creditworthy than his/her actual financial status would substantiate. Then, not only is the consumer required to make future monthly payments on the motor vehicle, the consumer is also under the burden of paying additional future payments for a check or promissory note that the consumer may or may not be able to afford. A dealer or broker might also cash the check earlier than agreed upon, or as directed by the consumer, causing the consumer's account to be overdrawn and damaging the consumer's credit. Listing a deferred payment on a credit application as a down payment, without disclosing its actual terms and conditions, is fraud upon the financial organization, which bases its decisions on the information supplied by the dealer or broker. It is not uncommon to later find the consumer in default on the loan, which may not have been approved had honest information been disclosed on the credit application.

(u) Yield Spread Premium Disclosure — Any dealer or broker that charges a consumer a yield spread premium for arranging financing for the consumer:

(A) Shall clearly and conspicuously disclose in writing, prior to the consumer applying for credit or executing a purchase or lease agreement:

(i) That the dealer or broker may receive additional compensation from the consumer for arranging the financing which may be in the form of a fee or additional loan points; and

(ii) That interest rates quoted by the dealer or broker may be negotiable; and

(B) Shall not, during the negotiation for the sale or lease of a motor vehicle, quote a monthly payment calculated using an interest rate that is more than three points higher than the buy rate, unless the dealer or broker discloses in writing the yield spread premium to the consumer, if the dealer or broker quoting the rate knows the consumer's credit score or has the ability to obtain the consumer's credit score at the time the monthly payment is quoted.

OFFICIAL COMMENTARY: This rule is only applicable when a dealer or broker arranges financing for a consumer buying or leasing a motor vehicle and charges a fee or yield spread premium. When a dealer or broker arranges vehicle financing for a consumer it often charges a fee or adds points to the buy-rate charged by the financial organization. This mark-up to the cost of financing may cost consumers thousands of dollars over the term of a loan or lease. Without disclosure, many consumers are unaware that the dealer or broker is making a profit for arranging the consumer's financing. Many consumers believe that the dealer or broker is getting them the best rates for which they qualify. This rule gives the consumer the most basic information regarding costs incurred when the consumer finances his/her transaction through a dealer or broker. Subsection (u)(B) of this paragraph addresses an unlawful practice known as "rate packing." The dealer runs the credit of a prospective buyer and, knowing the buyer's credit score, calculates the monthly payment using an interest rate that is excessively more than what the consumer's credit score would qualify for and often much higher than what the financial organization would be willing to allow on a point yield premium. Once the deal is closed, the dealer has effectively left plenty of "legroom" in the deal for finance personnel. Finance personnel will then drop the rate down to the maximum rate the financial organization allows for a point yield premium, usually two or three points, and include additional products or insurance in the deal with the consumer not aware the cost was added to the price of the vehicle. The consumer is then presented with expensive options or service contracts "for only a few extra dollars per month" or "for no extra charge."

(v) Misleading or Deceptive Tying Requirements — No person shall represent or imply that the person requires a consumer to purchase anything additional, in conjunction with the sale or lease of a motor vehicle, including, but not limited to, any goods, accessories, services, products, insurance, extended service or maintenance contracts, in order to:

(A) Purchase or lease a motor vehicle, unless the person requires all consumers to purchase the same additional items in order to purchase or lease any vehicles from that person; or

(B) Obtain financing for a motor vehicle unless the person requires all consumers to purchase the same additional items in order to obtain financing for that person's motor vehicles; and

(C) The person will not sell, lease or obtain financing for any motor vehicles without the sale of such additional items to any other consumer, whatsoever.

OFFICIAL COMMENTARY: A tying arrangement is one in which a person conditions the sale or financing of one product to the purchase of another product. This rule makes it clear that a person may not falsely represent that the person will not or cannot sell or finance a motor vehicle without the consumer purchasing additional items when in fact the person does sell or finance vehicles in the course of its business without such requirements in each and every transaction. This rule does not prohibit a dealer from requiring or ensuring that a consumer has purchased motor vehicle insurance as may be required by law or the terms of a lease or purchase agreement.

(w) Deceptive Financing Representations — No dealer or broker shall falsely represent that a transaction is conditioned upon the consumer financing the transaction with or through the dealer or broker when in fact the consumer is able to finance through other means or sources;

(x) Unlawful Spot Delivery — No dealer or broker shall spot deliver a vehicle to any consumer unless the dealer or broker has a reasonable basis to believe the consumer could qualify for the terms of financing quoted to the consumer at the time of delivery;

(y) Misrepresentation Regarding Failure to Finance — No dealer or broker, who has spot delivered a vehicle to a consumer and thereafter fails to complete the transaction in accordance with the terms offered in the purchase order, lease agreement or retail installment contract, shall misrepresent to a consumer the reason that the consumer does not qualify for financing or misrepresent why the transaction cannot be completed according to the terms offered;

OFFICIAL COMMENTARY: This rule addresses the unlawful business practice commonly known as "yo-yo financing" or "bushing." In a yo-yo transaction, a dealer quotes the consumer finance terms that are not yet accepted by a financial organization in order to get the consumer to take delivery of the vehicle "on the spot." Later, when the dealer either cannot get the quoted terms funded or cannot make the expected profit from added points, the dealer tells the consumer that the deal did not go through and that the dealer needs to rewrite the transaction on terms usually less favorable to the consumer. It is a common practice of dealers and brokers to quote financing terms that include an undisclosed yield spread premium when they spot deliver a vehicle. When a dealer engages in the practice of unwinding a transaction even though the consumer is qualified for the original quoted terms, simply so the dealer can add interest points or make more profit, it is one of the most egregious forms of the yo-yo scam. If there is a financial organization that will fund the quoted rate, the dealer or broker will never be justified in unwinding the transaction because the rate is not low enough to allow the dealer or broker to add a yield spread premium. A dealer or broker either knows, or has the ability to find out, prior to the

time it spot delivers a motor vehicle and quotes finance terms: the available buy-rates, the consumer's credit history, and the consumer's credit score. Dealers who "spot deliver" motor vehicles are in fact the originating creditors extending the finance terms to the consumer. In today's credit market, a dealer can almost always find a financial organization that will accept the transaction. The only question is whether the dealer will take a loss, break even or make a profit on the financing. The primary targets of this rule are dealers and brokers who offer terms and availability of financing without having a good faith basis based upon the consumer's credit worthiness, simply to have the consumer accept spot delivery. This rule should deter brokers or dealers from knowingly quoting rates to consumers _ which they know the consumer will not be approved for _ simply to get the consumer to take delivery of the vehicle. Not all transactions in which a credit application is not approved are scams. Sometimes a consumer does not have strong enough credit to quality for the most attractive financing offers, has a change in financial circumstances or has provided incomplete or false information on the credit application.

(z) Anti-Bushing Rule — In any transaction in which the dealer or broker has spot delivered a vehicle to a consumer and the consumer does not qualify for the terms offered, the dealer or broker shall, prior to offering, negotiating or entering into new terms for the purchase or lease of a vehicle:

(A) Inform the consumer that the consumer is entitled to have all items of value received from the consumer as part of the transaction, including any trade-in and down payment, returned to the consumer;

(B) If the consumer is physically present when the dealer or broker informs the consumer that the consumer does not qualify for the terms offered, return all items of value received from the consumer as part of the transaction; and

(C) If the dealer or broker informs a consumer by telephone or other means, without the consumer present, that the consumer did not qualify for the terms offered, clearly disclose the consumer's right to receive the immediate return of all items of value given by the consumer as part of the transaction when the consumer returns the spot delivered vehicle. Simply informing a consumer of the consumer's right to get back his/her down payment and trade-in and having the consumer sign a waiver or rescission form, without the actual ability for the consumer to have his/her down payment back and take possession of his/her trade-in, does not comply with ORS 646.877. The consumer's down payment and trade-in must be actually available to the consumer should the consumer wish to rescind the transaction and not enter into a new transaction. If a consumer has paid a down payment with a check, the dealer is not required to refund the down payment until the consumer's check has cleared.

OFFICIAL COMMENTARY: This rule clarifies the Oregon "Anti-bushing" statute, ORS 646.877, so that dealers and brokers clearly understand its requirements. This statute gives both dealers and consumers specific rights when it is necessary to unwind a spot delivery transaction. While the statute clearly states "the seller shall return to the buyer all items of value received from the buyer as part of the transaction," many dealers and brokers do not actually give or even offer the consumer the down payment and trade-in back before the dealer or broker tries to get the consumer to sign a new contract. Many dealers and brokers do not even have the down payment or trade-in readily available when they inform the consumer that the consumer needs to enter into a new contract. Simply offering to return the items of value and having a consumer agree to rescind the prior deal is not in compliance with the statute. The consumer has an absolute right to walk away from the deal if the original offer is not going to be honored. Without having actual ability to take possession of the trade-in and down payment, the seller has the ability to pressure a consumer into entering into a less favorable contract and has an uneven bargaining position. Having a refund check presently available and giving the consumer his/her keys with the trade-in vehicle immediately available is necessary for compliance.

(aa) Unlawful Negative Equity Adjustment — No person shall make a negative equity adjustment in the sale or lease of a motor vehicle;

OFFICIAL COMMENTARY: Both federal and Oregon law prohibit the practice of negative equity adjustments. On April 6, 1998, the Board of Governors of the Federal Reserve System (the Federal Reserve) published, as a final rule, revisions to the Official Staff Commentary to Regulation Z, 12 CFR Part 226, Supplement I-Official Staff Commentary. See 63 Fed. Reg. 16669. The revisions to the Federal Reserve's Official Staff Commentary to Regulation Z became effective March 31, 1998. Compliance with the Official Staff Commentary became mandatory on October 1, 1998. The final rule states, in part: Under Regulation Z, the term "down payment" refers to an amount paid to a seller to reduce the "cash price" in a credit sale transaction. Comment 2(a)(18)-3 gives guidance on how a creditor discloses the down payment if a trade-in is involved in the sale and if the amount of an existing lien exceeds the value of the trade-in. The comment clarifies that creditors should disclose the down payment as zero and not a negative amount. The comment addresses a credit sale and financed down payment treated as a single transaction; it does not affect creditor's ability to disclose them as two transactions. 63 Fed. Reg. 16669. Section 2(a)(18)-3 of the Official Staff Commentary provides:"3. Effect of existing liens. In a credit sale, the 'down payment' may only be used to reduce the cash price. For example, when the existing lien on an automobile to be traded in exceeds the value of the automobile, creditors must disclose a zero on the down payment line rather than a negative number. To illustrate, assume a consumer owes $10,000 on an existing automobile loan and that the trade-in value of the automobile is only $8,000, leaving a $2,000 deficit. The creditor should disclose a down payment of $0, not -$2,000." Several states, including Oregon, specifically permit negative equity to be included in the amount financed or principal balance of a retail installment contract and mandate that negative equity appear as an other amount financed, not as a component of the cash price or down payment. Chapter 83 of the Oregon Revised Statutes sets forth the requirements and limitations for every retail installment contract and mandates where negative equity must be disclosed on the contract and does not allow negative equity adjustments to be made to the cash sale price. First, Oregon law defines the applicable terms:

ORS 83.010(1): "'Cash sale price' means the price for which the seller would have sold or furnished to the buyer, and the buyer would have bought or obtained from the seller, the goods or services which are the subject matter of a retail installment transaction, if the sale had been a sale for cash. The cash sale price may include any taxes, registration and license fees and charges for transferring vehicle titles, delivery, installation, servicing, repairs, alterations or improvements."

ORS 83.010(4): "'Principal balance' means the cash sale price of the goods or services which are the subject matter of a retail installment contract less the amount of the buyer's down payment in money or goods or both, plus the amounts, if any, included therein, if a separate identified charge is made therefor and stated in the contract, for insurance and official fees."

Finally, Oregon law specifies the contents, sequence and location of the required disclosures in the contract:

ORS 83.030: "Contents of contract. The retail installment contract shall contain the names of the seller and the buyer, the place of business of the seller, the residence or other address of the buyer as specified by the buyer and a description or identification of the goods sold or to be sold, or services furnished or rendered or to be furnished or rendered. The contract also shall contain the following items, which shall be set forth in the sequence appearing below; however, additional items may be included to explain the calculations involved in determining the balance to be paid by the buyer:

(A) The cash sale price of each item of goods or services;

(B) The amount of the buyer's down payment, identifying the amounts paid in money and allowed for goods traded in;

(C) The difference between subsections (1) and (2) of this section;

(D) The aggregate amount, if any, included for insurance, specifying the type or types of insurance and the terms of coverage;

(E) The aggregate amount of official fees;

(F) The principal balance, which is the sum of subsections (3), (4) and (5) of this section;" There is no question but that the state and federal laws clearly contemplate the disclosure of negative equity. The use of a "negative equity adjustment" is sometimes referred to as "creative financing." The reality is that the practice consists of committing fraud in reporting to a financial organization regarding the true value of the trade-in and misrepresenting the actual amount of the down payment made in order to get financing on the new transaction. The California case of Reta Thompson v. 10,000 RV Sales, Inc., 130 Cal.App.4th 950, 979, 31 Cal. Rptr. 3d 18. (Ct. App. 2005) succinctly explained why this practice is unlawful: "Although financing properly disclosed negative equity is permissible under the (California Automobile Sales Finance Act (ASFA)) and Regulation Z, it is not permissible to include the over-allowance in the cash price of a vehicle. This interpretation of the ASFA is consistent with its remedial purpose of protecting consumers from inaccurate and unfair credit practices through full and honest disclosures. Allowing a dealer to include overallowances on trade-in vehicles in the cash price of vehicles being purchased adversely affects consumers who are funded long-term loans for which they otherwise may not qualify and which they may not be able to afford. Additionally, this practice negatively impacts lenders who extend credit for sales misrepresented to them based on fictitious values of vehicles being financed. As the evidence at trial showed, lenders cannot determine fraud from the face of a contract when the numbers have been manipulated. Finally, and of no less import, enforcing the ASFA's disclosure requirements protects dealership competitors who are at a disadvantage if they quote a true trade-in value rather than an inflated one. Requiring a meaningful disclosure of credit terms both protects consumers and enhances fair business competition. (15 U.S.C. § 1601(a))."

Oregon law, as well as Regulation Z, permit the financing of prior credit balances on trade-in vehicles as long as the amount financed is clearly and separately disclosed and properly identified. (See Official staff interpretation, 12 CFR § 226.18(c) (Supp. I 2005).) To engage in any negative equity adjustment not only violates Oregon Revised Statutes Chapter 83 disclosures and Regulation Z, but is a violation of the Oregon Unlawful Trade

Practices Act in several sections which make it unlawful when a dealer or broker:

(A) "Makes false or misleading representations concerning credit availability or the nature of the transaction or obligation incurred," ORS 646.608(1)(k); or

(B) "Makes false or misleading representations of fact concerning the offering price of, or the person's cost for real estate, goods or services," ORS 646.608(1)(s).

This rule requires that a consumer be clearly informed that the negative equity in his/her trade-in has been added to his/her purchase or lease. Compliance with this rule will eliminate those situations where a consumer believes (s)he has purchased a vehicle at one price, only to discover after closer examination of the deal documents that the negative equity has been added to the cost of the new transaction. The consequences are enormous. The added cost of financing can add up to thousands of extra dollars for a consumer, plus makes it even harder to trade-in the new vehicle at a later date because the negative equity on the new vehicle is even more than the original trade-in.

This rule creates no new law. It simply states that dealers and brokers must obey the laws that have been in effect for years. All of the published purchase agreements and retail installment contracts printed and distributed by the different Oregon dealer associations added a disclosure line for negative equity after the changes to Regulation Z became effective. The time has come that they be used honestly in every transaction.

(bb) Negative Equity Disclosure — Any negative equity of a vehicle taken in trade as part of any motor vehicle transaction shall be clearly and conspicuously disclosed in any purchase order, lease agreement or retail installment contract.

Stat. Auth.: ORS 646.608(4)

Stats. Implemented: ORS 646.608(1)(u)

Hist.: 1AG 6-1979, f. & ef. 12-19-79; JD 4-1993, f. 8-6-93, cert. ef. 8-16-93; JD 3-1996, f. 10-18-96, cert. ef. 10-23-96; DOJ 10-2001(Temp), f. & cert. ef. 10-17-01 thru 4-14-02; DOJ 3-2002, f. & cert. ef. 4-22-02; DOJ 15-2007, f. 12-20-07, cert. ef. 1-2-08

137-020-0025
Mobile Home Consignment

(1) Purpose: The purpose of this rule is to declare as unfair or deceptive in trade or commerce the practice of selling mobile homes on consignment without complying with this rule.

(2) Authority: This rule is adopted pursuant to ORS Chapter 183 on authority granted to the Attorney General by 646.608(1)(u) and (4).

(3) Effective Date: This rule applies to consignment sales agreements entered into on or after January 1, 1980.

(4) Definitions: For purposes of this rule:

(a) The definitions of terms set forth in ORS 646.605 are applicable;

(b) "Mobile Home Dealer" means a person who regularly engages in the sale of mobile homes as defined by this rule;

(c) "Mobile Home" means a non-self propelled structure, transportable in one or more sections, which is designed to be used as a permanent family dwelling;

(d) "Consignment Seller" means the owner of a mobile home who enlists the assistance of a mobile home dealer to offer his or her mobile home for sale to a third party and where the mobile home dealer receives consideration for such assistance. For purposes of this rule, it does not matter that the mobile home dealer does not take possession of the mobile home;

(e) "Minimum Net Agreement" means an agreement characterized by an arrangement in which a consignment seller agrees to accept a fixed dollar amount as his or her share of the proceeds regardless of the total sale price of the unit sold.

(5) Unfair or Deceptive Mobile Home Consignment Practices: A mobile home dealer engages in conduct which is unfair or deceptive in trade or commerce when it fails to deliver to a consignment seller the written agreements in compliance with the following:

(a) A mobile home dealer shall provide a mobile home consignment seller with a copy of a written consignment agreement prior to the date that the mobile home is offered for sale;

(b) The written consignment agreement shall contain the following:

(A) Identification of the mobile home offered for sale;

(B) The length of the term of the consignment agreement;

(C) If the mobile home dealer advises the consignment seller of an estimated retail value of the mobile home, a statement of that value shall be included;

(D) Identification of any class of expenses, including, but not limited to, taxes, repairs, transportation cost or tear down expenses, to be deducted from the consignment seller's portion of the proceeds of the sale in addition to the mobile home dealer's commission;

(E) The mobile home dealer's commission, stated in terms of a dollar amount or percentage of the sales price, unless it is a minimum net agreement;

(F) In the event of a minimum net agreement, the amount to be paid to the consignment seller shall be so stated;

(G) A statement of whether or not the consignment seller will have the right to approve the final purchase price; and

(H) The signature of the consignment seller.

(c) The mobile home dealer shall promptly deliver to the consignment seller a copy of the purchase agreement, which shall include the sales price, after the purchase agreement has been executed by the third party purchaser.

Stat. Auth.: ORS 646

Stats. Implemented: ORS 646.608(1)(u)

Hist.: 1AG 3-1979, f. 10-11-79, ef. 1-1-80

137-020-0030
Updating

(1) Purpose: It is the purpose of this rule to define as an unfair trade practice the failure to disclose the year in which a motor vehicle or motor vehicle chassis was actually manufactured.

(2) Authority: This rule is adopted pursuant to ORS Chapter 183 on authority granted to the Attorney General by 646.608(1)(s) and (4).

(3) Definitions: For purposes of these rules:

(a) "Person" is defined in ORS 646.605(4);

(b) "Motor Vehicle" means a self-propelled vehicle intended for use upon public highways which is or may be used or bought primarily for personal, family, or household purposes. For purposes of this rule, the term "motor vehicle" includes mobile homes, motor homes and recreational vehicles, but does not include automobiles and motorcycles;

(c) "Motor Vehicle Chassis" means the frame assembly, power plant, and all other appurtenances necessary to make a motor vehicle self-propelled.

(4) This rule is effective on and after September 1, 1976.

(5) Failure to Disclose Year of Manufacture:

(a) It is unfair or deceptive conduct in trade or commerce to sell, or offer for sale, a motor vehicle to its first purchaser for purposes other than resale without disclosing prior to the time of entering into any binding sales agreement:

(A) The month and year in which such motor vehicle was manufactured; and

(B) If the motor vehicle chassis was manufactured in a month or year different from that of the completed motor vehicle, the month and year in which such motor vehicle chassis was manufactured.

(b) Providing a prospective purchaser with a copy of certificate of origin issued by the manufacturer of the motor vehicle or motor vehicle chassis which sets forth the month and year of manufacture shall constitute adequate disclosure for purposes of this rule.

Stat. Auth.: ORS 646

Stats. Implemented: ORS 646.608(1)(u)

Hist.: 1AG 16, f. 7-21-76, ef. 9-1-76

137-020-0040
Adoption of FTC Used Car Rule, Federal Truth-in-Lending Act, and Federal Consumer Leasing Law

(1) For purposes of this rule, the following definitions shall apply:

(a) "Truth-in-Lending Act" means the Federal Truth-in-Lending Act, as amended and in effect as of January 2, 2008, including 15 U.S.C. 1601-1665(a), and any regulations which have been adopted thereto and in effect as of January 2, 2008, including but not limited to Regulation Z (12 CFR 226);

(b) "Federal Consumer Leasing Law" means the consumer leasing portions of the Truth-in-Lending Act, 15 USC §1667 et seq., as

amended and in effect as of January 2, 2008 and all regulations which implement this section including but not limited to Regulation M (12 CFR 213);

(c) "FTC Used Car Rule" means the Federal Trade Commission Used Motor Vehicle Trade Regulation Rule, 16 CFR § 455 et seq., as amended and in effect as of January 2, 2008;

(d) "Person" refers to those individuals and entities as defined in ORS 646.605(4);

(e) "Real Estate, Goods or Services" refers to those items defined in ORS 646.605(7);

(f) "Consummation" means the time at which a consumer becomes contractually obligated on a credit transaction. The time the obligation arises is a matter determined under state law; and

(g) The definitions set forth in OAR 137-020-0020.

(2) It is unfair or deceptive conduct in trade or commerce for a person to advertise, offer credit or extend credit related to the purchase of real estate, goods or services in violation of the Truth-in-Lending Act or the Federal Consumer Leasing Law.

(3) It is unfair or deceptive conduct in trade or commerce for a person to advertise, display for sale or lease, or sell or lease a motor vehicle in violation of the FTC Used Car Rule.

OFFICIAL COMMENTARY: Many advertisements for sales and leases, in particular those for motor vehicles, use one or more of the Regulation Z or Regulation M triggering terms and then fail to make the required disclosures. All three acts also have very specific disclosure requirements which must be given to the consumer prior to the execution of a sales, credit or lease agreement. This rule makes it clear that failure to comply with these federal regulations is a violation of the Oregon Unlawful Trade Practices Act. Each of these three acts is discussed below:

(a) "Regulation Z" Advertising. The Truth-in-Lending Act and accompanying regulations govern credit advertising. An advertisement for closed-end credit which contains a "triggering term" must disclose other major terms, including the annual percentage rate. This rule is intended to ensure that all important terms of a credit plan, not just the most attractive ones, appear in an advertisement.

(b) The following triggering terms require certain disclosures to be made in an advertisement for closed-end credit (12 CFR 226.24):

(A) The amount of the down payment (expressed as either a percentage or dollar amount), in a "credit sale" transaction; Examples: "10% down" "$1000 down" "90% financing" "trade-in with $1000 appraised value required"

(B) The amount of any payment (expressed as either a percentage or dollar amount); Examples: "Monthly payments less than $250 on all our loan plans" "Pay $23.44 per $1000 amount borrowed" "$210.95 per month"

(C) The number of payments or the period of repayment; or "Up to four years to pay" "48 months to pay" "30-year mortgages available"

(D) The amount of any finance charge. Examples: "Financing costs less than $300 per year" "Less than $1200 interest" "$2.00 monthly carrying charge"

(c) If any one of the triggering terms appears, it would be an unfair or deceptive trade practice to fail to clearly and conspicuously disclose in the advertisement:

(A) The amount or percentage of the down payment;

(B) The terms of repayment; and

(C) The "annual percentage rate," using that term or the abbreviation "APR." If the annual percentage rate may be increased after consummation of the credit transaction, that fact also must be stated. The amount or percentage of the "down payment" need not be shown directly, as long as it can be determined from the advertisement. For example, "10% cash required from buyer" or "credit terms require minimum $1000 trade-in" would satisfy the disclosure requirement. The "terms of repayment" may be expressed in a variety of ways, as long as they convey the required information. For example, an automobile finance company might use unit cost to disclose repayment terms: "48 monthly payments of $23.44 for each $1000 borrowed." Similarly, the length of the loan can be expressed as the number of payments or the time period of the loan. Disclosures provided on credit contracts. Creditors must give the required disclosures to the consumer in writing, in a form that the consumer may keep, before consummation of the transaction. See § 226.17(a)(1) and (b). Sometimes the disclosures are placed on the same document with the credit contract, as permitted under comment 17(a)(1)–(3). In such cases, the timing requirement is satisfied if the creditor gives a copy of the document containing the unexecuted credit contract and the disclosures to the consumer to read and sign, and the consumer is free to take possession of and review the document in its entirety before signing. It is not sufficient, however, if the document containing the disclosures is merely shown to the consumer before the consumer signs and becomes obligated; the creditor must give the document to the consumer. If after receiving the document, the consumer signs it and becomes obligated, the consumer may return it to the creditor to execute or process, provided the consumer is also given a copy at that time to keep. http://www.fdic.gov/regulations/laws/rules/6500-1700.html#6500226.17.

"Regulation M" Advertising. If an advertisement promoting a "consumer lease" contains any of the following triggering terms, then five specific disclosures must also be clearly and conspicuously included in the advertisement. It is an unfair or deceptive trade practice to fail to clearly and conspicuously make all five disclosures.

(d) The triggering terms are:

(A) A statement of any capitalized cost reduction or other payment required before or at lease consummation, or by delivery if delivery takes place after consummation, or that no payment is required; or

(B) The amount of any payment.

(e) If any triggering term is used in a consumer lease advertisement then all five of the following disclosures must be in the advertisement:

(A) A statement that the transaction advertised is a lease;

(B) The total amount of any payment (such as security deposit or capitalized cost reduction) required before or at the consummation of the lease, or by delivery if delivery takes place after consummation, or a statement that no such payment is required;

(C) The number, amounts and due dates or periods of scheduled payments under the lease;

(D) Whether or not a security deposit is required; and

(E) In leases where the consumer's liability is based on the difference between the property's residual value and its realized value at the end of the lease term, that an extra charge may be imposed at the end of the lease term. For further information on advertising consumer credit or consumer leases, see the Federal Trade Commission website titled: "How to Advertise Consumer Credit & Lease Terms" at http://www.ftc.gov/bcp/conline/pubs/buspubs/creditad.htm.

Disclosure. Regulation M mandates that all required disclosures be given prior to the consummation of a consumer lease. "FTC Used Car Rule" - Motor vehicle dealers must post a Buyers Guide, also known as an "As-Is" disclosure, in every used vehicle which they display for sale or lease as required under the FTC guidelines. If a used car transaction is conducted in Spanish, the seller must post a Spanish language Buyers Guide on the vehicle before it is displayed or offered for sale. Dealers must post a Buyers Guide before they "offer" a used vehicle for sale. A vehicle is offered for sale when it is displayed for sale or a dealer lets a customer inspect it for the purpose of buying it, even if the car is not fully prepared for delivery. This requirement also applies to used vehicles for sale on a dealer's lot through consignment, power of attorney, or other agreement. At public auctions, dealers and the auction company must comply. The Rule does not apply at auctions that are closed to consumers.

(f) Previously titled or not, any used vehicle that meets the following specifications must post a Buyers Guide. (See OAR 137-020-0020 for the Oregon definition of a used vehicle.) Previously titled or not, any vehicle driven for purposes other than moving or test driving is considered a used vehicle, including light-duty vans, light-duty trucks, demonstrators, and used cars that meet the following specifications:

(A) A gross vehicle weight rating (GVWR) of less than 8,500 pounds;

(B) A curb weight of less than 6,000 pounds; and

(C) A frontal area of less than 46 square feet.

(g) Exceptions to the Rule are:

(A) Motorcycles;

(B) Any vehicle sold for scrap or parts if the dealer submits title documents to the appropriate state authority and obtains a salvage certification; and

(C) Agricultural equipment. FTC "Dealer's Guide to the Used Car Rule" http://www.ftc.gov/bcp/conline/pubs/buspubs/usedcarc.htm FTC consumer guide to "Buying a Used Car" http://www.ftc.gov/bcp/edu/pubs/consumer/autos/aut03.shtm

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 646.608(4)

Stats. Implemented: ORS 646.608(1)(u)

Hist.: JD 1-1987, f. 2-5-87, ef. 2-15-87; JD 9-1994(Temp), f. & cert. ef. 11-23-94; JD 5-1995, f. & cert. ef. 4-7-95; DOJ 16-2007, f. 12-20-07, cert. ef. 1-2-08

137-020-0050
Motor Vehicle Advertising

(1) For purposes of this rule, the definitions specified in OAR 137-020-0020 shall apply.

(2) Violations: It is unfair or deceptive in trade or commerce for any person to advertise motor vehicles if:

(a) Trade-in Value — The advertisement represents that motor vehicles or other property to be received in trade in conjunction with the purchase of a motor vehicle:

(A) Will be valued at a specific amount, range of amounts or guaranteed minimum amount; or

(B) Uses a multiple, such as "double," or other type of increased trade-in allowance;

OFFICIAL COMMENTARY: It is a violation of this rule to guarantee any monetary amount or other value on any vehicle or property used as a trade-in on a motor vehicle transaction. This includes any reference to any trade publication valuation, for example, it would be unlawful to state that a trade-in would be valued at "Kelley Blue Book" or like publication.

(b) Dealer Rebates — The advertisement represents that purchasers of vehicles will receive a cash rebate, discount certificate, coupon, cash card for products or services or other similar promotion unless it is offered by a manufacturer or another party, independent of the dealer and without dealer participation.

OFFICIAL COMMENTARY: Rebates controlled by the dealer may be illusory because the dealer may simply increase the offering price or limit the dealer's negotiated price by the same amount as the ostensible value of the rebate. The rule eliminates this possibility by prohibiting such rebates. Therefore, no monetary or similar form of remuneration to a consumer is allowed in the offering of a motor vehicle, unless it is a promotion paid for by a party wholly independent of the dealer and that third party is not paid by the dealer for offering the promotion.

(c) Clarification of sale or lease — The advertisement includes lease and sale offers in the same advertisement without making a clear and conspicuous distinction as to which terms apply to the sale and which apply to the lease;

(d) Invoice advertising — The advertisement represents that motor vehicles are offered for sale at a price that is compared in any manner to the dealer's "cost" or terms of essentially identical import unless the advertisement:

(A) Exclusively uses the term "invoice" or "invoice price"; and

(B) Complies with the following:

(i) The invoice price shall be the final price listed on the manufacturer's invoice after subtracting any amount identified on the invoice as being held back for the dealer's account, and after subtracting any advertising fees or manufacturer to dealer rebates or incentives;

(ii) Purchasers shall be able to purchase any vehicle described by the advertisement at the offering price;

(iii) The invoice shall be readily available for inspection by prospective customers;

(iv) The advertisement clearly and conspicuously states that the invoice price for the sale of the vehicle is the dealer's actual cost after subtracting all holdbacks, incentives, manufacturer to dealer rebates, advertising incentives, promotional fees or any other consideration which will be paid by the manufacturer to the dealer;

(v) A manufacturer to consumer rebate is not included in the formula to arrive at the "invoice price." Consumers are entitled to any such rebate in addition to any savings advertised with the "invoice price" offer; and

(vi) The vehicles being so advertised have not had aftermarket items, including, but not limited to, additional goods, accessories, services, products or insurance added to them at a price higher than the dealer's actual cost.

OFFICIAL COMMENTARY: This rule mandates the use of the word "invoice" or "invoice price" when any advertisement is compared to a dealer's cost. The rule makes it clear that all holdbacks and other funds the dealer will get from the manufacturer must be subtracted from the offering price. The rule does not require the vehicle be sold for the invoice price, but only that the invoice price be the reference price used as a starting point. For example, it is lawful to state a certain model of car is for sale at $500 over invoice price, as long as the referenced adjusted invoice price is after all of the appropriate subtractions. Also, manufacturer to consumer rebates belong to the consumer and the consumer is entitled to those rebates in addition to the advertised "invoice price." This rule does not require the dealer to subtract promotional and sales incentives that are not known to the dealer at the time of the advertisement or listed on the invoice, such as volume sales incentives or special promotional manufacturer to dealer incentives and incentives that are calculated based upon special criteria. A dealer or broker may not, however, offer a vehicle for sale referenced to the invoice price and simply pack the price of the vehicle by adding aftermarket items not sold at true invoice price. This practice would simply add back profit on the vehicle and the consumer's cost would not be the invoice price. A vehicle advertised at invoice must be sold at invoice.

(e) Buy-Down Rates — The advertisement represents that financing is available for the purchase of motor vehicles at a buy-down rate unless the advertisement includes a clear and conspicuous disclosure that the interest rate is not sponsored by the manufacturer, if such is the case, the amount of the buy-down is reflected in the Federal Truth in Lending Statement, and the advertisement clearly and conspicuously states that "the cost of the buy-down may increase the price of the vehicle." If the buy-down will increase the cost of the vehicle, the dealer shall offer the consumer the option of purchasing the vehicle without the buy-down rate at the offering price less the cost of the buy-down. If any specific terms must be met in order to qualify for the advertised buy-down rate, they shall be clearly and conspicuously disclosed. Examples are large down payments, only available to the highest credit ratings, hidden finance charges, unusual terms of the loan or higher selling prices;

(f) Clear and Conspicuous/Complete Offer — The advertisement:

(A) Fails to incorporate a material statement or fails to use any disclosure or disclaimer which is required by law or by these rules, or without which the advertisement would be false, incomplete, inaccurate, deceptive or misleading;

(B) Fails to incorporate a material statement or uses any disclosure or disclaimer which is not presented in a clear and conspicuous manner;

(C) Uses one or more footnotes or asterisks which, alone or in combination, confuse, contradict, materially modify or unreasonably limit the material terms or availability of any advertised statement; or

(D) Uses images, words, phrases, initials, abbreviations or any other items which are not clear and conspicuous.

OFFICIAL COMMENTARY: An advertiser must review any advertisement before publication to ensure it is truthful and "clear and conspicuous." Advertisers are not allowed to fabricate information or use false, misleading or unsubstantiated representations in advertisements. It is important that advertisers understand that in order for material information to be "clear and conspicuous," it must be in close proximity to the information it defines or clarifies and not in an obscure location of the advertisement.

When an advertisement is presented in a visual format, disclosures must be large enough to be read by the average person viewing the advertisement. The size and type of media used will dictate the required size of a disclosure. The definition of clear and conspicuous, in OAR 137-020-0020, details the requirements for television, radio, print and internet disclosures. Other visual media, including, but not limited to, billboards, hand-held posters or handbills, must also comply with the same standards as other visual media. Each advertisement shall be evaluated for its overall impression. The public should not have to weigh each word, hunt for the hidden meaning of each statement, or search for inconspicuous disclaimers. Advertisers shall not advertise by placing important disclosures in small print, inconspicuously buried at the bottom of the advertisement, or speaking so fast or softly that an average person cannot understand what is being said. An advertisement shall not contain material that is not commonly understood by an average person who is not involved in the motor vehicle industry. An asterisk may be used to give additional or qualifying information about a word or term. Asterisks or other reference symbols, however, may not be used as a means of contradicting, disclaiming or substantially changing the meaning of any advertised statements. Multiple asterisks must be clearly explained and the information for each must be separated from other referenced disclosures. Use of multiple reference symbols which combine all information together in one paragraph at the bottom of an advertisement in small print is not clear and conspicuous.

(g) Bait and Switch Rules — An advertisement offers vehicles for sale or lease, vehicles at a specific or discounted price, or specific interest rates or finance terms when such assertions are deceptive, false, misleading or not sincere good faith offers, including, but not limited to, the following:

(A) Statements or illustrations used in any advertisement which create a false impression of the grade, quality, year of model, size, usability, origin, price, interest rate, down payment, monthly payment, make, value or model of the product offered, or which misrepresent the product, interest rate or terms of sale or lease in such a manner that later, on disclosure of the true facts, the purchaser may be switched from the advertised vehicle to another vehicle or to a higher interest rate or different finance offer (See 16 CFR § 238, FTC Guides Against Bait Advertising);

(B) Except as otherwise allowed by subsection (2)(j) of this rule, advertising a motor vehicle for sale or lease when it is not in the possession of the dealer, willingly shown to the consumer or sold at the advertised price and terms. If already sold or leased, the advertiser shall, upon request of a consumer, show proof of the sale or lease of the motor vehicle which was advertised;

(C) Using a headline or major theme in an advertisement to make an offer of a low or special interest rate, down payment or monthly payment which makes it appear that the special offer applies to all or a majority of vehicles offered in the advertisement when it only applies to a limited number of vehicles;

(D) Using discount or loss leader price advertising, unless the advertisement lists, in close proximity in print type no less than half as large as the offering price, the number of vehicles available at the offering price. The listed number of vehicles must be available on the day the offer is advertised at the offered price;

(E) Using a deceptive, false or misleading offer to secure the first contact or interview, even if the true facts are subsequently made known to the consumer;

(F) Using any act or practice to discourage the purchase of the advertised vehicle as part of a scheme to sell another vehicle;

(G) Using any act or practice as part of a scheme to raise the interest rate, the down payment or the monthly payment to one higher than advertised;

(H) Advertising limited availability of vehicles, such as "only 1 at this price," in order to induce consumers into a dealership when the dealership has other similar vehicles available for sale at the same price or for the same terms;

(I) Offering finance terms, including, but not limited to, low down payments, low monthly payments or low interest rates or finance terms, which the advertiser cannot provide, does not intend to provide, does not want to provide, or which the advertiser knows or should know are not available or cannot be provided as advertised. The purpose of the offer is to switch borrowers from the advertised finance offer to other finance terms, usually at a higher interest rate or on a basis more advantageous to the person making the offer;

(J) Offering a low monthly lease payment based upon a capitalized cost reduction that is so large the advertiser knows or should have known:

(i) It is not a bona fide offer; or

(ii) It is so much more than an average capitalized cost reduction that most consumers would not be expected to make such a large payment for the advertised vehicle.

OFFICIAL COMMENTARY: Bait advertising is an alluring but insincere offer to sell a product or service that the advertiser in truth does not intend or want to sell. It can also be in the form a finance offer, such as low monthly payments, low down payments or low interest rates when the advertiser knows most consumers will not qualify for the finance terms offered. A bait advertisement may also be an offer that does not apply to the majority of vehicles advertised. The purpose is to switch consumers from buying the advertised vehicle, in order to sell another vehicle, usually at a higher price. It may also be designed to have the consumer agree to finance terms different from the terms advertised on a basis more advantageous to the advertiser. The primary aim of a bait advertisement is to obtain leads as to persons interested in buying a vehicle of the type so advertised or in securing financing at terms that are not available to the market group to which the advertisement is directed.

(h) Limited Offers of Vehicles, Discounts or Financing — The offering price or an offer to lease, a rebate, a discount offer or a special finance offer applies to a specific vehicle, or to a specific or limited number of vehicles of a specific model or type, unless:

(A) The exact number of vehicles available for which the offer is being made and the specific models to which the offer applies are clearly and conspicuously disclosed in type no less than half the size of the type used for the offer;

(B) Each vehicle is clearly and conspicuously identified in the advertisement by its vehicle identification number if there are less than six such vehicles advertised; and

(C) Any advertised vehicle is available for sale on the day it is advertised.

OFFICIAL COMMENTARY: This rule is triggered only when there are a "limited" number of vehicles to which the offer applies. If the offer applies to an unlimited number of vehicles advertised, all the additional identifying information outlined in the rule is not required. If there are a limited number of vehicles to which the offer applies, the advertisement must clearly state any limitations. "Up to" savings claims which fail to disclose the specific number and identification of the vehicles to which the discount applies would violate this rule. This rule should be read in conjunction with the Bait and Switch Rule.

(i) Offer Limited to Only Eligible Consumers — An offer, including, but not limited to, one for special finance or payment terms, rebates or any other special offer made in an advertisement, applies to a specific or limited number of consumers, unless the following information is clearly and conspicuously disclosed:

(A) The exact model vehicles for which the offer is being made; and

(B) All limitations and conditions of eligibility for the offer, including, but not limited to, the minimum credit score upon which the offer is based, are clearly and conspicuously disclosed.

OFFICIAL COMMENTARY: This rule is triggered when there are a "limited" number of consumers to whom an offer applies. If there are a limited number of consumers to whom the offer applies, the advertisement must clearly disclose any limitations. If the offer is only available to consumers with a particular credit score, then the advertisement must clearly and conspicuously disclose the required minimum credit score. It is important to remember that to be clear and conspicuous requires the disclosure be in close proximity to the offer.

(j) Vehicles Not Immediately Available — The advertisement uses terms which state or imply that motor vehicles are in stock or otherwise available for immediate delivery when they are not. If a motor vehicle is not available for immediate delivery, the advertisement must clearly and conspicuously state the vehicle's availability such as it is in transit, on order, or obtainable only by special order or dealer trade, and that it is not in stock;

(k) Used Vehicle Offers — The advertisement is for a used vehicle, which was manufactured less than four years prior to the date of the advertisement, without designating the vehicle as "used." Other descriptive terms may be substituted for the term used, but not so as to create ambiguity as to whether the vehicle is new or used. Used vehicles, such as "dealer demos" or late model vehicles, cannot be displayed in an advertisement with new vehicles in such a manner that it is difficult to determine if they are used or new;

OFFICIAL COMMENTARY: Examples of alternative terms include "lease return," "pre-owned," "dealer demonstrator" or "rental return."

(L) Program and Certified Vehicles — The advertisement uses the word "program," "certified" or terms of essentially similar import, unless the advertisement clearly and conspicuously discloses the nature and benefits of the "program" or "certification" that is offered with the motor vehicle and the origin and prior use of the vehicle. If there is an additional cost to the consumer to obtain the program or certification, that cost must be clearly and conspicuously disclosed in the advertisement and it must be listed on any purchase or lease agreement;

OFFICIAL COMMENTARY: Dealers and advertisers have used the words "program" and "certified" to designate a wide variety of late model used vehicles. This rule prohibits use of the terms unless there is a verifiable benefit which attaches with the program or certification. The only time these words may be used are if the manufacturer or dealer actually has a special program that attaches to the sale of the used vehicle, such as a complete inspection for defects, repair of the defects that are discovered, and/or an additional warranty that is more extensive than the vehicle would otherwise have without the program. If any program or certification is used in an advertisement, the advertisement must clearly and conspicuously disclose the terms and cost, if any, of the program or certification, if that amount is not already included in the advertised offering price.

(m) Non-negotiable Offers — The advertisement offers or the dealer posts on any vehicle or uses any words which imply that the offering price of the vehicle is non-negotiable or that no negotiations are necessary unless in fact the dealer:

(A) Does not negotiate the offering price of the advertised vehicles;

(B) Maintains the same price for all consumers for equivalent vehicles;

(C) Maintains such price unless a general price adjustment is made which is applicable to all consumers;

(D) Posts the non-negotiable price on all such vehicles; and

(E) Does not falsely inflate the value of any trade-in vehicle by such an amount that the claim that it is a non-negotiable transaction is a sham.

OFFICIAL COMMENTARY: Dealers who engage in any advertisement that claims that the offering price is not negotiable, that the advertised price is so low that it is unnecessary to negotiate, or terms of similar import may not negotiate the offering price of the vehicle once the car has been offered at a price with such a claim. The non-negotiable price must be clearly posted on all such vehicles. The dealer may not alter the vehicle price offered in a particular transaction. Altering a vehicle price includes "reappraising" a trade-in vehicle, changing the terms of sale, or changing vehicle features or options where the effect is to alter the net offered price. The majority of trade-ins today have negative equity. If a dealer does not truthfully list the negative equity on the transaction documents, falsely inflates the trade-in value or adds the negative equity to the purchase price, the dealer will violate not only this rule, but Regulation Z and OAR 137-020-0040.

(n) Limited Offers — The advertisement offers any vehicle without disclosing material limitations of the terms listed in the offer, including, but not limited to, the length of time that the offering price is in effect. Advertisements which do not list any effective dates will be presumed to offer advertised vehicles at the "advertised price" until such time as the vehicles are subsequently advertised at different terms or for a period of 30 days, whichever comes sooner;

(o) Identification as a dealer — The advertisement, including, but not limited to, those on the internet, offers any vehicle for sale and does not prominently identify the dealer or broker by the complete business name that the dealer or broker uses in the normal course of its business. When the advertisement is a classified line advertisement, the dealer or broker may use the word "dealer" or abbreviation "DLR." The dealer or broker must also display its business name prominently at any off-site sale location. In the case of an internet advertisement, the advertisement must state the full name of the dealer, the dealer's address, telephone number and Oregon dealer license number. If the internet advertisement is an online auction or small classified line advertisement with limited space, a hyperlink or web address which leads to all dealer information may be used. This rule does not apply to dealers providing vehicles for display purposes only under ORS 822.040(4), but only if the dealer complies with ORS 822.040(4) and all rules promulgated pursuant to that statute;

OFFICIAL COMMENTARY: In any advertisement, the complete business name of the dealer or broker must be clearly and conspicuously displayed. It should be noted that this rule applies even in the case of special event or off-site sales, such as mall sales or sales conducted using the name of another prominent business at that business' location. The dealer or broker must always display its commonly used business name prominently in any advertisement or at any off-site sale. Creation and use of an assumed business name that is not used in the normal course of business is misleading as to what entity is actually offering the vehicles. Some dealers have used their corporate business name or the name of a mall or large retail store in order to make consumers believe that some different company is conducting the sale. Other dealers have published advertisements that list the name of their advertising agent so that it appears the agent and not the dealer is conducting the sales event; for example: "For 3 days only XYZ Event Promotions will be in Salem to sell these 200 vehicles." Purchasers have an absolute right to know the dealership with which they are doing business and who is actually conducting the sale. If more than one dealership is involved, all dealerships participating in the event must be named. If an advertisement is by a new vehicle regional dealer group, only the name of the regional group need be identified, not the individual names of all the dealers in the group.

(p) Reference Pricing — The advertisement claims, implies or could cause a reasonable consumer to believe that:

(A) A vehicle is reduced in price from the dealer's former price, or that the price is a percentage or dollar amount of savings from the dealer's former price, or words to that effect, unless the dealer actually advertised or has records to substantiate that the vehicle has been offered for sale at the former price, for no less than 10 days in the prior 30 days; and

(i) For new vehicles, the advertisement lists the MSRP; or

(ii) For used vehicles, the advertisement lists the Kelley Blue Book or NADA Used Car Guide based upon the year, mileage, condition and accessories of the vehicle advertised. The advertisement must specify if it is referencing a retail or wholesale guide; or

(B) A dealer is conducting a sales promotion or marketing event at which prices have been reduced, when in fact prices have not been reduced.

OFFICIAL COMMENTARY: Unlawful reference price advertising is a variation on "bait" advertising, using a multitude of supposed reductions or special offers for a unique sales event or implying special price reductions, when in fact the vehicles are offered at prices that are not reduced from normal sale prices.

(q) Used Car Reference to New MSRP — A used vehicle advertisement references the original MSRP of the vehicle when it was new in comparison to its present sales price;

OFFICIAL COMMENTARY: An average motor vehicle depreciates in value from the day it is purchased. Its fair market value is based upon many factors: wear and tear, mileage, availability of like vehicles and other market conditions. The MSRP is a term of art specifically authorized for use in the sale of new cars. There are too many variables in used vehicles that make any comparison to its original MSRP meaningless and deceptive. A reference may be made to any of the professional used car pricing guides, but then only if the advertisement clearly and conspicuously discloses if the guide is a "retail" or "wholesale" guide. If an offering price is advertised using a guide, it must be calculated based upon all applicable additions and subtractions listed in the guide. This rule does not make it unlawful to give a consumer access to original MSRP information about a vehicle, such as using a hyperlink on an internet advertisement. It is meant to stop reference pricing the sale price to the MSRP as a comparison to show savings.

(r) Comparison Price Advertising — The advertisement explicitly or implicitly claims that the dealer's offering price is lower than another dealer or dealers', unless the dealer can clearly show, through verifiable statistical analysis of other prices in the target market and records of the dealership, that such is the case;

(s) Adjustable Interest — The advertisement offers an interest rate that is adjustable without clearly and conspicuously disclosing that the interest rate is adjustable;

(t) Price Reduction Advertising — The advertisement states the offering price of a new vehicle as discounted or in any way reduced by a specified amount below the MSRP or the dealer's sale price unless the MSRP, the amount of any discount, rebate, or other price reduction and the final offering price are clearly and conspicuously displayed in figures. Each figure shall be labeled with a clear and conspicuous description;

OFFICIAL COMMENTARY: The clearest way to comply with this rule is to post this information in the form of a mathematical type equation.

(u) Range of Prices Advertising — The advertisement states that any vehicles are available for sale at a range of prices, a range of percentage or fractional discounts, a specific down payment or a specific monthly payment using the words "as low as" or "starting at" or words to that effect, unless:

(A) The advertisement clearly and conspicuously states the number of vehicles available at the lowest offered term in type no less than half the size of the type used for the offer;

(B) Each vehicle, to which the offer is applicable, is clearly and conspicuously identified in the advertisement by make, model, year of manufacture and its vehicle identification number, if less than 25% of the vehicles advertised are eligible for the lowest offer. This subsection is not applicable to advertisements published by a motor vehicle manufacturer;

(C) The highest price or lowest discount in the range is clearly and conspicuously disclosed in the advertisement in the same type size;

(D) The offer is not a major theme or headline in the advertisement, except for when a majority of the vehicles advertised are eligible for the offer; and

(E) The financing criteria are clearly and conspicuously disclosed, if a consumer must meet certain minimum credit criteria to qualify for the offer.

(v) Limited Rebate Offers — An advertised offering price includes any rebates or reductions, unless such rebates and reductions are available to every purchaser or member of the general public without exception. Rebates or reductions which are not available to every purchaser or member of the general public, such as "commercial rebate," "college graduate rebate," "loyalty rebate," "financing company rebate," or "first time buyer's rebate," may be listed in the advertisement, but may not be subtracted from the price so as to reduce the offering price. The offering price, which is available to every purchaser or member of the general public, must be prominently displayed in type which is greater than any other reduced offering price listed in the advertisement that is not available to the general public;

OFFICIAL COMMENTARY: Manufacturers and financial organizations offer discounts or rebates to limited groups of purchasers for a variety of reasons. The rule prohibits the subtraction of those amounts from the offering price of the vehicle, unless every person in the public is eligible for the discount or rebate. The advertisement can list an offering price with these special reductions, but only in addition to and in smaller print type than the offering price that is available to everyone.

(w) Factory Sales — The advertisement uses the terms "factory or manufacturer authorized sale," "factory discount outlet," or similar terms indicating that the dealer has been granted special pricing or distribution privileges by a motor vehicle manufacturer, unless the dealer is specifically authorized to do so by the motor vehicle manufacturer. The dealer using such an offer must have written substantiation before publishing such an advertisement;

(x) Misleading Reasons for Sale — An advertised sale is one being conducted in a dealer or broker's normal course of business and a person uses terms or illustrations in the advertisement which are false or have the capacity or tendency to deceive or mislead consumers as to the nature of or reason for the sale, including, but not limited to, using:

(A) The terms "liquidator," "auction sale," "liquidation sale," "urgent," "disposal sale," "total inventory reduction sale," "close out," "final clearance," "bank asset sale," "repossession sale," "disposal sale," "reprocessed vehicle sale," "authorized distribution center," "factory authorized sale" or any similar terms;

(B) The term "public notice" or similar terms when used in such a manner that it appears to be a publication of any type of legal notice, court notice or government notice; or

(C) Any terms which imply the sale is an event of urgent status or the vehicles have unique qualities or benefits or were specially obtained inventory.

OFFICIAL COMMENTARY: Emergency or distress sales, including, but not limited to, bankruptcy, inventory reduction, liquidation and going out of business sales, or any other specific reason for a sale shall not be advertised unless the stated or implied reason is true. "Selling out," "closing out sale," and similar terms shall not be used unless the business publishing the advertisement is actually going out of business. The term "liquidation sale" means that the advertiser's business or inventory is in the process of being liquidated prior to actual closing. Using a business name or advertising agent that incorporates the term "liquidator," or term of similar import, in its business name in conjunction with the sale of motor vehicles has the tendency to mislead consumers as to the nature of the sale and is deceptive, unless the dealer is actually going out of business. When a dealer purchases a vehicle for its inventory, the source of its purchase does not superimpose any special benefit or pricing status upon the vehicle. The fact that the vehicle was previously a lease or rental return, sold at auction or repossessed by a lender does not allow the dealer to falsely imply that the consumer will get a better price on the vehicle because of its prior stature. It is simply a vehicle being sold in the dealer's normal course of business. A new motor vehicle dealer may use the terms such as "close-out" or "final clearance" for the sale of inventory that is no longer being manufactured or for year-end vehicles that are not going to be restocked by the manufacturer. Words may not be used that have the tendency to deceive or confuse a consumer as to the exact nature of the sale of the vehicles. This rule does not prohibit offers of special sales events held in conjunction with a specific financial organization, such as a local credit union.

(y) Misrepresenting Down Payment — Any down payment required for the vehicle transaction is referred to in an advertisement as a "transfer fee," "reassignment fee," "assumption fee" or any other words of similar import that do not clearly specify that the amount referenced is in fact a down payment; or the monthly payment is referred to by any other term that is not commonly used to describe a monthly payment;

OFFICIAL COMMENTARY: The terms "down payment" and "monthly payment" are normal terms understood by the average consumer. Advertisements which refer to these terms by use of a term that is not commonly understood to mean the same can confuse and deceive the average consumer as to the actual nature of the payment and the type of offer. It is deceptive to use alternate terms which imply the consumer is assuming a pre-existing loan or "taking over payments" from some other obligee.

(z) Deceptive Format or Layout — The advertisement uses any format, layout, headline, assertion, illustration or type size which has a tendency to mislead or deceive its intended audience regarding the prices, finance terms, availability or applicability of any offer made in the advertisement;

OFFICIAL COMMENTARY: Some advertisements incorporate large amounts of information that, if taken individually, might communicate valid information regarding the offering of a vehicle. When combined, however, the combination of inconsistent information makes it difficult to determine what information is applicable to any other information or vehicles. Some advertisements create a false sense of urgency or simply confuse the viewer. Other advertisements contain multiple offers that are not available in combination or are inconsistent with each other. The composition and layout of advertisements should minimize the possibility of misunderstanding by the reader. Prices, illustrations, or descriptions should be displayed in an advertisement in such a manner that it is clear to which vehicles they apply. It is misleading to use a prominent theme or headline in an advertisement when that offer applies to only one or a limited number of vehicles and the offer is not applicable to the majority of the vehicles included in the sale.

This rule follows the Federal Trade Commission's policy statement on deception which was succinctly stated by the Third Circuit. "The tendency of the advertising to deceive must be judged by viewing it as a whole, without emphasizing isolated words or phrases apart from their context." Beneficial Corp. v. FTC, 542 F2d 611, 617 (3d Cir 1976), cert denied, 430 US 983 (1977). "Depending on the circumstances, accurate information in the text may not remedy a false headline because reasonable consumers may glance only at the headline. Written disclosures or fine print may be insufficient to correct a misleading representation. Other practices of the company may direct consumers' attention away from the qualifying disclosures. Oral statements, label disclosures or point-of-sale material will not necessarily correct a deceptive representation or omission. Thus, when the first contact between a seller and a buyer occurs through a deceptive practice, the law may be violated even if the truth is subsequently made known to the purchaser. Pro forma statements or disclaimers may not cure otherwise deceptive messages or practices." FTC Policy Statement on Deception, appended to Cliffdale Associates, Inc., 103 FTC 110, 174 (1984).

(aa) False or Misleading Statements — The advertiser or advertising agent makes any representation or statement of fact in an advertisement if the advertiser or advertising agent knows or should know that the representation or statement is false, confusing or misleading or the advertiser or advertising agent does not have sufficient information upon which to base a reasonable belief in the truth of the representation;

OFFICIAL COMMENTARY: Statements made in an advertisement must be true and specifically applicable to the sale or offer being made in the advertisement. An example of a violation of this rule is an advertisement that stated, "National Rental Car Company Files Bankruptcy – Liquidation Companies Across the County Move to Eliminate Inventory." While some rental car company may once have filed bankruptcy, the dealerships and advertising agent which published this advertisement had no vehicles from the rental car company to sell. Further, no liquidation companies were liquidating vehicles from a rental car company and none were in any dealers' inventories. An advertisement may not be false, manipulate the truth or use language that does not correctly describe the nature of the sale, or the source of ownership of the vehicles for sale. Superlative advertising claims are objective (factual) or subjective (puffery):

Objective claims relate to tangible qualities and performance values of a product or service which can be measured against accepted standards or tests. As statements of fact, such claims can be proved or disproved and the advertiser should possess substantiation; and

Subjective claims are expressions of opinion or personal evaluation of the intangible qualities of a product or service. Individual opinions, statements of corporate pride and promises may sometimes be considered puffery and not subject to a test of their truth and accuracy. Subjective superlatives which tend to mislead should be avoided and can be violations of this rule. Particular care is needed with superlative claims. Measurable criteria, e.g., "the cheapest," must be confirmed. As particular factual claims, superlatives must be placed directly alongside the area where supremacy is claimed and proven. General superiority claims like "the best" may only be used in clear puffery, and not on the basis of selective comparisons. The repeated insistence of superlatives within a script might in itself amount to a claim of supremacy which would need to be verified. Qualitative claims of superiority (e.g., "we simply sell for less") which are open to challenge and/or which are impossible to measure conclusively should be avoided, except for appropriate mentions in a way which allows that rival brands may also make the same claim (e.g., "we simply try to sell for less").

(bb) Zero Down Advertisements — The advertisement uses the phrase "zero down ($0 down)," "no money down," "a penny down" or words of similar meaning, when a down payment of any kind is, in fact, required, including, but not limited to:

(A) The consumer must use the vehicle's rebate as the down payment;

(B) The consumer must use the equity from the consumer's trade-in as a down payment; or

(C) The consumer must pay a security deposit, first month's payment, acquisition fee or any other amount, other than taxes, license and registration costs or a Dealer Title and Registration Document Preparation Service Fee which are clearly and conspicuously disclosed in the advertisement, at the inception of the transaction.

OFFICIAL COMMENTARY: If a down payment or fee of any amount is required at the time of the transaction it is not a "no money down" offer. This is especially a problem in lease advertising where it is common to require the first month's payment, a security deposit, and an acquisition fee at lease inception. If any government fees are required to be paid at the time of sale or lease, including, but not limited to, title or registration fees, this information must be clearly and conspicuously disclosed in the advertisement.

(cc) Rebate Offers — The advertisement offers the availability of a manufacturer's, lender's or other third party's rebate unless such advertisement clearly and conspicuously discloses:

(A) The amount of any applicable rebate;

(B) Any conditions, restrictions or limitations placed on the rebate; and

(C) To which model the rebate applies. If multiple rebates are applicable in the same advertisement, the models that each respective rebate applies to must be identified;

(dd) Withdrawal of Advertisement — An advertisement for the sale or lease of a specific motor vehicle is not withdrawn or the words "sold" superimposed over the advertisement as fast as technologically and reasonably possible, based upon the media used for the advertisement and the frequency of publication, after the motor vehicle is sold or is no longer available for sale or lease to the general public;

OFFICIAL COMMENTARY: Dealers, advertisers and advertising agents have the responsibility to monitor their advertisements and ensure that after a vehicle is sold or leased, or otherwise no longer available to the public, any advertisement for the vehicle is removed from the media in which it is published, including, but not limited to, television, radio, newspapers or the internet. This has become a particularly egregious problem on the internet because of the transmission of advertisements to different websites through a central internet advertising distributor. This rule makes it clear that the obligation to ensure timely removal of advertisements for vehicles which are sold or no longer available is upon all parties involved with its publication. If an internet vehicle advertising company, an advertising agent or any other publisher has received notice from a dealer that a vehicle is sold or no longer available, it must remove the advertisement or superimpose the words "sold" over the advertisement as fast as possible based upon the type of media in which the advertisement is placed and the frequency of its publication.

(ee) Sale Offer May Not be Reduced by Down Payment — The advertised offering price or monthly payment for the sale of a motor vehicle is calculated by reducing the offering price by the amount of a down payment, minimum trade-in amount, deposit or other payment to be made by the purchaser;

OFFICIAL COMMENTARY: A monthly payment or offering price displayed in an advertisement for the sale of a motor vehicle cannot be calculated using a formula that includes any reduction that the purchaser must pay towards the offering price of the vehicle in order to arrive at some lower monthly payment or offering price. This deceptive practice is used in sales advertisements to make it appear that a vehicle has an extremely low monthly payment or an offering price that is less than the true price of the vehicle. The actual terms of the offer are usually in fine print, which disclose that a down payment or minimum trade-in value is required. For example, a headline of "$79 a month" as an enticement in an advertisement for a $10,000 car, which was calculated by using a required down payment of $5,000 is deceptive and a classic unlawful "bait" technique. Any amount of manufacturer's rebates that are deducted to arrive at the offering price shall not be considered as "made by the purchaser" for the purpose of this rule. This rule does not prohibit the listing of a minimum down payment that may be required by a financial organization to accept a finance offer or for any other valid purpose; however, it is unlawful to prominently display a monthly payment that was calculated using a down payment reduction so as to make the monthly payment appear lower than if calculated based upon the full offering price. It is also unlawful to display an offering price based upon the subtraction of a down payment. This rule should be read in conjunction with OAR 137-020-0020(2)(v) and (3)(c) regarding what fees are allowed to be excluded from any offering price.

(ff) Price Matching Offers — The advertisement uses terms "we will meet your best offer" or "we won't be undersold," or terms of similar import which suggest that a dealer will beat or match a competitor's price unless:

(A) The advertisement clearly and conspicuously discloses the price matching policy and any limitations; and

(B) Such policy does not require the presentation of any evidence which places an unreasonable burden on the consumer.

OFFICIAL COMMENTARY: Dealers may not encourage consumers to make and break contracts in an attempt to offer them a price lower than the price which they already negotiated with another dealer. A dealer may always offer to beat another advertised price, but to require a written quote from another dealer puts a consumer in the position of entering and breaking a valid contract in order to get a lower price. Requiring a consumer to present a purchase order, sales documents or other written proof of an offer from another dealer is an unreasonable burden on the consumer.

(gg) False Credit Advertisements — The advertisement makes a false or misleading offer of credit or makes any false or misleading statement in connection with an offer of credit, including, but not limited to:

(A) Failing to clearly and conspicuously disclose all material limitations or conditions of the offer of credit;

(B) Stating that "no credit application is refused," "no credit application rejected," "all credit applications are accepted," "we finance anyone," or words of similar import, unless the offeror can substantiate that all credit applications received by the offeror have been approved for credit; or

(C) Stating that a consumer is "approved" or "pre-approved" for an offer of credit, or words of similar import, if:

(i) The offer of credit is qualified by conditions other than the specific criteria used in making a firm offer of credit pursuant to the Fair Credit Reporting Act or otherwise allowed by FCRA;

(ii) The offer is not a "firm offer of credit" made pursuant to FCRA; or

(iii) The offer made is false.

OFFICIAL COMMENTARY: An advertisement for an offer of credit must be truthful and state all facts accurately. This rule is not intended to limit, reduce, modify or effect the FCRA, but to identify unfair or deceptive acts or practices under the Oregon Unlawful Trade Practices Act. FCRA permits a financial organization to obtain a consumer's confidential credit information from a credit reporting agency for the purpose of making a firm offer of credit. The offer may be qualified by the consumer's present credit status after the offer is made to a consumer and several other exemptions listed in FCRA (See 15 USC § 1681a). Some examples of violations of this rule include, but are not limited to, the following:

(a) A false offer which appears bona fide, but in fact is a subterfuge to get consumers into a dealership. This would be the case if financing was not actually offered or available by the stated lender listed in the advertisement or the dealership or advertising agent never intended to use the stated lender to finance any of the vehicle transactions during the advertised promotion. It is not only a clear violation of FCRA to obtain consumer information from a credit reporting company to get names for a mailing list without making a valid "firm offer of credit," but could also be a violation of this rule if it was a false offer of credit by a dealer or advertising agent;

(b) A false offer that states consumers are qualified for a loan of $30,000 when in fact the offeror knew the credit scores used to obtain the names of consumers would only qualify for loans of a lesser amount. When a valid "firm offer of credit" is made to a varied group of consumers with different credit scores, the offeror should separate its mailers and only list the amount available to the consumer receiving the offer;

(c) An offer of credit is made, but a large list of conditions which allow the withdrawal of the offer are buried at the bottom or back of the advertisement in small or illegible print;

(d) An offer of credit is made claiming that consumers are approved or pre-approved for credit when the offeror did not obtain credit scores or the offeror has no basis upon which to claim a consumer will be approved for credit; and

(e) A false advertisement that uses language implying all consumers are able to receive credit when not all will be approved.

(hh) Alternative Offer Limitations — An advertisement offers the sale or lease of a motor vehicle with either a special finance rate or a manufacturer's rebate and fails to clearly and conspicuously disclose that the consumer is only entitled to receive one or the other and not both;

OFFICIAL COMMENTARY: It is common for a manufacturer to offer a special low finance rate or a rebate on a vehicle at the same time; however, the consumer must make a choice of one or the other. Advertisements must clearly and conspicuously state, when such a situation exists, that the consumer may only receive one or the other.

(ii) Misleading Use of Illustrations — An advertisement uses inaccurate photographs, descriptions or illustrations when describing specific automobiles. However, an advertiser may use stock illustrations or photos which are substantially similar when an exact match is not available;

OFFICIAL COMMENTARY: Examples of improper advertisements include advertising a fully-loaded motor vehicle when the advertisement actually refers to a minimally-equipped motor vehicle in the text and a photograph of a four door pickup truck when the advertisement refers to an extended cab truck. Use of a deceptive illustration is not legitimized by stating in the advertisement "photo for illustration purposes only" or similar language.

(jj) False Advertising — The advertisement is a false advertisement;

(kk) Misleading Initial Term Offers — The advertisement offers adjustable terms of payment with no payments or low payments in the beginning of a loan or lease, which then increase after a term of months unless:

(A) The offer is by a manufacturer or financial organization as part of a specific loan or lease offer and no rebates, incentives or other funds that the consumer is entitled to receive are used to fund the reduction; or

(B) The offer is made by any person using rebates, incentives or other funds that the consumer is entitled to receive to fund the reduction and the advertisement clearly and conspicuously discloses that the offer is available only by using rebates, incentives or other funds that the consumer is entitled to receive and the use of the rebates, incentives or other funds as a down payment may be more financially beneficial to the consumer over the term of the loan or lease.

OFFICIAL COMMENTARY: It is deceptive and misleading for an advertisement to make it appear that a consumer is getting special low payments or no payments for the beginning term of a loan or lease without disclosing to the consumer how that reduction is accomplished, when in fact the person simply applied a manufacturer's rebate or incentive, which the consumer is entitled to receive, to achieve the lower payments. The consumer is actually making or reducing the payments for the initial period with his/her own funds, which could have been used to reduce the balance owed, thereby reducing the total cost of the loan to the consumer over its term, or simply taken by the consumer as cash. If the rebate was used to reduce the principal balance, the total amount paid for the vehicle over the course of the loan could be thousands of dollars less.

(LL) Broker Fiduciary Obligation — Any person advertises as, holds themselves out as, or engages in the conduct of a broker and fails to act in a fiduciary capacity for the consumer;

OFFICIAL COMMENTARY: Some consumers do not want to personally be involved in negotiating and arranging the purchase or lease of their own of motor vehicle and employ the services of a motor vehicle broker to perform this function for them. In other instances, a dealer, who does not have a particular vehicle sought by a consumer, becomes a broker by negotiating the purchase or lease of a vehicle for a consumer from another dealer. Oregon law allows a fee to the broker for its services and requires that a broker act only as an agent for the consumer; ORS 822.047. The Oregon Unlawful Trade Practices Act makes it unlawful for a person to make false or misleading representations of fact concerning: the offering price of, or the consumer's cost for the person's services, 646.608(1)(s); the nature of the transaction, 646.608(1)(k); or the status of their relationship, ORS 646.608(1)(e). A dealer or other person cannot act as or cause a consumer to believe it is a broker, directly or by failing to clarify the relationship, and then act in its own self interest. (See also Official Commentary, OAR 137-020-0020, "Broker.")

(mm) Use of Abbreviations — An advertisement uses any abbreviation which is deceptive, misleading or not commonly understood by the general public or approved by federal law or state law;

OFFICIAL COMMENTARY: Examples of abbreviations commonly understood: AC, AM/FM, AUTO, AIR, 2DR, CYL, MSRP, DOC, DOC. PREP. FEE, or TITLE/REG. PROCESS FEE; abbreviations not commonly understood: WAC, OAC, PEG.

(nn) Misleading Business Names - Any words are used in a company name or advertisement which would mislead the public either directly or by implication regarding the nature or affiliation of a dealer or broker's business. Use of the term "wholesale" or "wholesaler" shall not be used in a company name affiliated with motor vehicle sales or leases after the effective date of this rule unless the person actually owns and operates a motor vehicle business that only sells vehicles wholesale. Any Oregon dealer or broker that used the term "wholesale" or "wholesaler" in its business name prior to the effective date of this rule may continue to use that word, except it must clearly and conspicuously state in any advertisement or display of its name at its business location words that convey to the public that it is a retail, not wholesale, motor vehicle business. Use of the term "liquidator" shall not be used in a company name to sell or advertise motor vehicles, unless the company is solely in the business of liquidating assets of persons going out of business and in fact the sale is a going out of business sale;

OFFICIAL COMMENTARY: This rule ensures that words are not incorporated into a business name that would tend to mislead a consumer as to the affiliation or nature of a business, the source of its goods or the type of business being conducted. Examples, other than wholesale, include: "factory" or "manufacturer," which should not be used in a company name, unless the advertiser actually owns and operates or directly and absolutely controls the manufacturing facility that produces the advertised products. Incorporating in the dealer's name any term or designation which has a tendency to mislead others as to the true nature of the business, such as the use of "wholesale," when a dealer's business is substantially retail, or "discount" when the price and policy of a dealer does not provide substantial discounts.

(oo) Negative Equity Trade-in Disclosure — The advertisement offers to "pay off" any motor vehicle taken in trade, or words of similar import, unless the advertiser will actually pay off the outstanding debt, without including the cost as negative equity as part of the new transaction. If the advertisement makes any statements regarding accepting any vehicle in trade for the purchase or lease of another vehicle, the following disclaimer must be used:

"NOTICE: Trading in a vehicle will not eliminate your debt. Negative equity will be added to any purchase or lease."

OFFICIAL COMMENTARY: If a consumer owes $2,000 on his/her car, but its actual cash trade-in value is only $1,500, that person has $500 of negative equity that will be added to the purchase price or capitalized cost of a lease agreement. An advertisement that offers to "pay off" the balance on a trade-in can easily mislead a consumer to believe that the dealer is going to "pay off" the negative equity as well.

(3) Lease Advertisements: It is unfair or deceptive in trade or commerce for a person to advertise the lease of any motor vehicle unless the following information is clearly and conspicuously disclosed:

(a) Except for the name and model of the vehicle advertised, the following information shall be displayed most prominently and in the largest type in the advertisement for the lease:

(A) The monthly lease payment and the amount due at inception by the consumer (not including any rebate used to reduce the capitalized cost) in the same size font; and

(B) The term of the lease and that the offer is for a "lease," displayed, with the amounts listed in paragraph (3)(a)(A) above, in a font no less than half the size of those amounts or the minimum size described to be clear and conspicuous based on the media, as outlined in OAR 137-020-0020(j), whichever is larger.

(b) The MSRP and the capitalized cost if different than the MSRP;

(c) The capitalized cost reduction (either by cash down payment or trade equity), acquisition fee, initial payment, security deposit, Dealer Title and Registration Document Preparation Service Fee, any rebates which reduce the capitalized cost and any other additional costs due at the time of delivery, and the total of those amounts (also known as "amount due at inception");

(d) The total lease charge, which includes:

(A) The total of the monthly payments;

(B) Any lease acquisition fees;

(C) The total of the amounts listed in (3)(c); and

(D) Any required lease disposition or termination fee.

(e) The residual value of the vehicle at the end of the lease term;

(f) Any lease return fee which a consumer must pay if the consumer chooses not to purchase the vehicle at the end of the lease; and

(g) If the advertised monthly lease payment requires the consumer to pay a cash amount or have a trade equity at the inception of the lease of more than 10% (ten percent) of the MSRP, the monthly payment without the deduction of the cash or trade equity and it shall be included in the information which is disclosed under paragraph (3)(a)(A) above.

OFFICIAL COMMENTARY: This rule gives the consumer the basic information (s)he needs to accurately compare the benefits of an offered lease, or to evaluate the benefits between a lease and sale of the same vehicle. It also addresses misleading monthly payment advertisements, which have been calculated using higher than normal consumer down payments or required equity on trade-ins in order to make the monthly payments appear lower.

(4) Used Vehicle Rule: It is unfair or deceptive in trade or commerce to advertise or otherwise represent, sell or lease a vehicle as new if:

(a) The vehicle has been previously spot delivered to a buyer or lessee;

(b) The vehicle has been previously titled or registered;

(c) The vehicle was previously used by any person for its discretionary use; or

(d) The vehicle is a used vehicle.

OFFICIAL COMMENTARY: This section makes it clear that a used vehicle may not be advertised as new. It does not prohibit a dealer or broker from titling a vehicle as a new vehicle that has been previously spot delivered, but not previously titled or registered; or providing new vehicle financing or warranty coverage for a used vehicle, such as a dealer demo, if the vehicle is otherwise still eligible for new vehicle financing or warranty coverage. The consumer must be informed, however, that (s)he is buying or leasing a used vehicle. Also, if a vehicle was erroneously titled or registered by an honest clerical error, the vehicle is still considered a new vehicle.

(5) The Advertised Price Must be the Sales Price: It is unfair or deceptive in trade or commerce for a dealer to sell a vehicle to a consumer for more than an advertised price or fail to disclose the sale price of a vehicle as advertised in any media or advertisement.

OFFICIAL COMMENTARY: In addition to this rule, OAR 137-020-0020(3)(a) requires the use of an extension sticker on any vehicle offered for sale or lease in an advertisement stating the offering price of the motor vehicle listed in the advertisement. A dealer must post any advertised sale price on the window or use a "hang tag" stating the advertised price.

Stat. Auth.: ORS 646.608(4)
Stats. Implemented: ORS 646.608(1)(u)
Hist.: JD 1-1987, f. 2-5-87, ef. 2-15-87; JD 3-1996, f. 10-18-96, cert. ef. 10-23-96; DOJ 17-2007, f. 12-20-07, cert. ef. 1-2-08

137-020-0100
Plain Language

(1) Definitions: For purposes of this rule:

(a) "Department" is defined as Oregon Department of Justice;

(b) "Consumer Contract" is defined in ORS 180.540(3) and does not include contracts which state agencies other than the Department may review under 180.540(2);

(c) "Reasonable Fees" includes the prevailing billing rate which the Department has established in OAR 137-008-0010.

(2) Application: Any seller or extender of credit may submit a consumer contract to the Department by:

(a) Completing an application for review. The application may be obtained by calling or writing the Financial Fraud Section, 100 Justice Building, Salem, OR 97310, (503) 378-4732;

(b) Including a $250 fee for each contract to be reviewed, and such additional "reasonable fees" as the Department determines is necessary to review the contract;

(c) Submitting three copies of the contract to be reviewed;

(d) Underlining in red any words, phrases or provisions which are specifically required, recommended or endorsed by a state or federal statute, rule or regulation.

(3) Review: After a contract is submitted the Department will:

(a) Return the contract and the fee if the Department determines that the contract submitted for review is not a consumer contract; or

(b) Certify the consumer contract meets Oregon Plain Language guidelines if it meets the standards set forth in ORS 180.540, et seq.;

(c) Inform the person submitting the contract that the contract does not comply with Oregon's Plain Language Standard. The Department shall provide a brief explanation of its determination. The explanation need not include every reason for non-compliance and corrections of each stated deficiency will not assure compliance;

(d) Return any fees charged over and above the initial $250 filing fee to the extent the fee exceeded the cost of review.

(4) Certification: Certification of a consumer contract under this rule is not an approval of the contract's legality or legal effect. The fact that a consumer contract has been certified or not certified shall not be admissible in any action to interpret or enforce a contract or any term of a contract.

(5) No person may use a contract which represents it meets Oregon's Plain Language guidelines unless the person has received certification of the contract pursuant to this rule.

(6) Any oral or written reference to the Department's certification must be accompanied by the following statement:

The Department of Justice Certification of a contract under the Plain Language Contract Act is not an approval of the contract's legality or legal effect.

Stat. Auth.: ORS 180.540, 183.310 - 183.550 & 646
Stats. Implemented: ORS 180.540, 180.545 & 180.555
Hist.: JD 5-1985, f. 12-20-85, ef. 1-1-86; JD 13-1992, f. & cert. ef. 6-5-92

Gasoline Advertising

137-020-0150
Gasoline Price Advertising

(1) Definitions: For the purposes of OAR 137-020-0150 to 137-020-0160 the following definitions apply:

(a) "Clear and conspicuous" means in a form that is readily visible to and easily readable by a customer or potential customer who would be materially affected by the information and means in a location that a person who would be materially affected by the information ought to notice the information displayed.

(b) "Condition" means any payment method (e.g., credit), service level (e.g., full service or mini service), or any other modifying circumstance affecting the price per unit of measurement of motor vehicle fuel from the lowest cash price;

(c) "Diesel" means a refined middle distillate suitable for use as a fuel in a compression-ignition (diesel) internal combustion engine;

(d) "Display" means to post information on a street sign or price sign;

(e) "Full service" includes services such as washing windshields, windows and headlights, checking fluid levels, checking or adjusting tire pressure and inspecting belts and hoses but does not include a car wash;

(f) "Gasoline" means any fuel sold for use in spark ignition engines whether leaded or unleaded;

(g) "Grade" means the automotive fuel rating as defined in OAR 603-027-0410;

(h) "Lowest cash price" means the offering price available to all customers that pay in cash;

(i) "Mini service" means providing only the dispensing of motor vehicle fuel into a customer's vehicle;

(j) "Motor vehicle fuel" means gasoline, diesel or other fuel used for the generation of power in an internal combustion engine, except aviation jet fuels;

(k) "Other fuel" means gasoline-ethanol blends with greater than 10% by volume ethanol, 100% other renewable diesel (100% Biomass-Based Diesel), renewable diesel blends, B100 Biodiesel, Biodiesel Blends, E85 Fuel Ethanol, M85 Fuel Methanol, E15, or any other liquid product used for the generation of power in an internal combustion engine that is sold to be used in a motor vehicle, except for gasoline and diesel;

(l) "Price sign" means any sign, billboard, digital signage or other medium that provides the price charged for motor vehicle fuel, is visible from a dispensing device and is not a street sign;

(m) "ODOT diesel" means undyed diesel sold for use in motor vehicles, which may be purchased without the tax provided the purchaser has valid credentials issued by ODOT under ORS 825 or 319. ODOT diesel was formerly known as PUC diesel;

(n) "Retailer" means any person who operates a service station, business or other place for the purpose of retailing and delivering gasoline, diesel or other fuel into the tanks of motor vehicles;

(o) "Street sign" means any sign, billboard, digital signage or other medium that provides the price charged for motor vehicle fuel and is located near and is visible from a street or highway, such as a freeway pole sign or a monument sign; and

(p) "Unit of measurement" means a United States gallon or liter as defined in the National Institute of Standards and Technology (NIST) Handbook 44 entitled "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices" as adopted in OAR 603-027-0635.

(2) Advertising: A retailer is not required to display prices charged for motor vehicle fuel.

(3) Displayed Prices: A retailer may display a price for motor vehicle fuel. If a retailer displays a price for motor vehicle fuel:

(a) The retailer must clearly and conspicuously display on each street sign the lowest cash prices charged for the sale of the lowest grade of each type of motor vehicle fuel sold or offered for sale to all customers or potential customers;

(b) Notwithstanding subparagraph (a) above, if a retailer only sells or offers for sale ODOT diesel and no other motor vehicle fuel (including other diesel), the retailer may display only the ODOT diesel price on the street sign and does not need to post a price sign;

(c) The retailer must clearly and conspicuously display on each price sign all prices charged for the sale of all grades of motor vehicle fuel sold or offered for sale;

(d) If the lowest cash prices are available only under some conditions:

(A) The retailer must clearly and conspicuously display all conditions on each street sign, price sign and dispensing device (e.g., cash only, mini serve);

(B) The retailer must ensure the following for each distinct street sign:

(i) All words or symbols of condition are in equal size and must be equally visible to a customer or potential customer;

(ii) All words or symbols of condition are in no less than one-third the size as the words or symbols setting forth the cash price; and

(iii) All words or symbols setting forth the prices applicable to the condition are in equal size and must be equally visible to a customer or potential customer as the words or symbols setting forth the cash price.

(C) The retailer must ensure the following for each distinct price sign:

(i) All words or symbols of condition are in equal size and must be equally visible to a customer or potential customer;

(ii) All words or symbols of condition are in equal size as the words or symbols setting forth the cash price; and

(iii) All words or symbols setting forth the prices applicable to the condition are in equal size and must be equally visible to a customer or potential customer as the words or symbols setting forth the cash price.

(D) The retailer must clearly identify the area where each price is available, if the lowest cash price is available only in a certain area of the service station or business. The identification may be placed on the canopy above the island, if it is visible from each side of the island, or at the entry points of the island. The identification must be clear and conspicuous from a driver's position;

(E) For full service, the retailer must state what specific services are included in its full service at the entry points of the island where full service is available; and

(F) The retailer may only charge a price greater than the lowest cash price if the retailer provides the condition or the condition is offered in a designated location and the customer affirmatively rejects the condition (e.g., the retailer either provided full service or the retailer offered to perform all services included in that retailer's full service in a location designated as full service and the customer rejected the services offered).

(e) The retailer may offer a discount from the lowest cash price for customers that enroll in a loyalty program, membership program or other similar program where a customer must affirmatively enroll in the program. If the discounted program is not available to all members of the general public, the retailer does not need to display the discounted program price under subsection (3)(c).

(f) The retailer must arrange all prices in a meaningful and consistent order;

(g) The retailer must clearly and conspicuously identify each grade of motor vehicle fuel that corresponds with each price;

(h) The retailer may not display prices for products other than motor vehicle fuel in a manner that creates a likelihood of confusion or misunderstanding with the price of motor vehicle fuel;

(i) The retailer may not require as a condition of buying motor vehicle fuel at the displayed price that a customer purchase a specific quantity (e.g., 8 gallons or a full tank) or dollar amount of motor vehicle fuel; and

(j) The retailer may display on the street sign all of the information required to be displayed on the price sign under subsection (5)(d)(B).

(4) Dispensing Devices: In regards to its motor vehicle fuel dispensing devices, a retailer must:

(a) Ensure that the price per unit of measurement and the unit of measurement for each grade of motor vehicle fuel are the same on each street sign, price sign and dispensing device used for delivering that kind of fuel into the tanks of motor vehicles;

(b) Ensure that computing-type dispensing devices automatically compute the full sales price for all motor vehicle fuel prices sold or offered for sale through the dispensing devices;

(c) Ensure that dispensing devices are set to display and compute all unit prices for each grades of motor vehicle fuel sold. A retailer may not use a dispensing device to dispense motor vehicle fuel at one or more unit prices the dispensing device cannot compute;

(d) Calibrate all dispensing devices in the same unit of measurement;

(e) Charge the customer only the total amount registered on the dispensing device at the selected unit price;

(f) If the lowest cash prices are available only under some conditions, ensure the dispensing device clearly and conspicuously states all conditions.

(A) The words or symbols of condition may be posted on the upper 50 percent of the dispensing device panel or on top of the dispensing device ("pump topper"); and

(B) The retailer must ensure that the letters stating the conditions are in block lettering type at least one inch in height and one-half inch stroke (width of type) in distinct contrasting color to the background.

(5) Price signs:

(a) In regards to its price signs, a retailer must:

(A) Ensure that at least one price sign is visible at or near each dispensing device; and

(B) Ensure that the information displayed on each price sign is clear and conspicuous from a driver's position.

(b) A retailer may place a price sign on top of the dispensing device ("pump topper"), on the island or on the side of the retailer's building;

(c) A retailer may post price signs in multiple locations in order to comply with subsection (5)(a) (e.g., a retailer may use pump toppers for one island and a sign on the side of the building for another island). Each price sign must comply with subsections (5)(d) and (e);

(d) If the price sign is on top of the dispensing device, the retailer must ensure:

(A) That the letters and numerals on the sign are in block lettering type at least one inch in height and one-half inch stroke (width of type) in distinct contrasting color to the background; and

(B) That the following information is displayed on the price sign:

(i) All words or symbols of condition; and

(ii) Immediately adjacent to the words or symbols of condition, either:

(I) The whole unit price of any condition for each grade of motor vehicle fuel; or

(II) The additional price per unit of measurement for any condition in whole cents (e.g., "credit price + 3¢/gal" or "full service additional 10¢/gal") for each grade of motor vehicle fuel. If the additional price per unit of measurement for a specific condition (e.g., credit) for each grade of motor vehicle fuel is the same, then only one price reference is required under this subparagraph.

(e) If the price sign is on the island or on the side of the retailer's building, the retailer must ensure:

(A) That the letters and numerals on the sign are in block lettering type at least three inches in height and one and one-half inch stroke (width of type) in distinct contrasting color to the background; and

(B) That the following information is displayed on the price sign:

(i) All words or symbols of condition; and

(ii) Immediately adjacent to the words or symbols of condition, the whole unit price of any condition for each grade of motor vehicle fuel.

(6) Effective date: If a retailer that displays a price for motor vehicle fuel complies with this subsection on January 1, 2011, the retailer does not need to comply with subsection (5) unless and until the retailer purchases a new street sign or modifies its street sign;

(a) The retailer clearly and conspicuously displays on each street sign the lowest cash prices for the sale of all grades of motor vehicle fuel sold or offered for sale;

(b) Notwithstanding subparagraph (a) above, if a retailer only sells or offers for sale ODOT diesel and no other motor vehicle fuel (including other diesel), the retailer may display only the ODOT diesel price on the street sign;

(c) If the lowest cash prices are available only under some conditions:

(A) The retailer clearly and conspicuously displays all conditions on the street sign and dispensing device;

(B) The retailer ensures the following for the street sign:

(i) All words or symbols of condition are in equal size and are equally visible to a customer or potential customer;

(ii) All words or symbols of condition are in no less than one-third the size as the words or symbols setting forth the cash price; and

(iii) All words or symbols setting forth the prices applicable to the condition are in equal size and are equally visible to a customer or potential customer as the words or symbols setting forth the cash price.

(C) Immediately adjacent to the words or symbols of condition, the retailer displays on the street sign either:

(i) The whole unit price of any condition for each grade of motor vehicle fuel; or

(ii) The additional price per unit of measurement for any condition in whole cents (e.g., "credit price + 3¢/gal" or "full service additional 10¢/gal") for each grade of motor vehicle fuel. If the additional price per unit of measurement for a specific condition (e.g., credit) for each grade of motor vehicle fuel is the same, then only one price reference is required under this subparagraph.

(D) The retailer clearly identifies the area where each price is available, if the lowest cash price is available only in a certain area of the service station or business. The identification may be placed on the canopy above the island, if it is visible from each side of the island, or at the entry points of the island. The identification must be clear and conspicuous from a driver's position;

(E) For full service, the retailer states what specific services are included in its full service at the entry points of the island where full service is available; and

(F) The retailer only charges a price greater than the lowest cash price if the retailer provides the condition or the condition is offered in a designated location and the customer affirmatively rejects the condition (e.g., the retailer either provided full service or the retailer offered to perform all services included in that retailer's full service in a location designated as full service and the customer rejected the services offered).

(d) The retailer may offer a discount from the lowest cash price for customers that enroll in a loyalty program, membership program or other similar program where a customer must affirmatively enroll in the program. If the retailer displays the discounted program price, it complies with subsection (6)(c);

(e) The retailer arranges all prices in a meaningful and consistent order;

(f) The retailer clearly and conspicuously identifies each grade of motor vehicle fuel that corresponds with each price;

(g) The retailer does not display prices for products other than motor vehicle fuel in a manner that creates a likelihood of confusion or misunderstanding with the price of motor vehicle fuel; and

(h) The retailer does not require as a condition of buying motor vehicle fuel at the displayed price that a customer purchase a specific quantity (e.g., 8 gallons or a full tank) or dollar amount of motor vehicle fuel.

Stat. Auth.: ORS 646
Stats. Implemented: ORS 646.608(1)(u) & 1985 c.751 (2)
Hist.: JD 7-1985, f. 12-31-85, ef. 1-1-86; DOJ 20-2010, f. 12-30-10, cert. ef. 1-1-11

137-020-0160
Sales Practices

(1) A retailer may not limit the price advertised for a particular grade of motor vehicle fuel to a customer purchasing or receiving goods or services in addition to the motor vehicle fuel except for full services. For purposes of this rule, a customer does not include customers who purchase ODOT diesel.

(2) The location at which any grade of motor vehicle fuel is dispensed or at which any condition is applicable will not be changed except for a bona fide reason and will not be changed within 60 days of another change except for an emergency or legal necessity.

(3) Violation of OAR 137-020-0150 and this rule is a violation of the Unlawful Trade Practices Act, ORS 646.608(1)(u).

Stat. Auth.: ORS 646
Stats. Implemented: ORS 646.608(1)(u) & 1985 c.751 (2)
Hist.: JD 7-1985, f. 12-31-85, ef. 1-1-86; DOJ 21-2010, f. 12-30-10, cert. ef. 1-1-11

Registration of Telemarketers

137-020-0200
Definitions

For purposes of OAR 137-020-0200 through 137-020-0203:

(1) "Telephonic Seller" applies to all persons required to register with the Oregon Department of Justice pursuant to ORS 646.551 through 646.565.

(2) "Doing Business in This State" means making telephonic solicitations of prospective purchasers from locations in this state or making telephonic solicitations of prospective purchasers who are located in this state.

(3) "Department" means Department of Justice.

(4) "Item" means any goods and services and includes coupon books which are to be used with businesses other than the seller's business.

(5) "Owner" means a person who owns or controls ten percent or more of the net income of a telephonic seller.

(6) "Person" includes an individual firm, association, corporation, partnership, joint venture, or any other business entity.

(7) "Principal" means an owner, an executive officer of a corporation, a general partner of a partnership, a sole proprietor of a sole proprietorship, a trustee of a trust, or any other individual with similar supervisory functions with respect to any person.

(8) "Purchaser" or "Prospective Purchaser" means a person who is solicited to become or does become obligated to a telephonic seller.

(9) "Salesperson" means any individual employed, appointed or authorized by a telephonic seller, whether referred to by the telephonic seller as an agent, representative, or independent contractor, who attempts to solicit or solicits a sale on behalf of the telephonic seller. The principals of a seller are themselves salespersons if they solicit sales on behalf of the telephonic seller.

(10) "Newspaper of General Circulation" is a newspaper published for the dissemination of local or telegraphic news and intelligence of a general character, and which has been established, printed and published at regular intervals in the state, county, or city where publication, notice by publication, or official advertising is to be given or made for at least one year preceding the date of the publication, notice or advertisement.

Stat. Auth.: ORS 646
Stats. Implemented: ORS 646.551
Hist.: JD 4-1989, f. & cert. ef. 10-3-89

137-020-0201
Registration

(1) Not less than ten days prior to doing business in this state, a telephonic seller shall register with the Department of Justice by filing the information required by OAR 137-020-0202 and a filing fee of $400. A seller shall be deemed to do business in this state if the seller solicits prospective purchasers from locations in this state or solicits prospective purchasers who are located in this state.

(2) The information required by OAR 137-020-0202 shall be submitted on a form provided by the Department of Justice and shall be verified by a declaration signed by each principal of the telephonic seller under penalty of perjury. The declaration shall specify the date and location of signing. Information submitted pursuant to 137-020-0202(12) or (13) shall be clearly identified and appended to the filing.

(3) Registration of a telephonic seller shall be valid one year from the effective date thereof and may be annually renewed by making the filing required by OAR 137-020-0202 and paying a filing fee of $400.

(4) Whenever, prior to expiration of a seller's annual registration, there is a material change in the information required by OAR 137-020-0202, the seller shall, within ten days, file an addendum

updating the information with the Department of Justice. However, changes in salespersons soliciting on behalf of a seller shall be updated by addenda filed, if necessary, in quarterly intervals computed from the effective date of registration. The addendum shall provide the required information for all salespersons who are currently soliciting or have solicited on behalf of the seller at any time during the period between the filing of the registration, or the last addendum, and the current addendum, and shall include salespersons no longer soliciting for the seller as of the date of the filing of the current addendum.

(5) Upon receipt of a filing and filing fee pursuant to section (1) or (3) of this rule, the department shall send the telephonic seller a written confirmation of receipt of the filing. If the seller has more than one business location, the written confirmation shall be sent to the principal business location identified in the seller's filing in sufficient number so that the seller has one for each business location. The seller shall post the confirmation of receipt of filing, within ten days of receipt thereof, in a conspicuous place at each of the seller's business locations and shall have available for inspection by any governmental agency at each location a copy of the entire registration statement which has been filed with the department. Until confirmation of receipt of filing is received and posted, the seller shall post in a conspicuous place at each of the seller's business locations within this state a copy of the first page of the registration form sent to the department. The seller shall also post in close proximity to either the confirmation of receipt of filing, or until the confirmation is received, the first page of the submitted registration form, the name of the individual or individuals in charge of each location from which the seller does business in this state, as defined in OAR 137-020-0200(2).

Stat. Auth.: ORS 646
Stats. Implemented: ORS 646.553
Hist.: JD 4-1989, f. & cert. ef. 10-3-89

137-020-0202
Filing Information

Each filing pursuant to OAR 137-020-0201(1) through (5) shall contain the following information:

(1) The name or names of the seller, including the name under which the seller is doing or intends to do business, if different from the seller's, and the name of any parent or affiliated organization that will engage in business transactions with purchasers relating to sales solicited by the seller or that accepts responsibility for statements made by, or acts of, the seller relating to sales solicited by the seller.

(2) The seller's business form and place of organization and, if the seller is a corporation, a copy of its articles of incorporation and bylaws and amendments thereto: or, if a partnership, a copy of the partnership agreement; or if operating under a fictitious business name, the location where the fictitious name has been registered. All the same information shall be included for any parent or affiliated organization disclosed pursuant to section (1) of this rule.

(3) The complete street address or addresses of all locations, designating the principal location from which the telephonic seller will be conducting business. If the principal location of the seller is not in this state, then the seller shall also designate which of its locations within this state is its main location in the state.

(4) A listing of all telephone numbers to be used by the seller and the address where each telephone using each of these telephone numbers is located.

(5) The name of, and the office held by, the seller's officers, directors, trustees, general and limited partners, sole proprietor, and owners, as the case may be, and the names of those persons who have management responsibilities in connection with the seller's business activities.

(6) The complete address of the principal residence, the date of birth and the driver's license number and state of issuance of each of the persons whose names are disclosed pursuant to section (5) of this rule.

(7) The name and principal residence address of each person the telephonic seller leaves in charge at each location from which the seller does business in this state, as defined in OAR 137-020-0200(2), and the business location which each of these persons is or will be in charge of.

(8) A statement, meeting the requirements of this rule, as to both the seller, whether a corporation, partnership, firm, association, joint venture, or any other type of business entity (and whether identified pursuant to section (5) or (7) of this rule or not), and as to any person identified pursuant to sections (5) and (7) of this rule, who:

(a) Has been convicted of a felony or misdemeanor involving fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property. For purposes of this paragraph, a plea of nolo contendere is a conviction;

(b) Has had entered against him or her a final judgment or order in a civil or administrative action, including a stipulated judgment or order, if the complaint or petition in the civil or administrative action alleged acts constituting a violation of the Unlawful Trade Practices Act, fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property, the use of untrue or misleading representations in an attempt to sell or dispose of real or personal property, or the use of unfair, unlawful or deceptive business practices;

(c) Is subject to any currently effective injunction or restrictive court order relating to business activity as the result of an action brought by a federal, state, or local public agency or unit thereof, including, but not limited to, an action affecting any vocational license;

(d) Has at any time during the previous seven tax years filed for bankruptcy, been adjudged a bankrupt, been reorganized due to insolvency, or been a principal, director, officer, trustee, general or limited partner, or had management responsibilities of any other corporation, partnership, joint venture, or business entity that has so filed or was so adjudicated or reorganized during or within one year after the period that the person held that position. For purposes of subsections (a), (b) and (c) of this section, the statement required by this subdivision shall identify the seller or person, the court or administrative agency rendering the judgment or order, the docket number of the matter, the date of the judgment or order, and the name of the governmental agency, if any, that brought the action resulting in the judgment or order. For purposes of this subsection, the statement required by this subdivision shall include the name and location of the seller or person filing in bankruptcy, adjudged a bankrupt, or reorganized due to insolvency, and shall include the date thereof, the court which exercised jurisdiction, and the docket number of the matter.

(9) The name of the financial institution and account number for each of the seller's demand accounts; checking accounts; and merchant accounts used for the deposit of any credit card charge slips, including but not limited to credit cards issued by VISA, MasterCard, Discover Card, American Express, Diners Club or Carte Blanche.

(10) Every pseudonym or alias ever used or now being used by a salesperson, manager or principal of the telephonic seller's business.

(11) A list of the names and principal residence addresses of salespersons who solicit on behalf of the telephonic seller and the names the salespersons use while so soliciting.

(12) A description of the items the seller is offering for sale and a copy of all sales scripts the telephonic seller requires salespersons to use when soliciting prospective purchasers, or if no sales script is required to be used, a statement to that effect.

(13) A copy of all sales information and literature (including but not limited to scripts, outlines, instructions, and information regarding how to conduct telephonic sales, sample introductions, sample closings, product information, and contest or premium-award information) provided by the telephonic seller to salespersons or of which the seller informs salespersons, and a copy of all written materials the seller sends to any prospective or actual purchaser.

(14) If the telephonic seller represents or implies, or directs salespersons to represent or imply to purchasers that the purchaser will receive certain specific items (including a certificate of any type which the purchaser must redeem to obtain the item described in the certificate) or one or more items from among designated items, whether the items are denominated as gifts, premiums, bonuses, prizes, or otherwise, the filing shall include the following:

(a) A list of the items offered;

(b) The value or worth of each item described to prospective purchasers and the basis for the valuation;

(c) The price paid by the telephonic seller to its supplier for each of these items and the name, address, and telephone number of each item's supplier;

(d) If the purchaser is to receive fewer than all of the items described by the seller, the filing shall include the following:

(A) The manner in which the telephonic seller decides which item or items a particular prospective purchaser is to receive;

(B) The odds a single prospective purchaser has of receiving each described item;

(C) The name and address of each recipient who has, during the preceding 12 months (or if the seller has not been in business that long, during the period the telephonic seller has been in business) received the item having the greatest value and the item with the smallest odds of being received.

(e) All rules, regulations, terms, and conditions a prospective purchaser must meet in order to receive the item.

(15) If the telephonic seller is offering to sell any metal, stone, or mineral, the filing shall include the following:

(a) The name, address, and telephone number of each of the seller's suppliers and a description of each metal, stone, or mineral provided by the supplier;

(b) If possession of any metal, stone, or mineral is to be retained by the seller or will not be transferred to the purchaser until the purchaser has paid in full, the filing shall include the following:

(A) The address of each location where the metal, stone, or material will be kept;

(B) If not kept on premises owned by the seller or at an address or addresses set forth in compliance with section (3) of this rule, the name of the owner of the business at which the metal, stone, or mineral will be kept;

(C) A copy of any contract or other document which evidences the seller's right to store the metal, stone, or mineral at the address or addresses designated pursuant to paragraph (A) of this subsection.

(c) If the seller is not selling the metal, stone, or mineral from its own inventory, but instead purchases the metal, stone, or mineral to fill orders taken from purchasers, the filing shall include copies of all contracts or other documents evidencing the seller's ability to call upon suppliers to fill the seller's orders;

(d) If the seller represents to purchasers that the seller has insurance or a surety bond of any type relating to a purchaser's purchase of any metal, stone, or mineral from the seller, the filing shall include a complete copy of all these insurance policies and bonds;

(e) If the seller makes any representations as to the earning or profit potential of purchases of any metal, stone, or mineral, the filing shall include data to substantiate the claims made. If the representation relates to previous sales made by the seller or a related entity, substantiating data shall be based on the experiences of at least 50 percent of the persons who have purchased the particular metal, stone, or mineral from the seller or related entity during the preceding six months (or if the seller or related entity has not been in business that long, during the period the seller or related entity has been in business) and shall include the raw data upon which the representation is based, including, but not limited to, all of the following:

(A) The length of time the seller or related entity has been selling the particular metal, stone, or mineral being offered;

(B) The number of purchasers thereof from the seller or related entity known to the seller or related entity to have made at least the same earnings or profit as those represented;

(C) The percentage that the number disclosed pursuant to paragraph (B) of this subsection represents of the total number of purchasers from the seller or related entity of the particular metal, stone, or mineral.

(16) If the telephonic seller is offering to sell an interest in oil, gas, or mineral fields, wells, or exploration sites, the filing shall include disclosure of the following:

(a) The seller's ownership interest, if any, in each field, well, or site being offered for sale;

(b) The total number of interests to be sold in each field, well, or site being offered for sale;

(c) If, in selling an interest in any particular field, well, or site, reference is made to an investigation of these fields, wells, or sites by the seller or anyone else, the filing shall include the following:

(A) The name, business address, telephone number, and professional credentials of the person or persons who made the investigation;

(B) A copy of the report and other documents relating to the investigation prepared by the person or persons.

(d) If the seller makes any representation as to the earning or profit potential of purchases of any interest in these fields, wells, or sites, the filing shall include data to substantiate the claims made. If the representation relates to previous sales made by the seller or a related entity, the substantiating data shall be based on the experiences of at least 50 percent of the purchasers of the particular interests from the seller or the related entity during the preceding six months (or if the seller has not been in business that long, during the period the seller or related entity has been in business) and shall include the raw data upon which the representation is based, including, but not limited to, all of the following:

(A) The length of time the seller or related entity has been selling the particular interests in the fields, wells, or sites being offered;

(B) The number of purchasers of the particular interests from the seller or related entity known to the seller to have made at least the same earnings as those represented;

(C) The percentage which the number disclosed pursuant to paragraph (B) of this subsection represents of the total number of purchasers of the particular interests from the seller or related entity.

Stat. Auth.: ORS 646
Stats. Implemented: ORS 646.553
Hist.: JD 4-1989, f. & cert. ef. 10-3-89

137-020-0203
Information to Be Provided Each Prospective Purchaser

In addition to complying with the requirements of OAR 137-020-0202, as applicable, each telephonic seller, shall, at the time the solicitation is made and prior to consummation of any sales transaction, provide all of the following information to each prospective purchaser:

(1) If the telephonic seller represents or implies that a prospective purchaser will receive, without charge therefor, certain specific items or one item from among designated items, whether the items are denominated as gifts, premiums, bonuses, prizes, or otherwise, the seller shall provide the following:

(a) The information required to be filed by OAR 137-020-0202(14)(d)(A) and (B), and (e);

(b) The complete street address of the location from which the salesperson is calling the prospective purchaser and, if different, the complete street address of the telephonic seller's principal location;

(c) The total number of individuals who have actually received from the telephonic seller, during the preceding months (or if the seller has not been in business that long, during the period the telephonic seller has been in business), the item having the greatest value and the item with the smallest odds of being received.

(2) If the telephonic seller is offering to sell any metal, stone, or mineral, the seller shall provide the following information:

(a) The complete street address of the location from which the salesperson is calling the prospective purchaser and, if different, the complete street address of the telephonic seller's principal location;

(b) The information specified in OAR 137-020-0202(15)(b)(A) and (B) and (e).

(3) If the telephonic seller is offering to sell an interest in oil, gas, or mineral fields, wells, or exploration sites, the seller shall provide the following information:

(a) The complete street address of the location from which the salesperson is calling the prospective purchaser and, if different, the complete street address of the telephonic seller's principal location;

(b) The information required to be filed by OAR 137-020-0202(16)(a), (b) and (d) and (c)(A).

(4) If the telephonic seller represents that office equipment or supplies being offered are offered at prices which are below those usually charged for these items, the seller shall provide the following information:

(a) The complete street address of the location from which the salesperson is calling the prospective purchaser and, if different, the complete street address of the telephonic seller's principal location;

(b) The name of the manufacturer of each of the items the telephonic seller has represented for sale and in which the prospective purchaser expresses interest.

Stat. Auth.: ORS 646
Stats. Implemented: ORS 646.557
Hist.: JD 4-1989, f. & cert. ef. 10-3-89

137-020-0205
Refusal to Issue or Renew Registration; Revocation or Suspension of Registration

(1) The Department may refuse to issue or renew a registration to a telephonic seller or may revoke or suspend the registration of a telephonic seller upon a finding of any of the causes listed in ORS 646.553(6). Opportunity for a hearing shall be afforded as provided in ORS 183.310 to 183.550.

(2) Except as otherwise specifically provided herein, the requirements of OAR 137-003-0001 to 137-003-0092 shall apply to all hearings held pursuant to this rule.

(3) The Department shall send a notice to the telephonic seller and their authorized representative by certified mail of the Department's intent to refuse to issue or renew a registration or to revoke or suspend a registration. The notice to the telephonic seller shall be sent to the principal business location of the telephonic seller, as shown on the filing information provided under ORS 137-020-0202.

(4) In addition to the notice requirements under OAR 137-003-0001, the notice provided under section (3) of this rule shall include a statement that an answer to the Department's assertions or charges will be required, and listing the consequences of failure to answer. A statement of the consequences of failure to answer may be satisfied by enclosing a copy of section (6) of this rule with the notice.

(5) A hearing request and answer shall be made in writing to the Department by the telephonic seller or their authorized representative. Except as otherwise provided by sections (7) and (8) of this rule, a hearing request and answer must be received within 60 calendar days from the date the notice to the applicant was mailed by the Department to be considered timely.

(6) An answer shall include the following:

(a) An admission or denial of each factual matter alleged in the Department's notice;

(b) A short and plain statement of each relevant affirmative defense the telephonic seller may have;

(c) A short and plain statement of each legal issue the telephonic seller may have;

(d) Except for good cause:

(A) Factual matters alleged in the notice and not denied in the answer shall be presumed admitted;

(B) Failure to raise a particular defense or legal issue in the answer shall be considered a waiver of such defense or legal issue;

(C) New matters alleged in the answer that were not alleged in the notice (affirmative defenses) shall be presumed to be denied by the Department; and

(D) Evidence shall not be taken on any issue not raised in the notice and answer.

(7) A telephonic seller or their authorized representative may submit a written request for an extension in which to file an answer to the Department's notice. To be considered timely, the extension request must be received within 21 calendar days from the date the notice to the applicant was mailed by the Department. The Department shall grant extensions only upon a showing of good cause.

(8) A telephonic seller or their authorized representative may submit written amendments to their answer. To be considered timely, the amendments must be received by the Department no less than 21 calendar days prior to the contested case hearing. The Department shall allow amendments to answers only upon a showing of good cause.

Stat. Auth.: ORS 646.553(7)
Stats. Implemented: ORS 646.553(7)
Hist.: DOJ 8-2000, f. & cert. ef. 8-14-00; DOJ 12-2000, f. 12-4-00, cert. ef. 12-5-00

137-020-0250
Loan Brokers and Misleading Activities

(1) Definitions: As used in this rule:

(a) The definitions of terms set forth in ORS 646.605 are applicable;

(b) "Advance Fee" means any consideration which is assessed or collected, prior to the closing of a loan, by a loan broker and includes, but is not limited to, payments to information providers as defined under ORS 759.700 et seq.;

(c) "Advertise" means any form of solicitation including but not limited to newspaper, radio and television advertisements;

(d) "Borrower" means a person obtaining or attempting to obtain a loan of money or a line of credit for personal use;

(e) "Loan Broker" means any person who:

(A) For or in expectation of consideration arranges or attempts to arrange or offers to find a loan of money or a line of credit;

(B) For or in expectation of consideration assists or advises a borrower in obtaining or attempting to obtain a loan of money, a line of credit, or related guarantee, enhancement, or collateral of any kind or nature; or

(C) Acts for or on behalf of a loan broker for the purpose of soliciting borrowers;

(D) "Loan broker" does not include:

(i) Any person making a direct loan to a consumer;

(ii) Any bank or savings and loan association, trust company, building and loan association, credit union, mutual bank and savings bank, consumer finance company, securities broker-dealer, real estate broker or salesperson, attorney, Federal Housing Administration or Veterans' Administration approved lender, mortgage broker or lender, or insurance company, provided that the person excepted is licensed by or approved by and subject to regulation or supervision of any agency of the United States or this state and is acting within the scope of the license or approval; and also excepting subsidiaries of licensed or chartered consumer finance companies, banks, credit unions, savings and loan associations;

(iii) Mortgage brokers exempt from licensing under ORS Chapter 59 or as defined in ORS 59.015(10);

(iv) Mortgage bankers as defined in ORS 59.015(9);

(v) A person making a retail installment sales;

(vi) Any person who has a contractual correspondent agreement with any qualified lender to deliver first or second mortgages secured by real estate; and

(vii) Any employee of the above exempted persons.

(f) "Principal" means any officer, director, partner, joint venturer, branch manager, or other person with similar managerial or supervisory responsibilities for a loan broker;

(g) "Qualified Lender" means any bank or savings and loan association, trust company, building and loan association, credit union, consumer finance company, retail installment sales company, Federal Housing Administration or Veterans' Administration approved lender or person who has available through a state or federally regulated financial institution $250,000 which the person has agreed to use to finance loans and who has executed a written contract with a loan broker according to this rule.

(2) It is unfair or deceptive in trade or commerce for a loan broker to charge an advance fee unless the loan broker:

(a) Prior to accepting any advance fees, provides to the prospective borrower a written contract which includes:

(A) The names of the loan broker and any parent organizations under which the parent organization is doing business;

(B) The length of time the loan broker has been in business;

(C) A full and detailed description of the actual services that the loan broker will perform for the prospective borrower;

(D) The number of contracts that the loan broker has entered into in the past 12 months;

(E) The number of loans that have been made to consumers through contracts with the loan broker in the past 12 months and the dollar amount of those loans;

(F) The name of the bank into which the borrower's advance fees will be deposited;

(G) Information concerning who the advance fees are paid to and for what service;

(H) The names of the qualified lenders that are providing loans to the loan broker's customers and the criteria that the qualified lenders are using to determine whether to make a loan to prospective borrowers referred to them by the broker; and

(I) A provision outlining the refund requirement set forth in subsection (3)(a) of this rule.

(b) Has a written contract from a qualified lender agreeing to accept or reject a loan within the time specified in this rule and agreeing to make a loan if an individual meets specified criteria set forth in the contract;

(c) Notifies the borrower within 14 days of receipt of the application whether the loan has been accepted or rejected and provides the loan within seven days of acceptance;

(d) Provides to the borrower, upon request, all correspondence and written materials with the qualified lender concerning the loan application;

(e) Submits the borrower's application within five days of receiving the application to a qualified lender with whom the loan broker has a written contract;

(f) Place any advance fees in an escrow account; and

(g) Complies with the provisions of section (3) of this rule.

(3) It is unfair and deceptive in trade or commerce for a loan broker to:

(a) Fail to refund within 48 hours of rejecting a loan the advance fees paid;

(b) Advertise or represents that all or most borrowers will qualify for a loan or that persons with bad credit histories or no credit histories will qualify for a loan;

(c) Fail to substantiate to the Oregon Department of Justice, within 14 days of a request, representations made regarding any offer to obtain a loan;

(d) Spend any advance fees until the loan has been granted; and

(e) Advertise loan brokering services without disclosing as a part of that advertisement:

(A) Any material restrictions regarding obtaining a loan;

(B) The qualified lenders who will provide the loans;

(C) The dollar amount of loans which the loan broker has obtained for borrowers;

(D) The cost of the service; and

(E) The maximum period of time the loan broker will take to obtain a written commitment from a qualified lender to loan money.

Stat. Auth.: ORS 183.310 - 183.550, 183.335(5) & 646.608(1)(u) & (4)
Stats. Implemented: ORS 646.608(1)(u)
Hist.: JD 1-1992(Temp), f. & cert. ef. 2-13-92; JD 9-1992, f. & cert. ef. 4-15-92

137-020-0300
Unordered Real Estate, Goods, or Services

(1) As used in OAR 137-020-0300:

(a) "Goods" includes real estate and services;

(b) "Mistake" means unintentionally providing or sending goods to consumers;

(c) "Person" includes individual, corporation, partnership, association or any other legal entity;

(d) "Real Estate, Goods or Services" has the same meaning as ORS 646.605(7);

(e) "Send" includes delivery, mail, provide, or caused to be delivered, mailed or provided;

(f) "Unordered Goods" means any real estate, goods or services which are sent without prior expressed request or consent from the person receiving the goods;

(g) "Unordered Goods" do not include:

(A) Goods sent or services performed by mistake;

(B) A gift given free of charge to a consumer;

(C) Additions to existing services or levels of services already provided to consumers for which there is no separate and specific charge for such additions;

(D) Restructuring, after notice pursuant to section (2) of this rule of existing goods or services or levels of services already provided, where the restructuring does not result in a substantial change in goods or services;

(E) Goods sent pursuant to an agreement that is in compliance with **16 CFR § 425**.

(2) A person satisfies the notice requirement of paragraph (1)(g)(D) of this rule when:

(a) The consumer receives one notice separate from the provider's regular billings, at least 30 but not more than 45 days, in advance of the effective date of the delivery of the new goods, clearly and conspicuously:

(A) Describing the specific goods to be delivered;

(B) Stating the price of the goods to be delivered;

(C) Informing the consumer that the goods will be delivered unless the consumer informs the provider that the goods are not wanted; and

(D) Informing the consumer of at least two methods, at least one of which is expense-free to the consumer, by which the consumer can inform the provider of the consumer's desire not to receive the goods.

(b) The first bill, containing a charge for the goods, clearly and conspicuously, and in direct proximity to an itemized listing of the new charge on the face of the bill, advises the consumer of the inclusion of the new charge on the bill for the new goods and of the consumer's right to cancel those goods within ten days of the receipt of the bill at no cost to the consumer for the period during which those goods were provided prior to effective cancellation.

(3) The notice required by section (2) of this rule shall not require the consumer to cancel the goods to avoid the charge prior to ten days after the consumer's receipt of the first bill containing the charges for goods.

(4) For purposes of this rule, cancellation by mail shall be effective upon the date of mailing the request for cancellation.

(5) It shall be unfair and deceptive in trade or commerce for any person to:

(a) Send a consumer unordered goods unless the person sending the goods proves the goods were sent by mistake, as a gift, or as a result of the consumer's prior expressed request or consent;

(b) Send any bill to a consumer for any unordered goods;

(c) Interrupt, delay, terminate, cancel, or deny delivery of or other provision of goods to a consumer because the consumer has not paid for or returned unordered goods;

(d) Require a consumer to consent to or authorize the receipt of unordered goods as a condition of doing business with the person.

Stat. Auth.: ORS 183.310 - 183.410, 646.608(1)(u) & 646.608(4)
Stats. Implemented: ORS 646.608(1)(u)
Hist.: JD 3-1991(Temp), f. & cert. ef. 5-31-91; JD 9-1991, f. & cert. ef. 11-26-91

Contest, Sweepstakes and Prize Notification Rules

137-020-0410
Definitions and Exemptions

(1) Purpose: The purpose of OAR 137-020-0410 to 137-020-0440 is to declare as unfair or deceptive in trade or commerce certain practices in promotions.

(2) Authority: OAR 137-020-0410 to 137-020-0440 are adopted pursuant to ORS Chapter 183 on authority granted to the Attorney General by 646.608(4) and 646.608(1)(u).

(3) Definitions: For purposes of OAR 137-020-0410 to 137-020-0440:

(a) The definitions set forth in ORS 646.605 are applicable.

(b) "Advertisement" or "solicitation" means any oral, written or graphic notice given in a manner designed to attract public attention and includes without limitation, public broadcasts, and notices published in the electronic press as well as telephone and mail solicitations used to encourage any type of action by the person solicited relating to a promotion.

(c) "Clear and conspicuous" means the message is conveyed in a manner that is reasonably apparent to the audience to whom it is directed. In order for a message to be considered clear and conspicuous, it shall, at a minimum:

(A) Not contradict or substantially alter any terms it purports to clarify, explain or otherwise relate to; and

(B) In the case of printed advertising or solicitations:

(i) Be in close proximity to the terms it purports to clarify, explain or otherwise relate to; and

(ii) Be of sufficient prominence in terms of placement, font or color contrast as compared with the remainder of the advertisement or solicitation so as to be reasonably apparent to the audience to whom it is directed.

(d) "Contest" means a procedure where a prize is awarded or offered in which the outcome depends on the skill of the contestant and includes puzzles, games, and competitions. "Contest" includes any such procedure in which a person is required to purchase anything, pay anything of value or make a donation. "Contest" includes also any such procedure which is advertised in a way creating the reasonable impression that a payment of anything of value, purchase of anything, or making a donation is a condition of awarding a prize or receiving, using, competing for, or obtaining information about a prize.

(e) "Prize" means a gift, award, cash award, or other thing of value offered or awarded to a person in a promotion.

(f) "Promotion" means any contest, sweepstakes or scheme. "Promotion" does not include any contest, sweepstakes or scheme in which the sole act required for entry, participation, or receipt of a prize is that the participant mail or deposit a form or game piece with the sponsor, place a call to a local or toll free number, or, mail a request or place a call to a local or toll-free number to obtain a game piece or form which the entrant can then return by mail or deposit at a local retail establishment, provided:

(A) That the fact that no purchase or payment of anything of value to the sponsor is required is clearly and conspicuously disclosed in each advertisement or solicitation; and

(B) No advertisements or solicitations for the contest, sweepstakes, or scheme create the reasonable impression that a payment of anything of value, purchase of anything, or making a donation is a condition of awarding a prize or receiving, using, competing for, or obtaining information about a prize.

(g) "Personal Financial Data" means personal financial data about the person, including but not limited to income, credit card ownership, bank account information, or similar financial information.

(h) "Scheme" means any advertisement or solicitation which requires a person to pay anything of value, make a donation, or creates the reasonable impression that a payment of anything of value, purchase of anything, or making a donation is a condition of awarding a prize or receiving, using, competing for, or obtaining information about a prize.

(i) "Sponsor" means any person who, in connection with any promotion, awards or offers another person a prize or who allows the person to receive, use, compete for, or obtain information about a prize.

(j) "Sweepstakes" means a procedure based on chance of awarding a prize. "Sweepstakes" includes any such procedure in which a person is required to purchase anything, pay anything of value or make a donation as a condition of awarding a prize or receiving, using, competing for, or obtaining information about a prize. "Sweepstakes" includes also any such procedure which is advertised in a way creating the reasonable impression that a payment of anything of value, purchase of anything, or making a donation, is a condition of awarding a prize or receiving, using, competing for, or obtaining information about a prize.

(k) "Verifiable Retail Value" has the meaning given in OAR 137-020-0015(1)(c).

(4) OAR 137-020-0410 to 137-020-0440 apply only to promotions. These rules do not apply to:

(a) Any activity by the State of Oregon or by a private person acting as a duly authorized contractee of the State Lottery Commission;

(b) A qualified nonprofit organization conducting a raffle pursuant to ORS Chapter 464; or

(c) Activity described in ORS 646.612(2).

(5) The information required to be disclosed pursuant to OAR 137-020-0420, 137-020-0430 and 137-020-0440 shall be deemed to be clearly and conspicuously disclosed if it is printed in compliance with this subsection in a distinct portion of the solicitation entitled "Consumer Disclosure," "Official Rules," or words of similar meaning. To comply with this subsection, the main text of the advertisement or solicitation shall contain clear and conspicuous reference to this portion, and the reference to the portion shall appear in close proximity to each description of the principal prize.

(6) Broadcast advertisements shall be exempt from the requirements of OAR 137-020-0420 and 137-020-0430(2)(a), (b), and (c) if:

(a) The information otherwise required by OAR 137-020-0420 to 137-020-0440 is available in writing; and

(b) The broadcast advertisement clearly and conspicuously refers the consumer to the location where the information is available.

Stat. Auth.: ORS 180.520(1)(c) & 646.608(1)(u)
Stats. Implemented: ORS 180.520(1)(c) & 646.608(1)(u)
Hist.: JD 2-1996, f. 6-21-96, cert. ef. 7-8-96

137-020-0420
Rules of Unique Application to Contests

It is unfair or deceptive in trade or commerce for a sponsor to advertise or solicit any person to participate in any contest which requires a person to pay money or make a donation or creates the impression in a reasonable person that a payment of anything of value, purchase of anything, or making a donation is a condition of participation in the contest, unless there is clear and conspicuous disclosure of:

(1) The maximum number of rounds or levels, if the contest has more than one round or level;

(2) The date the final winner will be determined;

(3) The maximum total cost the final winner will have paid to the sponsor to participate in the contest, and, if the final winner must purchase or pay anything of value to a person other than the sponsor as a condition of eligibility, then that fact must be clearly and conspicuously disclosed;

(4) If the contest involves multiple rounds of increasing difficulty, an example illustrative of the last determinative round or a statement that subsequent rounds will be more difficult;

(5) If the contest is judged by other than the sponsor, the identity of or description of the qualifications of the judges;

(6) The method used in judging; and

(7) The name and address of the sponsor, or the sponsor's agent, consistently stated wherever it is used in a promotion, and:

(a) The name and address of the sponsor, or the sponsor's agent, stated on the envelope used to mail the advertisement or solicitation; or

(b) The name and address of the sponsor, or the sponsor's agent, stated on the entry form.

Stat. Auth.: ORS 180.520(1)(c) & 646.608(1)(u)
Stats. Implemented: ORS 180.520(1)(c) & 646.608(1)(u)
Hist.: JD 2-1996, f. 6-21-96, cert. ef. 7-8-96

137-020-0430
Rules of Unique Application to Sweepstakes

It is unfair or deceptive in trade or commerce for a sponsor to advertise or solicit any sweepstakes unless there is a clear and conspicuous disclosure of:

(1) The statement of odds of winning in arabic numerals; provided that if the odds of winning depend on the number of entries received, a statement to that effect will be deemed sufficient;

(2) The name and address of the sponsor, or the sponsor's agent, consistently stated wherever it is used in a promotion, and:

(a) The name and address of the sponsor, or the sponsor's agent, stated on the envelope used to mail the advertisement or solicitation; or

(b) The name and address of the sponsor, or the sponsor's agent, stated on the entry form or on the heading to the solicitation; and

(3) The rules for entry without purchase.

Stat. Auth.: ORS 180.520(1)(c) & 646.608(1)(u)
Stats. Implemented: ORS 180.520(1)(c) & 646.608(1)(u)
Hist.: JD 2-1996, f. 6-21-96, cert. ef. 7-8-96

137-020-0440
Prohibitions Applicable to All Promotions (Including Schemes, Sweepstakes, and Contest)

It is unfair or deceptive in trade or commerce for a sponsor to advertise or solicit for a promotion if the sponsor:

(1) Misleads a person as to the source of the promotion. This prohibition includes but is not limited to a promotion which indicates or implies that the promotion originates from a government agency, public utility, insurance company, consumer reporting agency, debt collector, law firm, or common carrier, unless such is the case;

(2) Misleads a person to believe the number of persons eligible for the prize, contest, or next level of the contest is limited, or that a person has been selected to receive a particular prize, unless such is the case;

(3) Represents that a person has been declared a finalist, is in first place, or is otherwise in a limited group of persons with an enhanced likelihood of winning or receiving a prize, from which a single winner or select group of winners will receive a prize, when more than 25% of those receiving the notice have the same chance of winning;

(4) Represents directly or by implication that a person will have an increased chance of receiving a prize by making multiple or duplicate purchases, payments or donations, or by entering more than once, unless such is the case;

(5) Misleads a person that the person is being notified a second or final time of the opportunity to receive or compete for a prize, unless such is the case;

(6) Requires as a condition of participation in any promotion any person to disclose the person's personal financial data;

(7) Creates the reasonable impression that disclosure of a person's personal financial data is a condition of participating in any promotion;

(8) Makes or solicits any charge or fee that is not clearly and conspicuously disclosed in the initial advertisement or solicitation, as a condition of entering or continuing to participate in that promotion;

(9) Connects or combines prizes from different promotions unless the fact that the same prizes may be offered in various promotions is clearly and conspicuously disclosed and the combination of prizes will not affect the stated odds of winning;

(10) Issues any writing which simulates or resembles:

(a) A negotiable instrument as described in ORS 73.1040(1) unless the writing clearly and conspicuously discloses its true value and purposes and the writing would not mislead a reasonable consumer; or

(b) An invoice unless the invoice seeks payment for goods, property or services which the recipient has previously agreed to receive from the sponsor.

(11) Fails to clearly and conspicuously disclose the verifiable retail value in arabic numerals of any prize which the person receiving the notice has been selected to receive or may be eligible to receive;

(12) Fails to clearly and conspicuously disclose the cost of shipping or handling fees or any other charges necessary to participate in a promotion;

(13) Fails to clearly and conspicuously make any other disclosure necessary to assure that the promotion is not misleading, unfair, or deceptive;

(14) Charges a participant in a promotion for shipping, unless the charge is:

(a) Less than or equal to the average cost of postage or the average charge of a delivery service in the business of delivering goods of like size, weight, and kind for shippers other than the offeror of the gift; or

(b) Less than or equal to the exact amount for shipping paid to an independent fulfillment house or an independent supplier, either of which is in the business of shipping goods for shippers other than the offeror of the gift; or

(15) Charges a participant in a promotion for handling, unless the charge is:

(a) Reasonable;

(b) Less than or equal to the actual cost of handling; or

(c) In the case of a general merchandise retailer, less than or equal to the actual amount for handling paid to an independent fulfillment house or supplier, either of which is in the business of handling goods for businesses other than the offerer of the gift.

Stat. Auth.: ORS 180.520(1)(c) & 646.608(1)(u)
Stats. Implemented: ORS 180.520(1)(c) & 646.608(1)(u)
Hist.: JD 2-1996, f. 6-21-96, cert. ef. 7-8-96

137-020-0460
Requests for Removal from Sweepstakes Promotion Mailing List; Additions to List of Persons to Whom Sweepstakes Promotions May Not Be Mailed

(1) Definitions. For purposes of this rule:

(a) "Department" means the Oregon Department of Justice.

(b) "Removal request" means a written request to be removed from a sweepstakes promotion mailing list or to be placed on a list of persons to whom sweepstakes promotions may not be mailed.

(c) "Person" means an individual, corporation, trust, partnership, or incorporated or unincorporated association.

(d) "Sweepstakes" has the meaning given in OAR 137-020-0410(j).

(e) "Sweepstakes promotion" means an offer to participate in a sweepstakes.

(2) Any person who receives a sweepstakes promotion in the United States mail may send a written removal request to the originator of the sweepstakes promotion.

(3) Removal requests shall be submitted on a "Sweepstakes Removal Request" form provided by the Department.

(4) Removal requests may be mailed to:

(a) The Department, at the address indicated on the "Sweepstakes Removal Request" form; or

(b) The originator of the sweepstakes promotion, at the address to which the recipient of the sweepstakes promotion would have sent a payment for any goods or services promoted in the sweepstakes promotion had the recipient ordered the goods or services instead of mailing a removal request.

(5) Within 15 business days of the receipt of a removal request, the Department shall forward the removal request to the originator of the sweepstakes promotion by certified mail.

(6) Within 60 calendar days of the date of receipt of a removal request by a person or the Department, the originator of the sweepstakes promotion shall remove the requestor's name from the originator's sweepstakes promotion mailing list or place the requestor's name on a list of persons to whom sweepstakes promotions may not be mailed.

(7) Failure by the originator of a sweepstakes promotion to comply with section (6) of this rule constitutes an unlawful trade practice under ORS 646.608.

Stat. Auth.: ORS 646.879
Stats. Implemented: ORS 646.879
Hist.: DOJ 9-2000, f. & cert. ef. 8-14-00

Manufactured Dwelling Rules

137-020-0505
Manufactured Dwelling Rules

(1) Purpose: The purpose of these rules is to declare as unfair or deceptive in trade or commerce certain practices involving the sale of manufactured dwellings; to set out disclosures that must be included in the manufactured dwelling purchase agreement; and to set out new requirements for disclosure of site improvements in manufactured dwelling park rental agreements.

(2) Authority: These rules are adopted pursuant to ORS Chapter 183 on authority granted by 90.516 (2001 OL Ch. 282 § 5), 646.404 (2001 OL Ch. 969 § 3), 646.608(1)(u) and 646.608(4).

Stat. Auth.: ORS 90.516, 180.520(1)(c), 646.404, 646.608(1)(u) & (4)
Stats. Implemented: ORS 90.510, 90.512 - 90.518, 646.400 - 646.404, 646.608(1)(u), (1)(yy) & (4)
Hist.: DOJ 2-2002, f. & cert. ef. 4-15-02

137-020-0520
Definitions

For purposes of OAR 137-020-0520 to 137-020-565:

(1) "Base price" means the total retail cost of the following unless separately disclosed as described in OAR 137-020-0550:

(a) The manufactured dwelling as provided by the manufacturer;

(b) Features added by the dealer, if any;

(c) Freight; and

(d) Delivery and installation as stated in the purchase agreement.

(2) "Buyer" means a person who buys or agrees to buy a manufactured dwelling.

(3) "Clear and conspicuous" means information displayed in a form that is readily noticeable, easily readable, will be easily understood by the audience to whom it is directed, and is in a meaningful sequence. In order for a message to be considered "clear and conspicuous," it shall, at a minimum:

(a) Not contradict or substantially alter any terms it purports to clarify, explain or otherwise relate to;

(b) Use abbreviations or terms only if they are commonly understood by the average person, approved by federal or state law, or defined in the writing; and

(c) Be of sufficient prominence in terms of print style, size and contrast as compared with the remainder of the document or writing so as to be readily noticeable to an average person in the audience to whom it is directed.

(4) "Dealer" means any person in the business of selling, leasing or distributing new or used manufactured dwellings to persons who purchase or lease a manufactured dwelling for use as a residence.

(5) "Floor area" means the sum of the product of the length multiplied by the width of each section of a manufactured dwelling as delivered from the factory, expressed in approximate square feet.

(a) "Length" of a manufactured dwelling means the distance from the extreme exterior of the front wall (nearest to the drawbar and coupling mechanism) to the extreme exterior of the rear wall (at the opposite end of the home) where such walls enclose living or other interior space and such distance includes expandable rooms but not bay windows, porches, drawbars, couplings, hitches, wall and roof extensions or other attachments.

(b) "Width" of a manufactured dwelling means the distance between the extreme exterior of two opposite walls enclosing living or other interior space and including expandable rooms but not bay windows, porches, wall and roof extensions or other attachments.

OFFICIAL COMMENTARY: The definition of "floor area" in this rule is consistent with Building Codes Division's rules defining "length" and "width" of a manufactured dwelling under OAR 918-500-0005(21) and (54).

(6) "Improvements" means goods and services that are not included in the base price and that are, in general, needed to prepare a site and complete the setup of a manufactured dwelling. When describing improvements, each of the improvements must specify, where applicable, the dimensions and major structural materials to be used. "Improvements" include, but are not limited to:

(a) Installations or other changes that a tenant makes to a rental space;

(b) Site preparation;

(c) Sidewalks;

(d) Concrete;

(e) Skirting;

(f) Steps;

(g) Railings;

(h) Decks;

(i) Awnings;

(j) Carports;

(k) Garages;

(l) Sheds;

(m) Gutters, downspouts and rain drains;

(n) Utility connections;

(o) Heat pumps and air conditioning;

(p) Basements;

(q) Plants and landscaping;

(r) Permits;

(s) Installation fees; and

(t) Systems development charges.

(7) "Manufactured dwelling" means:

(a) Residential trailer, a structure constructed for movement on the public highways that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes and that was constructed before January 1, 1962;

(b) Mobile home, a structure constructed for movement on the public highways that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes and that was constructed between January 1, 1962, and June 15, 1976, and met the construction requirements of Oregon mobile home law in effect at the time of construction;

(c) "Manufactured home," a structure constructed for movement on the public highways that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes and that was constructed in accordance with federal manufactured housing construction and safety standards and regulations in effect at the time of construction; and

(d) "Manufactured dwelling" does not mean any building or structure constructed to conform to the State of Oregon Structural Specialty Code or the One and Two Family Dwelling Code adopted pursuant to ORS 455.100 to 455.450 and 455.610 to 455.630 or any unit identified as a recreational vehicle by the manufacturer.

(8) "Manufactured dwelling park" means any place where four (4) or more manufactured dwellings are located within 500 feet of one another on a lot, tract or parcel of land under the same ownership, the primary purpose of which is to rent or lease space or keep space for rent or lease to any person for a charge or fee paid or to be paid for the rental or lease or use of facilities or to offer space free in connection with securing the trade or patronage of such person. "Manufactured dwelling park" does not include a lot or lots located within a subdivision being rented or leased for occupancy by no more than one (1) manufactured dwelling per lot if the subdivision was approved by the local government unit having jurisdiction under an ordinance adopted pursuant to ORS 92.010 to 92.190.

(9) "Prospective tenant" means any person who has made any inquiry of the landlord of a manufactured dwelling park concerning the possibility of renting a space in a manufactured dwelling park.

(10) "Provider" means a contractor licensed under ORS Chapter 701 who makes improvements to a manufactured dwelling park. The provider also includes the dealer or the landlord who contracts with the buyer to make site improvements for the manufactured dwelling, whether on private property or in a manufactured dwelling park.

(11) "Purchase agreement" means the written contract between the dealer and the buyer for the purchase of a manufactured dwelling. "Purchase agreement" does not include documents of a retail installment contract or loan agreement entered into as part of the purchase transaction.

(12) "Rental agreement" means all written agreements, valid rules and regulations adopted under ORS 90.510 embodying the terms and conditions concerning the use and occupancy of a manufactured dwelling unit and premises. "Rental agreement" includes a lease. A rental agreement shall specify the term of tenancy.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 90.516, 180.520(1)(c), 646.404, 646.608(1)(u) & (4)
Stats. Implemented: ORS 90.510, 90.512 - 90.518, 646.400 - 646.404, 646.608(1)(u), (1)(yy) & (4)
Hist.: DOJ 2-2002, f. & cert. ef. 4-15-02

137-020-0535
Unfair Trade Practices

It is unfair or deceptive in trade or commerce for the dealer or the landlord of a manufactured dwelling park to:

(1) Require a prospective tenant to purchase a manufactured dwelling from a particular dealer or one of a group of dealers;

(2) Give preference to a prospective tenant who has purchased a manufactured dwelling from a particular dealer; or

(3) Require The buyer to rent a space for a manufactured dwelling in a particular manufactured dwelling park or group of such parks.

Stat. Auth.: ORS 180.520(1)(c), 646.608(1)(u) & (4)
Stats. Implemented: ORS 646.608(1)(u) & (4)
Hist.: JD 6-1997, f. & cert. ef. 11-3-97; DOJ 2-2002, f. & cert. ef. 4-15-02, Renumbered from 137-020-0500

137-020-0550
Manufactured Dwelling Purchase Agreement; List of Regulating Agencies

(1) The purchase agreement used by the manufactured dwelling dealer shall include the base price and a written itemization that clearly and conspicuously discloses the retail prices of the following, if not included in the base price:

(a) Manufactured dwelling options ordered by the buyer;

(b) Alterations and upgrades to the manufactured dwelling made by the dealer or by a third party at the request of the dealer;

(c) Improvements provided by the dealer, or by a third party at the request of the dealer, to the extent known to the dealer at the time of sale. The written itemization of improvements under this paragraph excuses the provider making the improvements from compliance with ORS 90.518(1) (2001 OL Ch. 282 §4(1));

OFFICIAL COMMENTARY: The provider of the improvements (contractor) may itemize the retail price for each listed improvement, or may itemize each improvement and include the total retail price for all improvements for which the provider contracts.

(d) Goods and services provided by the dealer, or by a third party at the request of the dealer, that are not otherwise disclosed pursuant to this rule;

(e) The amount of any earnest money paid to or collected by the dealer and the circumstances under which the earnest money may be returned to the buyer;

(f) The separate itemization and amount of each refundable or nonrefundable administrative or processing fee paid to or collected by the dealer and the circumstances under which each of the fees may be refunded to the buyer;

(g) All loan fees and credit report fees paid to or collected by the dealer to obtain financing for the buyer's purchase of the manufactured dwelling and the circumstances under which the fees may be returned to the buyer;

(h) Registration and other charges paid to or collected by the dealer for transferring title to the manufactured dwelling, which may include the payment of county property taxes;

(i) The extended warranty contract or service agreement, if any;

(j) Delivery, installation or site access charges provided by the dealer, or by a third party at the request of the dealer, that are not otherwise disclosed pursuant to this rule, if any; and

(k) If any additional costs are required for the delivery, installation or site access of a manufactured dwelling, the purchase agreement shall contain a notice that the buyer is responsible for the costs.

OFFICIAL COMMENTARY: In addition to listing the base price, the dealer should also include a list of any options, upgrades or alterations that are included in the base price.

(2) The purchase agreement shall also include the following information:

(a) The buyer's name, phone number and address;

(b) The dealer's name, the dealer's vehicle dealer certificate number issued by the Driver and Motor Vehicles Division of the Department of Transportation ("DMV") under ORS Chapter 822, phone number, fax number and the name of the salesperson(s), if different than the dealer;

(c) Information that identifies and describes the manufactured dwelling including, but not limited to:

(A) Approximate date of manufacture;

(B) Make;

(C) Model and year;

(D) Serial number, if known at the time of sale;

(E) Whether the manufactured dwelling is new or used; and

(F) Approximate floor area (as defined by OAR 137-020-0505); and

(d) The delivery site for the manufactured dwelling.

(3) The manufactured dwelling dealer shall attach to each purchase agreement a list of governmental consumer protection agencies having jurisdiction over manufactured dwelling issues. The purchase agreement must contain an acknowledgement signed or initialed by the buyer indicating the buyer has received the list. The list shall be developed by the Department of Justice and made available to all dealers. The list is informational only and does not constitute legal advice. Failure by the dealer to provide the list of agencies to the buyer is an unlawful practice under ORS 646.608(1)(yy).

(4) The dealer shall give a signed copy of the purchase agreement to the buyer and shall retain a signed copy in the dealer's files for not less than seven (7) years from the date of sale. If the dealer arranges financing, the dealer shall give a signed copy of the purchase agreement to the party that makes the loan for the purchase.

(5) The dealer may use the Purchase Agreement form contained in this rule and include it as part of the dealer's sales contract. The dealer's use of this form shall be deemed to comply with this rule. If an alternate form is used by the dealer, it must comply with the requirements of this rule.

(6) Except as provided in ORS 41.740, the purchase agreement shall contain all of the terms of the contract between the buyer and the manufactured dwelling dealer. No evidence of the terms of the contract may be presented other than the contents of the purchase agreement. As used in this rule, "contract" does not include a retail installment contract or loan agreement entered into as part of the purchase transaction.

(7) The purchase agreement shall contain a notice to the buyer that:

(a) The purchase agreement is a contract between the manufactured dwelling dealer and the buyer;

(b) The purchase agreement, together with all other written terms and conditions of the sale, represents a complete and full statement of the terms of the agreement;

(c) No other terms of the agreement may be presented other than the contents of the purchase agreement and any addenda thereto; and

(d) Any oral promise or other agreement that is not set forth in the purchase agreement may not be legally enforceable.

(8) The disclosures required by this rule shall be clear and conspicuous.

(9) Nothing in this rule relieves the dealer from disclosing all other terms and conditions required by law.

(10) Failure of the dealer to use a purchase agreement form that complies with this rule is an unlawful practice under ORS 646.608(1)(yy). [Form not included. See ED. NOTE.]

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 180.520(1)(c) & 646.404 (2001 OL Ch. 969 §3)
Stats. Implemented: ORS 646.400 - 646.404 & 646.608(1)(yy)
Hist.: DOJ 2-2002, f. & cert. ef. 4-15-02

137-020-0565
Landlord's Written Site Improvement Disclosure Statement

(1) Before a prospective tenant signs a rental agreement for space in a manufactured dwelling park under ORS 90.510(4), the landlord must provide the prospective tenant with a written statement that discloses the improvements that the park will require under the rental agreement, pursuant to 90.510(5). This statement is called the "site improvement disclosure statement." The site improvement disclosure statement shall be attached as an exhibit to the rental agreement. The statement must be in a form that complies with this rule. The disclosures required by this rule shall be clear and conspicuous, and shall include at least the following:

(a) A notice that the tenant has the right to select the provider (contractor) who will make the improvements;

OFFICIAL COMMENTARY: The landlord may not impose any penalty on a prospective tenant related to the selection of any particular provider. However, the landlord may impose reasonable restrictions upon the prospective tenant in selecting the provider under ORS 90.525.

(b) A statement that separately identifies each required improvement and specifies:

(A) The dimensions, major structural materials and finish to be used. The landlord may provide a set of plans or specifications to satisfy this requirement;

Official Commentary: For example, the site improvement disclosure statement for a certain park requires a "10' x 12' shed." Unless otherwise stated, the materials and construction need only comply with state and local building and structural codes and zoning standards. If the manufactured dwelling park requires other materials or a particular finish, the site improvement disclosure statement must so state.

(B) The installation charges imposed by the landlord, if paid to or collected by the landlord. If an installation fee is not disclosed, it is waived by the landlord;

(C) The installation fees imposed by government agencies, if paid to or collected by the landlord. If the landlord does not collect government fees, the landlord shall advise the prospective tenant whether such fees must be paid and identify the governmental agency to which the fees are paid;

(D) The systems development charges to be paid by the tenant, if paid to or collected by the landlord. If the landlord does not collect systems development charges, the landlord shall advise the prospective tenant whether such charges must be paid and identify the governmental agency to which the systems development charges are paid; and

(E) The site preparation requirements and restrictions, including, but not limited to, requirements and restrictions on the use of plants and landscaping; and

(c) Identification of the improvements that belong to the tenant and the improvements that must remain with the manufactured dwelling park.

(2) If the landlord fails to disclose to a prospective tenant any required site improvement(s) as required under these rules and ORS 90.510:

(a) That tenant shall not be required to make the non-disclosed site improvement(s) at any time;

(b) The space is deemed to be in compliance with the manufactured dwelling park's rules and regulations, statement of policy and rental agreement; and

(c) The landlord shall not impose any penalty on the prospective tenant for failure to make the non-disclosed site improvement(s).

(3) The manufactured dwelling park landlord may use the form provided in this rule. If an alternative form is used by the landlord, it must comply with the requirements of this rule and ORS 90.512 to 90.518.

(4) Except as provided in ORS 41.740, the site improvement disclosure statement described in this rule shall contain all of the terms relating to improvements that a prospective tenant must make under the rental agreement. There may be no evidence of the terms of the site improvement disclosure statement other than the contents of the site improvement disclosure statement.

(5) The site improvement disclosure statement shall contain a notice to the prospective tenant that:

(a) The site improvement disclosure statement represents the complete and full statement of all the improvements required to be made by the tenant under the rental agreement;

(b) The site improvement disclosure statement, together with all other terms and conditions of a rental agreement, is a contract between the manufactured dwelling park landlord and the tenant; and

(c) Any oral promise or other agreement that is not set forth in the site improvement disclosure statement may not be legally enforceable.

Official Commentary: The landlord should have the tenant sign or initial the site improvement disclosure statement and retain a signed copy in the landlord's files. [Form not included. See ED. NOTE.]

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 90.516 (2001 OL Ch. 282 §5) & 180.520(1)(c)

Stats. Implemented: ORS 90.510 & 90.512 - 90.518 (2001 OL Ch. 282)

Hist.: DOJ 2-2002, f. & cert. ef. 4-15-02

137-020-0600

Misrepresentation of Notarial Powers; Notice of Notarial Powers and Fees

(1) As used in this section: "Notary public" means any person certified by the State of Oregon to provide notarial services as specified by ORS 194.005 to 194.200 and 194.505 to 194.595 who is not a member of the Oregon State Bar and who is not otherwise authorized by federal law to practice, serve as a representative or appear in immigration matters.

(2) It is unfair or deceptive in trade or commerce for a notary public to make an express or implied representation of powers, qualifications, rights or privileges that the notary public does not have, including but not limited to the power to provide advice of any kind on legal or immigration matters.

(3) It is unfair or deceptive in trade or commerce for a notary public to make an express or implied representation that the notary public is a "notario publico," or a "notario," or to advertise notarial services in a language other than English, unless the representation or advertisement clearly and conspicuously includes the following in the language of the representation or advertisement and in English:

(a) A statement, "I am not licensed to practice law in the State of Oregon, and I am not permitted to give legal advice on immigration or other legal matters or accept fees for legal advice"; and

(b) The fees for notarial acts specified under ORS 194.164.

(4) It is unfair or deceptive in trade or commerce for a notary public who makes an express or implied representation that the notary public is a "notario publico," or a "notario," or who advertises notarial services in a language other than English to fail to clearly and conspicuously post a sign containing the information specified in subsection (3)(a) and (3)(b) of this rule in a publicly accessible area of the notary's place of business.

Stat. Auth.: ORS 180.520(1)(c), 646.608(1)(u) & (4)

Stats. Implemented: ORS 646.608(1)(u) & (4)

Hist.: DOJ 3-1999, f. & cert. ef. 2-18-99

Used Motor Vehicle Mediation Pilot Program

137-020-0705

Purpose

These rules implement ORS 180.095(4) by establishing the framework within which the Department of Justice shall negotiate contracts with Community Dispute Resolution Programs to carry out a pilot program testing the efficiency, effectiveness, and fairness of mediating certain disputes between dealers and their customers arising from used motor vehicle transactions. Throughout the design, implementation, and evaluation of the used motor vehicle mediation pilot program, the Department shall periodically consult with dealers, consumers, mediators, and other interested persons.

Stat. Auth.: ORS 180.095(4)

Stats. Implemented: ORS 180.095(4)

Hist.: DOJ 10-2000, f. & cert. ef. 8-14-00

137-020-0707

Definitions

(1) "Community Dispute Resolution Program" or "CDRP" means a program that has been determined eligible for funding under ORS 36.155(1)(b) and OAR 718, division 20.

(2) "Dealer" means a person licensed by the Oregon Department of Motor Vehicles to sell, trade, lease, display or offer for sale, trade or exchange motor vehicles or to offer to negotiate or purchase motor vehicles on behalf of third parties. "Dealer" does not include a security interest holder as shown by the vehicle title issued by any jurisdiction or any person excluded by ORS 822.015(1) to (4) or 822.015(6) to (9).

(3) "Department" means the Oregon Department of Justice.

(4) "Mediation" means a voluntary process in which a mediator assists and facilitates two or more parties to a controversy in reaching a mutually acceptable resolution of the controversy.

(5) "Motor vehicle" means any self-propelled vehicle normally obtained for personal, family or household purposes. "Motor vehicle" does not include aircraft.

(6) "Used motor vehicle" means any motor vehicle that has been previously delivered to any person for his or her discretionary

use for personal or business purposes and for more than a try-out before a contemplated purchase or preparation for sale.

Stat. Auth.: ORS 180.095(4)
Stats. Implemented: ORS 180.095(4)
Hist.: DOJ 10-2000, f. & cert. ef. 8-14-00

137-020-0709
Standards and Guidelines for Mediation

(1) No dealer or consumer will be compelled to participate in mediation.

(2) The Department shall select matters that are eligible for the pilot program from complaints submitted to it in writing. The Department may apply the following factors in determining the eligibility of a matter. An allegation is eligible unless, in the Department's sole and unreviewable discretion, the allegation:

(a) Involves a business that is already the object of an ongoing investigation or civil or criminal prosecution; or

(b) Involves a practice that appears to the Department to be criminal and continuing; or

(c) Is another iteration of a pattern of the same conduct exhibited by the same business; or

(d) Involves a business or consumer located at such a distance from a participating CDRP that it would be impractical for the dispute to be mediated by that CDRP; or

(e) Involves conduct by an unlicensed dealer.

(3) The Department shall select at least two CDRP's to participate in the pilot program. At least one shall be in Southern Oregon and at least one shall be in the Portland Metropolitan area. The Department and the participating CDRP's shall enter into written agreements specifying the relative duties of the CDRP and the Department. The agreements shall comply with Oregon laws concerning the confidentiality of mediation communications.

(4) When the Department determines that a complaint is eligible for referral to the pilot program, the Department shall:

(a) Notify the complainant and the business in writing;

(b) Send the participating CDRP the complainant's written submission and an instructional packet describing relevant state and federal laws relating to used motor vehicle transactions and general information about the used motor vehicle industry. The Department and the participating CDRP's, in consultation with dealers, shall create the instructional packet.

(5) According to the terms of its agreement with the Department, the participating CDRP shall develop the case, conduct any mediation that may be required, and provide all reports required by the participating CDRP and the Department. However, confidential mediation documents used by the mediator shall remain the property of the mediator or the participating CDRP and shall not be subject to the control of the Department.

(6) The mediator in mediations conducted as part of this pilot program:

(a) Shall not represent the interests of any of the parties or offer legal advice.

(b) Shall not act as a judge or an arbitrator and shall have no decision making power to impose a settlement on the participants or to render decisions.

(c) Shall not give legal advice, nor will he or she provide legal counsel to the parties.

(d) Shall disclose any pre-existing relationships or conflicts of interest at the earliest possible convenience.

(e) Shall not be an employee or agent of any party to the mediation.

(f) May require that participants review documents submitted by the mediator or the CDRP and may require the participants to provide information to the mediator before participating in a mediation session.

(7) Attorneys shall not accompany participants into mediation sessions conducted as part of this pilot program. Participants in the mediation are free to consult with an attorney at any time, other than in a mediation session.

Stat. Auth.: ORS 180.095(4)
Stats. Implemented: ORS 180.095(4)
Hist.: DOJ 10-2000, f. & cert. ef. 8-14-00

137-020-0711
Mediator Qualifications and Training

(1) Minimum Qualifications and Training. Every mediator assigned by a CDRP to participate in this pilot program shall meet or exceed:

(a) The minimum qualifications and training requirements for mediators in CDRP's established by the Oregon Dispute Resolution Commission in OAR 718-020-0070; and

(b) Any additional qualifications and training requirements established by the participating CDRP.

(2) Additional Qualifications and Training. The Department shall develop a training program for mediators who will participate in this pilot program. In addition to the minimum qualifications and training required under section (1) above, mediators assigned by a participating CDRP to participate in this pilot program shall complete to the satisfaction of the participating CDRP a course of education describing the basic legal principles applicable to common disputes about used motor vehicle transactions. The materials will also include basic information about the used motor vehicle industry.

Stat. Auth.: ORS 180.095(4)
Stats. Implemented: ORS 180.095(4)
Hist.: DOJ 10-2000, f. & cert. ef. 8-14-00

137-020-0713
Costs of Participation, Collection of Data

(1) Neither the dealer nor the consumer shall be required to make any payment to anyone for participation in the pilot program.

(2) The Department may enter into an interagency agreement with the Oregon Dispute Resolution Commission for the collection and analysis of data concerning the efficiency, effectiveness, and fairness of the pilot program.

Stat. Auth.: ORS 180.095(4)
Stats. Implemented: ORS 180.095(4)
Hist.: DOJ 10-2000, f. & cert. ef. 8-14-00

137-020-0800
Definitions

As used in this rule and OAR 137-020-0805:

(1) "Borrower" means an individual who is obligated to repay a loan under a residential mortgage loan agreement, and includes the individual's spouse, domestic partner, and heirs;

(2) "Good faith" means honesty in fact and the observance of reasonable standards of fair dealing;

(3) "Mortgage loan servicer" means a person engaging in the servicing of residential mortgage loans in this state and includes a person who makes or holds a mortgage loan if the person is the holder of the mortgage servicing rights or has been delegated servicing functions for the mortgage loan;

(4) "Residential mortgage loan" means a loan to a natural person made primarily for personal, family or household use, other than a loan for open-end credit, as that term is defined in 12 CFR 1026.2(a)(20), as in effect on December 30, 2011, secured by a mortgage or other consensual security interest on residential real property located in this state;

(5) "Servicing of residential mortgage loans" includes, but is not limited to:

(a) Collecting or remitting, or having the right or obligation to collect or remit, for a lender, note owner, note holder or other holder of an interest in a note, payments, interest, principal and trust items, including but not limited to hazard insurance and taxes, on a residential mortgage loan in accordance with the terms of the loan, and includes loan payment follow-up, delinquency loan follow-up, loan analysis and any notifications to the borrower that are necessary to enable the borrower to keep the loan current and in good standing;

(b) Bringing and maintaining a suit or action to collect amounts owed on a residential mortgage loan, including but not limited to exercising contractual, statutory or common law remedies such as injunction, specific performance, judicial or nonjudicial foreclosure or receivership; and,

(c) Taking action for the purpose of protecting the lender's, note owner's, note holder's or other owner of an interest in the note's interest in the property and rights under the security instrument.

"Servicing of residential mortgage loans" does not include the activities of any person licensed or authorized to act as an attorney, escrow agent, title company, or title insurer under Oregon law, or any person qualified to serve as a trustee under ORS 86.790.

(6) "Person" has the meaning provided in ORS 646.605(4); and,

(7) "Residential real property" means real property located in this state improved by a one-to-four family residence or residential unit in a building used or occupied, or intended to be used or occupied, wholly or partly, as the primary residence of the borrower, but shall not refer to unimproved real property upon which such dwellings are to be constructed.

Stat. Auth.: ORS 646.608(4)
Stats. Implemented.: ORS 646.608(1)(u) & (4)
Hist.: DOJ 2-2012(Temp), f. & cert. ef. 1-27-12 thru 7-24-12; Suspended by DOJ 4-2012(Temp), f. & cert. ef. 2-15-12 thru 7-24-12; DOJ 12-2012, f. 7-23-12, cert. ef. 7-24-12

137-020-0805
Unfair and Deceptive Acts in Mortgage Loan Servicing

A mortgage loan servicer engages in unfair or deceptive conduct in trade or commerce if the mortgage loan servicer:

(1) Assesses a late fee or delinquency charge for a full payment made on or before the payment's due date or within the grace period applicable for the payment;

(2) Assesses or collects any default-related fee or charge that the servicer is not legally authorized to assess or collect under the terms of the residential mortgage loan, deed of trust, or mortgage;

(3) Misrepresents to a borrower any material information regarding a loan modification;

(4) Misrepresents any information set forth in an affidavit, declaration, or other sworn statement detailing a borrower's default and the servicer's right to foreclose;

(5) Fails to comply with the requirements of the following provisions of the Real Estate Settlement Procedures Act of 1974, as in effect on January 1, 2012: 12 USC 2605(b), 12 USC 2605(c), 12 USC 2605(d), or 12 USC 2605(e); or,

(6) Fails to deal with a borrower in good faith.

Stat. Auth.: ORS 646.608(4)
Stats. Implemented: ORS 646.608(1)(u) and (4)
Hist.: DOJ 4-2012(Temp), f. & cert. ef. 2-15-12 thru 7-24-12; DOJ 12-2012, f. 7-23-12, cert. ef. 7-24-12

DIVISION 25

BINGO/RAFFLES/MONTE CARLO

General Provisions

137-025-0020
Definitions

For purposes of these rules, the following definitions shall apply:

(1) The "Department" means the Oregon Department of Justice.

(2) "Bingo" means a game played on a printed form or card containing a grid bearing horizontal and vertical lines of numbers. Each card must include the same number of numbers. The numbers may be pre-printed or completed by the players. Numbers are drawn from a receptacle containing no more than 90 numbers, until there are one or more winners. A winner(s) is determined by the player(s) to first cover or uncover the selected numbers in a designated combination, sequence or pattern as they appear on the player's card. The progress toward a "bingo" of the non-winning players shall be irrelevant in determining the prize payout for the winner(s). A "blackout" (i.e., covering all squares on the grid) shall qualify as a designated sequence or pattern. Games which do not qualify as bingo include, but are not limited to, games marketed as "quick shot bonanza," "pick X" bingo, and "pick-8" bingo in the format utilizing a 40 square grid.

(3) "Pull Tab" means a single folded or banded ticket or card, the face of which is initially covered or otherwise hidden from view to conceal a number, symbol or set of symbols, a few of which numbers or symbols out of every set of pull tabs have been designated in advance and at random as prize winners.

(4) "Raffle" means a form of a lottery in which each participant buys a ticket for an article or money designated as a prize and where the winner is determined by a random drawing. A raffle includes the elements of consideration, chance and a prize. Consideration is presumed to be present unless it is clearly and conspicuously disclosed to prospective participants that tickets to the drawing may be acquired without contributing something of economic value.

(5) "Door Prize Drawing" means a drawing held by a nonprofit organization at a meeting of the organization where both the sale of tickets and the drawing(s) occur during the meeting and the total value of the prize(s) does not exceed $500.

(6) "Handle" means the total amount of money and other things of value bet on the bingo, lotto or raffle games, the value of raffle chances sold or the total amount collected from the sale of imitation money during Monte Carlo events.

(7) "Responsible Officials of the Organization" means the officers of the organization and the board of directors, if any.

(8) "Bingo Game Manager" means any person who is responsible for the overall conduct of bingo games of a charitable, fraternal or religious organization.

(9) "Regular Bingo Game" means a bingo game where players use hard cards or paper cards from a packet which have been purchased for a package price and may be used by players during more than one game of a session.

(10) "Special Bingo Game" means a bingo game where players must purchase individual paper cards where use is limited to a specific bingo game.

(11) "Concessions" means the sale of food, beverages, related bingo supplies, such as daubers, glue and other retail items using a bingo theme sold to bingo players.

(12) "Management or Operation" means supervising the games.

(13) "Administration or Operation" means supervising the games.

(14) "Supervise" means to direct, oversee and inspect the work of others; to exercise authority with respect to decision-making or the implementing of decisions; and responsibility for the performance of functions integral to the operation of bingo and raffles, including operation of the games and operation of the facility used to conduct the games.

(15) "Drawing" means an approved random selection process for determining winners in a raffle. To be random, each number in the drawing must have an equal chance of selection.

(16) "Monte Carlo event" means a gambling event at which wagers are placed with imitation money upon contests of chance in which players compete against the house. As used in this subsection, "imitation money" includes imitation currency, chips or tokens.

(17) "Monte Carlo equipment supplier" means a person or organization who leases equipment to a non-profit tax exempt organization for operation of a Monte Carlo event.

(18) "Monte Carlo event contractor" means a Monte Carlo event supplier who is employed to operate a Monte Carlo event on behalf of a non-profit tax exempt organization.

(19) "Monte Carlo event licensee" means any organization which has obtained a Monte Carlo event license pursuant to OAR 137-025-0410.

(20) "Related party" means an officer, director or bingo game manager of the licensed organization. Related party includes the family of such an individual. Family shall include a spouse, domestic partner, brothers and sisters (whether by the whole or half blood), ancestors and lineal descendents. Related party also includes corporations wherein the preceding individuals directly, or indirectly, own 50% or more of the capital interest and a trust in which the preceding individuals serve as fiduciaries or are named beneficiaries.

(21) "Sleeper Bingo" — A bingo game where the licensee adopts a house rule providing that a bingo prize may be shared between player(s) announcing a qualifying bingo on the last number called and player(s) who achieved a qualifying bingo as a result of a previously called number.

(22) "Linked Progressive Bingo Game" means a standard non-linked bingo game where an additional prize is paid to a winner based upon a designated combination, sequence or pattern. The addi-

tional prize is paid from a common prize pool which is collected from multiple participating licensees.

(23) "Linked Progressive Bingo Contractor" means a person or organization who leases equipment to bingo licensees for operation of a linked progressive bingo game.

Stat. Auth.: ORS 167.117(10)(12), 464.250(1) & 914
Stats. Implemented: HB 3009, 1997, SB 716, 2003
Hist.: JD 8-1987, f. 10-30-87, ef. 11-1-87; JD 1-1989, f. & cert. ef. 3-1-89; JD 1-1991, f. 2-1-91, cert. ef. 3-1-91; JD 2-1993, f. 6-21-93, cert. ef. 7-1-93; JD 7-1997(Temp), f. 12-31-97, cert. ef. 1-1-98 thru 6-20-98; DOJ 5-1998, f. 6-19-98, cert. ef. 6-20-98; DOJ 13-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2004, f. 2-19-04, cert. ef. 4-1-04; DOJ 8-2004, f. & cert. ef. 5-19-04

137-025-0030
Eligibility for Licenses in General

(1) Every applicant for a license to conduct bingo, raffle games, or Monte Carlo events must:

(a) Be organized primarily for purposes other than the operation of bingo, Monte Carlo, and raffle games;

(b) Have a valid organizational governing structure, and the members of the governing structure must exercise independent control over the organization's activities and budget;

(c) Be exempt from the payment of federal income taxes and have held that exempt status for at least one year preceding its application for a license. The application must be accompanied by a copy of a determination letter from the Internal Revenue Service, verifying tax exempt status or, if the organization qualifies for tax exempt status other than pursuant to **IRC 501(c)**, a signed opinion letter from an attorney or certified public accountant stating that the organization holds tax exempt status and citing the relevant provisions of the **Internal Revenue Code** which support the tax exempt status. If an Internal Revenue Service determination letter is dated less than one year prior to the date of application to the Department, the applicant shall have the burden of demonstrating that it has met all organizational and operational tests for the exempt status and has been organized primarily for charitable, fraternal or religious purposes for a period of not less than one year prior to the date of the application. Any applicant that claims its tax exempt status through a ruling by the Internal Revenue Service as to its parent organization's tax exempt status must demonstrate that it is covered by such a ruling. The applicant must have been chartered by the parent organization for a period of one year preceding its application for a license.

(2) No joint license for conducting bingo, Monte Carlo, or raffle games will be issued to two or more organizations. However, the Department may grant approval for a licensee to share the operation of the games with other organizations which would otherwise qualify for a license under section (1) of this rule.

(3) Licenses to conduct bingo, Monte Carlo, or raffle games may not be transferred or assigned.

(4) A licensee shall promptly notify the Department if the licensee loses its federal tax exempt status. A license ceases to be valid if the licensee loses its tax exempt status.

Stat. Auth.: ORS 914
Stats. Implemented: HB 3009, 1997
Hist.: JD 8-1987, f. 10-30-87, ef. 11-1-8; JD 7-1997(Temp), f. 12-31-97, cert. ef. 1-1-98 thru 6-20-98; DOJ 5-1998, f. 6-19-98, cert. ef. 6-20-98

137-025-0040
General Requirements of Operations

(1) No person shall conduct bingo, Monte Carlo, or raffle games unless he or she conducts such activities on behalf of a charitable, fraternal or religious organization licensed by the Department to operate such games or engages in such activity as is otherwise exempt from licensing as provided in section (2) of this rule. The sale of pull tabs shall not qualify as bingo, Monte Carlo, or raffle and is not permitted by these rules.

(2) The following activities shall not require a license under these rules:

(a) Door prize drawings;

(b) Operating bingo with a handle of no more than $2,000 per session and with a total handle of no more than $5,000 per calendar year;

(c) Holding one or more raffles with a cumulative handle of less than $10,000 per calendar year;

(d) Holding Monte Carlo events with a handle of no more than $2,000 per Monte Carlo event and a total handle of no more than $5,000 per calendar year.

(3)(a) Except as provided in subparagraph (b) below, all individuals involved in the operation of bingo or raffle games, or Monte Carlo events shall be volunteers or employees of the licensee. Operation of the games shall not be conducted by independent contractors. However, a bingo licensee may contract with a third party to provide specific collateral services required for the proper and efficient operation of a bingo game. Such services may include concessions, bookkeeping/accounting services, payroll services, janitorial services, security services, construction services and legal services. Contract shall be permitted only if the third party regularly performs such services for clients other than licensees and the fee, if any, charged for the service(s) provided is customary and reasonable. However, a bingo licensee may not locate its game in a for-profit restaurant, tavern or similar establishment unless it is a Class C or D bingo licensee and bingo is not played in the establishment more than one day per week and the establishment is open to the public and serves non-players during the bingo session.

(b) An organization licensed to conduct Monte Carlo events may contract with a licensed or exempted Monte Carlo equipment supplier and/or Monte Carlo event contractor as provided in OAR 137-025-0420 to operate the event, including the provisions of equipment, supplies and personnel, provided that the licensed supplier is paid a fixed fee to conduct the event and the imitation money is sold to players by employees or volunteers of the licensed charitable, fraternal, or religious organization.

(4) A licensee shall not permit the operating expenses of its bingo and raffle games, excluding prizes and money paid to players, to exceed 18.0 percent of the annual handle of its bingo and raffle operations. If the expenses of bingo and raffle games operated by the licensee in the preceding 12 months have exceeded 18.0 percent, the bingo, or raffle license shall not be renewed unless the licensee files, on a form prescribed by the Department, a satisfactory plan for operating in compliance with the 18.0 percent expense limitation. The license shall be conditioned on continued compliance with the plan and may be revoked or suspended in the event of noncompliance.

(5) In the event that compensation is paid to personnel for services related to the operation of bingo, Monte Carlo, and raffle games, the compensation shall not exceed:

(a) 200 percent of the federal minimum wage for nonsupervisory personnel; and

(b) 300 percent of the federal minimum wage for supervisory personnel.

(6) No bingo card or raffle tickets shall be sold to persons under 18 years of age unless the sale is made in the presence of their parent or legal guardian.

(7) Unless excepted by the Department pursuant to OAR 137-025-0190, no person shall spend more than 30 hours per week administering or operating bingo and raffle games on behalf of a licensee. Pursuant to ORS 464.310(2), the Department may authorize bingo game managers or supervisors to work as supervisors for other licensees. The Department will approve such requests if it concludes that the licensees involved have satisfactory inventory control systems in place and that the applicant will not usurp the functions (as provided in OAR 137-025-0090(3)) of the bingo game manager permitee(s) for the additional licensee(s).

(8) Bingo and raffle licensees with handles in excess of $250,000 shall limit administrative and prize expenses to ensure that an amount not less than five (5.0) percent of the annual gaming handle is earned and transferred to the organization's general operating account, or other fund as directed by the organization's governing board, for use by the governing board in pursuit of the organization's charitable, fraternal, or religious mission. If an organization fails to comply with the five percent profitability requirement, in whole or in part, due to the payment of one or more prizes in excess of $2,500, the Department shall take that fact into account in fashioning a conditional license.

(9) Licensees may publicly acknowledge other organizations, including for profit businesses, which donate prizes and help underwrite the cost of the licensees' gaming activities. These organizations may be referred to as "sponsors" of the activity. However, any public information referencing the event must promote an understanding that the event is conducted by and operated for the benefit of the named licensee and this information must be more prominent than any sponsorship recognition.

Stat. Auth.: ORS 464.250(1) & 914
Stats. Implemented: HB 3009, 1997
Hist.: JD 7-1987, f. 10-30-87, ef. 1-1-88; JD 6-1991, f. & cert. ef. 10-22-91; JD 2-1993, f. 6-21-93, cert. ef. 7-1-93; JD 7-1997(Temp), f. 12-31-97, cert. ef. 1-1-98 thru 6-20-98; DOJ 5-1998, f. 6-19-98, cert. ef. 6-20-98; DOJ 13-2001, f. 12-28-01, cert. ef. 1-1-02

137-025-0045
Operation of Linked Progressive Bingo Games — Generally

Operation of linked progressive bingo games shall be of two types: single hall and multiple hall games. Multiple hall games shall be operated by a licensed Linked Progressive Bingo Contractor. Single hall games shall also be operated by a Linked Progressive Bingo Contractor except that linked progressive bingo games played at a single hall, involving prizes not exceeding $2500, may be operated by the licensees operating non-linked games at that location.

Stat. Auth.: ORS 167.117(10)(12), 464.250(1) & 914
Stats. Implemented: SB 716, 2003
Hist.: DOJ 8-2004, f. & cert. ef. 5-19-04

Bingo Licenses

137-025-0050
Classes of Licenses

(1) A "Class A" bingo license shall authorize a licensee to collect a bingo handle of an unlimited amount during the license year.

(2) A "Class B" bingo license shall authorize a licensee to collect a bingo handle of no more than $250,000 during the license year.

(3) A "Class C" bingo license shall authorize a licensee to collect a bingo handle of no more than $75,000 during the license year.

(4) A "Class D" bingo license shall authorize a licensee to collect a bingo handle of no more than $20,000 during the license year.

Stat. Auth.: ORS 914
Stats. Implemented: HB 3009, 1997
Hist.: JD 8-1987, f. 10-30-87, ef. 11-1-87; JD 2-1993, f. 6-21-93, cert. ef. 7-1-93; JD 7-1997(Temp), f. 12-31-97, cert. ef. 1-1-98 thru 6-20-98; DOJ 5-1998, f. 6-19-98, cert. ef. 6-20-98

137-025-0060
Application for Bingo License

(1) An application for a bingo license or license renewal shall be made on a form prescribed by the Department, shall be signed by a responsible official of the organization and shall be accompanied by the license application fee as provided in section (3) of this rule. The Department shall reject applications which are incomplete, are not accompanied by the documents required by this section or are not accompanied by a sufficient license fee. An applicant shall be immediately notified of any such deficiencies. The license application shall include the following information:

(a) The name, address and telephone number of the organization;

(b) A statement of the purposes for which the money received from the bingo games will be used;

(c) A statement as to whether or not the organization has had a license to operate bingo or raffle games denied, revoked or suspended by the State of Oregon or any other licensing authority;

(d) The full names and addresses of the responsible officials of the organization;

(e) For Class A or B bingo licensees, the name and address of the individual proposed by the applicant to act as its supervising bingo game manager;

(f) The address of the location proposed by the applicant where the bingo games will be held; the amount of rent to be paid for the location if not owned by the applicant; the party who is to be paid rent, if any; and a statement that rent will not be paid to a related party;

(g) The class of license sought by the applicant; and

(h) For Class A or B bingo licensees, the name and address of the financial institution and the account number for the bingo account(s) to be used by the applicant.

(2) The applicant shall submit the following documents with the application. The information required in subsections (c) through (f) of this section shall be on forms prescribed by the Department:

(a) A copy of a letter supporting tax exempt status as specified in OAR 137-025-0030(c);

(b) For a Class A or B license, a copy of a current or proposed lease agreement for the location of the bingo games if the applicant does not own the premises intended for use;

(c) For a Class A or B bingo license, a completed authorization to inspect bank records on a form furnished by the Department, authorizing the financial institution to disclose customer information regarding the applicant's bingo account to the Department;

(d) As required by Chapter 914, Oregon Law 1987, a waiver of potential liability claims against the State of Oregon, its agencies, employees and agents for any damages resulting from any disclosure or publication of any information acquired by the Department during any of its investigations, inquiries or hearings;

(e) A consent to inspections authorized by Chapter 914, Oregon Laws 1987, and the rules adopted thereto;

(f) A statement verifying whether or not the applicant has conducted bingo operations during the 12 months prior to submitting the application for a license and, if so, a financial summary of its operation; and

(g) Such other information as may be requested by the Department.

(3) The application fees are as follows:

(a) Class A license — $200;
(b) Class B license — $100;
(c) Class C license — $40;
(d) Class D license — $20.

Stat. Auth.: ORS 464
Stats. Implemented: ORS 464.250(2) & (4), 464.280(2)(a) & (b) & 464.510
Hist.: JD 8-1987, f. 10-30-87, ef. 11-1-87; JD 2-1993, f. 6-21-93, cert. ef. 7-1-93; DOJ 13-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 7-2006, f. 12-12-06, cert. ef. 1-1-07

137-025-0070
Issuance of License to Conduct Bingo

(1) Within 60 days after the filing of a completed application for a license or license renewal to conduct bingo, the Department shall either issue a license or notify the applicant in writing, in accordance with ORS 183.310 to 183.550, that the license has been denied, and that the applicant is entitled to a hearing. The license shall be effective for one year from the date it is issued and may be renewed annually, except that a license issued prior to January 1, 1988, shall be effective until January 1, 1989. The form of the license shall be prescribed by the Department and shall include:

(a) The name of the licensed organization;

(b) The class of license;

(c) The expiration date of the license;

(d) The authorized county and specific location where bingo games may be operated by the licensee; and

(e) Any special conditions of the license.

(2) Each license shall be conspicuously displayed by the licensee during operating hours at its authorized location.

Stat. Auth.: ORS 464
Stats. Implemented: ORS 464.250(2)
Hist.: JD 8-1987, f. 10-30-87, ef. 11-1-87

137-025-0080
Bingo License Renewal and Amendment

(1) Within 60 days prior to the expiration of an existing bingo license, the licensee may apply to the Department to renew the license. The application and fee shall be the same as for the initial license.

(2) A licensee shall not exceed the class limit for gross receipts:

(a) As soon as it is apparent to the licensee that the class limit on annual receipts from licensed activities will be exceeded, it shall immediately notify the Department and shall apply for the license

class which is proper, submitting the basic fee required for that class less the amount originally submitted for the previous license;

(b) Any such additional license issued by the Department shall be valid only for the period which remains in the term of the previous license at the time such additional license is issued.

(3) A licensee shall not conduct any bingo operations at a location in addition to the location designated on its license unless approved in advance by the Department. A licensee desiring to change its regular authorized location to operate bingo shall submit an application to amend its license on a form prescribed by the Department.

Stat. Auth.: ORS 464
Stats. Implemented: ORS 464.250(2)
Hist.: JD 8-1987, f. 10-30-87, ef. 11-1-87

137-025-0090
Bingo Game Manager Permit

(1) No person shall act as a bingo game manager for a Class A or B licensee unless he or she has a current bingo game manager permit or temporary authorization from the Department. A Class A or B bingo licensee shall not allow any person to act as a bingo game manager unless he or she possesses a current bingo game manager permit or temporary authorization from the Department. Temporary authorization to act as a manager may be granted by the Department upon the filing of a completed bingo game manager application.

(2) An application for a bingo game manager permit shall be made on a form prescribed by the Department and shall be accompanied by a $40 permit application fee. The Department shall reject applications which are incomplete or are not accompanied by a sufficient fee. All applicants shall be immediately notified of any such deficiencies. The license application shall include a personal information statement, including information regarding personal identity and personal history; a description of prior bingo employment activity and compensation received; a criminal history statement; finger prints and a completed release of educational, employment and military records form.

(3) A Class A and B licensee shall designate a bingo game manager for the licensee. The bingo game manager permit for the licensee's manager shall be conspicuously displayed by the licensee during operating hours at its authorized location. The licensee shall notify the Department in writing if it intends to designate a different bingo game manager:

(a) The bingo game manager shall be responsible for the overall operation of the bingo games by ensuring that:

(A) The public and the licensees are protected from fraud;

(B) All provisions of ORS 167.118, ORS Chapter 464 and OAR 137-025-0010 et seq. are followed;

(C) All records are completed and correct; and

(D) All monies derived from the bingo game are safeguarded until transferred to the licensee's bingo checking account.

(b) To the extent that they are not assumed by the board of directors or a bingo committee designated by the board, the duties and responsibilities of a bingo game manager include the following:

(A) Personnel actions regarding bingo workers including hiring, firing, training, evaluating, scheduling work periods, and/or setting salaries;

(B) Scheduling the bingo activity, including determining the time and days of operation;

(C) Setting the scope of the bingo activity by determining:

(i) The number of games to be played;

(ii) The type of games to be played;

(iii) The cost to each player to participate; and

(iv) The type and amount of prizes to be awarded.

(D) Setting the scope of marketing activities related to the bingo activity by determining:

(i) Type and scope of promotional activities; and

(ii) The media, content, timing, and target market area of advertising.

(4) A bingo game manager shall be knowledgeable regarding the rules for the conduct of bingo games.

(5) Within 60 days after the filing of a completed application for a permit, the Department shall either issue a permit or notify the applicant in writing, in accordance with ORS 183.310 to 184.550 that the permit has been denied and that the applicant is entitled to a hearing. The permit shall be effective for one year from the date it is issued and may be renewed annually. The form of the permit shall be prescribed by the Department.

(6) No person may concurrently act as a bingo game manager for more than one licensee unless such participation is approved by the Department. The Department may approve requests for bingo game managers to temporarily act in that capacity on behalf of more than one licensee for a period of up to 90 days. Such requests shall be approved in emergency situations when a licensee is already operating a game and is without a bingo game manager as a result of unforeseen circumstances or circumstances beyond the licensee's control.

(7) The organization's designated bingo game manager shall be physically present and shall personally oversee the operation of the game at least 50 percent of the time the licensee's bingo games are in session for each reporting period. The Department may approve a lower percentage requirement for designated managers of licensees holding exceptions pursuant to OAR 137-025-0190.

(8) Any person to whom a bingo game manager permit is issued shall notify the Department upon any change of the person's name, residence or mailing address, or change of employment if employed by a licensee. Notice required under this section may be given in person or by mail and:

(a) Must be given within 30 days of the date of the change;

(b) Must be in writing and contain the old and new name, residence or mailing address, or employer(s); and

(c) Must contain the person's bingo game manager permit number.

Stat. Auth.: ORS 464.250(1)
Stats. Implemented: ORS 464.250(1), (2), (3) & (4) & 464.280
Hist.: JD 8-1987, f. 10-30-87, ef. 11-1-87; JD 2-1993, f. 6-21-93, cert. ef. 7-1-93; DOJ 13-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 7-2006, f. 12-12-06, cert. ef. 1-1-07

137-025-0091
Licensee/Permittee Qualifications

Pursuant to ORS 464.280, an applicant or holder of a bingo or raffle license or permit shall establish the following qualifications:

(1) Basic knowledge of the rules and regulations governing the operation of bingo by Class A and B licensees;

(2) Honesty, integrity and forthrightness, including completeness of relevant information submitted by the applicant in the course of the application process;

(3) Adherence to local, state and federal laws and regulations;

(4) Financial responsibility and integrity in financial transactions. Past insolvency, bankruptcy or intention to file for bankruptcy shall not per se disqualify an applicant.

Stat. Auth.: ORS 464.250(1)
Stats. Implemented: ORS 464.280
Hist.: JD 2-1993, f. 6-21-93, cert. ef. 7-1-93

137-025-0100
Notice of Bingo Activities

Prior to conducting bingo operations, each Class A or B bingo licensee shall file with the Department a schedule of bingo activities on a form provided by the Department. The form shall list the regular sessions conducted by the licensee, specifying the days and hours of the week. The licensee shall not conduct operations except during the times on file with the Department. A licensee desiring to change its scheduled bingo activities shall file an amended schedule with the Department on a form prescribed by the Department.

Stat. Auth.: ORS 464
Stats. Implemented: ORS 464.250
Hist.: JD 8-1987, f. 10-30-87, ef. 11-1-87

137-025-0110
Operator Lists

Each Class A or B bingo licensee shall submit to the Department, on a form prescribed by the Department, a list of the names, address and dates of birth of all employees who conduct bingo operations on behalf of the licensee. An initial list shall be submitted on or before the date the licensee begins conducting bingo operations

pursuant to these rules. An updated list of employees shall be filed once every 90 days.

Stat. Auth.: ORS 464
Stats. Implemented: ORS 464.250
Hist.: JD 8-1987, f. 10-30-87, ef. 11-1-87

137-025-0115
Application for Linked Progressive Bingo Contractor License

(1) An application for a Linked Progressive Bingo Contractor license or license renewal shall be made on a form prescribed by the Department, shall be signed by a responsible official of the organization, and must be accompanied by the license application fee as provided in section (3) of this rule. The Department shall reject applications which are incomplete, are not accompanied by the documents required by this section, or are not accompanied by a sufficient license fee. An applicant shall be immediately notified of any such deficiencies. The license application shall include the following information:

(a) The name, address and telephone number of the organization;

(b) A statement as to whether or not the organization has had a license to provide equipment or services for bingo or other gambling activity denied, revoked or suspended by the State of Oregon or any other licensing authority; and

(c) The full names and physical addresses of the responsible officials of the organization.

(2) The applicant shall submit the following documents with the application. The information required in subsections (b) and (c) of this section shall be on forms prescribed by the Department and shall be signed by a responsible official of the organization:

(a) Proof of compliance with applicable state and local business registration laws and regulations.

(b) As required by Oregon ORS 464.280, a waiver of potential liability claims against the State of Oregon, its agencies, employees, and agents for any damages resulting from any disclosure or publication of any information acquired by the Department during any of its investigations, inquiries or hearings;

(c) A consent to allow Department employees access to licensees' place of business for inspection and testing of equipment and to examine records maintained by licensees.

(d) A description of the Linked Progressive Bingo Game(s) which the applicant intends to offer to Oregon bingo licensees.

(e) Such other information as requested by the Department.

(3) The non-refundable application and licensing investigation fee is $500.

Stat. Auth.: ORS 167.117(10) & (12), 464.250(1) & 914
Stats. Implemented: SB 716, 2003
Hist.: DOJ 8-2004, f. & cert. ef. 5-19-04

137-025-0117
Application for Linked Progressive Bingo Game Escrow Agent

(1) An application for a Linked Progressive Bingo Game Escrow Agent license or license renewal shall be made on a form prescribed by the Department, shall be signed by a responsible official of the organization, and must be accompanied by the license application fee as provided in section (3) of this rule. The Department shall reject applications which are incomplete, are not accompanied by the documents required by this section, or are not accompanied by a sufficient license fee. An applicant shall be immediately notified of any such deficiencies. The license application shall include the following information:

(a) The name, address and telephone number of the person or organization;

(b) A statement as to whether or not the person or organization has had a license to provide equipment or services for bingo or other gambling activity denied, revoked or suspended by the State of Oregon or any other licensing authority; and

(c) The full name(s) and physical address(s) of the responsible official(s) of the applicant.

(2) The applicant shall submit the following documents with the application. The information required in subsections (b) and (c) of this section shall be on forms prescribed by the Department and shall be signed by a responsible official of the applicant:

(a) Proof of compliance with applicable state and local business registration laws and regulations.

(b) As required by Oregon ORS 464.280, a waiver of potential liability claims against the State of Oregon, its agencies, employees, and agents for any damages resulting from any disclosure or publication of any information acquired by the Department during any of its investigations, inquiries or hearings;

(c) A consent to allow Department employees access to licensees' place of business for inspection of equipment and to examine records maintained by licensees.

(d) Such other information as requested by the Department.

(3) The non-refundable application and licensing investigation fee is $50 for an applicant licensed pursuant to ORS 696.505 et seq. The fee for all other applicants is $250.

Stat. Auth.: ORS 167.117(10) & (12), 464.250(1) & 914
Stats. Implemented: SB 716, 2003
Hist.: DOJ 8-2004, f. & cert. ef. 5-19-04

Bingo Records and Reports

137-025-0120
Daily Bingo Records

Each Class A or B bingo licensee shall prepare and retain a daily bingo record on a form prescribed by the Department. A form shall be completed for each session and shall require the following information:

(1) The date, time and location of the session.

(2) A count of the attendance and the time the attendance count was made.

(3) The handle collected during the session.

(4) The number of regular bingo game cards sold and the total money collected from such sales.

(5) For special bingo games, the number of cards sold and the total money collected from such sales for each game.

(6) For each bingo game of a session, the value of the prizes awarded to the winner(s) and the number of winners receiving such prizes.

(7) The total value of prizes awarded during the session.

Stat. Auth.: ORS 464
Stats. Implemented: ORS 464.250(5)
Hist.: JD 7-1987, f. 10-30-87, ef. 1-1-88; DOJ 13-2001, f. 12-28-01, cert. ef. 1-1-02

137-025-0130
Bingo Receipts

(1) Each Class A or Class B licensee shall maintain a record of all winners of prizes valued at $100 or more. The record shall be completed on a form prescribed by the Department. A form shall be completed for each session and shall require the following information:

(a) The name of the licensee;

(b) The date;

(c) A description of the prize;

(d) The amount of each cash prize;

(e) The name and address of the prize winner; and

(f) The signature of the prize winner.

(2) It shall be the responsibility of the licensee to see that the prize winner is accurately identified, and the licensee shall require such proof of identification as is necessary to establish the winner's identity. The licensee shall not pay out any prize until the winner has furnished to the licensee all information required by this rule to be upon the prize record.

(3) The record of prize winners shall be affixed to the daily bingo report for that session, along with a copy of the games schedule for that session, and shall be retained for a period of three years.

Stat. Auth.: ORS 464
Stats. Implemented: ORS 464.250(5)
Hist.: JD 7-1987, f. 10-30-87, ef. 1-1-88

137-025-0140
Bingo Reports

(1) Each Class C or D licensee shall file an annual report with the Department no later than 60 days after the end of its license year.

The report shall be on a form prescribed by the Department. The report shall include the following information:

(a) The total number of bingo sessions held during the license year;

(b) The total bingo handle;

(c) The total amount of cash prizes and the total cost to the licensee of all noncash prizes awarded;

(d) The total expenses directly related to the operation of bingo, itemized by major categories of expenses;

(e) The total expenses expressed as a percentage of the total of the bingo handle; and

(f) The net income from bingo activities.

(2) A Class B licensee shall file an annual report no later than 60 days after the end of the license year. The report shall be on a form prescribed by the Department. The report shall include the following information:

(a) The total number of bingo sessions held during the license year;

(b) The total bingo handle for the license year;

(c) The total amount of cash prizes and the total cost to the licensee of all noncash prizes awarded;

(d) The total expenses directly related to the operation of bingo itemized by major categories of expenses, including the following:

(A) A listing of each employee connected with the management, promotion, conduct or operation of the bingo game along with the employee's duties, hours and compensation;

(B) A statement describing the allocation method used in allocating common use expenses; and

(C) A detailed listing of all other expenses.

(f) The total expenses expressed as a percentage of the bingo handle plus the total receipts from concessions if operated by the licensee; and

(g) The total number of customers participating.

(3) A Class A licensee shall file a quarterly report for each of the following periods of the year: January 1 through March 31; April 1 through June 30; July 1, through September 30; and October 1, through December 31. The reports shall be on a form prescribed by the Department. The reports shall be filed no later than 30 days after the end of the reporting period. A licensee need not file a report for a quarterly period if the license was issued during the last month of the quarterly reporting period. However, if the licensee elects not to file a report, any activities during that month shall be included in the next quarterly report. The report shall include the following information:

(a) The total number of bingo sessions held during the quarter;

(b) The total bingo handle for the quarter;

(c) The total amount of cash prizes, and the total cost to the licensee of all noncash prizes awarded;

(d) The total expenses directly related to the operation of bingo, itemized by major categories of expenses, including the following:

(A) A listing of each employee connected with the management, promotion, conduct or operation of the bingo game along with the employee's duties, hours and compensation;

(B) A statement describing the allocation method used in allocating common use expenses; and

(C) A detailed listing of all other expenses.

(f) The total expenses expressed as a percentage of the bingo handle plus the total receipts from concessions if operated by the license; and

(g) The total number of customers participating during the reporting period.

(4) All bingo reports shall be signed by the bingo game manager and a responsible official of the organization who shall be a different person than the bingo game manager.

Stat. Auth.: ORS 464
Stats. Implemented: ORS 464.250(5)
Hist.: JD 7-1987, f. 10-30-87, ef. 1-1-88; DOJ 13-2001, f. 12-28-01, cert. ef. 1-1-02

137-025-0150
Bingo Fees

(1) All annual and quarterly bingo reports filed with the Department shall be accompanied by a fee, made payable to the Department of Justice, as follows:

(a) Class D license — $20;

(b) Class C license — A fee of $20 plus 0.5 of 1 percent of the bingo handle in excess of $20,000;

(c) Class B license — A fee of 0.5 of 1 percent of the bingo handle up to $75,000 and 1 percent of the bingo handle in excess of $75,000;

(d) Class A license — A fee of 1.20 percent of the bingo handle up to $3,000,000 and 1 percent of the bingo handle in excess of $3,000,000.

(2) A delinquency fee of $20 or 1 percent of the fee described above, whichever is greater, shall be paid by the licensee if the report or regular fee is not delivered to the Department by the due date. The minimum delinquency fee shall increase to $50 after 60 days from the due date of the report.

(3) When the filing date for reports and fees falls on a Saturday or legal holiday, the due date is the next business day following the Saturday or legal holiday.

Stat. Auth.: ORS 464.250(1)
Stats. Implemented: ORS 464.250(2) & (3)
Hist.: JD 7-1987, f. 10-30-87, ef. 1-1-88; JD 2-1993, f. 6-21-93, cert. ef. 7-1-93; DOJ 7-2006, f. 12-12-06, cert. ef. 1-1-07

Operation of Bingo Games

137-025-0160
Conduct of Bingo in General

(1) No employee of the licensee involved in the conduct of bingo games may receive a prize or participate as a player at a bingo game session in which the employee is actually involved in the conduct of the bingo games.

(2) All prizes awarded in connection with bingo games, whether in cash or merchandise, and all rules by which such prizes may be won, including costs to a participant, shall be disclosed to each participant prior to that participant taking part in the activity or paying for the opportunity to take part in the activity. Disclosures shall be made by conspicuously posting or displaying upon the premises where the activity is operated a complete description of the rules of the activity, an explanation of how each prize can be won, and the cost to participate in the activity.

(3) The numbers for bingo shall be physically selected from a container, and players shall be able to view the selection process, including an unobstructed view of the container or blower chamber. Immediately following the drawing of each number in any bingo game wherein a prize valued at $100 or greater is offered, the caller shall display the letter and number for viewing by the participants. Numbers shall not be selected by electronic equipment, such as a computer. For any game in which a prize valued at less than $100 is offered, upon request by a player to any employee or volunteer of the licensee, the player, accompanied by a management representative of the licensee, shall be allowed to inspect the bingo caller's cradle to verify the bingo numbers called before the bingo numbers are returned to the blower chamber.

(4) All prizes, or script redeemable for prizes, paid to the winner(s) shall be paid by the licensee; no prizes or script shall be transferred from non-winners to the winner(s).

(5) Bingo cards may not be purchased or played other than at the approved location of the licensee's game; a player must be present to win.

(6) Except for the conduct of "bonanza" bingo described in section (7) of this rule, the numbers shall be drawn and announced during the play of the game; each player covers the corresponding number, if present on the bingo card, as each number is called.

(7) A licensee may play "bonanza" bingo by drawing a predesignated quantity of bingo numbers before the actual playing of the bonanza bingo game only if the licensee complies with the following procedures:

(a) Bonanza bingo cards shall remain sealed until such time as they are sold to the players;

(b) The balls drawn in advance of the bonanza bingo game shall be drawn during a bingo session in the presence of the players; and

(c) The quantity of numbers drawn in advance shall be fewer than the number which would produce a probable instant winner, based upon the rules of the game and the expected number of players.

(8) No operator shall engage in any act, practice, or course of operation as would operate as a fraud to affect the outcome of any bingo game.

(9) Cages or blowers used to mix and select bingo numbers shall be designed and constructed in such a manner which reasonably provides a thorough mix of the numbers and random selection. Cages and blowers shall be cleaned and maintained in good repair so as to prevent damage to the bingo numbers.

(10) Bingo numbers shall be periodically inspected, cleaned and maintained in good condition by the licensee. No bingo numbers may be used in play which are defective, cracked, broken, illegible, out of round or damaged in such a manner that would interfere with or affect the random selection process. Only sequentially complete sets of bingo numbers shall be placed in play; there shall be no duplication of numbers.

(11) No person shall tamper with, mutilate, weight, or otherwise alter a bingo number in any manner that would interfere with or affect the random selection process.

(12) The Department may immediately remove any bingo number or set of bingo numbers from play if a violation is found. The number or number set shall not be returned to play until the violation is corrected. The Department may require that any bingo number or number set be replaced or tested for compliance if a violation is found or suspected.

(13) With the exception of "sleeper bingos," a prize may be awarded only to the bingo player(s) who first covers or uncovers the selected numbers in a designated combination, sequence or pattern. Multiple prizes may be awarded in the course of a game if each prize is given to the first player to achieve a designated pattern, such as those offered in "work up" games. No awards, including consolation awards, such as "monitor bingos," shall be made to players other than the prizes described above.

Stat. Auth.: ORS 464.250(1) & 464
Stats. Implemented: ORS 464.250(7) & SB 716, 2003
Hist.: JD 7-1987, f. 10-30-87, ef. 1-1-88; JD 1-1991, f. 2-1-91, cert. ef. 3-1-91; JD 2-1993, f. 6-21-93, cert. ef. 7-1-93; DOJ 6-2004, f. 2-19-04, cert. ef. 4-1-04; DOJ 8-2004, f. & cert. ef. 5-19-04

137-025-0170
Bingo Checking Account

Each Class A or B licensee shall have one or more separate checking accounts for bingo related purposes. All bingo proceeds, except amounts paid for prizes shall be deposited in the bingo checking account within three business days of their collection. Expenses which are exclusively related to the conduct of bingo games shall be paid from the bingo account. After bingo expenses have been paid, the licensee may transfer funds from the bingo account to another account of the licensee. The licensee shall retain a copy of all bingo checking account records, including account statements, canceled checks, check registers, and deposit slips for a period of three years.

Stat. Auth.: ORS 464
Stats. Implemented: ORS 464.250(5)
Hist.: JD 7-1987, f. 10-30-87, ef. 1-1-88

137-025-0180
Bingo Operating Limits

(1) Unless excepted by the Department, a licensee shall not operate bingo games for more than 15 hours nor more than three days in any one calendar week. However, a Class C or D licensee may operate without restriction as to number of days or hours per week if its total operations are limited to no more than 12 consecutive days during its license year. All bingo games must be conducted at a single physical location. No more than two bingo games may be operated simultaneously at a location. One licensee may not operate simultaneous games. Simultaneous games occur when numbers are pulled from more than one container/blower at the same time.

(2) A licensee shall not award non-linked progressive game prizes exceeding $2,500 in value in any one game except a licensee may award prizes not to exceed $10,000 per game up to 2 times during the license year. A licensee may award an unlimited number of prizes in excess of $2,500 for authorized linked progressive bingo games. On the licensee report as provided by OAR 137-025-0140, the licensee shall record the dates(s) and amount(s) of any prizes awarded exceeding $2,500 per game which were not paid by a licensed Linked Progressive Game Bingo Escrow Agent. A licensee shall not offer a non-linked progressive game prize in excess of $2,500 unless the licensee has such funds available in an account with a financial institution or has evidence that it has purchased current insurance from a surety/insurance company providing for payment if such a prize is won by one or more of the licensee's players. Any such prize won by a player shall be paid by a corporate or cashier's check no later than the close of the second business day after the prize is won.

(3) The "operating expenses" of all bingo and raffle games, conducted by the licensee as defined in ORS 167.117(14), excluding prizes and money paid to players, shall not exceed 18 percent of the total of the annual handle of those games:

(a) If expenses are related to both the bingo operations and the nonbingo operations of a licensee (such as rent, utilities and employee salaries), a reasonable allocation shall be made between the bingo and nonbingo activities. Employee salaries shall be allocated based upon hours spent in bingo and nonbingo activities;

(b) All leasehold improvements and improvements to bingo facilities owned by the licensee may be reasonably amortized;

(c) No salary of an employee of the licensee shall be considered an operating expense for purposes of this subsection, if less than 20 percent of the employee's time is devoted to activities directly related to the games;

(d) Fees paid to the Department are not operating expenses for purposes of this subsection;

(e) If a licensee subleased its space or equipment to one or more additional licensees, the licensee may pro rate its rental expenses based on proportional use of the property; the pro rate shall be based on the actual hours of use by that licensee compared to the total hours of use of the other licensees.

Stat. Auth.: ORS 464.250(1)
Stats. Implemented: HB 3009, 1997, SB 716, 2003
Hist.: JD 7-1987, f. 10-30-87, ef. 1-1-88; JD 2-1993, f. 6-21-93, cert. ef. 7-1-93; DOJ 5-1998, f. 6-19-98, cert. ef. 6-20-98; DOJ 13-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2004, f. 2-19-04, cert. ef. 4-1-04; DOJ 8-2004, f. & cert. ef. 5-19-04

Multiple Hall Linked Progressive Bingo Games

137-025-0181
Operation of Linked Progressive Bingo Games

A licensed Linked Progressive Bingo Contractor shall not operate such a game in Oregon unless it complies with the following:

(1) The specific characteristics/format of the game and the equipment/software have been approved by the Department.

(2) The Contractor has furnished to the Department proof of certification by Gaming Laboratories International, Inc. testing laboratory pursuant to GLI-12 standards or certification by another nationally recognized laboratory pursuant to the preceding standards or standards determined by the Department as being equivalent and any other integrity standards communicated by the Department to the testing laboratory.

(3) The approved Oregon game is not conducted at locations other than those sites of Oregon bingo licensees licensed by the Department.

(4) The contractor has submitted and the Department has approved:

(a) A model contract between the contractor and bingo licensees;

(b) A schedule of lease fees to be charged to bingo licensees, including any proposed discounts; and

(c) A model contract between the contractor and the linked progressive bingo game escrow agent.

(5) A contractor that desires to change the specific characteristics/format of a game which has been approved by the Department pursuant to paragraph (1) above, shall make written application for changes to the Department. The application shall certify that all participating bingo licensees have been notified of the proposed change(s). The Department shall approve or disapprove of the proposed change(s) within 5 business days.

Stat. Auth.: ORS 167.117(10) & (12), 464.250(1) & 914
Stats. Implemented: SB 716, 2003
Hist.: DOJ 8-2004, f. & cert. ef. 5-19-04

137-025-0182
Linked Progressive Bingo Game Contracts

The contract between the Linked Progressive Bingo Game Contractor and a bingo licensee shall provide for the schedule of prize pool contributions to be made by the licensee to the linked progressive bingo game escrow agent. The schedule shall be the same for all licensees and may not be changed without the approval of the Department. The contractor shall provide that if a licensee does not make scheduled payments to the escrow agent, its access to the game(s) will be terminated. A bingo licensee's access to the game shall not be activated until a copy of the signed completed contract has been received by the Department.

Stat. Auth.: ORS 167.117(10) & (12), 464.250(1) & 914
Stats. Implemented: SB 716, 2003
Hist.: DOJ 8-2004, f. & cert. ef. 5-19-04

137-025-0183
Access to Linked Progressive Bingo Games

A Linked Progressive Bingo Game Contractor shall be responsible for implementing and maintaining adequate security measures to restrict access to the electronic linked bingo system to other than authorized parties. Only authorized parties may access the system for legitimate lawful purposes. Authorized parties include Oregon gaming licensees, the designated escrow agent and the Department. A linked bingo system shall be restricted from access by the general public through internet and any other electronic means.

Stat. Auth.: ORS 167.117(10) & (12), 464.250(1) & 914
Stats. Implemented: SB 716, 2003
Hist.: DOJ 8-2004, f. & cert. ef. 5-19-04

137-025-0184
Linked Progressive Games — Manner of Conducting

(1) A licensee shall activate the linked progressive bingo game equipment in its possession in order to host or participate in a linked progressive bingo game and the system equipment shall record and maintain a record of the number of such games hosted or in which the licensee participated.

(2) A winning player must have achieved bingo on the last number called. A progressive bingo game can be played within or as an accompaniment to any other primary bingo game; however, if a winning player achieves the primary bingo on the last number called then the system equipment shall display the winning bingo card for viewing by the players at the location and if a primary bingo is verified, regardless of whether it also qualifies for the progressive prize, that particular linked progressive bingo game is also concluded.

(3) As each linked progressive bingo game is played at a participating licensed location, the bingo prize shall be increased by designated payments per licensee and participating locations will be notified of the increased amount of the progressive prize.

(4) If a linked progressive bingo game is played in conjunction with a standardized non-linked game and a player is charged an extra fee to participate in the linked progressive bingo game, the Linked Progressive Bingo Game Contractor shall operate the linked progressive game in a manner so that it can be verified that any winning player did pay the extra fee to participate in the linked progressive game.

(5) When a linked progressive bingo game winner is initially verified, the Linked Progressive Bingo Game Contractor equipment shall immediately be activated to notify the other participating licensee halls of a likely winner and the players shall be made aware that the progressive prize amount has been frozen. Once the contractor and the host licensee have completed all appropriate activities to verify the winner, the escrow agent shall be notified and the prize shall be reset to the advertised minimum plus any increases due to sales after the prize was frozen. The licensee hosting the game which produced the winner shall obtain all relevant federal W2G form information from the winner. The licensee shall also obtain information as to whether the winner prefers to receive the prize check from the licensee, from the escrow agent or by certified and insured mail delivery at an address provided by the winner. The licensee shall immediately transmit the above information, along with a statement of the amount of the prize, to the escrow agent.

(6) Linked Progressive Bingo Game Escrow Agents may charge the Linked Progressive Bingo Contractor a reasonable fee for their services.

(7) The escrow agent shall establish a "sweep account" with a commercial bank with branch offices throughout Oregon. All participating licensees will be notified as to the identity of the commercial bank. Participating licensees shall establish an account for prize pool contributions at a local branch of the commercial bank and shall execute the necessary documents so that the sums deposited may be swept by the escrow agent, into the sweep account. Participating licensees shall transfer the required prize pool contribution no later than three business days from the date a linked progressive bingo game was conducted.

(8) The escrow agent shall immediately notify the Department if a participating licensee fails to transfer a scheduled prize pool deposit for a linked progressive bingo game. The Department shall immediately notify the licensee of the delinquency and if the delinquent amount is not paid within two business days, the Department shall notify the Linked Progressive Bingo Game Contractor to terminate the licensee's access to the game.

(9) The Department may direct the Linked Progressive Bingo Game Contractor to renew the delinquent licensee's access to the game if the Department has received confirmation that the licensee has contributed the full amount of the delinquency plus a $100 delinquency fee to the licensee's prize pool contribution account.

Stat. Auth.: ORS 167.117(10) & (12), 464.250(1) & 914
Stats. Implemented: SB 716, 2003
Hist.: DOJ 8-2004, f. & cert. ef. 5-19-04

Single Hall Linked Progressive Bingo Games

137-025-0186
Operation of Linked Progressive Bingo Games

Such games may be operated by a Linked Progressive Bingo Contractor or a group of licensees operating games at the hall. If operated by a Contractor, the contractor shall be licensed and comply with all rules as provided for Multiple Hall Linked Progressive Bingo Games, including those providing for the utilization of a licensed escrow agent. If operated by the licensees, they shall comply with the following:

(1) The licensees shall apply to the Department for approval to operate the game. Approval shall include:

(a) The specific characteristics/format of the game,

(b) Any specific equipment/software to be utilized to operate the game;

(c) The proposed arrangement and mechanics for operation of a common prize pool, including the identity of the licensee that will hold the prize pool funds; and

(d) The proposed method of verifying winners of linked progressive bingo games, including the method for confirming that winners have paid to participate in the linked progressive bingo game if an additional payment is required.

(2) When a linked progressive bingo game winner is verified, all other participating licensees shall immediately be notified and the game prize shall immediately be reset to the advertised minimum prize.

Stat. Auth.: ORS 167.117(10) & (12), 464.250(1) & 914
Stats. Implemented: SB 716, 2003
Hist.: DOJ 8-2004, f. & cert. ef. 5-19-04

Linked Progressive Bingo Game Escrow Agents

137-025-0188
Linked Progressive Bingo Games Escrow Agent Reports

(1) Each Linked Progressive Bingo Games Escrow Agent shall file a monthly report with the Department not later than 10 days after the end of each month. The report shall be on a form prescribed by the Department. The report shall include the following information:

(a) The total escrowed funds deposited during the reporting period.

(b) An itemized record of the escrowed funds paid to the escrow agent by each participating licensee, listing the amount and date received.

(c) The total prize payouts made by the escrow agent, listed by participating licensee and each winning player and showing the date of the payout.

(2) Escrow agents will maintain adequate records to document the custody and transfer of funds under their control for a period of not less than three years.

Stat. Auth.: ORS 167.117(10) & (12), 464.250(1) & 914
Stats. Implemented: SB 716, 2003
Hist.: DOJ 8-2004, f. & cert. ef. 5-19-04

137-025-0189
Linked Progressive Bingo Game Escrow Agents — Generally

(1) Persons or organizations acting as escrow agents for linked progressive bingo game prizes must be licensed by the Department pursuant to ORS Chapter 464 and the administrative rules adopted pursuant to that law. Licensees shall be licensed pursuant to ORS 696.505 et seq. or shall comply with subparagraph (2) below. To act as an escrow agent, licensees shall be third parties independent of any Linked Progressive Bingo Contractor or bingo licensee involved in the operation of the linked progressive bingo game. All funds held in escrow for charitable gaming licensers shall be held in a designated escrow account or deposit with a commercial bank, located within the state of Oregon and approved by the Department.

(2) A Linked Progressive Bingo Game Escrow Agent not licensed pursuant to ORS 696.505 et seq. shall deposit with the Department a corporate surety bond running to the State of Oregon, executed by a surety company satisfactory to the Department in the amount of $25,000.

(3) An escrow agent may satisfy the preceding requirement by depositing with the State Treasurer an amount equal to $25,000 in a form satisfactory to the Department for the faithful performance of the agent's linked progressive bingo game activity.

(4) The designated escrow agent for a particular linked progressive bingo game shall, upon obtaining the relevant information from the host licensee, immediately obtain a cashiers check for the winning amount, made payable to the winner, and shall prepare the appropriate federal W2G form. The escrow agent shall then immediately deliver the check to the winner in a manner consistent with the winner's expressed method of delivery as communicated to the host licensee.

Stat. Auth.: ORS 167.117(10) & (12), 464.250(1) & 914
Stats. Implemented: SB 716, 2003
Hist.: DOJ 8-2004, f. & cert. ef. 5-19-04

137-025-0190
Exceptions Approved by Department

(1) A bingo licensee that has received tax exempt status under the **Internal Revenue Code Section 501(c)(3)** and was operating a bingo game in Oregon in January, 1987, may apply for certain exceptions as provided in ORS 464.390. Requests for exceptions shall be prepared on forms prescribed by the Department. The forms shall include a description of why the licensee believes there is a compelling community need for the charitable activities funded by its bingo operations, a list of limits for which it seeks an exception plus the desired levels for which approval is sought, an explanation as to why its funding will be reduced unless the specific exceptions are granted, a monthly financial summary of its bingo operations for the period of January 1, 1986 to June 30, 1987, including the handle, the amount paid for prizes, the net receipts and the organization's regular hours of operation and such other information as may be requested by the Department.

(2) For purposes of this rule, "funding" shall refer to the net receipts from bingo operations available to the licensee after prizes, expenses and fees to the Department have been paid.

(3) The Department shall consider the following factors in evaluating whether there is a compelling community need for the charitable activities funded by a bingo operation:

(a) The nature of the charitable activities conducted or supported to date;

(b) The importance of those activities to the community;

(c) The prospect that those activities will be assumed by another organization or governmental entity or that a charitable beneficiary can find similar funding or services elsewhere in the community; and;

(d) The level of community involvement in the organization's activities, including community financial support received through fundraising other than bingo and participation by individuals in the community in the management of the organization.

(4) For purposes of determining whether or not the Act will seriously reduce an organization's funding, the Department shall consider the level of net receipts generated by the bingo operation prior to June 30, 1987 and shall account for inflation in approving any exception. In approving any exception, the Department shall presume that, except for the payment of fees required by this Act, the net receipts as a percentage of handle for the period covered by the exception shall not be less than the comparable relationship which existed prior to June 30, 1987.

(5) The Department shall review the exceptions granted under this rule not less than once per year, unless the Department determines that there has been a material change of circumstances since the time the exceptions were granted to the licensee, in which case the Department shall initiate an immediate review of the license. The Department will not continue an exception that otherwise meets the requirements of this rule if there has been a material change of circumstances as defined in ORS 464.390(4) since the time when the licensee was granted the exception.

Stat. Auth.: ORS 914
Stats. Implemented: HB 3009, 1997
Hist.: JD 8-1987, f. 10-30-87, ef. 11-1-87; DOJ 5-1998, f. 6-19-98, cert. ef. 6-20-98

137-025-0191
Multi License Supervision

(1) Pursuant to ORS 464.310(2), the Department may authorize an individual to manage the operation of a bingo facility on behalf of more than one licensee if:

(a) The individual is employed by or is a member of a bingo licensee and manages one or more functions described below for all of the licensees conducting bingo at the same facility;

(b) The individual's management responsibilities on behalf of the other licensees are solely related to the use, maintenance or upkeep of the facility, which may include janitorial and security services and ordering supplies relating to these functions;

(c) The individual does not exercise supervision or control over functions related to the operation of the games of more than one bingo licensee.

(2) An individual seeking the Department's approval to operate on behalf of more than one licensee as provided in section (1) of this rule, shall make application to the Department on a form prescribed by the Department.

Stat. Auth.: ORS 464.250(1)
Stats. Implemented: ORS 464.310(2)
Hist.: JD 2-1993, f. 6-21-93, cert. ef. 7-1-93

Raffle Licenses

137-025-0200
Classes of Licenses

(1) A "Class A" raffle license shall authorize a licensee to conduct raffle games throughout the license year, without restriction as to raffle handle.

(2) A "Class B" raffle license shall authorize a licensee to conduct raffle games throughout the license year with the handle for each such game not to exceed $10,000.

Stat. Auth.: ORS 464
Stats. Implemented: ORS 464.250
Hist.: JD 8-1987, f. 10-30-87, ef. 11-1-87; DOJ 13-2001, f. 12-28-01, cert. ef. 1-1-02

137-025-0210
Application for Raffle License

(1) An application for a raffle license or license renewal shall be made on a form prescribed by the Department, shall be signed by a responsible official of the organization, and must be accompanied by the license application fee as provided in section (3) of this rule. The Department shall reject applications which are incomplete, are not accompanied by the documents required by this section, or are not accompanied by a sufficient license fee. An applicant shall be immediately notified of any such deficiencies. The license application shall include the following information:

(a) The name, address and telephone number of the organization;

(b) A statement of the purposes for which the money received from the raffle games will be used;

(c) A statement as to whether or not the organization has had a license to operate bingo or raffle games denied, revoked or suspended by the State of Oregon or any other licensing authority; and

(d) The full names and addresses of the responsible officials of the organization.

(2) The applicant shall submit the following documents with the application. The information required in subsections (b) and (c) of this section shall be on forms prescribed by the Department and shall be signed by a responsible official of the organization:

(a) A copy of a letter supporting tax exempt status as specified in OAR 137-025-0030(1)(c);

(b) As required by Oregon Laws 1987, Chapter 914, a waiver of potential liability claims against the State of Oregon, its agencies, employees and agents for any damages resulting from any disclosure or publication of any information acquired by the Department during any of its investigations, inquiries or hearings;

(c) A consent to inspection authorized by Chapter 914, Oregon Laws 1987, and the rules adopted thereto; and

(d) Such other information as requested by the Department.

(3) The application fees are as follows:

(a) Class A raffle license — $100;

(b) Class B raffle license — $40.

Stat. Auth.: ORS 464
Stats. Implemented: ORS 464.250(2), 464.250(4) & 464.280(2)(b)
Hist.: JD 8-1987, f. 10-30-87, ef. 11-1-87; DOJ 7-2006, f. 12-12-06, cert. ef. 1-1-07

137-025-0220
Issuance of License to Conduct Raffles

(1) Within 60 days after the filing of a completed application for a license or license renewal to conduct raffles, the Department shall either issue a license or notify the applicant in writing, in accordance with ORS 183.310 to 183.550, that the license has been denied, and that the applicant is entitled to a hearing. The license shall be effective for one year from the date it is issued and may be renewed annually, except that a license issued prior to January 1, 1988, shall be effective until January 1, 1989.

(2) The form of the license shall be prescribed by the Department and shall include:

(a) The name of the licensed organization;

(b) The class of license;

(c) The expiration date of the license;

(d) Any special conditions of the license.

Stat. Auth.: ORS 464
Stats. Implemented: ORS 183.310, 183.550 & 464.250(2)
Hist.: JD 8-1987, f. 10-30-87, ef. 11-1-87

137-025-0230
Raffle License Renewal and Amendment

(1) Within 60 days prior to the expiration of an existing raffle license, the licensee may apply to the Department to renew the license. The application and fee shall be the same as for the initial license.

(2) A licensee shall not exceed the class limit for gross receipts:

(a) If a Class B licensee desires to conduct games with sales in excess of $10,000, it shall notify the Department and shall apply for a Class A license, submitting the basic fee required for that class less the amount originally submitted for the previous license;

(b) Any such additional license issued by the Department shall be valid only for the period which remains in the term of the previous license at the time such additional license is issued.

Stat. Auth.: ORS 464
Stats. Implemented: ORS 464.250(2)
Hist.: JD 8-1987, f. 10-30-87, ef. 11-1-87; DOJ 13-2001, f. 12-28-01, cert. ef. 1-1-02

Raffle Records and Reports

137-025-0240
Raffle Records

(1) A raffle licensee shall maintain the following records or information with regard to individual raffle games and retain the information for a period of three years:

(a) The total amount of proceeds received from the sale of tickets for each raffle game;

(b) All expenses relating to the conduct of each raffle game; and

(c) The winning ticket stubs.

(2) A Class A licensee shall maintain a raffle log book for all raffle games where sales are intended to exceed $10,000. The raffle log book shall be retained by the licensee for a period of three years. The raffle log book shall contain:

(a) A list of the names of all volunteers or employees who receive raffle tickets for sale;

(b) The numbers of tickets received by each seller;

(c) The number of purchased tickets returned to the licensee by each seller; and

(d) The amount of money from ticket sales returned to the licensee by each seller.

Stat. Auth.: ORS 464
Stats. Implemented: ORS 464.250(5)
Hist.: JD 7-1987, f. 10-30-87, ef. 1-1-88; DOJ 13-2001, f. 12-28-01, cert. ef. 1-1-02

137-025-0250
Raffle Receipts

(1) A record shall be prepared by a raffle licensee for each winner of a prize with a retail value of $100 or more, which shall include:

(a) The name of the licensee;

(b) The date of the drawing;

(c) A description of the prize;

(d) The name and address of the prize winner; and

(e) The signature of the prize winner.

(2) A raffle licensee shall obtain a receipt from the seller/distributor for all noncash prizes awarded with a retail value of more than $500.

(3) The preceding receipts shall be retained by the licensee for a period of three years.

Stat. Auth.: ORS 464
Stats. Implemented: ORS 464.250(5)
Hist.: JD 7-1987, f. 10-30-87, ef. 1-1-88

137-025-0260
Notice of Raffle Game

(1) Prior to conducting sales of raffle tickets, each Class A raffle licensee shall submit to the Department a completed raffle notice for all raffles where sales are intended to exceed $10,000.

(2) The notice shall be submitted on a form to be obtained from the Department. The information to be submitted shall include:

(a) The name of the organization;

(b) The organization's raffle license number;

(c) The location, date and time for the draw;

(d) A description of and the retail value of the prizes to be awarded;

(e) The total number of tickets to be offered for sale and the price of each ticket; and

(f) A copy of a sample ticket.

Stat. Auth.: ORS 464
Stats. Implemented: ORS 464.250(4) & (7)
Hist.: JD 7-1987, f. 10-30-87, ef. 1-1-88; DOJ 13-2001, f. 12-28-01, cert. ef. 1-1-02

137-025-0270
Raffle Reports

(1) A raffle licensee shall file an annual report with the Department of Justice no later than 60 days after the end of the license year. The report shall be on a form prescribed by the Department. The report shall include the following information:

(a) The number of raffle games held during the license year;

(b) The date of each drawing;

(c) The total sales of each game;

(d) The total expenses relating to the conduct of each raffle game;

(e) The total amount of cash prizes and the total cost to the licensee of all noncash prizes awarded;

(f) The total expenses of all games expressed as a percentage of the total raffle handle; and

(g) The net income from raffle games.

(2) All raffle reports shall be signed by a responsible official of the organization.

Stat. Auth.: ORS 464
Stats. Implemented: ORS 464.250(5)
Hist.: JD 7-1987, f. 10-30-87, ef. 1-1-88

137-025-0280
Raffle Fees

(1) All annual raffle reports filed with the Department shall be accompanied by a fee, made payable to the Department of Justice, of 2 percent of the raffle handle listed in the report up to $125,000 and 0.5 of 1 percent of the raffle handle in excess of $125,000. A delinquency fee of $20 or one percent of the fee described above, whichever is greater, shall be paid by the licensee if the report or regular fee is not delivered to the Department by the due date. The minimum delinquency fee shall increase to $50 after 60 days from the due date of the report.

(2) When the filing date for reports and fees falls on a Saturday or legal holiday, the due date is the next business day following the Saturday or legal holiday.

Stat. Auth.: ORS 464
Stats. Implemented: ORS 464.250(3)
Hist.: JD 7-1987, f. 10-30-87, ef. 1-1-88; DOJ 7-2006, f. 12-12-06, cert. ef. 1-1-07

Operation of Raffle Games

137-025-0290
Conduct of Raffles in General

(1) Tickets for entry into a raffle shall constitute a separate and equal chance to win with all other tickets sold or issued. No person may be required to obtain more than one ticket, or to pay for anything other than the ticket, in order to enter a raffle.

(2) No person may be required to be present at a raffle drawing in order to be eligible to receive a prize.

(3) In conducting a drawing in connection with any raffle, each ticket seller shall return to the organization stubs or other detachable sections of all tickets sold. Except for duck races as provided for in OAR 137-025-0291 and alternate drawing formats approved by the Department in section (8) of this rule, the organization shall place each stub or other detachable section of each ticket sold in a receptacle out of which the winning tickets are to be drawn. The receptacle must be designed so that each ticket placed therein has an equal opportunity with every other ticket to be the one withdrawn.

(4) No unsold ticket or stub shall be entered in the draw container or be otherwise considered for the draw to determine the winner or winners of any prize.

(5) Where prizes for a raffle are unclaimed, the prizes shall be held in a trust for a period of one year from the date of the draw. If at that time the prizes are unclaimed, the prize shall be donated to the licensee.

(6) A raffle licensee shall not sell tickets more than twelve months in advance of the draw date.

(7) If for any reason the raffle is not completed and the prizes not awarded on the scheduled drawing date, the sponsoring organization must take all steps necessary to notify ticket purchasers of that fact and return all money received from ticket purchasers within 30 days.

(8) An alternate drawing format may be used to determine the winner(s) if such a format is approved by the Department prior to the sale of any ticket or other form of raffle entry. The alternate format must meet the definition of a drawing as defined in OAR 137-025-0020

(15) To be approved, an alternate drawing format request must be submitted to the Department in writing at least 30 days prior to the sale of entries and must contain at a minimum, the following information:

(a) The time, date and location of the drawing;

(b) The type of random selection process to be used and complete details of its operations;

(c) A description of how game integrity will be ensured so that each participant has an equal chance of winning.

Stat. Auth.: ORS 464.250(1)
Stats. Implemented: ORS 464.250(7)
Hist.: JD 7-1987, f. 10-30-87, ef. 1-1-88; JD 2-1993, f. 6-21-93, cert. ef. 7-1-93; DOJ 13-2001, f. 12-28-01, cert. ef. 1-1-02

137-025-0291
Duck Race Regulations

A licensee conducting a "Duck Race" raffle shall comply with the following:

(1) All ducks shall be positioned above the river at the same location and shall be released simultaneously. Once dropped, the ducks shall enter the river without interference or obstruction.

(2) Once the ducks enter the river, the ducks shall not receive human assistance until the race is concluded.

(3) The ducks shall be identified so that each duck corresponds to a separate numbered raffle ticket. The method of identification of the ducks shall be waterproof.

(4) At the finish line, the licensee shall construct a boom which will be designed to act to funnel the ducks to a chute. The chute shall be constructed so as to allow one duck at a time to pass through. The boom and the chute shall be reasonably secure. The boom shall be wide enough to capture the ducks that reach the finish line area as they move down stream.

(5) The course for the race shall be established so that the race may be observed by raffle purchasers. The length of the course shall be established so that the race will be conducted in less than one hour. The licensee shall conduct a test of the course, by releasing a sample of ducks and observing their progress, within one week prior to the race date. Once the race has started, a course shall not be altered.

(6) If a duck race is not completed in 90 minutes from the time the ducks are released into the river, the race shall be terminated and the licensee shall conduct the raffle by drawing tickets from a container as provided in OAR 137-029-0290(1)–(5).

Stat. Auth.: ORS 464.250(1)
Stats. Implemented: ORS 464.250(7)
Hist.: JD 2-1993, f. 6-21-93, cert. ef. 7-1-93

137-025-0300
Raffle Prize Limits

(1) The total cash prize(s) offered or awarded in a raffle shall not exceed $2,500.

(2) No prize shall be offered or awarded with a retail market value in excess of $75,000 and the cumulative retail value of all prizes offered or awarded at a raffle shall not exceed $100,000.

Stat. Auth.: ORS 914
Stats. Implemented: HB 3009, 1997
Hist.: JD 7-1987, f. 10-30-87, ef. 1-1-88; DOJ 5-1998, f. 6-19-98, cert. ef. 6-20-98; DOJ 13-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 3-2006, f. & cert. ef. 1-4-06

137-025-0310
Raffle Tickets

(1) The following information must be printed upon each ticket sold or shall be otherwise provided to each purchaser at the time of the sale:

(a) The date and time of the drawing;

(b) The location of the drawing;

(c) The name of the organization conducting the raffle;

(d) The price of the chance;

(e) A full and fair description of the prize or prizes to be awarded;

(f) The retail market value of each prize to be awarded; and

(g) The total number of tickets which may be sold.

(2) The preceding rules regarding raffle tickets do not apply to operations exempted by OAR 137-025-0040(2).

Stat. Auth.: ORS 464
Stats. Implemented: ORS 464.250(1)
Hist.: JD 7-1987, f. 10-30-87, ef. 1-1-88; JD 1-1989, f. & cert. ef. 3-1-89

Monte Carlo Events

137-025-0400
Monte Carlo Events in General

(1) All personnel conducting a Monte Carlo event shall be:

(a) Volunteers or employees of a non-profit tax exempt organization licensed to conduct Monte Carlo events pursuant to OAR 137-025-0420;

(b) Volunteers or employees of a non-profit tax exempt organization exempted from the requirement to hold a Monte Carlo event license pursuant to OAR 137-025-0040(2)(d); or

(c) Employees or individual independent contractors of a Monte Carlo event contractor licensed pursuant to OAR 137-025-0420.

(2) No person or organization shall act as a Monte Carlo equipment supplier without a valid Monte Carlo equipment supplier license granted by the Department, except as provided in subparagraph (3) of this rule.

(3) A non-profit tax exempt organization may lease Monte Carlo equipment to another non-profit tax exempt organization without obtaining a Monte Carlo equipment supplier license.

(4) No person or organization shall act as a Monte Carlo event contractor licensee without a valid Monte Carlo event contractor license granted by the Department.

(5) No licensed Monte Carlo equipment supplier or licensed Monte Carlo event contractor shall enter into an agreement to lease Monte Carlo equipment and/or operate Monte Carlo games for a nonprofit tax exempt organization unless they obtain a signed written contract in compliance with OAR 137-025-0450. Equipment shall not be provided or services performed other than pursuant to the price and terms as provided in such contract.

Stat. Auth.: ORS 914
Stats. Implemented: HB 3009, 1997
Hist.: JD 7-1997(Temp), f. 12-31-97, cert. ef. 1-1-98 thru 6-20-98; DOJ 5-1998, f. 6-19-98, cert. ef. 6-20-98

Monte Carlo Licenses

137-025-0405
Classes of Monte Carlo Charitable Games Licenses

(1) A "Class A" Monte Carlo license shall authorize a licensee to conduct Monte Carlo events with a gross handle of more than $10,000 per event throughout the license year, but shall not exceed 7 events per license year.

(2) A "Class B" Monte Carlo license shall authorize a licensee to conduct Monte Carlo events throughout the license year with (a) the handle for each such event not to exceed $5,000 per event, but shall not exceed 7 events per license year; or (b) the handle for each such event not to exceed $10,000 per event, but shall not exceed 2 events per license year.

Stat. Auth.: ORS 914
Stats. Implemented: HB 3009, 1997
Hist.: JD 7-1997(Temp), f. 12-31-97, cert. ef. 1-1-98 thru 6-20-98; DOJ 5-1998, f. 6-19-98, cert. ef. 6-20-98

137-025-0410
Application for Monte Carlo Event License

(1) An application for a Monte Carlo license or license renewal shall be made on a form prescribed by the Department, shall be signed by a responsible official of the organization, and must be accompanied by the license application fee as provided in section (3) of this rule. The Department shall reject applications which are incomplete, are not accompanied by the documents required by this section, or are not accompanied by a sufficient license fee. An applicant shall be immediately notified of any such deficiencies. The license application shall include the following information:

(a) The name, address and telephone number of the organization;

(b) A statement of the purposes for which the money received from the Monte Carlo events will be used;

(c) A statement as to whether or not the organization has had a license to operate bingo, raffle games, or Monte Carlo events denied, revoked or suspended by the State of Oregon or any other licensing authority; and

(d) The full names and addresses of the responsible officials of the organization.

(2) The applicant shall submit the following documents with the application. The information required in subsections (b) and (c) of this section shall be on forms prescribed by the Department and shall be signed by a responsible official of the organization:

(a) A copy of a letter supporting tax exempt status as specified in OAR 137-025-0030(1)(c);

(b) As required by ORS 464.280, a waiver of potential liability claims against the State of Oregon, its agencies, employees and agents for any damages resulting from any disclosure or publication of any information acquired by the Department during any of its investigations, inquiries or hearings;

(c) A consent to inspection authorized by ORS 464.280 and the rules adopted thereto; and

(d) Copies of current or proposed rental or service contracts for facility lease or rental, and Monte Carlo event service or equipment provider. If no contract has been proposed or offered at the time of license application, applicant shall submit such contracts for approval by the Department, not less than seven days prior to the actual conduct of any Monte Carlo event;

(e) Consent to allow Department employees to be present on the premises before, during, and after the conduct of the Monte Carlo event to inspect and test equipment and examine records maintained by licensee;

(f) Such other information as requested by the Department.

(3) The non-refundable application fees are as follows:

(a) Class A Monte Carlo event license — $100;

(b) Class B Monte Carlo event license — $40.

Stat. Auth.: ORS 914
Stats. Implemented: HB 3009, 1997
Hist.: JD 7-1997(Temp), f. 12-31-97, cert. ef. 1-1-98 thru 6-20-98; DOJ 5-1998, f. 6-19-98, cert. ef. 6-20-98; DOJ 7-2006, f. 12-12-06, cert. ef. 1-1-07

137-025-0415
Application for Monte Carlo Supplier/Event Contractor License

(1) An application for a Monte Carlo equipment supplier and a Monte Carlo event contractor license or license renewal shall be made on a form prescribed by the Department, shall be signed by a responsible official of the organization, and must be accompanied by the license application fee as provided in section (3) of this rule. The Department shall reject applications which are incomplete, are not accompanied by the documents required by this section, or are not accompanied by a sufficient license fee. An applicant shall be immediately notified of any such deficiencies. The license application shall include the following information:

(a) The name, address and telephone number of the organization;

(b) A statement as to whether or not the organization has had a license to provide equipment or services for Monte Carlo events, bingo or raffle games denied, revoked or suspended by the State of Oregon or any other licensing authority; and

(c) The full names and addresses of the responsible officials of the organization.

(2) The applicant shall submit the following documents with the application. The information required in subsections (b) and (c) of this section shall be on forms prescribed by the Department and shall be signed by a responsible official of the organization:

(a) Proof of compliance with applicable state and local business registration laws and regulations;

(b) As required by Oregon ORS 464.280, a waiver of potential liability claims against the State of Oregon, its agencies, employees and agents for any damages resulting from any disclosure or publication of any information acquired by the Department during any of its investigations, inquiries or hearings;

(c) A consent to allow Department employees access to licensees' place of business for inspection and testing of equipment and examine records maintained by licensees;

(d) Consent to allow Department employees to be present on the premises where Monte Carlo events are held before, during, an after the conduct of the Monte Carlo event to inspect and test equipment and examine records maintained by licensee;

(e) A list of all games and gaming equipment offered for sale, lease, or rental;

(f) Such other information as requested by the Department.

(3) The non-refundable application and licensing investigation fees are as follows:

(a) Monte Carlo equipment supplier license — $50;

(b) Monte Carlo event contractor license — $300.

Stat. Auth.: ORS 914

Stats. Implemented: HB 3009, 1997

Hist.: JD 7-1997(Temp), f. 12-31-97, cert. ef. 1-1-98 thru 6-20-98; DOJ 5-1998, f. 6-19-98, cert. ef. 6-20-98; DOJ 7-2006, f. 12-12-06, cert. ef. 1-1-07

137-025-0420
Issuance of License to Conduct Monte Carlo Events or Supply Equipment and Services

(1)(a) Within 60 days after the filing of a completed application for a license or license renewal pursuant to OAR 137-025-0410 or 137-025-0415, the Department shall either issue a license or notify the applicant in writing, in accordance with ORS 183.310 to 183.550, that the license has been denied, and that the applicant is entitled to a hearing.

(b) The license shall be effective for one year from the date it is issued and may be renewed annually.

(2) The form of the license shall be prescribed by the Department and shall include:

(a) The name of the licensed organization;

(b) The class of license;

(c) The expiration date of the license;

(d) Any special conditions of the license.

Stat. Auth.: ORS 914

Stats. Implemented: HB 3009, 1997

Hist.: JD 7-1997(Temp), f. 12-31-97, cert. ef. 1-1-98 thru 6-20-98; DOJ 5-1998, f. 6-19-98, cert. ef. 6-20-98

137-025-0425
Monte Carlo License Renewal and Amendment

(1) Within 60 days prior to the expiration of an existing Monte Carlo event license or a Monte Carlo equipment supplier or event contractor license, the licensee may apply to the Department to renew the license. The application and fee shall be the same as for the initial license.

(2) A Monte Carlo event licensee shall not exceed the class limit for gross receipts:

(a) If a Class B licensee desires to conduct games with sales in excess of $5,000 the limits described in OAR 137-025-0405(2), it shall notify the Department and shall apply for a Class A license, submitting the basic fee required for that class less the amount originally submitted for the previous license;

(b) Any such additional license issued by the Department shall be valid only for the period which remains in the term of the previous license at the time such additional license is issued.

Stat. Auth.: ORS 914

Stats. Implemented: HB 3009, 1997

Hist.: JD 7-1997(Temp), f. 12-31-97, cert. ef. 1-1-98 thru 6-20-98; DOJ 5-1998, f. 6-19-98, cert. ef. 6-20-98

Operation of Monte Carlo Events

137-025-0430
Conduct of Monte Carlo Events in General

(1) Any person, corporation, or organization desiring to conduct Monte Carlo events shall:

(a) Comply with and meet all applicable provisions of ORS 128.610 et seq., 167.117 et seq., 464.250 et seq., OAR 137-025 et seq. and the applicable provisions of all other state, federal, and local laws.

(b) Be issued and maintain all applicable local licenses.

(2) A Monte Carlo event licensee shall not sell imitation money more than twelve months in advance of the event date.

(3) No Monte Carlo event shall be conducted that exceeds 12 hours in length. For the purposes of this subsection, the 12-hour period is not dependent upon whether contests of chance are continuously operated.

(4) Monte Carlo events shall not be conducted in the same location more than 15 times in a calendar month or 40 times in a calendar year.

(5) An organization conducting a Monte Carlo event may not directly or indirectly rent a facility for the event from a licensed Monte Carlo equipment supplier or a Monte Carlo event contractor.

(6) Any Monte Carlo event contractor, employee, or agent assisting the conduct of a Monte Carlo event shall wear a printed or typed name tag clearly visible by the participants. The printing on the tag shall include, but not be limited to the following:

(a) First name of the person;

(b) The name of the private Monte Carlo event contractor's company for whom the person is working.

Stat. Auth.: ORS 464.250(1)

Stats. Implemented: HB 3009, 1997

Hist.: JD 7-1997(Temp), f. 12-31-97, cert. ef. 1-1-98 thru 6-20-98; DOJ 5-1998, f. 6-19-98, cert. ef. 6-20-98

137-025-0435
Notice of Monte Carlo Event

(1) At least 10 days prior to conducting a Monte Carlo event, each Monte Carlo licensee shall submit to the Department a completed Monte Carlo event notice for all Monte Carlo events where sales of imitation money are intended to exceed $5,000.

(2) The notice shall be submitted on a form to be obtained from the Department. The information to be submitted shall include:

(a) The name of the organization;

(b) The organization's Monte Carlo event license number;

(c) The location, date and time for the event;

(d)(A) A description of; and

(B) The retail value of the prizes to be awarded which exceed $100 in value;

(e) A description of the manner in which imitation money may be redeemed for prizes.

(f) The name and address of any supplier of rented Monte Carlo equipment and/or any Monte Carlo event contractor that will conduct the event. A copy of any contract for such equipment or services shall accompany the notice.

Stat. Auth.: ORS 914

Stats. Implemented: HB 3009, 1997

Hist.: JD 7-1997(Temp), f. 12-31-97, cert. ef. 1-1-98 thru 6-20-98; DOJ 5-1998, f. 6-19-98, cert. ef. 6-20-98

137-025-0440
Monte Carlo Equipment Supplier/Event Contractor Contracts

(1) A Monte Carlo event contract with a licensed Monte Carlo equipment supplier and/or a Monte Carlo event contractor shall include, but not be limited to the following:

(a) Name and license number of the non-profit tax exempt organization which will conduct the event;

(b) Name and license number of the Monte Carlo equipment supplier and/or Monte Carlo event contractor;

(c) Date, times and location of events to be conducted;

(d) Detailed list of games to be conducted;

(e) Description of gaming equipment including number of gaming tables to be supplied;

(f) All rental terms and conditions including contract price;

(g) Number of dealers or other workers supplied, if any; and

(h) Signature and name of official of each party to the contract.

(2) A contract shall not provide for the operation of events for a period that exceeds one year in duration.

(3) No licensee shall pay a percentage of the receipts of the net profits from the Monte Carlo event for the rental of Monte Carlo event equipment, services, labor, or premises.

(4) A Monte Carlo event contractor shall deliver to the Department a copy of any contract for services no less than ten days prior to the Monte Carlo event.

Stat. Auth.: ORS 464.250(1)
Stats. Implemented: HB 3009, 1997
Hist.: JD 7-1997(Temp), f. 12-31-97, cert. ef. 1-1-98 thru 6-20-98; DOJ 5-1998, f. 6-19-98, cert. ef. 6-20-98

137-025-0450
Purchase/Sale of Monte Carlo Imitation Money

(1) Imitation money shall be sold only by bona fide members or employees of the licensee organization. No imitation money shall be sold, or cash handled, by a Monte Carlo event contractor, his agents, or employees regardless of whether said person is a member of the licensed charitable, fraternal, or religious organization.

(2) All imitation money sold for use at a Monte Carlo event shall be identifiable as sold by the particular licensee or event contractor operating the event. A licensee may not collect from any player a sum in excess of $200 per event for the purchase of imitation money for use at such Monte Carlo event.

(3) A Class A licensee shall follow the following described procedures in the sale of imitation money to Monte Carlo players.

(a) Each player shall receive a player identification card. The cards shall be sequentially numbered and the player's name shall be completed on the card. The player's name shall also be entered next to the same sequential number on a form prescribed by the department.

(b) The player identification card shall contain incremental amounts of money, the total of which shall not exceed $200. Each time the player purchases imitation money, the licensee's seller shall cancel an amount on the card equal to the amount paid by the player.

(c) The licensee shall make good faith efforts to collect all player identification cards before the close of the event.

(4) Licensees shall conspicuously post a notice that no player may pay more than $200 for imitation money per event.

Stat. Auth.: ORS 914
Stats. Implemented: HB 3009, 1997
Hist.: JD 7-1997(Temp), f. 12-31-97, cert. ef. 1-1-98 thru 6-20-98; DOJ 5-1998, f. 6-19-98, cert. ef. 6-20-98

137-025-0455
Monte Carlo Event Prizes

(1) No cash prize shall be offered or awarded. Once purchased, imitation money cannot be redeemed for cash or cash equivalent.

(2) No prize shall be offered or awarded with a retail market value in excess of $50,000 and the retail market value of prizes offered or awarded to Monte Carlo players shall not exceed $100,000 per event.

Stat. Auth.: ORS 914
Stats. Implemented: HB 3009, 1997
Hist.: JD 7-1997(Temp), f. 12-31-97, cert. ef. 1-1-98 thru 6-20-98; DOJ 5-1998, f. 6-19-98, cert. ef. 6-20-98

137-025-0460
Authorized Games

(1) During a Monte Carlo event, an organization may conduct only the following authorized games of chance:

(a) Blackjack;

(b) Roulette;

(c) Craps;

(d) Caribbean stud poker;

(e) Let it ride;

(f) Wheel of fortune;

(g) Red dog;

(h) Jackpot; and

(i) Pai gow

(2) No other games may be conducted unless approved in writing by the Department. To be considered for approval, an authorized game request must be submitted in writing to the Department at least 30 days prior to the event.

(3) No games utilizing any electromechanical device or other mechanism employing electronic chips, tubes, video display screens or microprocessors are allowable.

(4) Equipment used in the conduct of a Monte Carlo event shall be maintained in good repair and proper working order. Equipment which is not so maintained may immediately be removed from play at the direction of the Department.

(5) The utilization of equipment and method of play shall be such that each participant is afforded an equal chance of winning.

(6) No organization worker or contract worker shall conduct the game when his or her immediate family member is a participant at the worker's table.

(7) No person under the age of 18 years of age shall be permitted to participate in gaming at the Monte Carlo event or assist in the conduct of the Monte Carlo event.

(8) No volunteer or employee of a licensee No employee of a licensee paid for working a Monte Carlo event, or employee or agent of a Monte Carlo event contractor may participate in playing any game, either directly or indirectly or by proxy, or bid on, or receive any prize, at any Monte Carlo event at which they have worked in any capacity.

(9) Each game shall be conducted by a dealer present at the gaming table. The dealer shall be an employee or volunteer of the organization conducting the event or an employee or agent of a licensed Monte Carlo event contractor.

Stat. Auth.: ORS 464.250(1)
Stats. Implemented: HB 3009, 1997
Hist.: JD 7-1997(Temp), f. 12-31-97, cert. ef. 1-1-98 thru 6-20-98; DOJ 5-1998, f. 6-19-98, cert. ef. 6-20-98

Monte Carlo Reports and Records

137-025-0470
Monte Carlo Event Reports

(1) A Monte Carlo event licensee shall file an annual report with the Department of Justice no later than 60 days after the end of the license year. The report shall be on a form prescribed by the Department. The report shall include the following information:

(a) The number of Monte Carlo events held during the license year;

(b) The date of each event;

(c) The total Monte Carlo imitation money sales of each event;

(d) The total Monte Carlo expenses relating to the conduct of each event;

(e) The total cost to the licensee of all Monte Carlo prizes awarded;

(f) For purposes of this rule, if other activities are held at the event, the licensee may make a reasonable allocation between the Monte Carlo and non-Monte Carlo activities.

(2) All Monte Carlo event reports shall be signed by a responsible official of the organization.

Stat. Auth.: ORS 914
Stats. Implemented: HB 3009, 1997
Hist.: DOJ 5-1998, f. 6-19-98, cert. ef. 6-20-98

137-025-0475
Monte Carlo Event Records

A Monte Carlo event licensee shall maintain the following records or information on forms prescribed by the department, with regard to individual Monte Carlo events and retain the information for a period of three years:

(1) In the case of a Class A licensee, the information relating to the sale of imitation money at each Monte Carlo event required by OAR 137-025-0430(3). In the case of a class B licensee, information sufficient to establish gross sales of imitation money at each Monte Carlo event.

(2) All Monte Carlo expenses relating to the conduct of each Monte Carlo event;

(3) A description of all Monte Carlo prizes offered in conjunction with each Monte Carlo event, and the retail value of each prize which is valued at $100 or more;

(4) Any contract with a licensed supplier of Monte Carlo event equipment and/or a licensed Monte Carlo event contractor;

(5) Any contract for rental/use of premises for the event.

Stat. Auth.: ORS 914
Stats. Implemented: HB 3009, 1997
Hist.: DOJ 5-1998, f. 6-19-98, cert. ef. 6-20-98

137-025-0480
Monte Carlo Event Fees

(1) All annual Monte Carlo reports filed with the Department shall be accompanied by a fee, made payable to the Department of Justice, of 1 percent of the Monte Carlo handle listed in the report. A delinquency fee of $20 or one percent of the fee described above, whichever is greater, shall be paid by the licensee if the report or regular fee is not delivered to the Department by the due date. The minimum delinquency fee shall increase to $50 after 60 days from the due date of the report.

(2) When the filing date for reports and fees falls on a Saturday or legal holiday, the due date is the next business day following the Saturday or legal holiday.

Stat. Auth.: ORS 914
Stats. Implemented: HB 3009, 1997
Hist.: DOJ 5-1998, f. 6-19-98, cert. ef. 6-20-98; DOJ 7-2006, f. 12-12-06, cert. ef. 1-1-07

Miscellaneous

137-025-0500
Suspension, Revocation and Civil Penalties

(1) After notice and opportunity for hearing, as provided in ORS 183.310 to 183.550, the Department may assess a civil penalty not to exceed $10,000 and may deny, revoke, suspend or refuse to renew any license or permit, for conduct as specified in ORS 464.470. In setting the amount of the civil penalty or the term of suspension, the Department shall consider the nature of the violation and whether the applicant, licensee, permit holder, or person with an interest in the bingo or raffles operation or proposed operation knew or should have known that the conduct constituted grounds for such action.

(2) The Department may take actions as specified in subparagraph (1) for conduct as describe in ORS 464.470. Such conduct includes, but is not limited to:

(a) Violating ORS 167.117, 167.118, ORS Chapter 464, or these rules;

(b) Denying representatives of the Department or any law enforcement officer access to a location where a licensee conducts bingo or raffle game activity, or failing to promptly produce for the preceding officials for inspection or audit any records or receipts related to bingo or raffle operations;

(c) Misrepresenting or failing to disclose to the Department any material fact;

(d) Failing to file completed reports or pay fees within 30 days after receiving notification from the Department of a delinquency; and

(e) Operating a bingo, raffle game, or Monte Carlo event without a license, unless exempt under OAR 137-025-0040;

(f) Failing to maintain an adequate financial record keeping system and/or failure to keep accurate financial books and records.

(3) In determining whether to deny, revoke or suspend a license or permit due to past criminal activity, the Department will consider the following with respect to the applicant/licensee/permittee:

(a) The nature and severity of the criminal act(s);

(b) The relevance of the crime as it relates to the legal operation of nonprofit gaming;

(c) Mitigating or extenuating circumstances;

(d) Proximity in time of the criminal activity;

(e) Age at the time of the criminal activity;

(f) Pattern or frequency of criminal activity; and

(g) Honesty and forthrightness in disclosing the past criminal activity to department personnel.

(4) The Department may deny, revoke or suspend a license or permit if the applicant is a relative or associate of another individual or organization who has engaged in conduct in violation of ORS 464.470(1) and there is clear and convincing evidence that the applicant is likely to be subject to the control or influence of the violator.

(5) The Department may require an applicant, permittee or licensee whose permit or license has been denied or revoked to wait a period of time designated by the Department before reapplying for a permit/license.

Stat. Auth.: ORS 464.250(1)
Stats. Implemented: HB 3009, 1997
Hist.: DOJ 5-1998, f. 6-19-98, cert. ef. 6-20-98, Renumbered from 137-025-0320

137-025-0520
Model APA Rules

The Attorney General's Model Rules of Procedure under the Administrative Procedures Act, effective September 15, 1997, are by this reference adopted as the rules and procedures for carrying out ORS 167.117, 167.118 and ORS Chapter 464, except as otherwise specifically provided herein.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the Department of Justice.]
Stat. Auth.: ORS 914
Stats. Implemented: HB 3009, 1997
Hist.: DOJ 5-1998, f. 6-19-98, cert. ef. 6-20-98, Renumbered from 137-025-0330

137-025-0530
Effective Dates

(1) OAR 137-025-0010 is repealed, effective January 1, 1988.

(2) OAR 137-025-0020 to 137-025-0030, 137-025-0050 to 137-025-0110, 137-025-0190 to 137-025-0230 and 137-025-0330 shall take effect on November 1, 1987.

(3) OAR 137-025-0040, 137-025-0120 to 137-025-0180 and 137-025-0240 to 137-025-0320 shall take effect on January 1, 1988.

(4) The amended fee schedule, to take effect on January 1, 2007, shall apply as follows:

(a) For licensees/permit application fees, for licensees/permits which expire after December 31, 2007; and

(b) For report fees, for licensee reporting periods ending after December 31, 2006.

Stat. Auth.: ORS 464
Stats. Implemented: ORS 464.250(1)
Hist.: JD 8-1987, f. 10-30-87, ef. 11-1-87; DOJ 5-1998, f. 6-19-98, cert. ef. 6-20-98, Renumbered from 137-025-0330; DOJ 7-2006, f. 12-12-06, cert. ef. 1-1-07

DIVISION 45

REVIEW OF PUBLIC CONTRACTS

137-045-0010
Definitions

The following definitions apply to all Oregon Administrative Rules contained in OAR chapter 137, division 045:

(1) "Agency" means "State agency" as defined in ORS 291.045.

(2) "Agency Contract Administration" means an action undertaken by an Agency in accordance with the terms of a Public Contract that has been approved for legal sufficiency if required, or is exempt from legal sufficiency approval, and does not change the Public Contract. Agency Contract Administration does not include an assignment of rights or delegation of duties under a Public Contract to a third party. Examples of Agency Contract Administration include, but are not limited to, actions that result in:

(a) A notice to proceed, the exercise of an option, or any other exercise of a contractual right, whereby the Agency causes a Public Contract to be implemented in accordance with its terms; and

(b) A purchase order, work order or similar ordering instrument issued under a binding contract such as a Requirements Contract or Variable Delivery Contract.

(3) "Architectural and Engineering Services Contract" means a Public Contract for architectural, engineering and land surveying

services as defined in ORS 279C.100(2) or related services as defined in 279C.100(6).

(4) "Assistant Attorney General" means a person appointed by the Attorney General under ORS Chapter 180 as an Assistant Attorney General or as a Special Assistant Attorney General and who is authorized in writing by the Chief Counsel, General Counsel Division, to review and approve Public Contracts for legal sufficiency. Such authorization may be limited by the Public Contract type and amount.

(5) "Attorney in Charge, Business Transactions Section" means the Assistant Attorney General the Attorney General appoints as Attorney in Charge of the Business Transactions Section, General Counsel Division, Department of Justice or an alternate designated by the Chief Counsel, General Counsel Division.

(6) "Attorney General" means the Attorney General of the State of Oregon.

(7) "Chief Counsel, General Counsel Division" means the Assistant Attorney General the Attorney General appoints as Chief Counsel of the General Counsel Division, Department of Justice or an alternate designated by the Attorney General.

(8) "Emergency" means circumstances that create a substantial risk of loss, damage to property, interruption of services or threat to public health or safety that require prompt execution of a Public Contract to deal with the risk.

(9) "Federal Cooperative Agreement" means a Public Contract under which an Agency receives money or property from a federal agency for the purpose of supporting or stimulating an Agency program or activity and substantial involvement is expected between the federal agency and the Agency when carrying out the program or activity contemplated in the agreement. A Federal Cooperative Agreement does not include a procurement contract under 31 U.S.C. section 6303.

(10) "Grant" means:

(a) A Public Contract under which an Agency receives money, property or other value from a grantor for the purpose of supporting or stimulating an Agency program or activity, and in which no substantial involvement by grantor is anticipated in the contemplated program or activity other than activities associated with monitoring compliance with Grant conditions; or

(b) A Public Contract under which an Agency provides money, property or other value to a recipient for the purpose of supporting or stimulating a program or activity of the recipient, and in which no substantial involvement by Agency is anticipated in the contemplated program or activity other than activities associated with monitoring compliance with Grant conditions.

(11) "Information Technology Contract" means a Public Contract for the acquisition, disposal, repair, maintenance or modification of hardware, software, or services for data processing, office automation, or Telecommunications.

(12) "Interagency Agreement" means any agreement solely between state officers, boards, commissions, departments, institutions, branches or agencies of this state.

(13) "Intergovernmental Agreement" means any agreement between an Agency and a unit of local government of this state, the United States, a United States governmental agency, an American Indian tribe or an agency of an American Indian tribe and includes Interstate Agreements and International Agreements.

(14) "International Agreement" means any agreement between an Agency and a nation or a public agency in any nation other than the United States.

(15) "Interstate Agreement" means any agreement between an Agency and a unit of local government or state agency of another state.

(16) "Last Reviewed Contract" means a Public Contract that has been approved for legal sufficiency, and includes all amendments that were effective prior to an amendment that has been approved for legal sufficiency.

(17) "Non-Negotiable Public Contract" means a Public Contract that is a preprinted form of contract comprised of terms and conditions offered to an Agency for acceptance without a commercially reasonable opportunity to negotiate and that is attached to or included with products that are available to the public for purchase at retail, through the mail or direct sales. Examples of a Non-Negotiable Public Contract may include a shrink-wrapped or click-wrapped license agreement attached to or included with a packaged or electronic copy of computer software.

(18) "Personal Services Contract" means a contract whose primary purpose is to acquire specialized skills, knowledge and resources in the application of technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment, including, without limitation, a contract for the services of an accountant, physician or dentist, educator, consultant (including a provider under an Architectural and Engineering Services Contract), broadcaster, or artist (including a photographer, filmmaker, painter, weaver or sculptor).

(19) "Price Agreement" means an agreement for the procurement of goods or services at a set price or prices, or at a price or prices established using a method prescribed by the agreement, with:

(a) No guarantee of a minimum or maximum purchase; or

(b) An initial order or minimum purchase combined with a continuing obligation to provide goods or services with no guarantee of a minimum or maximum additional purchase. Price Agreements are sometimes referred to as flexible services agreements, agreements to agree, master agreements or retainer agreements.

(20) "Procurement Document" means an invitation to bid, request for proposals, request for quotes, or other similar document, including, when available, the anticipated Public Contract, and including addenda that modify the anticipated Public Contract. The following are not Procurement Documents unless they invite offers from prospective contractors: a request for information, a request for qualifications, a prequalification of bidders or a request for product prequalification. A project-specific selection document under a Price Agreement that has resulted from a previous Procurement Document that an Assistant Attorney General authorized for release, or an addendum that modifies only Technical Specifications, is not a Procurement Document.

(21) "Public Contract" means any contract, including any amendments, entered into by an Agency for the acquisition, disposition, purchase, lease, sale or transfer of rights of real or personal property, public improvements, or services, including any contract for repair or maintenance. An Intergovernmental Agreement entered into for any of the foregoing actions is a Public Contract. An Interagency Agreement is not a Public Contract. Agency Contract Administration is not a Public Contract.

(22) "Public Improvement Contract" means any Public Contract for construction, reconstruction, or major renovation on real property by or for an Agency.

(23) "Requirements Contract" means a Public Contract that requires that all of the purchaser's requirements for the goods or services specified in the Public Contract for the period of time, or for the project(s) specified in the Public Contract, shall be purchased exclusively from the seller.

(24) "Statement of Work" means all provisions of a Public Contract that specifically describe the services or work to be performed or goods to be delivered by either the contractor, its subcontractor(s), or the Agency, as applicable, including any related Technical Specifications, deadlines, or deliverables.

(25) "Technical Specifications" with respect to equipment, materials and goods, means descriptions of dimensions, composition and manufacturer and quantities and units of measurement that describe quality, performance, and acceptance requirements. With respect to services, "Technical Specifications" means quantities and units of measurement that describe quality, performance and acceptance requirements.

(26) "Telecommunications" means 1-way and 2-way transmission of information over a distance by means of electromagnetic systems, electro-optical systems, or both.

(27) "Variable Delivery Contract" means a Public Contract that, during its term, uses purchase orders, work orders or similar ordering instruments to provide for incremental delivery of the amount of goods or services, or both, that is specified in the Public Contract. A Variable Delivery Contract identifies goods or services by any

method that is both commercially reasonable and in accordance with industry standards, including but not limited to, Technical Specifications, time of delivery, place of delivery, manufacturer, form of delivery, or any combination of the foregoing.

Stat. Auth.: ORS 291.047(3)
Stats. Implemented: ORS 291.045, 291.047 & 291.049
Hist.: JD 4-1997(Temp), f. & cert. ef. 10-3-97; JD 5-1997(Temp), f. & cert. ef. 10-17-97; 137-045-0010(Temp) repealed by DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 2-2001, f. & cert. ef. 1-18-01; DOJ 17-2003, f. & cert. ef. 12-9-03; DOJ 19-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 18-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 14-2009, f. 12-1-09, cert. ef. 1-1-10

137-045-0015
Legal Sufficiency Approval

(1) Legal sufficiency approval pursuant to this rule does not affect any other applicable review or approval requirement, except that legal sufficiency approval of a Public Contract that is an Interstate Agreement or an International Agreement satisfies requirements for Attorney General review under ORS 190.430 and ORS 190.490, as applicable.

(2) The Attorney General, through Assistant Attorneys General, provides legal sufficiency approval of a Public Contract solely for the benefit of Agencies, to determine compliance with this rule. Approval of a Public Contract for legal sufficiency is based upon the individual determination by the Assistant Attorney General reviewing the Public Contract and does not preclude the State of Oregon from later asserting any legally available claim or defense arising from or relating to the Public Contract.

(3) Approval of a Public Contract for legal sufficiency must be noted in written form by the Assistant Attorney General reviewing the Public Contract and must be either affixed directly to the Public Contract or set forth in a separate correspondence that identifies the Public Contract with particularity. An Assistant Attorney General may approve Public Contracts as a group if they are substantially in the same form, are substantially for the same purpose and have the same expiration date if the Assistant Attorney General identifies the manner in which individual contracts within the group may vary.

(4) Sections (4) and (5) are adopted to provide guidance to Agencies regarding criteria used for, and factors excluded from, the Attorney General's legal sufficiency approval of Public Contracts. Except as provided in section (5) of this rule, approval for legal sufficiency means that the reviewing Assistant Attorney General finds that:

(a) The Public Contract has been reduced to written form;

(b) The subject matter, promised performance and consideration of the Public Contract are within the Agency's statutory authority;

(c) The Public Contract, on its face, contains all the essential elements of a legally binding contract, such as a description of consideration (money, performance, or forbearance) when consideration is required;

(d) The Public Contract, on its face, complies with federal and State of Oregon statutes and administrative rules regulating the Public Contract, and that all provisions required by Oregon law to be incorporated have been included;

(e) The Public Contract includes or requires, as required by Oregon law, execution of any certification;

(f) The Public Contract, on its face, does not violate any State of Oregon constitutional limitation or prohibition, such as by creating unlawful "debt" under section 7, Article XI, of the Oregon Constitution, or impermissibly binding a future Legislative Assembly to fund the Public Contract, or any federal constitutional provision;

(g) The Statement of Work or comparable provisions and business or commercial terms are sufficiently clear and definite under the circumstances to be enforceable; and

(h) The Public Contract allows the Agency, if appropriate, to terminate the Public Contract, declare defaults, and pursue its rights and remedies.

(5) Approval for legal sufficiency does not include:

(a) Consideration of facts or circumstances that are not apparent on the face of the Public Contract, unless the Assistant Attorney General reviewing the Public Contract has actual knowledge of those facts or circumstances;

(b) A determination that the individual signing the Public Contract on behalf of the Agency possesses lawful authority to do so;

(c) A determination that the technical provisions used in the Public Contract that are particular to a profession, trade or industry reflect the Agency's intentions, are appropriate to further the Agency's stated objectives or are sufficiently clear and definite to be enforceable;

(d) A determination that the Public Contract is a good business deal for the Agency, weighing relative risks and benefits, although the Assistant Attorney General reviewing the Public Contract may provide advice regarding significant risks and issues in any particular transaction. The Agency is responsible for risk assessment and the decision whether to proceed with a Public Contract despite exposure to risks;

(e) A determination that any particular remedy, whether or not expressly set forth in the Public Contract, will be available to the Agency. The requesting Agency may request the Assistant Attorney General reviewing the Public Contract to address the availability of specific remedies;

(f) A determination that the Public Contract complies with grant conditions or federal funding requirements or contains terms or assurances required under a grant or federal funding program. The requesting Agency may request the Assistant Attorney General reviewing the Public Contract to address the compliance with grant conditions, federal funding requirements, or required assurances; or

(g) A stylistic or grammatical review, including spelling, punctuation and the like, unless such errors create ambiguity or otherwise are substantive. The Assistant Attorney General reviewing the Public Contract may address matters of this nature as time allows; however, these matters are primarily the responsibility of the Agency submitting a Public Contract for review.

(h) A determination that, except for setting off amounts owed under the Public Contract, the Agency will have court-enforceable damages, specific performance, or setoff remedies under a Public Contract with another sovereign in the event the sovereign fails to comply with the contract's terms unless the Assistant Attorney General determines in a separate writing that any such remedies are available to the Agency.

Stat. Auth.: ORS 291.045(7)
Stats. Implemented: ORS 291.045 & 291.047
Hist.: JD 4-1997(Temp), f. & cert. ef. 10-3-97; JD 5-1997(Temp), f. & cert. ef. 10-17-97; 137-045-0010(Temp) repealed by DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 5-1999(Temp), f. 9-14-99, cert. ef. 9-15-99 thru 3-13-00; DOJ 2-2001, f. & cert. ef. 1-18-01; DOJ 17-2003, f. & cert. ef. 12-9-03; DOJ 18-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 14-2009, f. 12-1-09, cert. ef. 1-1-10

137-045-0020
Mixed Contracts

A mixed Public Contract requires the contractor to render certain services and also to provide the Agency with other kinds of services, goods or products. Classification of a mixed Public Contract as a Personal Services Contract, Architectural and Engineering Services Contract, Information Technology Contract, or other kind of Public Contract is determined by the mixed Public Contract's predominant purpose. A mixed Public Contract's predominant purpose is determined by whether the majority of the amounts paid or received under the mixed Public Contract will be for a particular kind of service (personal, architectural, engineering, land surveying or related services, information technology, or other kinds of service) or for the acquisition of goods or products. An Assistant Attorney General shall defer to the reasonable classification of Public Contract type by the Department of Administrative Services for Public Contracts subject to Department of Administrative Services statutes and rules.

Stat. Auth.: ORS 291.047(3)
Stats. Implemented: ORS 291.045, 291.047 & OL 1997, Ch. 869
Hist.: JD 4-1997(Temp), f. & cert. ef. 10-3-97; JD 5-1997(Temp), f. & cert. ef. 10-17-97; 137-045-0020(Temp) repealed by DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 2-2001, f. & cert. ef. 1-18-01; DOJ 18-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 14-2009, f. 12-1-09, cert. ef. 1-1-10

137-045-0030
Review of Public Contracts

(1) Except as described in section (2), before a Public Contract is binding on the State of Oregon, and before any service may be performed or payment may be made under the Public Contract, the Attorney General must approve for legal sufficiency in accordance with these rules:

(a) Any Public Contract calling for or providing for payment in excess of $150,000.

(b) An amendment to a Public Contract described in subsection (1)(a).

(c) An amendment that makes the amended Public Contract subject to legal sufficiency approval under subsection (1)(a).

(2) The legal sufficiency approval requirement described in section (1) does not apply to Public Contracts that are exempt from legal sufficiency approval under these division 45 rules.

(3) For purposes of determining whether a Public Contract exceeds the amounts set forth in section (1), a Public Contract calls for or provides for payments in excess of the applicable amount if one of the following applies:

(a) The Public Contract expressly provides that the Agency will make or receive payments in money, services or goods over the term of the Public Contract with a value that will, in aggregate, exceed the applicable threshold, whether or not the total amount or value of the payments is expressly stated. For purposes of this subsection, when an agency is lending money, and the only payment to the Agency is in money, "payments" receivable by the Agency mean principal, only.

(b) The Public Contract expressly provides for a guaranteed maximum price or a maximum not to exceed amount payable or receivable by the Agency with a value that exceeds the applicable threshold.

(c) Based on historical or other data available to the contracting Agency at the time of entering into the Public Contract, the contracting Agency determines that the value of the benefit, loss or detriment to the Agency that is called for by the Public Contract will likely exceed the applicable threshold.

(4) An Agency shall not fragment or segregate transactions for purposes of circumventing the legal sufficiency approval requirement.

(5) A program or activity of a recipient of a Grant that is financed by the Grant does not constitute a service performed under a Public Contract for purposes of this rule.

Stat. Auth.: ORS 291.047(3)
Stats. Implemented: ORS 291.047
Hist.: JD 4-1997(Temp), f. & cert. ef. 10-3-97; JD 5-1997(Temp), f. & cert. ef. 10-17-97; 137-045-0030(Temp) repealed by DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 2-2001, f. & cert. ef. 1-18-01; DOJ 17-2003, f. & cert. ef. 12-9-03; DOJ 18-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 14-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 9-2011, f. 11-29-11, cert. ef. 1-1-12

137-045-0035
Review of Anticipated Public Contract

(1) Except as provided in this rule, if an Agency expects the resulting Public Contract to require legal sufficiency approval, the Agency must also submit to the Attorney General any associated Agency Procurement Documents for review of the anticipated Public Contract. The Agency must obtain authorization from an Assistant Attorney General to release the Procurement Documents before the Agency releases them. These requirements may be waived in writing by an Assistant Attorney General if the Assistant Attorney General determines that the resulting Public Contract is legally sufficient and resolicitation of the Public Contract would not materially reduce the risk to the State.

(2) Review of the anticipated Public Contract includes determining what law applies to the procurement and applying that law to the procurement documents to determine whether the procurement process complies with applicable law and Agencies' reasonable interpretations of their own rules. The reviewing attorney is not required to inquire into facts concerning the procurement process that are not apparent on the face of the documents. The reviewing attorney may require changes to the Procurement Documents that are necessary for compliance with applicable law. If the reviewing attorney determines that nothing in the Procurement Documents, or otherwise apparent to the attorney, would prevent approval of the anticipated Public Contract for legal sufficiency, the attorney shall authorize release of the Procurement Documents. The attorney may condition an authorization to release Procurement Documents as necessary for compliance with these rules. Authorization to release the Procurement Documents does not ensure subsequent legal sufficiency approval of the Public Contract contemplated by the procurement and any accepted response. Authorization to release includes a determination that the solicitation process on the face of the Procurement Documents complies with applicable statutes or rules.

Stat. Auth.: ORS 291.047(3)
Stats. Implemented: ORS 291.047
Hist.: DOJ 2-2001, f. & cert. ef. 1-18-01; DOJ 17-2003, f. & cert. ef. 12-9-03; DOJ 19-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 18-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 14-2009, f. 12-1-09, cert. ef. 1-1-10

137-045-0050
Exemptions from Legal Sufficiency Approval Based on Risk Assessment

The Attorney General has determined that the degree of risk assumed by Agencies is not materially reduced by legal review and approval of individual Public Contracts within the types of Public Contracts listed below. The Attorney General exempts from the legal sufficiency approval requirement under ORS 291.047 the Public Contracts falling within the types of Public Contracts listed below:

(1) Adoption Assistance Agreements. A document of understanding between the Department of Human Services and adoptive parents of a special needs child as defined under title IV-E at section 473(c) of the Social Security Act.

(2) Amendments to Contracts Other than Public Improvement and Loan Contracts. A written amendment to a Public Contract that is not a Public Improvement or loan Contract, if all of the following apply:

(a) The Public Contract being amended was approved for legal sufficiency.

(b) The amendment modifies only one or more of the following, and related payment obligations as necessary:

(A) The Statement of Work to require the contractor to provide additional or fewer goods, services or other work within the general scope of the Last Reviewed Contract.

(B) The expiration date of the Public Contract; Technical Specifications; time, place, quantity or form of delivery, or price.

(C) Any provisions as specified in writing at the time of approval by the Assistant Attorney General who provided legal sufficiency approval of the Last Reviewed Contract, based on the Assistant Attorney General's finding that the degree of risk assumed by the Agency will not be materially reduced by legal review and approval of the provisions.

(c) The aggregate increase in payments scheduled to be made by the Agency, or the aggregate decrease in payments scheduled to be received by the Agency, under the amendment, and all prior amendments exempted from the legal sufficiency approval requirement under this section subsequent to the Last Reviewed Contract, does not exceed the greater of:

(A) $150,000; or

(B) Any limits specified in writing at the time of approval by the Assistant Attorney General who provided legal sufficiency approval of the Last Reviewed Contract, based on the Assistant Attorney General's finding that the degree of risk assumed by the Agency will not be materially reduced by legal review and approval of the provisions.

(3) Amendments to Public Improvement Contracts.

(a) A written change order or other amendment to a Public Improvement Contract, other than a construction manager/general contractor contract, as provided in subsection (b) or a design-build contract or an energy savings performance contract as provided in subsection (c) of this section, if all of the following apply:

(A) The Public Improvement Contract being amended was approved for legal sufficiency.

(B) The change order or other amendment is within the general scope of the Public Improvement Contract.

(C) The change order or other amendment is implemented in accordance with the provisions of the Public Improvement Contract governing change orders and other types of amendments.

(D) The change order or other amendment modifies only one or both of the following and related payment obligations as necessary:

(i) The Statement of Work so as to require the contractor to provide additional or fewer materials, tools, equipment, labor or professional or non-professional services within the general scope of the Last Reviewed Contract;

(ii) The substantial completion date, the final completion date, or interim milestone dates of the Public Improvement Contract; Technical Specifications; time, place, quantity or form of delivery of materials, tools, equipment or services; price.

(E) Any increase in Agency payments under the change order or other amendment does not exceed ten percent (10%) of the total amount of Agency payments scheduled to be made under the Last Reviewed Contract, and the aggregate increase in Agency payments scheduled to be made under that change order or other amendment, and all prior change orders or other amendments subsequent to the Last Reviewed Contract do not exceed thirty-three percent (33%) of that total amount.

(b) An amendment to a CM/GC contract (as defined in OAR 137-049-0610) that complies with either subsection (A) or (B) below, whether the amendment is in the form of a change order or other amendment:

(A) The amendment is made before construction services have been authorized under the CM/GC contract and complies with all of the following:

(i) The CM/GC contract being amended was approved for legal sufficiency.

(ii) The amendment is implemented in accordance with the provisions of the CM/GC contract governing change orders and other amendments.

(iii) The amendment modifies only one or more of the following and related payment obligations as necessary:

(I) The Statement of Work so as to require the CM/GC to provide additional or fewer materials, equipment, or pre-construction services within the general scope of the Last Reviewed Contract.

(II) The substantial completion date, the final completion date, or interim milestone dates of the CM/GC contract; Technical Specifications; time, place, quantity or form of delivery of services; or price.

(iv) Any increase in Agency payments under the amendment does not exceed ten percent (10%) of the total amount of Agency payments scheduled to be made under the Last Reviewed Contract, and the aggregate increase in Agency payments scheduled to be made under that amendment and all prior amendments subsequent to the Last Reviewed Contract do not exceed thirty-three percent (33%) of that total amount.

(B) The amendment is made after construction services have been authorized under the CM/GC contract and complies with all of the following:

(i) The CM/GC contract being amended was approved for legal sufficiency.

(ii) The amendment is implemented in accordance with the provisions of the CM/GC contract governing change orders and other types of amendments.

(iii) The amendment is not the first amendment that authorizes construction services under the CM/GC contract.

(iv) The amendment does not establish the guaranteed maximum price ("GMP") under the CM/GC contract.

(v) The amendment modifies only one or both of the following and related payment obligations as necessary.

(I) The Statement of Work so as to require the CM/GC to provide additional or fewer materials, tools, equipment, labor or professional or non-professional services within the general scope of the Last Reviewed Contract.

(II) The substantial completion date, the final completion date, or interim milestone dates of the CM/GC contract; Technical Specifications; time, place, quantity or form of delivery of materials, tools, equipment or services; or the price.

(vi) The amendment does not increase the contract price (whether a GMP, fixed price, lump sum or other price) established under the Last Reviewed Contract by more than $500,000.

(vii) The amendment and all prior amendments subsequent to the Last Reviewed Contract in the aggregate do not increase the contract price (whether a GMP, fixed price, lump sum or other price) established under the Last Reviewed Contract by more than ten percent (10%).

(c) An amendment to a Design-Build contract (as defined in OAR 137-049-0610), or an amendment to an Energy Savings Performance Contract (as defined in ORS 279A.010(1)(g)) that is in the construction phase, whether the amendment is in the form of a change order or a conventional amendment, if all of the following apply:

(A) The contract being amended was approved for legal sufficiency.

(B) The amendment is implemented in accordance with the provisions of the Design-Build or Energy Savings Performance Contract governing change orders and other types of amendments.

(C) The amendment modifies only one or both of the following and related payment obligations as necessary:

(i) The Statement of Work so as to require the Design/Builder or Energy Savings Performance Contract contractor, as applicable, to provide additional or fewer materials, tools, equipment, labor or professional or non-professional services within the general scope of the Last Reviewed Contract;

(ii) The substantial completion date, the final completion date, or interim milestone dates of the contract; Technical Specifications; time, place, quantity or form of delivery of materials, tools, equipment or services; or the price.

(D) The amendment does not increase the contract price (whether a GMP, fixed price, lump sum or other price) established under the Last Reviewed Contract by more than $500,000 or five percent (5%), whichever is less.

(E) The amendment and all prior amendments subsequent to the Last Reviewed Contract in the aggregate do not increase the contract price (whether a GMP, fixed price, lump sum or other price) established under the Last Reviewed Contract by more than $500,000 or ten percent (10%), whichever is less.

(d) For purposes of this rule, "change order" means a mutually agreed upon change order or a unilateral construction change directive or similar instruction issued by the Agency or its authorized representative to the contractor requiring a change in the work within the general scope of a Public Improvement Contract and issued under the provisions of the Public Improvement Contract governing the implementation, addition, reduction or other revisions to the work and, if applicable, adjusting the contract price or contract time for the changed work.

(4) Bonds and Confirmation Statements.

(a) A Public Contract entered into, issued or established in connection with the issuance of a bond or other borrowing of the State of Oregon, including an interest rate exchange agreement and any associated confirmation statement, if the Oregon State Treasurer has issued or authorized the bond or other borrowing obligation to which the Public Contract relates and if bond counsel appointed in accordance with applicable law has issued an approving opinion for the benefit or use of purchasers of the bond or other borrowing with respect to the enforceability of the bond or other borrowing upon closing of the transaction.

(b) A confirmation statement associated with an Agency's investment-related interest rate or currency swap agreement or other investment transaction, if the agreement under which the confirmation statement arises has been approved for legal sufficiency or is exempt from legal sufficiency approval.

(5) Employment Agreements. Employment agreements; collective bargaining agreements negotiated under applicable federal or state laws, including collective bargaining agreements entered into pursuant to ORS 410.612; or notices of appointment provided in

accordance with OAR chapter 580, division 021. Agreements with third-party providers of temporary services are not exempt.

(6) Federal Contracts. A contract with a federal agency consisting substantially of provisions prescribed in Federal Acquisition Regulations or federal agency supplemental acquisition clauses (48 CFR), except a contract allowed under Section 211 of the federal E-Government Act of 2002.

(7) Federal Cooperative Agreements. A Federal Cooperative Agreement.

(8) Federal Grants. A grant from a federal agency under which an Agency is the grantee, provided that the Agency has a grants coordinator.

(9) Federal Pass-Through Grants. A grant under which an Agency passes through to another recipient all or a portion of the money or property received by the Agency under a grant from a federal agency, provided that:

(a) The Agency does not add to or modify the federal grant except as necessary to provide for proper administration; and

(b) The grant contains a clause substantially in the following form: "The recipient of grant funds, pursuant to this agreement with the State of Oregon, shall assume sole liability for recipient's breach of the conditions of the grant, and shall, upon recipient's breach of grant conditions that causes or requires the State of Oregon to return funds to the grantor, hold harmless and indemnify the State of Oregon for an amount equal to the funds which the State of Oregon is required to pay to grantor."

(10) Foster Care Agreements. An agreement between the Department of Human Services or the Oregon Youth Authority and a foster parent for the provision of foster care to an individual under the age of 21, or a youth placed with the Department of Human Services or Oregon Youth Authority pursuant to ORS 419C.478.

(11) Home Care Services Agreements. An agreement for the provision of and payment for home care services as defined in ORS 410.600(6).

(12) Membership Agreements. A Public Contract that calls for the payment of dues or fees in consideration of membership of individual officers, employees or agents of the State of Oregon in a club, institution, or association in which the State of Oregon acquires no ownership interest.

(13) Non-Negotiable Public Contracts. A Non-Negotiable Public Contract.

(14) Prescribed Contracts. A Public Contract that is in the form prescribed in Procurement Documents and any conditions on authorization for release under OAR 137-045-0035. Prescribed Contracts do not vary from the form prescribed in Procurement Documents other than to fill in blanks in the form, as is commonly done with invitations to bid for goods and services other than personal services.

(15) Purchase Order Contracts. A Public Contract formed by a purchase order, work order or a similar ordering instrument for the purchase of goods or services under a Price Agreement, provided that the Price Agreement was approved by an Assistant Attorney General and the ordering instrument complies with any conditions of the approval.

(16) Settlement Agreements. Agreements settling disputed claims, provided that they do not have the effect of amending Public Contracts that are subject to the legal sufficiency approval requirement.

(17) Amendments to Loan Contracts. A written amendment to a Public Contract solely for an Agency loan of money to another party that requires repayment to the Agency, if all of the following apply:

(a) The Public Contract being amended was approved for legal sufficiency.

(b) The amendment modifies only:

(A) The description of the project being financed, but only to the extent that the modified project remains eligible for financing by the same source of funds as the project before modification; or

(B) Business terms in the Public Contract which:

(i) Except as provided in subsection (17)(c), do not increase or decrease the total principal repayment obligations under the Public Contract;

(ii) Change the interest rate or payment due dates, except for the final maturity date; or

(iii) Describe the non-financial terms and conditions of performance, such as performance start or completion dates for the project being financed or job creation or retention requirements.

(c) The aggregate increase in the loan amount under the amendment or the aggregate decrease in principal payments scheduled to be received by the Agency, and all prior amendments exempted from the legal sufficiency approval requirement subsequent to the Last Reviewed Contract, does not exceed the greater of:

(A) $150,000; or

(B) Any particular amounts specified in writing at the time of approval by the Assistant Attorney General who provided legal sufficiency approval of the Last Reviewed Contract.

(18) Personal Services Contracts, Information Technology Contracts and Architectural and Engineering Services Contracts not calling for or providing for payment in excess of $150,000.

(19) Technology Transfer and Related Agreements. Agreements that govern the transfer of tangible research materials between Oregon University System ("OUS") and another organization, agreements with a predominant purpose to grant a license to OUS intellectual property and related agreements. Related agreements are agreements to manage interests in OUS intellectual property, agreements to combine management of interests in OUS intellectual property with management of interests in intellectual property from other parties, agreements that transfer ownership of intellectual property between OUS and other parties, agreements governing revenue sharing from licensing, and confidentiality agreements regarding intellectual property.

Stat. Auth.: ORS 291.047(4), 190.430 & 190.490
Stats. Implemented: ORS 291.047, 190.430 & 190.490
Hist.: JD 4-1997(Temp), f. & cert. ef. 10-3-97; JD 5-1997(Temp), f. & cert. ef. 10-17-97; 137-045-0050(Temp) repealed by DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 2-2001, f. & cert. ef. 1-18-01; DOJ 17-2003, f. & cert. ef. 12-9-03; DOJ 19-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 18-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 2-2009(Temp), f. & cert. ef. 2-26-09 thru 8-25-09; DOJ 10-2009, f. 7-2-09, cert. ef. 7-6-09; DOJ 14-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 11-2014(Temp), f. & cert. ef. 7-11-14 thru 9-30-14; DOJ 12-2014(Temp), f. 9-25-14, cert. ef. 10-1-14 thru 11-14-14; Administrative correction, 12-18-14

137-045-0052
Exemptions from ORS 190.430 and ORS 190.490 review

Contracts that are exempt from legal sufficiency review under ORS 291.047 or OAR chapter 137, division 045 are also exempt from the Attorney General review requirements under ORS 190.430 and 190.490.

Stat. Auth. ORS 190.430 & 190.490
Stats. Implemented: ORS 190.430 & 190.490
Hist.: DOJ 10-2009, f. 7-2-09, cert. ef. 7-6-09; DOJ 14-2009, f. 12-1-09, cert. ef. 1-1-10

137-045-0055
Special Public Contract Exemption Program for Exemptions from Legal Sufficiency Approval Based on Risk Assessment

(1) In addition to the Public Contracts described in OAR 137-045-0050, the Attorney General has determined that the degree of risk assumed by Agencies is not materially reduced by legal review and approval of individual Public Contracts that satisfy the requirements of the Special Public Contract Exemption Program and fall within the types of contract described in this rule. The Attorney General exempts from the legal sufficiency approval requirement the Public Contracts that satisfy the requirements of the Special Public Contract Exemption Program and fall within the types of contract described in this rule.

(2) The requirements of the Special Public Contract Exemption Program are:

(a) The Agency's representative responsible for the Public Contract must satisfactorily complete the Attorney General's initial and any continuing, as it is scheduled, legal sufficiency review training for that type of contract, which may be specifically tailored for that Agency, and hold a current legal sufficiency review exemption certificate for that type of contract issued by the Attorney in Charge, Business Transactions Section.

(b) The Public Contract must be substantially composed of provisions that have been preapproved by an Assistant Attorney General for use in the Special Public Contract Exemption Program and any modifications to such provisions as may be communicated to the Agency by an Assistant Attorney General.

(c) The Agency must agree that the Attorney in Charge, Business Transactions Section may:

(A) Periodically, select any Public Contract that is exempted from legal sufficiency review under the Special Public Contract Exemption Program for a quality control review; and

(B) Depending upon the results of any such review, provide comments to the Agency about the review, require changes to preapproved provisions, or suspend the Agency's or an Agency's representative's eligibility to participate in the Special Public Contract Exemption Program until further training or other reasonable conditions are met by the Agency or Agency representative.

(d) Costs for the activities specified in subsection (2)(c) of this rule shall be at the expense of the Agency unless otherwise agreed.

(e) An Agency must delete, modify with the specific advice of an Assistant Attorney General, or include only with the specific advice of an Assistant Attorney General, any provision in a proposed Public Contract that is substantially in any of the following forms:

(A) Governing law or choice of law: The laws of a state other than Oregon govern this contract.

(B) Jurisdiction or venue: A lawsuit to enforce, or arising out of, this contract must be brought in a state court located outside Oregon or any federal court.

(C) Arbitration: This contract is subject to binding arbitration.

(D) Indemnity, Hold Harmless: The State of Oregon or the Agency shall indemnify or hold harmless the other party.

(E) Responsibility: The State of Oregon or the Agency assumes or becomes responsible for unfunded liabilities or obligations, such as under uncapped, contingent, or open-ended responsibility clauses, unless such liabilities or obligations are expressly made subject to the limits of Oregon law in the contract, including Article XI, section 7 of the Oregon Constitution and the Oregon Tort Claims Act.

(F) Attorney fees or collection costs: The State of Oregon or the Agency shall pay the other party's attorney fees or the prevailing party in any lawsuit recovers its attorney fees from the losing party.

(G) Punitive or exemplary damages: The State of Oregon or the Agency shall pay punitive, exemplary, or treble damages for the breach of contract or for any claims arising out of the contract.

(H) Interest: The State of Oregon or the Agency is obligated to pay interest on an overdue account if the payment is less than forty-five days overdue or the interest is higher than eight per cent per annum.

(I) Third party beneficiary: A person not a party to the contract is stated to be a beneficiary of the contract or has the right to bring a legal action under the contract or to enforce the contract.

(J) Commitment to pay for performance beyond the end of the current biennium or with funds not currently available: The State of Oregon or the Agency has an unconditional (i.e., not limited by the potential non-appropriation or non-allotment of funds) obligation to pay funds that are not currently available for expenditure for that obligation by the Agency.

(K) Taxes: The State of Oregon or the Agency must pay taxes incident to the contract that are not directly imposed upon the State of Oregon or the Agency.

(L) Confidentiality: The State of Oregon or the Agency is obligated to keep information confidential unless the obligation is made subject to the provisions of the Oregon Public Records Law.

(M) Statute of Limitations: The State of Oregon or the Agency must file a legal action arising out of the contract within a specified time period.

(N) Contractor as agent or employee: The contractor is deemed to be an agent of the State of Oregon or the Agency for liability or other purposes or is the equivalent of an employee of the State of Oregon or the Agency.

(O) Financing agreements: Agreements as defined in ORS 283.095, including installment sales and lease purchase agreements.

(P) Representation, legal advice or legal opinions by counsel not authorized by the Attorney General.

(f) Unless otherwise requested by the Agency, the Assistant Attorney General will not provide advice regarding provisions in the proposed Public Contract that are not affected by modifying or including the provisions in subsection (2)(e).

(3) Classes of Public Contracts identified by the Attorney in Charge, Business Transactions Section, based on risk assessments developed in collaboration with an executive officer of an Agency who is responsible for oversight of Public Contracts, are eligible for exemption from legal sufficiency review under the Special Public Contract Exemption Program.

Stat. Auth.: ORS 291.047(4)
Stats. Implemented: ORS 291.047
Hist.: DOJ 17-2003, f. & cert. ef. 12-9-03; DOJ 18-2007, f. 12-28-07, cert. ef. 1-1-08

137-045-0060
Class Exemptions Based on Attorney General's Pre-Approval

The Attorney General may exempt Public Contracts falling within a class from the legal sufficiency approval requirement. The Attorney General delegates to the Attorney in Charge, Business Transactions Section, the authority to exempt Public Contracts falling within a class, and to otherwise act on behalf of the Attorney General, in accordance with this rule.

(1) An Agency requesting an exemption for Public Contracts falling within a class must submit a written exemption request to the Attorney in Charge, Business Transactions Section, for approval. The exemption request must be signed by an executive officer of the Agency who is responsible for oversight of Public Contracts and must be accompanied by:

(a) A statement that the exemption request is made pursuant to this rule;

(b) Citation to the requesting Agency's statutory authority for procuring and entering into the Public Contracts within the class;

(c) A description of the nature of the business transacted with the Public Contracts within the class;

(d) A description of the circumstances in which the Public Contracts within the class will be used;

(e) Samples of form Public Contracts used for the Public Contracts within the class and any form of amendment to be used in connection with the Public Contracts within the class;

(f) A description of the Agency's internal contract approval process and signatures required for the Public Contracts within the class; and

(g) A statement by the Agency that:

(A) The nature of the business transacted under Public Contracts within the class is substantially the same from transaction to transaction; and

(B) The form of Public Contract and any form of amendment submitted in accordance with OAR 137-045-0060(1)(e) do not vary from transaction to transaction, other than one or more of the following and related payment obligations, as necessary: the expiration date or project completion date of the Public Contract; Technical Specifications; time, place, quantity or form of delivery; price; or other provisions as specified in the statement; and

(C) The Agency will not modify the form of Public Contract and any form of amendment, other than as specifically provided for in OAR 137-045-0060(1)(g)(B) above, without review and approval for legal sufficiency by the Attorney General, nor will the Agency use such Public Contract other than in transactions described in the exemption request; and

(h) Any other information that the Attorney General or the Attorney in Charge, Business Transactions Section, requests in connection with the exemption request.

(2) If the Attorney General has determined that the degree of risk assumed by an Agency is not materially reduced by legal review and approval of individual Public Contracts falling within a class reviewed by the Attorney General in accordance with section (1) of this rule, the Attorney General will provide the Agency a written exemption, subject to any terms, conditions or limitations the Attorney General deems appropriate, including but not limited to, the

duration of the exemption, restrictions on the use of the submitted forms of Public Contract, form of purchase order or similar instrument or any form of amendment.

(3) The Attorney General may at any time review an exemption granted under section (2) of this rule. The Attorney General may revoke or modify such exemption at any time upon written notice to the Agency that it is in the best interest of the State of Oregon that the exemption be revoked or modified. Revocation or modification of an exemption granted under this rule shall not affect the validity of Public Contracts entered into under the exemption prior to the revocation or modification.

Stat. Auth.: ORS 291.047(5)
Stats. Implemented: ORS 291.047(5)(a)
Hist.: JD 4-1997(Temp), f. & cert. ef. 10-3-97; JD 5-1997(Temp), f. & cert. ef. 10-17-97; 137-045-0060(Temp) repealed by DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 2-2001, f. & cert. ef. 1-18-01; DOJ 17-2003, f. & cert. ef. 12-9-03; DOJ 18-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 14-2009, f. 12-1-09, cert. ef. 1-1-10

137-045-0070
Emergency Public Contract Exemption

(1) Upon the Agency's compliance with the procedures set forth in section (2), a Public Contract entered into in an Emergency is exempt from the legal sufficiency approval requirement.

(2) An executive officer of the Agency who is responsible for oversight of the Public Contract must prepare and sign a written report that contains:

(a) A concise summary of the circumstances that constitute the Emergency and the character of the risk of loss, damage, interruption of services or threat to public health or safety created or anticipated to be created by the Emergency circumstances;

(b) A statement of the reason or reasons why the prompt execution of the proposed Public Contract was required to deal with the risk created or anticipated to be created by the Emergency circumstances;

(c) A brief description of the services or goods to be provided under the Public Contract, together with its anticipated cost; and

(d) A brief explanation of how the Public Contract, in terms of duration, services or goods provided under it, was restricted to the scope reasonably necessary to adequately deal only with the risk created or anticipated to be created by the Emergency circumstances.

(3) The executive officer shall prepare and sign the written report no later than 10 business days after execution of the Public Contract. The Agency shall maintain a copy of the report in the Agency's Emergency Public Contract file. The Agency shall provide a copy of the report to the Attorney in Charge, Business Transactions Section within 30 days after preparing the report.

Stat. Auth.: ORS 291.047(5)
Stats. Implemented: ORS 291.047(5)(b)
Hist.: DOJ 2-2001, f. & cert. ef. 1-18-01; DOJ 17-2003, f. & cert. ef. 12-9-03; DOJ 19-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 18-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 14-2009, f. 12-1-09, cert. ef. 1-1-10

137-045-0080
Authorization of Services Prior to Legal Sufficiency Approval

At an Agency's request and upon the Agency's compliance with the procedures set forth in this rule, the Attorney General, through the Attorney in Charge, Business Transactions Section, may authorize services to be performed under specific types of written Public Contracts or under written Public Contracts for specific Agency programs, before legal sufficiency approval as follows:

(1) An Agency requesting authorization for performance of services under Public Contracts prior to legal sufficiency approval must submit a written authorization request signed by an executive officer of the Agency who is responsible for oversight of the Public Contracts to the Attorney in Charge, Business Transactions Section. The request must include:

(a) A statement that the authorization request is made pursuant to this rule;

(b) A description of the specific type of Public Contracts within the authorization request and a description of the circumstances in which the Agency will use these Public Contracts, or a description of the specific program for which the Agency will use the Public Contracts to be covered by the authorization;

(c) A citation to the requesting Agency's statutory authority for entering into the specific type of Public Contracts to be covered by the authorization;

(d) The form of Public Contracts comprising the type of Public Contracts within the exemption request or the form of Public Contracts used for the specific Agency program;

(e) A description of the Agency's internal contract approval process and the signatures required for the type of Public Contracts within the authorization request; and

(f) Any other information that the Attorney General requests in connection with the authorization request.

(2) If the Attorney General determines that the authorization for performance of services prior to legal sufficiency approval will not result in undue risk to the State of Oregon under the type of Public Contracts within the authorization request or under Public Contracts used for the specific Agency program described in accordance with section (1) of this rule, the Attorney General may authorize the services under those Public Contracts prior to legal sufficiency approval.

(3) If the Attorney General authorizes services under a Public Contract prior to legal sufficiency approval, the Attorney General, through the Attorney in Charge, Business Transactions Section, will provide the Agency with a written pre-approval service authorization, subject to any conditions or limitations the Attorney General deems appropriate, including but not limited to a condition that the Public Contract may not be amended prior to legal sufficiency approval.

(4) Any Public Contract under which the Attorney General authorizes services to be performed before approval for legal sufficiency must be submitted to the Attorney General, through the Attorney in Charge, Business Transactions Section, for legal sufficiency approval within a reasonable time after the Public Contract is signed by the parties, but in all cases before the Agency makes any payments under the Public Contract. As a condition for legal sufficiency approval, the Attorney in Charge, Business Transactions Section may require that the Public Contract be amended as necessary to make it legally sufficient.

(5) After the Public Contract has been approved for legal sufficiency, the Agency may make payments on the Public Contract even if the payments are for services rendered prior to legal sufficiency approval. An Agency is not authorized to make payments on the Public Contract before the Public Contract is approved for legal sufficiency and all other required approvals are obtained.

(6) The Attorney General, through the Attorney in Charge, Business Transactions Section, may at anytime review an authorization for pre-approval services granted under this rule. The Attorney General, through the Attorney in Charge, Business Transactions Section, may revoke or modify such authorization at any time upon written notice to the Agency that it is in the best interest of the State of Oregon that such authorization be revoked or modified. Revocation or modification of an authorization for pre-approval services granted under this rule shall not affect the validity of Public Contracts entered into under the authorization prior to the revocation or modification.

Stat. Auth.: ORS 291.047(3) & 291.047(6)
Stats. Implemented: ORS 291.047(6)
Hist.: DOJ 2-2001, f. & cert. ef. 1-18-01; DOJ 19-2005, f. 12-27-05, cert. ef. 1-1-06

137-045-0090
Ratification of Public Contracts

Before ratifying a Public Contract under ORS 291.049, an Agency shall do all of the following:

(1) Submit to the Attorney in Charge, Business Transactions Section, a copy of the Public Contract and the proposed ratification document. The ratification document is to be executed, after approval for legal sufficiency, by an executive officer of an Agency who is responsible for oversight of the Public Contract. The ratification document must contain:

(a) An explanation of why performance began or payment was made before the Public Contract was approved by the Attorney General for legal sufficiency;

(b) A description of the steps being taken to prevent similar occurrences in the future; and

(2) A proposed ratification of the Public Contract.

(3) Obtain approval of the Public Contract for legal sufficiency from the Attorney General, through the Attorney in Charge, Business Transactions Section;

(4) Obtain all other approvals required for the Public Contract.

Stat. Auth.: ORS 291.049(3)
Stats. Implemented: ORS 291.049
Hist.: DOJ 2-2001, f. & cert. ef. 1-18-01; DOJ 17-2003, f. & cert. ef. 12-9-03; DOJ 18-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 9-2011, f. 11-29-11, cert. ef. 1-1-12

DIVISION 46

MODEL RULES GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTING

137-046-0100
Content and General Application; Federal Law Supremacy

(1) These Model Rules are rules of procedure for Public Contracting as required under ORS 279A.065 and consist of the following four divisions:

(a) This division 46, which applies to all Public Contracting;

(b) Division 47, which describes procedures for Public Contracting for Goods, Services and Personal Services other than Architectural, Engineering and Land Surveying Services and Related Services;

(c) Division 48, which describes procedures for Public Contracting for Architectural, Engineering and Land Surveying Services and Related Services; and

(d) Division 49, which describes procedures for Public Contracting for Construction Services.

(2) If a conflict arises between these division 46 rules and rules in divisions 47, 48 and 49, the rules in divisions 47, 48 and 49 take precedence over these division 46 rules.

(3) Except as otherwise expressly provided in ORS 279C.800 through 279C.870, and notwithstanding ORS Chapters 279A, 279B, and 279C.005 through 279C.670, applicable federal statutes and regulations govern when federal funds are involved and the federal statutes or regulations conflict with any provision of ORS Chapters 279A, 279B, or 279C.005 through 279C.670 or these Model Rules, or require additional conditions in Public Contracts not authorized by ORS Chapters 279A, 279B, and 279C.005 through 279C.670 or these Model Rules.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.030 & 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-046-0110
Definitions for the Model Rules

Unless the context of a specifically applicable definition in the Code requires otherwise, capitalized terms used in the Model Rules have the meaning set forth in the division of the Model Rules in which they appear, and if not defined there, the meaning set forth in these division 46 rules, and if not defined here, the meaning set forth in the Code. The following terms, when capitalized in these Model Rules, have the meaning given below:

(1) "Addendum" or "Addenda" means an addition to, deletion from, a material change in, or general interest explanation of a Solicitation Document.

(2) "Administering Contracting Agency" has the meaning set forth in ORS 279A.200(1)(a) and for Interstate Cooperative Procurements includes the entities specified in ORS 279A.220(4).

(3) "Award" means, as the context requires, either identifying or the Contracting Agency's identification of the Person with whom the Contracting Agency intends to enter into a Contract following the resolution of any protest of the Contracting Agency's selection of that Person and the completion of all Contract negotiations.

(4) "Bid" means a Written response to an Invitation to Bid.

(5) "Closing" means the date and time specified in a Solicitation Document as the deadline for submitting Offers.

(6) "Code" means the Public Contracting Code.

(7) "Competitive Range" means the Proposers with whom the Contracting Agency will conduct discussions or negotiations if the Contracting Agency intends to conduct discussions or negotiations in accordance with OAR 137-047-0261 or 137-049-0650.

(8) "Contract" means a contract for sale or other disposal, or a purchase, lease, rental or other acquisition, by a contracting agency of personal property, services, including personal services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement. "Contract" does not include grants.

(9) "Contract Price" means, as the context requires, the maximum monetary obligation that a Contracting Agency either will or may incur under a Contract, including bonuses, incentives and contingency amounts, if the Contractor fully performs under the Contract.

(10) "Contract Review Authority" means:

(a) For State Contracting Agencies, generally the Director of the Oregon Department of Administrative Services;

(b) For Local Contracting Agencies, the Local Contracting Agency's Local Contract Review Board determined as specified in ORS 279A.060; and

(c) Where specified by statute, the Director of the Oregon Department of Transportation.

(11) "Contractor" means the Person, including a Consultant as defined in OAR 137-048-0110(1), with whom a Contracting Agency enters into a Contract.

(12) "DBE Disqualification" means a disqualification, suspension or debarment pursuant to ORS 200.065, 200.075 or 279A.110.

(13) "Descriptive Literature" means Written information submitted with the Offer that addresses the Goods and Services included in the Offer.

(14) "Electronic Advertisement" means a Contracting Agency's Solicitation Document, Request for Quotes, request for information or other document inviting participation in the Contracting Agency's Procurements made available over the Internet via:

(a) The World Wide Web or some other Internet protocol; or

(b) A Contracting Agency's Electronic Procurement System.

(15) "Electronic Offer" means a response to a Contracting Agency's Solicitation Document or Request for Quotes submitted to a Contracting Agency via:

(a) The World Wide Web or some other Internet protocol; or

(b) A Contracting Agency's Electronic Procurement System.

(16) "Electronic Procurement System" means an information system that Persons may access through the Internet using the World Wide Web or some other Internet protocol or that Persons may otherwise remotely access using a computer, that enables Persons to send Electronic Offers and a Contracting Agency to post Electronic Advertisements, receive Electronic Offers, and conduct other activities related to a Procurement.

(17) "Invitation to Bid" or "ITB" means the Solicitation Document issued to invite Offers from prospective Contractors pursuant to either ORS 279B.055 or 279C.335.

(18) "Model Rules" means the Attorney General's model rules of procedure for Public Contracting as required under ORS 279A.065.

(19) "Offer" means a Written offer to provide Goods or Services in response to a Solicitation Document.

(20) "Offeror" means a Person who submits an Offer.

(21) "Opening" means the date, time and place specified in the Solicitation Document for the public opening of Offers.

(22) "Person" means any of the following with legal capacity to enter into a Contract: individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity.

(23) "Personal Services" as used in division 47 and as used in division 46 when applicable to division 47 means the services performed under a Personal Services Contract. "Personal Services" as used in division 48 and division 49, and as used in this division 46 when applicable to division 48 or division 49, or both, has the meaning set forth in ORS 279C.100.

(24) "Personal Services Contract" means:

(a) For a Local Contracting Agency, a Contract or member of a class of Contracts, other than a Contract for the services of an Architect, Engineer, Land Surveyor or Provider of Related Services (as defined in ORS 279C.100), that the Local Contracting Agency's Local Contract Review Board has designated as a personal services contract pursuant to ORS 279A.055; or

(b) For a State Contracting Agency, a Contract, or member of a class of Contracts, other than a Contract for the services of an Architect, Engineer, Land Surveyor or Provider of Related Services (as defined in ORS 279C.100), whose primary purpose is to acquire specialized skills, knowledge and resources in the application of technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment, including, without limitation, a Contract for the services of an accountant, physician or dentist, educator, consultant, broadcaster or artist (including a photographer, filmmaker, painter, weaver or sculptor).

(25) "Product Sample" means the exact Goods or a representative portion of the Goods offered in an Offer, or the Goods requested in the Solicitation Document as a sample.

(26) "Proposal" means a Written response to a Request for Proposals.

(27) "Recycled Materials" means recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh), and other recycled plastic resin products and recycled products (as defined in ORS 279A.010(1)(ii).

(28) "Request for Qualifications" or "RFQ" means a Written document issued by a Contracting Agency to which Contractors respond in Writing by describing their experience with and qualifications for the Services, Personal Services or Architectural, Engineering or Land Surveying Services, or Related Services, described in the document.

(29) "Request for Quotes" means a Written or oral request for prices, rates or other conditions under which a potential Contractor would provide Goods or perform Services, Personal Services or Public Improvements described in the request.

(30) "Responsible" means meeting the standards set forth in OAR 137-047-0640 or 137-049-0390(2), and not debarred or disqualified by the Contracting Agency under OAR 137-047-0575 or 137-049-0370.

(31) "Responsible Offeror" means, as the context requires, a Responsible Bidder, Responsible Proposer or a Person who has submitted an Offer and meets the standards set forth in OAR 137-047-0640 or 137-049-0390(2), and who has not been debarred or disqualified by the Contracting Agency under OAR 137-047-0575 or 137-049-0370.

(32) "Responsive" means having the characteristic of substantial compliance in all material respects with applicable solicitation requirements.

(33) "Responsive Offer" means, as the context requires, a Responsive Bid, Responsive Proposal or other Offer that substantially complies in all material respects with applicable solicitation requirements.

(34) "Signature" means any Written mark, word or symbol that is made or adopted by a Person with the intent to be bound and that is attached to or logically associated with a Written document to which the Person intends to be bound.

(35) "Signed" means, as the context requires, that a Written document contains a Signature or that the act of making a Signature has occurred.

(36) "Solicitation Document" means an Invitation to Bid, Request for Proposals, Request for Quotes, or other similar document issued to invite Offers from prospective Contractors pursuant to ORS Chapter 279B or 279C. The following are not Solicitation Documents unless they invite Offers from prospective Contractors: a Request for Qualifications, a prequalification of bidders, a request for information, a sole source notice, an approval of a Special Procurement, or a request for product prequalification. A project-specific selection document under a Price Agreement that has resulted from a previous Solicitation Document is not itself a Solicitation Document.

(37) "Writing" means letters, characters and symbols inscribed on paper by hand, print, type or other method of impression, intended to represent or convey particular ideas or meanings. "Writing," when required or permitted by law, or required or permitted in a Solicitation Document, also means letters, characters and symbols made in electronic form and intended to represent or convey particular ideas or meanings.

(38) "Written" means existing in Writing.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

137-046-0120
Policy

Contracting Agencies subject to the Code shall conduct Public Contracting to further the policies set forth in ORS 279A.015, elsewhere in the Code, and in these Model Rules.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05;

137-046-0130
Application of the Code and Model Rules; Exceptions

(1) Except as set forth in this section, a Contracting Agency shall exercise all procurement authority related to Public Contracting in accordance with the Code and the Model Rules.

(2) A Contracting Agency that has specifically opted out of the Model Rules and adopted its own rules of procedure for Public Contracting pursuant to 279A.065 in the exercise of its own contracting authority is not subject to these Model Rules, except for those portions of the Model Rules that the Contracting Agency has prescribed for its own use for Public Contracting and except for those portions of the Model Rules pertaining to the procurement of Construction Manager/General Contractor Services under ORS 279A.065(3), where the Contracting Agency is not permitted to opt out of the Model Rules.

(3) Contracts or classes of Contracts for Personal Services of a Local Contracting Agency designated as such by the Local Contracting Agency's Local Contract Review Board pursuant to ORS 279A.055, are not subject to these Model Rules, unless the Local Contracting Agency adopts OAR 137-047-0250 through 137-047-0290 as the procedures the Local Contracting Agency will use to screen and select persons to perform Contracts for Personal Services other than Architectural, Engineering and Surveying Services and Related Services.

(4) These Model Rules do not apply to the Contracts or the classes of Contracts described in ORS 279A.025(2).

(5) These Model Rules do not apply to the contracting activities of the public bodies listed in ORS 279A.025(3).

(6) Contracting Agencies otherwise subject to the Code and these Model Rules may enter into Contracts for Goods or Services with non-profit agencies providing employment opportunities for individuals with disabilities pursuant to ORS 279.835 through 279.855 without following the source selection procedures set forth in either 279A.200 through 279A.225, or 279B.050 through 279B.085. However, Contracting Agencies must enter into such Contracts in accordance with administrative rules promulgated by the Department.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.050, 279A.055, 279A.065 & 279A.180
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15

Minorities, Women and Emerging Small Businesses

137-046-0200
Notice to Advocate for Minorities, Women and Emerging Small Businesses

Pursuant to ORS 200.035, State Contracting Agencies shall provide timely notice of all Procurements and Contract Awards to the

Advocate for Minority, Women and Emerging Small Business if the estimated Contract Price exceeds $5,000.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 200.035
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-046-0210
Subcontracting to and Contracting with Emerging Small Businesses; DBE Disqualification

(1) For purposes of ORS 279A.105, a subcontractor certified under 200.055 as an emerging small business is located in or draws its workforce from economically distressed areas if:

(a) Its principal place of business is located in an area designated as economically distressed by the Oregon Economic and Community Development Department pursuant to administrative rules adopted by the Oregon Economic and Community Development Department; or

(b) The Contractor certifies in a Signed Writing to the Contracting Agency that a substantial number of the subcontractor's employees or subcontractors that will manufacture or provide the Goods or perform the Services or Personal Services under the Contract reside in an area designated as economically distressed by the Oregon Economic and Community Development Department pursuant to administrative rules adopted by the Oregon Economic and Community Development Department. For the purposes of making the foregoing determination, the Contracting Agency shall determine in each particular instance what proportion of a Contractor's subcontractor's employees or subcontractors constitute a substantial number.

(2) Contracting Agencies shall include in each Solicitation Document a requirement that Offerors certify in their Offers in a form prescribed by the Contracting Agency, that the Offeror has not and will not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, women or emerging small business enterprise certified under ORS 200.055 or against a business enterprise that is owned or controlled by or that employs a disabled veteran as defined in ORS 408.225.

(3) DBE Disqualification.

(a) A Contracting Agency may disqualify a Person from consideration of Award of the Contracting Agency's Contracts under ORS 200.065(5), or suspend a Person's right to bid on or participate in any Contract pursuant to 200.075(1) after providing the Person with notice and a reasonable opportunity to be heard in accordance with subsections (b) and (c) of this Section.

(b) The Contracting Agency shall provide Written notice to the Person of a proposed DBE Disqualification. The Contracting Agency shall deliver the Written notice by personal service or by registered or certified mail, return receipt requested. This notice shall:

(A) State that the Contracting Agency intends to disqualify or suspend the Person;

(B) Set forth the reasons for the DBE Disqualification;

(C) Include a statement of the Person's right to a hearing if requested in Writing within the time stated in the notice and that if the Contracting Agency does not receive the Person's Written request for a hearing within the time stated, the Person shall have waived the right to a hearing;

(D) Include a statement of the authority and jurisdiction under which the hearing will be held;

(E) Include a reference to the particular sections of the statutes and rules involved;

(F) State the proposed DBE Disqualification period; and

(G) State that the Person may be represented by legal counsel.

(c) Hearing. The Contracting Agency shall schedule a hearing upon the Contracting Agency's receipt of the Person's timely hearing request. Within a reasonable time prior to the hearing, the Contracting Agency shall notify the Person of the time and place of the hearing and provide information on the procedures, right of representation and other rights related to the conduct of the hearing.

(d) Notice of DBE Disqualification. The Contracting Agency shall provide Written notice of the DBE Disqualification to the Person. The Contracting Agency shall deliver the Written notice by personal service or by registered or certified mail, return receipt requested. The notice shall contain:

(A) The effective date and period of DBE Disqualification;

(B) The grounds for DBE Disqualification; and

(C) A statement of the Person's appeal rights and applicable appeal deadlines.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 200.065, 200.075, 279A.065, 279A.105 & 279A.110
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-046-0252
Personnel Employment Disclosure and Preference — State Agency Contracts for Goods or Services

(1) As authorized by subsection 6(2) of Oregon Laws 2012, chapter 53 (Senate Bill 1518), a state contracting agency may state, in its Solicitation Documents for a procurement of goods or services, that the state contracting agency will consider, and award a preference based on, personnel deployment disclosures submitted by bidders or proposers in response to the solicitation.

(2) A state contracting agency may not reject a bidder or proposer on the ground that it submitted a non-responsive bid or proposal solely due to the bidder's or proposer's failure to submit a personnel employment disclosure. However, the state contracting agency may not apply the preference authorized by subsection 6(2) of Oregon Laws 2012, chapter 53 (Senate Bill 1518) in favor of a bidder or proposer that fails to submit a complete and accurate personnel disclosure form with its bid or proposal on or before the date and time bids or proposals are due.

(3) To qualify for the application of the preference under subsection 6(2) of Oregon Laws 2012, chapter 53 (Senate Bill 1518), a bidder's or proposer's personnel deployment disclosure form must state:

(a) The number of workers the bidder or proposer and the bidder's or proposer's subcontractors will, if awarded a contract, deploy to perform the overall contract work described in the Solicitation Documents.

(b) The number of workers the bidder or proposer and the bidder's or proposer's first-tier subcontractors will, if awarded a contract, employ in this state to perform contract work described in the Solicitation Documents.

(c) The number of jobs to be held by workers employed by the bidder or proposer and by the bidder's or proposer's subcontractors to perform the contract work described in the Solicitation Documents that will be newly created jobs that result from the award of the contract.

(d) The duration of the work of any workers (stated in number of work days) who will be employed in this state to perform contract work described in the Solicitation Documents for all workers (including workers of first-tier subcontractors) for whom the work duration will not be as long as the initial term of the contract.

(e) The rates of pay of all reported workers (including workers of first-tier subcontractors), described either individually, by position, or by job classification, who will be employed in this state to perform contract work described in the Solicitation Documents.

(4) To qualify for the application of the preference under subsection 6(2) of Oregon Laws 2012, chapter 53 (Senate Bill 1518), a bidder or proposer must make a promise in its bid or proposal to ensure that the deployment of workers will comply, in terms of worker positions, duration of the work, and the location of the employment of workers, with the personnel deployment disclosure submitted with its bid or proposal. If awarded a contract, a bidder or proposer must commit, in the contract, to ensure that the deployment of workers will comply, in terms of worker positions, duration of the work, and the location of the employment of workers, with the personnel deployment disclosure submitted with its bid or proposal. In the contract, the contractor must agree to pass this obligation to all first-tier subcontractors.

(5) A state contracting agency may require a contractor under a contract awarded with the application of the preference under subsection 6(2) of Oregon Laws 2012, chapter 53 (Senate Bill 1518) to submit, on a monthly or other periodic basis, the contractor's certi-

fication of its employment of workers and its first-tier subcontractors' workers) within this state in accordance with the contractor's personnel deployment disclosure.

(6) A state contracting agency may give a preference of not more than ten percent to a bid or proposal that states that the bidder or proposer (and its first-tier subcontractors) will employ more workers within this state than competing bidders or proposers. In determining the bidder or proposer who will employ more workers within this state, the state contracting agency may take the rates of pay and the duration of the work into account by averaging the rates of pay for all disclosed in-state work positions and averaging the duration of the in-state work positions among all disclosed in-state work positions. Before granting the preference to a bid or proposal, the agency must determine that the competing proposals otherwise suit the state agency's specifications for the procurement equally well.

(7) In applying the preference, a state contracting agency must achieve fairness by assigning a standard work-deployment period for each solicitation that does not exceed the duration of the initial term of any contract awarded with the application of the preference, or in project completion-based contracts, does not exceed the probable duration of the project work exclusive of a contractor's performance of warranty work and maintenance.

(8) Where a state contracting agency determines that a personnel deployment disclosure unreasonably or unrealistically overstates the number of workers a bidder or proposer (and first-tier subcontractors) will employ within this state, the state contracting agency may reject the bid or proposal on grounds of bidder or proposer nonresponsibility, or in a proposal situation, may deduct proposal evaluation points.

Stat. Auth.: ORS 279A.065
Stats. Implemented: 2012 OL, ch 53
Hist.: DOJ 8-2012, f. 7-2-12, cert. ef. 8-1-12

Contract Preferences

137-046-0300
Preference for Oregon Goods and Services

(1) Tiebreaker Preference and Award When Offers Are Identical. Under ORS 279A.120, when a Contracting Agency receives Offers identical in price, fitness, availability and quality, and chooses to Award a Contract, the Contracting Agency shall Award the Contract based on the following order of precedence:

(a) The Contracting Agency shall Award the Contract to the Offeror among those submitting identical Offers who is offering Goods or Services, or both, or Personal Services, that are manufactured, produced or to be performed in Oregon.

(b) If two or more Offerors submit identical Offers, and they all offer Goods or Services, or both, or Personal Services, that are manufactured, produced or to be performed in Oregon, the Contracting Agency shall Award the Contract by drawing lots among the identical Offers. The Contracting Agency shall provide the Offerors who submitted the identical Offers notice of the date, time and location of the drawing of lots and an opportunity for these Offerors to be present when the lots are drawn.

(c) If the Contracting Agency receives identical Offers, and none of the identical Offers offer Goods or Services, or both, or Personal Services, that are manufactured, produced or to be performed in Oregon, then the Contracting Agency shall award the Contract by drawing lots among the identical Offers. The Contracting Agency shall provide to the Offerors who submitted the identical Offers notice of the date, time and location of the drawing of lots and an opportunity for these Offerors to be present when the lots are drawn.

(2) Determining if Offers are Identical. A Contracting Agency shall consider Offers identical in price, fitness, availability and quality as follows:

(a) Bids received in response to an Invitation to Bid are identical in price, fitness, availability and quality if the Bids are Responsive, and offer the Goods or Services, or both, or Personal Services, described in the Invitation to Bid at the same price.

(b) Proposals received in response to a Request for Proposals are identical in price, fitness, availability and quality if they are Responsive and achieve equal scores when scored in accordance with the evaluation criteria set forth in the Request for Proposals.

(c) Offers received in response to a Special Procurement conducted under ORS 279B.085 are identical in price, fitness, availability and quality if, after completing the contracting procedure approved by the Contract Review Authority, the Contracting Agency determines, in Writing, that two or more Offers are equally advantageous to the Contracting Agency.

(d) Offers received in response to an intermediate Procurement conducted pursuant to ORS 279B.070 are identical if the Offers equally best serve the interests of the Contracting Agency in accordance with 279B.070(4).

(3) Determining if Goods or Services or Personal Services are Manufactured or Produced in Oregon. In applying Section 1 of this rule, Contracting Agencies shall determine whether a Contract is predominantly for Goods, Services or Personal Services and then use the predominant purpose to determine if the Goods, Services or Personal Services are manufactured, produced, or performed in Oregon. Contracting Agencies may request, either in a Solicitation Document, following Closing, or at any other time the Contracting Agency determines is appropriate, any information the Contracting Agency may need to determine if the Goods, Services or Personal Services are manufactured or produced in Oregon. A Contracting Agency may use any reasonable criteria to determine if Goods, Services or Personal Services are manufactured, produced, or performed in Oregon, provided that the criteria reasonably relate to that determination, and provided that the Contracting Agency applies those criteria equally to each Offer.

(4) Procedure for Drawing Lots. When this rule calls for the drawing of lots, the Contracting Agency shall draw lots by a procedure that affords each Offeror subject to the drawing a substantially equal probability of selection and that does not allow the person making the selection the opportunity to manipulate the drawing of lots to increase the probability of selecting one Offeror over another.

(5) Discretionary Preference and Award. Under ORS 279A.128, a Contracting Agency may provide, in a Solicitation Document for Goods, Services or Personal Services, a specified percentage preference of not more than ten percent for Goods fabricated or processed entirely in Oregon or Services or Personal Services performed entirely in Oregon. When the Contracting Agency provides for a preference under this Section, and more than one Offeror qualifies for the preference, the Contracting Agency may give a further preference to a qualifying Offeror that resides in or is headquartered in Oregon. A Contracting Agency may establish a preference percentage higher than ten percent by written order that finds good cause to establish the higher percentage and which explains the Contracting Agency's reasons and evidence for finding good cause to establish a higher percentage. A Contracting Agency may not apply the preferences described in this Section in a Procurement for emergency work, minor alterations, ordinary repairs or maintenance of public improvements, or construction work that is described in ORS 297C.320.

Stat. Auth.: ORS 279A.065; OL 2011, ch 237
Stats. Implemented: ORS 279A.065; 279A.120 & 279A.128; OL 2011, ch 237
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12; DOJ 8-2012, f. 7-2-12, cert. ef. 8-1-12

137-046-0310
Reciprocal Preferences

When evaluating Bids pursuant to OAR 137-047-0255, 137-047-0257 or 137-049-0390 and applying the reciprocal preference provided under ORS 279A.120(2)(b) a Contracting Agency may rely on the list prepared and maintained by the Department pursuant to ORS 279A.120(4) to determine:

(1) Whether the Nonresident Bidder's state gives preference to in-state bidders; and

(2) The amount of such preference.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065 & 279A.120
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-046-0320
Preference for Recycled Materials

(1) In comparing Goods from two or more Offerors, if at least one Offeror offers Goods manufactured from Recycled Materials, and at least one Offeror does not, a Contracting Agency shall select the Offeror offering Goods manufactured from Recycled Materials if each of the conditions specified in ORS 279A.125(2) exists. When making the determination under 279A.125(2)(d), the Contracting Agency shall consider the costs of the Goods following any adjustments the Contracting Agency makes to the price of the Goods after evaluation pursuant to OAR 137-046-0310.

(2) A Contracting Agency shall determine if Goods are manufactured from Recycled Materials in accordance with standards established by the Contracting Agency.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065 & 279A.125
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-046-0330
Federally Funded Transit Projects — Preference for Exceeding Federal Buy America Requirements

(1) A contracting agency, in its Solicitation Documents to award a contract for a transit project that will be funded in whole or in part with funds from the federal government or a federal government agency, may provide for the application of a preference in favor of an Offeror whose bid or proposal exceeds the applicable federal Buy America requirements.

(a) A contracting agency has discretion to adjust the amount or character of the preference to account for variations in the nature of the contract or project, and the degree to which each Offeror's bid or proposal exceeds the federal Buy America requirements.

(b) For example, in an invitation to bid procurement the contracting agency may authorize a range of preference price percentages to account for the various degrees to which the bidders might exceed the federal Buy America requirements. In no event, however, may the percentage preference given to a bidder exceed ten percent of the total bid price.

(c) Similarly, under a request for proposals, the contracting agency may allocate and award evaluation points to reflect the degrees to which the proposers might exceed the applicable federal Buy America requirements. In no event, however, may those percentage points exceed ten percent of the total number of points available for award under the request for proposals.

Stat. Auth.: ORS 279A.065
Stats. Implemented: 2012 OL, ch 58
Hist.: DOJ 8-2012, f. 7-2-12, cert. ef. 8-1-12

Cooperative Procurement

137-046-0400
Authority for Cooperative Procurements

(1) Contracting Agencies may participate in, sponsor, conduct or administer Joint Cooperative Procurements, Permissive Cooperative Procurements and Interstate Cooperative Procurements in accordance with ORS 279A.200 through 279A.225.

(2) Each Purchasing Contracting Agency shall determine in Writing whether the solicitation and award process for an Original Contract arising out of a Cooperative Procurement is substantially equivalent to those identified in ORS 279B.055, 279B.060 or 279B.085, consistent with 279A.200(2).

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065 & 279A.205
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-046-0410
Responsibilities of Administering Contracting Agencies and Purchasing Contracting Agencies

(1) If a Contracting Agency is an Administering Contracting Agency of a Cooperative Procurement, the Contracting Agency may establish the conditions under which Persons may participate in the Cooperative Procurement administered by the Administering Contracting Agency. Such conditions may include, without limitation, whether each Person who participates in the Cooperative Procurement must pay administrative fees to the Administering Contracting Agency, whether each Person must enter into a Written agreement with the Administering Contracting Agency, and any other matters related to the administration of the Cooperative Procurement and the resulting Original Contract. A Contracting Agency that acts as an Administering Contracting Agency may, but is not required to, include provisions in the Solicitation Document for a Cooperative Procurement and advertise the Solicitation Document in a manner to assist Purchasing Contracting Agencies' compliance with the Code or these Model Rules.

(2) If a Contracting Agency acting as a Purchasing Contracting Agency enters into a Contract based on a Cooperative Procurement, the Contracting Agency shall comply with the Code and these Model Rules, including without limitation those sections of the Code and these Model Rules that govern:

(a) The extent to which the Purchasing Contracting Agency may participate in the Cooperative Procurement;

(b) The advertisement of the Solicitation Document related to the Cooperative Procurement; and

(c) Public notice of the Purchasing Contracting Agency's intent to establish Contracts based on a Cooperative Procurement.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065 & 279A.205
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-046-0420
Joint Cooperative Procurements

A Contracting Agency that chooses to participate in, sponsor, conduct or administer a Joint Cooperative Procurement may do so only in accordance with ORS 279A.210.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065 & 279A.210
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

137-046-0430
Permissive Cooperative Procurements

A Contracting Agency that chooses to participate in, sponsor, conduct or administer a Permissive Cooperative Procurement may do so only in accordance with ORS 279A.215.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065 & 279A.215
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

137-046-0440
Advertisements of Intent to Establish Contracts through a Permissive Cooperative Procurement

(1) For purposes of determining whether a Purchasing Contracting Agency must give notice of intent to establish a Contract through a Permissive Cooperative Procurement as required by ORS 279A.215(2)(a), the estimated amount of the procurement will exceed $250,000 if:

(a) The Purchasing Contracting Agency's Contract arising out of the Permissive Cooperative Procurement expressly provides that the Purchasing Contracting Agency will make payments over the term of the Contract that will, in aggregate, exceed $250,000, whether or not the total amount or value of the payments is expressly stated;

(b) The Purchasing Contracting Agency's Contract arising out of the Permissive Cooperative Procurement expressly provides for payment, whether in a fixed amount or up to a stated maximum amount, that exceeds $250,000; or

(c) At the time the Purchasing Contracting Agency enters into the Contract, the Purchasing Contracting Agency reasonably contemplates, based on historical or other data available to the Purchasing Contracting Agency, that the total payments it will make for Goods or Services, or both, or Personal Services, under the Contract will, in aggregate, exceed $250,000 over the anticipated duration of the Contract.

(2) An Administering Contracting Agency that intends to establish a Contract arising out of the Permissive Cooperative Procurement it administers may satisfy the notice requirements set forth in

ORS 279A.215(2)(a) by including the information required by 279A.215(2)(b) in the Solicitation Document related to the Permissive Cooperative Procurement, and including instructions in the Solicitation Document to potential Offerors describing how they may submit comments in response to the Administering Contracting Agency's intent to establish a Contract through the Permissive Cooperative Procurement. The content and timing of such notice shall comply in all respects with 279A.215(2), 279A.215(3) and these Model Rules.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065 & 279A.215
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-046-0450
Interstate Cooperative Procurements

A Contracting Agency that chooses to participate in, sponsor, conduct or administer an Interstate Cooperative Procurement may do so only in accordance with ORS 279A.220.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065 & 279A.220
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

137-046-0460
Advertisements of Interstate Cooperative Procurements

(1) The Solicitation Document for an Interstate Cooperative Procurement is advertised in Oregon for purposes of ORS 279A.220(2)(a) if it is advertised in Oregon in compliance with 279B.055(4) or 279B.060(4) by:

(a) The Administering Contracting Agency;

(b) The Purchasing Contracting Agency;

(c) The Cooperative Procurement Group, or a member of the Cooperative Procurement Group, of which the Purchasing Contracting Agency is a member; or

(d) Another Purchasing Contracting Agency that is subject to the Code, so long as such advertisement would, if given by the Purchasing Contracting Agency, comply with ORS 279B.055(4) or 279B.060(4) with respect to the Purchasing Contracting Agency.

(2) A Purchasing Contracting Agency or the Cooperative Procurement Group of which the Purchasing Contracting Agency is a member satisfies the advertisement requirement under ORS 279A.220(2)(b) if the notice is advertised in the same manner as provided in 279B.055(4)(b) and (c).

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065 & 279A.220
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-046-0470
Protests and Disputes

(1) An Offeror or potential Offeror wishing to protest the procurement process, the contents of a solicitation document related to a Cooperative Procurement or the award or proposed award of an Original Contract shall make the protest in accordance with ORS 279B.400 through 279B.425 unless the Administering Contracting Agency is not subject to the Code. If the Administering Contracting Agency is not subject to the Code, then the Offeror or potential Offeror shall make the protest in accordance with the processes and procedures established by the Administering Contracting Agency.

(2) Any other protests related to a Cooperative Procurement, or disputes related to a Contract arising out of a Cooperative Procurement, shall be made and resolved as set forth in ORS 279A.225.

(3) The failure of a Purchasing Contracting Agency to exercise any rights or remedies it has under a Contract entered into through a Cooperative Procurement shall not affect the rights or remedies of any other Contracting Agency that participates in the Cooperative Procurement, including the Administering Contracting Agency, and shall not prevent any other Purchasing Contracting Agency from exercising any rights or seeking any remedies that may be available to it under its own Contract arising out of the Cooperative Procurement.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065 & 279A.225
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-046-0480
Contract Amendments

A Purchasing Contracting Agency may amend a Contract entered into pursuant to a Cooperative Procurement as set forth in OAR 137-047-0800.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

Repealed Rules

137-046-0500
Repealed Rules

As required by Or Laws 2003, Chapter 794, Section 334, OAR 137-030-0000, 137-030-0005, 137-030-0006, 137-030-0008, 137-030-0010, 137-030-0011, 137-030-0012, 137-030-0013, 137-030-0014, 137-030-0015, 137-030-0020, 137-030-0030, 137-030-0035, 137-030-0040,137-030-0050, 137-030-0055, 137-030-0060, 137-030-0065, 137-030-0070, 137-030-0075, 137-030-0080,137-030-0085, 137-030-0090, 137-030-0095, 137-030-0100, 137-030-0102, 137-030-0104, 137-030-0105, 137-030-0110, 137-030-0115, 137-030-0120, 137-030-0125, 137-030-0130, 137-030-0135, 137-030-0140, 137-030-0145, 137-030-0155, 137-035-0000, 137-035-0010, 137-035-0020, 137-035-0030, 137-035-0040,137-035-0050, 137-035-0060, 137-035-0065, 137-035-0070, 137-035-0080, 137-040-0000, 137-040-0005,137-040-0010, 137-040-0015, 137-040-0017, 137-040-0020, 137-040-0021, 137-040-0025, 137-040-0030,137-040-0031, 137-040-0035, 137-040-0045, 137-040-0500, 137-040-0510, 137-040-0520, 137-040-0530, 137-040-0540, 137-040-0550, 137-040-0560, 137-040-0565, 137-040-0570, 137-040-0590 are repealed effective March 1, 2005. The repealed rules will continue to apply to the solicitation of Public Contracts first advertised, but if not advertised then entered into, before March 1, 2005.

Stat. Auth.: ORS 279A.065 & OL 2003, Ch. 795, 334
Stats. Implemented: ORS 279A.065 & OL 2003, Ch. 795, 334
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

DIVISION 47

MODEL RULES
PUBLIC PROCUREMENTS FOR GOODS OR SERVICES

General Provisions

137-047-0000
Application

These division 47 rules implement ORS Chapter 279B, Public Procurements and apply to the Procurement of Goods and Services. State Contracting Agencies shall also procure Personal Services, except for Architectural, Engineering, Land Surveying and Related Services, in the same manner other Services are procured under these division 47 rules. Local Contracting Agencies, pursuant to 279B.050(4), may also adopt these division 47 rules to govern the Procurement of Personal Services Contracts or elect to award Personal Services Contracts under procedures set forth in 279B.055 through 279B.085.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.015
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-047-0100
Definitions

(1) "**Advantageous**" means in the Contracting Agency's best interests, as assessed according to the judgment of the Contracting Agency.

(2) "**Affected Person**" or "**Affected Offeror**" means a Person whose ability to participate in a Procurement is adversely affected by a Contracting Agency decision. See ORS 279B.410.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

Source Selection

137-047-0250
Source Selection

Methods of Source Selection; Feasibility Determination; Cost Analysis

(1) Except as permitted by ORS 279B.065 through 279B.085 and 279A.200 through 279A.225, a Contracting Agency shall Award a Contract for Goods or Services, or both based on Offers received in response to either competitive sealed Bids pursuant to 279B.055 or competitive sealed Proposals pursuant to 279B.060.

(2) Written Cost Analysis for Contracts for Services. Before conducting the Procurement of a Contract for Services that is subject to sections 2 to 4 of Oregon Laws 2009, chapter 880, a Contracting Agency must, in the absence of a determination under section 34 of that enactment that performing the services with the Contracting Agency's own personnel and resources is not feasible, conduct a Written cost analysis.

(3) Feasibility Determination for Contracts for Services. A Contracting Agency may proceed with the procurement of a Contract for Services without conducting a cost analysis under Oregon Laws 2009, chapter 880, section 3, if the Contracting Agency makes Written findings that one or more of the special circumstances described in Oregon Laws 2009, chapter 880, section 4, make the Contracting Agency's use of its own personnel and resources to provide the Services not feasible.

(4) Special Circumstances. The special circumstances identified in Oregon Laws 2009, section 4 that require a Contracting Agency to procure the Services by Contract include any circumstances, conditions or occurrences that would make the Services, if performed by the Contracting Agency's employees, incapable of being managed, utilized or dealt with successfully in terms of the quality, timeliness of completion, success in obtaining desired results, or other reasonable needs of the Contracting Agency.

(5) Written Cost Analysis under Section 3 of Oregon Laws 2009, chapter 880.

(a) Basic Comparison. The Written cost analysis must compare an estimate of the Contracting Agency's cost of performing the Services with an estimate of the cost a potential Contractor would incur in performing the Services. However, The Contracting Agency may proceed with the Procurement for Services only if it determines that the Contracting Agency would incur more cost in performing the Services with the Contracting Agency's own personnel than it would incur in procuring the Services from a Contractor. In making this determination, the cost the Contracting Agency would incur in procuring the Services from a Contractor includes the fair market value of any interest in equipment, materials or other assets the Contracting Agency will provide to the Contractor for the performance of the Services.

(b) Costs of Using Contracting Agency's Own Personnel and Resources. When estimating the Contracting Agency's cost of performing the Services, the Contracting Agency shall consider cost factors that include:

(A) The salary or wage and benefit costs for the employees of the Contracting Agency who would be directly involved in performing the Services, to the extent those costs reflect the proportion of the activity of those employees in the direct provision of the Services. These costs include those salary or wage and benefit costs of the employees who inspect, supervise or monitor the performance of the Services, to the extent those costs reflect the proportion of the activity of those employees in the direct inspection, supervision, or monitoring of the performance of the subject Services.

(B) The material costs necessary to the performance of the Services, including the costs for space, energy, transportation, storage, equipment and supplies used or consumed in the provision of the Services.

(C) The costs incurred in planning for, training for, starting up, implementing, transporting and delivering the Services.

(D) Any costs related to stopping and dismantling a project or operation because the Contracting Agency intends to procure a limited quantity of Services or to procure the Services within a defined or limited period of time.

(E) The miscellaneous costs related to performing the Services. These costs exclude the Contracting Agency's indirect overhead costs for existing salaries or wages and benefits for administrators, and exclude costs for rent, equipment, utilities and materials, except to the extent the cost items identified in this sentence are attributed solely to performing the Services and would not be incurred unless the Contracting Agency performed the Services.

(F) Oregon Laws 2009, chapter 880, section 3(1)(a) provides that an estimate of the Contracting Agency's costs of performing the Services includes the costs described in subsections (5)(b)(A) through (E) of this rule. Therefore, those costs do not constitute an exclusive list of cost information. A Contracting Agency may consider other reliable information that bears on the cost to the Contracting Agency of performing the Services. For example, if the Contracting Agency has accounted for its actual costs of performing the Services under consideration, or reasonably comparable Services, in a relatively recent Services project, the Contracting Agency may consider those actual costs in making its estimate.

(c) Costs a Potential Contractor Would Incur. When estimating the costs a potential Contractor would incur in performing the Services, the Contracting Agency shall consider cost factors that include:

(A) The average or actual salary or wage and benefit costs for Contractors and Contractor employees:

(i) Who work in the business or industry most closely involved in performing the Services; and

(ii) Who would be necessary and directly involved in performing the Services or who would inspect, supervise or monitor the performance of the Services.

(B) The material costs necessary to the performance of the Services, including the costs for space, energy, transportation, storage, raw and finished materials, equipment and supplies used or consumed in the provision of the Services.

(C) The miscellaneous costs related to performing the Services. These miscellaneous costs include reasonably foreseeable fluctuations in the costs listed in subsections (5)(c)(A) and (B) of this rule over the expected duration of the Procurement.

(D) Oregon Laws 2009, chapter 880, section 3(1)(b) provides that an estimate of the costs a potential Contractor would incur in performing the Services includes the costs described in subsections (5)(c)(A) through (C) of this rule. Therefore, those costs do not constitute an exclusive list of cost information. A Contracting Agency may consider other reliable information that bears on the costs a potential Contractor would incur. For example, if the Contracting Agency, in the reasonably near past, received Bids or Proposals for the performance of the Services under consideration, or reasonably comparable Services, the Contracting Agency may consider the pricing offered in those Bids or Proposals in making its estimate. Similarly, the Contracting Agency may consider what it actually paid out under a Contract for the same or similar Services. For the purposes of these examples, the reasonably near past is limited to Contracts, Bids or Proposals entered into or received within the five years preceding the date of the cost estimate. The Contracting Agency must take into account, when considering the pricing offered in previous Bids, Proposals or Contracts, adjustments to the pricing in light of measures of market price adjustments like the consumer price indexes that apply to the Services.

(6) Decision Based on Cost Comparison. After comparing the difference between the costs estimated for the Contracting Agency to perform the Services under section (5)(b) and the estimated costs a potential Contractor would incur in performing the Services under section (5)(c), the Contracting Agency may proceed with the Procurement only if the Contracting Agency would incur more cost in performing the Services with the agency's own personnel and resources than it would incur in procuring the Services from a Contractor.

(7) Exception Based on Salaries or Wages and Benefits. If the sole reason that the costs estimated for the Contracting Agency to

perform the Services under section (5)(b) exceed the estimated costs a potential Contractor would incur in performing the Services under section (5)(c) is because the average or actual salary or wage and benefit costs for Contractors and their employees estimated under subsection (5)(c)(A) are lower than the salary or wage and benefit costs for employees of the Contracting Agency under subsection (5)(b)(A), then the Contracting Agency may not proceed with the Procurement.

(8) Exception Based on Lack of Contracting Agency Personnel and Resources; Reporting. In cases in which the Contracting Agency determines that it would incur less cost in providing the Services with its own personnel and resources, the Contracting Agency nevertheless may proceed with the Procurement if, at the time the Contracting Agency intends to conduct the Procurement, the Contracting Agency determines that it lacks personnel and resources to perform the Services within the time the Contracting Agency requires them. When a Contracting Agency conducts a Procurement under this section, the Contracting Agency must:

(a) Make and keep a Written determination that it lacks personnel and resources to perform the Services within the time the Contracting Agency requires them and of the basis for the Contracting Agency's decision to proceed with the Procurement.

(b) If the Contracting Agency is a Local Contracting Agency, provide to its Local Contract Review Board, each calendar quarter, copies of each Written cost analysis and Written determination.

(c) If the Contracting Agency is a State Contracting Agency, provide to the Emergency Board, each calendar quarter, copies of each Written cost analysis and Written determination.

(d) If the Contracting Agency is a State Contracting Agency, prepare a request to the Governor for an appropriation and authority necessary for the State Contracting Agency to hire personnel and obtain resources necessary to perform the Services that are the subjects of the Written cost analyses and Written determinations within the time needed by the State Contracting Agency. The request to the Governor must include copies of the records submitted to the Emergency Board under subsection (8)(c) of this rule.

Stat. Auth.: ORS 279A.065, OL 2009, c 880, §§ 3, 4

Stats. Implemented: ORS 279B.050, OL 2009, c 880, § 2-4

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-047-0255
Competitive Sealed Bidding

(1) Generally. A Contracting Agency may procure Goods or Services by competitive sealed bidding as set forth in ORS 279B.055. An Invitation to Bid is used to initiate a competitive sealed bidding solicitation and shall contain the information required by 279B.055(2) and by section 2 of this rule. The Contracting Agency shall provide public notice of the competitive sealed bidding solicitation as set forth in OAR 137-047-0300.

(2) Invitation to Bid. In addition to the provisions required by ORS 279B.055(2), the Invitation to Bid shall include the following:

(a) General Information.

(A) Notice of any pre-Offer conference as follows:

(i) The time, date and location of any pre-Offer conference;

(ii) Whether attendance at the conference will be mandatory or voluntary; and

(iii) A provision that provides that statements made by the Contracting Agency's representatives at the conference are not binding upon the Contracting Agency unless confirmed by Written Addendum.

(B) The form and instructions for submission of Bids and any other special information, e.g., whether Bids may be submitted by electronic means (See OAR 137-047-0330 for required provisions of electronic Bids);

(C) The time, date and place of Opening;

(D) The office where the Solicitation Document may be reviewed;

(E) A statement that each Bidder must identify whether the Bidder is a "resident Bidder," as defined in ORS 279A.120(1);

(F) Bidder's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See OAR 137-046-0210(2)); and

(G) How the Contracting Agency will notify Bidders of Addenda and how the Contracting Agency will make Addenda available (See OAR 137-047-0430).

(b) Contracting Agency Need to Purchase. The character of the Goods or Services the Contracting Agency is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements. As required by Oregon Laws 2009, chapter 880, section 5, the Contracting Agency's description of its need to purchase must:

(A) Identify the scope of the work to be performed under the resulting Contract, if the Contracting Agency awards one;

(B) Outline the anticipated duties of the Contractor under any resulting Contract;

(C) Establish the expectations for the Contractor's performance of any resulting Contract; and

(D) Unless the Contracting Agency for Good Cause specifies otherwise, the scope of work must require the Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the Goods or Services that the Contracting Agency is purchasing.

(c) Bidding and Evaluation Process.

(A) The anticipated solicitation schedule, deadlines, protest process, and evaluation process;

(B) The Contracting Agency shall set forth objective evaluation criteria in the Solicitation Document in accordance with the requirements of ORS 279B.055(6)(a). Evaluation criteria need not be precise predictors of actual future costs, but to the extent possible, the evaluation factors shall be reasonable estimates of actual future costs based on information the Contracting Agency has available concerning future use; and

(C) If the Contracting Agency intends to Award Contracts to more than one Bidder pursuant to OAR 137-047-0600(4)(c), the Contracting Agency shall identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award.

(d) Applicable preferences pursuant to ORS 279B.055(6)(b).

(e) For Contracting Agencies subject to ORS 305.385, Contractor's certification of compliance with the Oregon tax laws in accordance with ORS 305.385.

(f) All contractual terms and conditions in the form of Contract provisions the Contracting Agency determines are applicable to the Procurement. As required by Oregon Laws 2009, chapter 880, section 5, the Contract terms and conditions must specify the consequences of the Contractor's failure to perform the scope of work or to meet the performance standards established by the resulting Contract. Those consequences may include, but are not limited to:

(A) The Contracting Agency's reduction or withholding of payment under the Contract;

(B) The Contracting Agency's right to require the Contractor to perform, at the Contractor's expense, any additional work necessary to perform the statement of work or to meet the performance standards established by the resulting Contract; and

(C) The Contracting Agency's rights, which the Contracting Agency may assert individually or in combination, to declare a default of the resulting Contract, to terminate the resulting Contract, and to seek damages and other relief available under the resulting Contract or applicable law.

(3) Good Cause. For the purposes of this rule, "Good Cause" means a reasonable explanation for not requiring Contractor to meet the highest standards, and may include an explanation of circumstances that support a finding that the requirement would unreasonably limit competition or is not in the best interest of the Contracting Agency. The Contracting Agency shall document in the Procurement file the basis for the determination of Good Cause for specification otherwise. A Contracting Agency will have Good Cause to specify otherwise under the following circumstances:

(a) The use or purpose to which the Goods or Services will be put does not justify a requirement that the Contractor meet the highest prevalent standards in performing the Contract;

(b) Imposing express technical, standard, dimensional or mathematical specifications will better ensure that the Goods or Services will be compatible with or will operate efficiently or effectively with components, equipment, parts, Services or information technology including hardware, Services or software with which the Goods or Services will be used, integrated, or coordinated;

(c) The circumstances of the industry or business that provides the Goods or Services are sufficiently volatile in terms of innovation or evolution of products, performance techniques, scientific developments, that a reliable highest prevalent standard does not exist or has not been developed;

(d) Any other circumstances in which Contracting Agency's interest in achieving economy, efficiency, compatibility or availability in the Procurement of the Goods or Services reasonably outweighs the Contracting Agency's practical need for the highest prevalent standard in the applicable or closest industry or business that supplies the Goods or Services to be delivered under the resulting Contract

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.055
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10;

137-047-0257
Multistep Sealed Bidding

(1) Generally. A Contracting Agency may procure Goods or Services by using multistep sealed bidding under ORS 279B.055(12).

(2) Phased Process. Multistep sealed bidding is a phased Procurement process that seeks information or unpriced submittals in the first phase combined with regular competitive sealed bidding, inviting Bidders who submitted technically eligible submittals in the first phase to submit competitive sealed price Bids in the second phase. The Contract must be Awarded to the lowest Responsible Bidder.

(3) Public Notice. When a Contracting Agency uses multistep sealed bidding, the Contract Agency shall give public notice for the first phase in accordance with OAR 137-047-0300. Public notice is not required for the second phase. However, a Contracting Agency shall give notice of the second phase to all Bidders, inform Bidders of the right to protest Addenda issued after the initial Closing under OAR 137-047-0430, and inform Bidders excluded from the second phase of the right, if any, to protest their exclusion under OAR 137-047-0720.

(4) Procedures Generally. In addition to the procedures set forth in OAR 137-047-0300 through 137-047-0490, a Contracting Agency shall employ the procedures set forth in this rule for multistep sealed bidding and in the Invitation to Bid.

(5) Procedure for Phase One of Multistep Sealed Bidding.

(a) Form. A Contracting Agency shall initiate multistep sealed bidding by issuing an Invitation to Bid in the form and manner required for competitive sealed Bids except as provided in this Rule. In addition to the requirements set forth OAR 137-047-0255(2), the multistep Invitation to Bid must state:

(A) That the solicitation is a multistep sealed Bid Procurement and describe the process the Contracting Agency will use to conduct the Procurement;

(B) That the Contracting Agency requests unpriced submittals and that the Contracting Agency will consider price Bids only in the second phase and only from those Bidders whose unpriced submittals are found eligible in the first phase;

(C) Whether Bidders must submit price Bids at the same time as unpriced submittals and, if so, that Bidders must submit the price Bids in a separate sealed envelope;

(D) The criteria to be used in the evaluation of unpriced submittals;

(b) Evaluation. The Contracting Agency shall evaluate unpriced submittals in accordance with the criteria set forth in the Invitation to Bid.

(6) Procedure for Phase Two of Multistep Sealed Bidding.

(a) After the completion of phase one, if the Contracting Agency does not cancel the Solicitation, the Contracting Agency shall invite each eligible Bidder to submit a price Bid.

(b) A Contracting Agency shall conduct phase two as any other competitive sealed Bid Procurement except:

(A) As specifically set forth in this rule or the Invitation to Bid;

(B) No public notice need be given of the invitation to submit price Bids because such notice was previously given.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.055
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

137-047-0260
Competitive Sealed Proposals

(1) Generally. A Contracting Agency may procure Goods or Services by competitive sealed Proposals as set forth in ORS 279B.060. A Contracting Agency shall use a Request for Proposal to initiate a competitive sealed Proposal solicitation. The Request for Proposal must contain the information required by 279B.060(2) and by section (2) of this rule. The Contracting Agency shall provide public notice of the Request for Proposal as set forth in OAR 137-047-0300.

(2) Request for Proposal. In addition to the provisions required by ORS 279B.060(2), the Request for Proposal must include the following:

(a) General Information.

(A) Notice of any pre-Offer conference as follows:

(i) The time, date and location of any pre-Offer conference;

(ii) Whether attendance at the conference will be mandatory or voluntary; and

(iii) A provision that provides that statements made by the Contracting Agency's representatives at the conference are not binding upon the Contracting Agency unless confirmed by Written Addendum.

(B) The form and instructions for submission of Proposals and any other special information, e.g., whether Proposals may be submitted by electronic means. (See OAR 137-047-0330 for required provisions of electronic Proposals);

(C) The time, date and place of Opening;

(D) The office where the Solicitation Document may be reviewed;

(E) Proposer's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See OAR 137-046-0210(2)); and

(F) How the Contracting Agency will notify Proposers of Addenda and how the Contracting Agency will make Addenda available. (See OAR 137-047-0430).

(b) Contracting Agency Need to Purchase. The character of the Goods or Services the Contracting Agency is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements. As required by ORS 279B.060(2)(c), the Contracting Agency's description of its need to purchase must:

(A) Identify the scope of the work to be performed under the resulting Contract, if the Contracting Agency awards one;

(B) Outline the anticipated duties of the Contractor under any resulting Contract;

(C) Establish the expectations for the Contractor's performance of any resulting Contract; and

(D) Unless the Contractor under any resulting Contract will provide architectural, engineering, photogrammetric mapping, transportation planning, or land surveying services, or related services that are subject to ORS 279C.100 to 279C.125, or the Contracting Agency for Good Cause specifies otherwise, the scope of work must require the Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the Goods or Services that the Contracting Agency is purchasing.

(c) Proposal and Evaluation Process.

(A) The anticipated solicitation schedule, deadlines, protest process, and evaluation process;

(B) The Contracting Agency shall set forth selection criteria in the Solicitation Document in accordance with the requirements of ORS 279B.060(3)(e). Evaluation criteria need not be precise predictors of actual future costs and performance, but to the extent possible, the factors shall be reasonable estimates of actual future costs based on information available to the Contracting Agency;

(C) If the Contracting Agency's solicitation process calls for the Contracting Agency to establish a Competitive Range, the Contracting Agency shall generally describe, in the Solicitation Document, the criteria or parameters the Contracting Agency will apply to determine the Competitive Range. The Contracting Agency, however, subsequently may determine or adjust the number of Proposers in the Competitive Range in accordance with OAR 137-047-0261(6).

(d) Applicable Preferences, including those described in ORS 279A.120, 279A.125(2) and 282.210.

(e) For Contracting Agencies subject to ORS 305.385, the Proposers' certification of compliance with the Oregon tax laws in accordance with ORS 305.385.

(f) All contractual terms and conditions the Contracting Agency determines are applicable to the Procurement. The Contracting Agency's determination of contractual terms and conditions that are applicable to the Procurement may take into consideration, as authorized by ORS 279B.060(3), those contractual terms and conditions the Contracting Agency will not include in the Request for Proposal because the Contracting Agency either will reserve them for negotiation, or will request Proposers to offer or suggest those terms or conditions. (See OAR 137-047-0260(3)).

(g) As required by ORS 279B.060(2)(h), the Contract terms and conditions must specify the consequences of the Contractor's failure to perform the scope of work or to meet the performance standards established by the resulting Contract. Those consequences may include, but are not limited to:

(A) The Contracting Agency's reduction or withholding of payment under the Contract;

(B) The Contracting Agency's right to require the Contractor to perform, at the Contractor's expense, any additional work necessary to perform the scope of work or to meet the performance standards established by the resulting Contract; and

(C) The Contracting Agency's rights, which the Contracting Agency may assert individually or in combination, to declare a default of the resulting Contract, to terminate the resulting Contract, and to seek damages and other relief available under the resulting Contract or applicable law.

(3) The Contracting Agency may include the applicable contractual terms and conditions in the form of Contract provisions, or legal concepts to be included in the resulting Contract. Further, the Contracting Agency may specify that it will include or use Proposer's terms and conditions that have been pre-negotiated under OAR 137-047-0550(3), but the Contracting Agency may only include or use a Proposer's pre-negotiated terms and conditions in the resulting Contract to the extent those terms and conditions do not materially conflict with the applicable contractual terms and conditions. The Contracting Agency shall not agree to any Proposer's terms and conditions that were expressly rejected in a solicitation protest under OAR 137-047-0420.

(4) For multiple Award Contracts, the Contracting Agency may enter into Contracts with different terms and conditions with each Contractor to the extent those terms and conditions do not materially conflict with the applicable contractual terms and conditions. The Contracting Agency shall not agree to any Proposer's terms and conditions that were expressly rejected in a solicitation protest under OAR 137-047-0420.

(5) Good Cause. For the purposes of this rule, "Good Cause" means a reasonable explanation for not requiring Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the Goods or Services under the Contract, and may include an explanation of circumstances that support a finding that the requirement would unreasonably limit competition or is not in the best interest of the Contracting Agency. The Contracting Agency shall document in the Procurement file the basis for the determination of Good Cause for specifying otherwise. A Contracting Agency will have Good Cause to specify otherwise when the Contracting Agency determines:

(a) The use or purpose to which the Goods or Services will be put does not justify a requirement that the Contractor meet the highest prevalent standards in performing the Contract;

(b) Imposing express technical, standard, dimensional or mathematical specifications will better ensure that the Goods or Services will be compatible with, or will operate efficiently or effectively with, associated information technology, hardware, software, components, equipment, parts, or on-going Services with which the Goods or Services will be used, integrated, or coordinated;

(c) The circumstances of the industry or business that provides the Goods or Services are sufficiently volatile in terms of innovation or evolution of products, performance techniques, or scientific developments, that a reliable highest prevalent standard does not exist or has not been developed;

(d) That other circumstances exist in which the Contracting Agency's interest in achieving economy, efficiency, compatibility or availability in the Procurement of the Goods or Services reasonably outweighs the Contracting Agency's practical need for the highest standard prevalent in the applicable or closest industry or business that supplies the Goods or Services to be delivered under the resulting Contract.

Stat. Auth.: ORS 279A.065, OL 2011, ch 458
Stats. Implemented: ORS 279B.060, OL 2011, ch 458
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15

137-047-0261
Multi-tiered and Multistep Proposals

(1) Generally. A Contracting Agency may use one or more, or any combination, of the methods of Contractor selection set forth in ORS 279B.060(7), 279B.060(8) and this rule to procure Goods or Services. In addition to the procedures set forth in OAR 137-047-0300 through 137-047-0490 for methods of Contractor selection, a Contracting Agency may provide for a multi-tiered or multistep selection process that permits award to the highest ranked Proposer at any tier or step, calls for the establishment of a Competitive Range, or permits either serial or competitive simultaneous discussions or negotiations with one or more Proposers.

(2) When conducting a multi-tiered or multistep selection process, a Contracting Agency may use any combination or series of Proposals, discussions, negotiations, demonstrations, offers, or other means of soliciting information from Proposers that bears on the selection of a Contractor or Contractors. In multi-tiered and multistep competitions, a Contracting Agency may use these means of soliciting information from prospective Proposers and Proposers in any sequence or order, and at any stage of the selection process, as determined in the discretion of the Contracting Agency.

(3) When a Contracting Agency's Request for Proposals prescribes a multi-tiered or multistep Contractor selection process, a Contracting Agency nevertheless may, at the completion of any stage in the competition and on determining the Most Advantageous Proposer (or, in multiple-award situations, on determining the awardees of the Public Contracts), award a Contract (or Contracts) and conclude the Procurement without proceeding to subsequent stages. The Contracting Agency also may, at any time, cancel the Procurement under ORS 279B.100.

(4) Exclusion Protest. A Contracting Agency may provide, before the notice of an intent to Award, an opportunity for a Proposer to protest exclusion from the Competitive Range or from subsequent phases of multi-tiered or multistep sealed Proposals as set forth in OAR 137-047-0720.

(5) Award Protest. A Contracting Agency shall provide an opportunity to protest its intent to Award a Contract pursuant to ORS 279B.410 and OAR 137-047-0740. An Affected Offeror may protest, for any of the bases set forth in 137-047-0720(2), its exclusion from the Competitive Range or from any phase of a multi-tiered or multistep sealed Proposal process, or may protest an Addendum issued following initial Closing, if the Contracting Agency did not previously provide Proposers the opportunity to protest the exclusion or Addendum. The failure to protest shall be considered the Proposer's failure to pursue an administrative remedy made available to the Proposer by the Contracting Agency.

(6) Competitive Range. When a Contracting Agency's solicitation process conducted under ORS 279B.060(8) calls for the Contracting Agency to establish a Competitive Range at any stage in the Procurement process, the Contracting Agency may do so as follows:

(a) Determining Competitive Range.

(A) The Contracting Agency may establish a Competitive Range after evaluating all Responsive Proposals in accordance with the evaluation criteria in the Request for Proposals. After evaluation of all Proposals in accordance with the criteria in the Request for Pro-

posals, the Contracting Agency may determine and rank the Proposers in the Competitive Range. Notwithstanding the foregoing, however, in instances in which the Contracting Agency determines that a single Proposer has a reasonable chance of being determined the most Advantageous Proposer, the Contracting Agency need not determine or rank Proposers in the Competitive Range. In addition, notwithstanding the foregoing, a Contracting Agency may establish a Competitive Range of all Proposers to enter into discussions to correct deficiencies in Proposals.

(B) The Contracting Agency may establish the number of Proposers in the Competitive Range in light of whether the Contracting Agency's evaluation of Proposals identifies a number of Proposers who have a reasonable chance of being determined the most Advantageous Proposer, or whether the evaluation establishes a natural break in the scores of Proposers that indicates that a particular number of Proposers are closely competitive or have a reasonable chance of being determined the most Advantageous Proposer.

(b) Protesting Competitive Range. The Contracting Agency must provide Written notice to all Proposers identifying Proposers in the Competitive Range. A Contracting Agency may provide an opportunity for Proposers excluded from the Competitive Range to protest the Contracting Agency's evaluation and determination of the Competitive Range in accordance with OAR 137-047-0720.

(7) Discussions. The Contracting Agency may initiate oral or written discussions with all "eligible Proposers" on subject matter within the general scope of the Request for Proposals. In conducting discussions, the Contracting Agency:

(a) Shall treat all eligible Proposers fairly and shall not favor any eligible Proposer over another;

(b) May disclose other eligible Proposers' Proposals or discussions only in accordance with ORS 279B.060(8)(b) or (c);

(c) May adjust the evaluation of a Proposal as a result of discussions. The conditions, terms, or price of the Proposal may be changed during the course of the discussions provided the changes are within the scope of the Request for Proposals.

(d) At any time during the time allowed for discussions, the Contracting Agency may:

(A) Continue discussions with a particular eligible Proposer;

(B) Terminate discussions with a particular eligible Proposer and continue discussions with other eligible Proposers; or

(C) Conclude discussions with all remaining eligible Proposers and provide, to the then-eligible Proposers, notice requesting best and final Offers.

(8) Negotiations. A Contracting Agency may commence serial negotiations with the highest-ranked eligible Proposer or commence simultaneous negotiations with all eligible Proposers. A Contracting Agency may negotiate:

(a) The statement of work;

(b) The Contract Price as it is affected by negotiating the statement of work and other terms and conditions authorized for negotiation in the Request for Proposals or Addenda thereto; and

(c) Any other terms and conditions reasonably related to those authorized for negotiation in the Request for Proposals or Addenda thereto. Proposers shall not submit for negotiation, and a Contracting Agency shall not accept, alternative terms and conditions that are not reasonably related to those authorized for negotiation in the Request for Proposals or any Addendum.

(9) Terminating Negotiations. At any time during discussions or negotiations a Contracting Agency conducts under this rule, the Contracting Agency may terminate discussions or negotiations with the highest-ranked Proposer, or the eligible Proposer with whom it is currently discussing or negotiating, if the Contracting Agency reasonably believes that:

(a) The eligible Proposer is not discussing or negotiating in good faith; or

(b) Further discussions or negotiations with the eligible Proposer will not result in the parties agreeing to the terms and conditions of a Contract in a timely manner.

(c) Continuing Serial Negotiations. If the Contracting Agency is conducting serial negotiations and the Contracting Agency terminates negotiations with an eligible Proposer, the Contracting Agency may then commence negotiations with the next highest scoring eligible Proposer, and continue the sequential process until the Contracting Agency has either:

(A) Determined to Award the Contract to the eligible Proposer with whom it is currently discussing or negotiating; or

(B) Decided to cancel the Procurement under ORS 279B.100.

(d) Competitive Simultaneous Negotiations. If the Contracting Agency chooses to conduct competitive negotiations, the Contracting Agency may negotiate simultaneously with competing eligible Proposers. The Contracting Agency:

(A) Shall treat all eligible Proposers fairly and shall not favor any eligible Proposer over another;

(B) May disclose other eligible Proposers' Proposals or the substance of negotiations with other eligible Proposers only if the Contracting Agency notifies all of the eligible Proposers with whom the Contracting Agency will engage in negotiations of the Contracting Agency's intent to disclose before engaging in negotiations with any eligible Proposer.

(e) Any oral modification of a Proposal resulting from negotiations must be reduced to Writing.

(10) Best and Final Offers. If a Contracting Agency requires best and final Offers, a Contracting Agency must establish a common date and time by which eligible Proposers must submit best and final Offers. If a Contracting Agency is dissatisfied with the best and final Offers, the Contracting Agency may make a written determination that it is in the Contracting Agency's best interest to conduct additional discussions, negotiations or change the Contracting Agency's requirements and require another submission of best and final Offers. A Contracting Agency must inform all eligible Proposers that if they do not submit notice of withdrawal or another best and final Offer, their immediately previous Offers will be considered their best and final Offers. The Contracting Agency shall evaluate Offers as modified by the best and final Offers. The Contracting Agency shall conduct the evaluations as described in OAR 137-047-0600. The Contracting Agency may not modify evaluation factors or their relative importance after the date and time that best and final Offers are due.

(11) Multistep Sealed Proposals. A Contracting Agency may procure Goods or Services by using multistep competitive sealed Proposals under ORS 279B.060(8)(b)(g). Multistep sealed Proposals is a phased Procurement process that seeks necessary information or unpriced technical Proposals in the first phase and, in the second phase, invites Proposers who submitted technically qualified Proposals to submit competitive sealed price Proposals on the technical Proposals. The Contracting Agency must award the Contract to the Responsible Proposer submitting the most Advantageous Proposal in accordance with the terms of the Solicitation Document applicable to the second phase.

(a) Public Notice. When a Contracting Agency uses multistep sealed Proposals, the Contracting Agency shall give public notice for the first phase in accordance with OAR 137-047-0300. Public notice is not required for the second phase. However, a Contracting Agency shall give notice of the subsequent phases to all Proposers and inform any Proposers excluded from the second phase of the right, if any, to protest exclusion under OAR 137-047-0720.

(b) Procedure for Phase One of Multistep Sealed Proposals. A Contracting Agency may initiate a multistep sealed Proposals Procurement by issuing a Request for Proposals in the form and manner required for competitive sealed Proposals except as provided in this rule. In addition to the requirements required for competitive sealed Proposals, the multistep Request for Proposals must state:

(A) That unpriced technical Proposals are requested;

(B) That the solicitation is a multistep sealed Proposal Procurement and that, in the second phase, priced Proposals will be accepted only from those Proposers whose unpriced technical Proposals are found qualified in the first phase;

(C) The criteria for the evaluation of unpriced technical Proposals; and

(D) That the Goods or Services being procured shall be furnished generally in accordance with the Proposer's technical Pro-

posal as found to be finally qualified and shall meet the requirements of the Request for Proposals.

(c) Addenda to the Request for Proposals. After receipt of unpriced technical Proposals, Addenda to the Request for Proposals shall be distributed only to Proposers who submitted unpriced technical Proposals.

(d) Receipt and Handling of Unpriced Technical Proposals. Unpriced technical Proposals need not be opened publicly.

(e) Evaluation of Unpriced Technical Proposals. Unpriced technical Proposals shall be evaluated solely in accordance with the criteria set forth in the Request for Proposals.

(f) Discussion of Unpriced Technical Proposals. The Contracting Agency may seek clarification of a technical Proposal of any Proposer who submits a qualified, or potentially qualified technical Proposal. During the course of such discussions, the Contracting Agency shall not disclose any information derived from one unpriced technical Proposal to any other Proposer.

(g) Methods of Contractor Selection for Phase One. In conducting phase one, a Contracting Agency may employ any combination of the methods of Contractor selection that call for the establishment of a Competitive Range or include discussions, negotiations, or best and final Offers as set forth in this rule.

(h) Procedure for Phase Two. On the completion of phase one, the Contracting Agency shall invite each qualified Proposer to submit price Proposals. A Contracting Agency shall conduct phase two as any other competitive sealed Proposal Procurement except as set forth in this rule.

(j) No public notice need be given of the request to submit price Proposals because such notice was previously given.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.060
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

137-047-0265
Small Procurements

(1) Generally. For Procurements of Goods or Services less than or equal to the dollar amount stated in ORS 279B.065, a Contracting Agency may Award a Contract as a small Procurement pursuant to ORS 279B.065.

(2) Amendments. A Contracting Agency may amend a Contract Awarded as a small Procurement in accordance with OAR 137-047-0800, but the cumulative amendments may not increase the total Contract Price to greater than one hundred twenty-five percent (125%) of the dollar amount stated in ORS 279B.065.

Stat. Auth.: ORS 279A.065 & 279B.065
Stats. Implemented: ORS 279B.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15

137-047-0270
Intermediate Procurements

(1) Generally. For Procurements of Goods or Services greater than the dollar amount stated in ORS 279B.065 and less than or equal to the higher dollar amount stated in ORS 279B.070, a Contracting Agency may Award a Contract as an intermediate Procurement pursuant to ORS 279B.070.

(2) Negotiations. A Contracting Agency may negotiate with a prospective Contractor who offers to provide Goods or Services in response to an intermediate Procurement to clarify its quote or Offer or to effect modifications that will make the quote or Offer more Advantageous to the Contracting Agency.

(3) Amendments. A Contracting Agency may amend a Contract Awarded as an intermediate Procurement in accordance with OAR 137-047-0800, but the cumulative amendments may not increase the total Contract Price to a sum that exceeds the higher dollar amount stated in ORS 279B.070 or one hundred twenty-five percent (125%) of the original Contract Price, whichever is greater.

Stat. Auth.: ORS 279A.065 & 279B.070
Stats. Implemented: ORS 279B.070
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 5-2012, f. & cert. ef. 2-27-12; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15

137-047-0275
Sole-source Procurements

(1) Generally. A Contracting Agency may Award a Contract without competition as a sole-Source Procurement pursuant to the requirements of ORS 279B.075.

(2) Public Notice. If, but for the Contracting Agency's determination that it may enter into a Contract as a sole-source, a Contracting Agency would be required to select a Contractor using source selection methods set forth in either ORS 279B.055 or 279B.060, a Contracting Agency shall give public notice of the Contract Review Authority's determination that the Goods or Services or class of Goods or Services are available from only one source. The Contracting Agency shall publish such notice in a manner similar to public notice of competitive sealed Bids under 279B.055(4) and OAR 137-047-0300. The public notice shall describe the Goods or Services to be acquired by a sole-source Procurement, identify the prospective Contractor and include the date, time and place that protests are due. The Contracting Agency shall give Affected Persons at least seven (7) days from the date of the notice of the determination that the Goods or Services are available from only one source to protest the sole source determination.

(3) Protest. An Affected Person may protest the Contract Review Authority's determination that the Goods or Services or class of Goods or Services are available from only one source in accordance with OAR 137-047-0710.

Stat. Auth.: ORS 279A.065 & 279B.075
Stats. Implemented: ORS 279B.075
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-047-0280
Emergency Procurements

A Contracting Agency may Award a Contract as an Emergency Procurement pursuant to the requirements of ORS 279B.080. When an Emergency Procurement is authorized, the Procurement shall be made with competition that is reasonable and appropriate under the circumstances. However, for emergency Procurement of construction services, see 279B.080(2).

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.080
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-047-0285
Special Procurements

(1) Generally. A Contracting Agency may Award a Contract as a Special Procurement pursuant to the requirements of ORS 279B.085.

(2) Public Notice. A Contracting Agency shall give public notice of the Contract Review Authority's approval of a Special Procurement in the same manner as public notice of competitive sealed Bids under ORS 279B.055(4) and OAR 137-047-0300. The public notice shall describe the Goods or Services or class of Goods or Services to be acquired through the Special Procurement. The Contracting Agency shall give Affected Persons at least seven (7) days from the date of the notice of approval of the Special Procurement to protest the Special Procurement.

(3) Protest. An Affected Person may protest the request for approval of a Special Procurement in accordance with ORS 279B.400 and OAR 137-047-0700.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.085
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-047-0290
Cooperative Procurements

A Contracting Agency may participate in, sponsor, conduct, or administer Cooperative Procurements as set forth in ORS 279A.200 through 279A.225 and OAR 137-046-0400 through 137-046-0480.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.205
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

Procurement Process

137-047-0300
Public Notice of Solicitation Documents

(1) Notice of Solicitation Documents; Fee. A Contracting Agency shall provide public notice of every Solicitation Document in accordance with section (2) of this rule. The Contracting Agency may give additional notice using any method it determines appropriate to foster and promote competition, including:

(a) Mailing notice of the availability of the Solicitation Document to Persons that have expressed an interest in the Contracting Agency's Procurements;

(b) Placing notice on the Contracting Agency's Electronic Procurement System; or

(c) Placing notice on the Contracting Agency's Internet World Wide Web site.

(2) Advertising. A Contracting Agency shall advertise every notice of a Solicitation Document as follows:

(a) The Contracting Agency shall publish the advertisement for Offers in accordance with the requirements of ORS 279B.055(4) and 279B.060(5); or

(b) A Contracting Agency may publish the advertisement for Offers on the Contracting Agency's Electronic Procurement System instead of publishing notice in a newspaper of general circulation as required by ORS 279B.055(4)(b) if, by rule or order, the Contracting Agency's Contract Review Authority has authorized the Contracting Agency to publish notice of Solicitation Documents on the Contracting Agency's Electronic Procurement System.

(3) Content of Advertisement. All advertisements for Offers shall set forth:

(a) Where, when, how, and for how long the Solicitation Document may be obtained;

(b) A general description of the Goods or Services to be acquired;

(c) The interval between the first date of notice of the Solicitation Document given in accordance with section (2)(a) or (b) above and Closing, which shall not be less than fourteen (14) Days for an Invitation to Bid and thirty (30) Days for a Request for Proposals, unless the Contracting Agency determines that a shorter interval is in the public's interest, and that a shorter interval will not substantially affect competition. However, in no event shall the interval between the first date of notice of the Solicitation Document given in accordance with section (2)(a) or (b) above and Closing be less than seven (7) Days as set forth in ORS 279B.055(4)(f). The Contracting Agency shall document the specific reasons for the shorter public notice period in the Procurement file;

(d) The date that Persons must file applications for prequalification if prequalification is a requirement and the class of Goods or Services is one for which Persons must be prequalified;

(e) The office where Contract terms, conditions and Specifications may be reviewed;

(f) The name, title and address of the individual authorized by the Contracting Agency to receive Offers;

(g) The scheduled Opening; and

(h) Any other information the Contracting Agency deems appropriate.

(4) Posting Advertisement for Offers. The Contracting Agency shall post a copy of each advertisement for Offers at the principal business office of the Contracting Agency. An Offeror may obtain a copy of the advertisement for Offers upon request.

(5) Fees. The Contracting Agency may charge a fee or require a deposit for the Solicitation Document.

(6) Notice of Addenda. The Contracting Agency shall provide potential Offerors notice of any Addenda to a Solicitation Document in accordance with OAR 137-047-0430.

Stat. Auth.: ORS 279A.065, 279B.055 & 279B.060
Stats. Implemented: ORS 279B.055 & 279B.060
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15

137-047-0310
Bids or Proposals are Offers

(1) Offer and Acceptance. The Bid or Proposal is the Bidder's or Proposer's Offer to enter into a Contract.

(a) In competitive bidding and competitive Proposals, the Offer is always a "Firm Offer," i.e. the Offer shall be held open by the Offeror for the Contracting Agency's acceptance for the period specified in OAR 137-047-0480. The Contracting Agency may elect to accept the Offer at any time during the specified period, and the Contracting Agency's Award of the Contract constitutes acceptance of the Offer and binds the Offeror to the Contract.

(b) Notwithstanding the fact that a competitive Proposal is a "Firm Offer" for the period specified in OAR 137-047-0480, the Contracting Agency may elect to discuss or negotiate certain contractual provisions, as identified in these rules or in the Solicitation Document, with the Proposer. Where negotiation is permitted by the rules or the Solicitation Document, Proposers are obligated to negotiate in good faith and only on those terms or conditions that the rules or the Solicitation Document have reserved for negotiation.

(2) Contingent Offers. Except to the extent the Proposer is authorized to propose certain terms and conditions pursuant to OAR 137-047-0262, a Proposer shall not make its Offer contingent upon the Contracting Agency's acceptance of any terms or conditions (including Specifications) other than those contained in the Solicitation Document.

(3) Offeror's Acknowledgment. By Signing and returning the Offer, the Offeror acknowledges it has read and understands the terms and conditions contained in the Solicitation Document and that it accepts and agrees to be bound by the terms and conditions of the Solicitation Document. If the Request for Proposals permits Proposers to propose alternative terms or conditions under OAR 137-047-0261, the Offeror's Offer includes any nonnegotiable terms and conditions, any proposed terms and conditions offered for negotiation upon and to the extent accepted by the Contracting Agency in Writing, and Offeror's agreement to perform the scope of work and meet the performance standards set forth in the final negotiated scope of work.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065, 279B.055 & 279B.60
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

137-047-0320
Facsimile Bids and Proposals

(1) Contracting Agency Authorization. A Contracting Agency may authorize Offerors to submit facsimile Offers. If the Contracting Agency determines that Bid or Proposal security is or will be required, the Contracting Agency should not authorize facsimile Offers unless the Contracting Agency has another method for receipt of such security. Prior to authorizing the submission of facsimile Offers, the Contracting Agency shall determine that the Contracting Agency's equipment and personnel are capable of receiving the size and volume of anticipated Offers within a short period of time. In addition, the Contracting Agency shall establish administrative procedures and controls:

(a) To receive, identify, record, and safeguard facsimile Offers;

(b) To ensure timely delivery of Offers to the location of Opening; and

(c) To preserve the Offers as sealed.

(2) Provisions To Be Included in Solicitation Document. In addition to all other requirements, if the Contracting Agency authorizes a facsimile Offer, the Contracting Agency will include in the Solicitation Document the following:

(a) A provision substantially in the form of the following: "A 'facsimile Offer,' as used in this Solicitation Document, means an Offer, modification of an Offer, or withdrawal of an Offer that is transmitted to and received by the Contracting Agency via a facsimile machine";

(b) A provision substantially in the form of the following: "Offerors may submit facsimile Offers in response to this Solicitation Document. The entire response must arrive at the place and by the time specified in this Solicitation Document";

(c) A provision that requires Offerors to Sign their facsimile Offers;

(d) A provision substantially in the form of the following: "The Contracting Agency reserves the right to Award the Contract solely on the basis of a facsimile Offer. However, upon the Contracting Agency's request the apparent successful Offeror shall promptly submit its complete original Signed Offer";

(e) The data and compatibility characteristics of the Contracting Agency's receiving facsimile machine as follows:

(A) Telephone number; and

(B) Compatibility characteristics, e.g. make and model number, receiving speed, communications protocol; and

(f) A provision that the Contracting Agency is not responsible for any failure attributable to the transmission or receipt of the facsimile Offer including, but not limited to the following:

(A) Receipt of garbled or incomplete documents;

(B) Availability or condition of the receiving facsimile machine;

(C) Incompatibility between the sending and receiving facsimile machine;

(D) Delay in transmission or receipt of documents;

(E) Failure of the Offeror to properly identify the Offer documents;

(F) Illegibility of Offer documents; and

(G) Security and confidentiality of data.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

137-047-0330
Electronic Procurement

(1) Electronic Procurement Authorized.

(a) A Contracting Agency may conduct all phases of a Procurement, including without limitation the posting of Electronic Advertisements and the receipt of Electronic Offers, by electronic methods if and to the extent the Contracting Agency specifies in a Solicitation Document, a Request for Quotes, or any other Written instructions on how to participate in the Procurement.

(b) The Contracting Agency shall open an Electronic Offer in accordance with electronic security measures in effect at the Contracting Agency at the time of its receipt of the Electronic Offer. Unless the Contracting Agency provides procedures for the secure receipt of Electronic Offers, the Person submitting the Electronic Offer assumes the risk of premature disclosure due to submission in unsealed form.

(c) The Contracting Agency's use of electronic Signatures shall be consistent with applicable statutes and rules. A Contracting Agency may limit the use of electronic methods of conducting a Procurement as Advantageous to the Contracting Agency.

(d) If the Contracting Agency determines that Bid or Proposal security is or will be required, the Contracting Agency should not authorize Electronic Offers unless the Contracting Agency has another method for receipt of such security.

(2) Rules Governing Electronic Procurements. The Contracting Agency shall conduct all portions of an electronic Procurement in accordance with these division 47 rules, unless otherwise set forth in this rule.

(3) Preliminary Matters. As a condition of participation in an electronic Procurement the Contracting Agency may require potential Contractors to register with the Contracting Agency before the date and time on which the Contracting Agency will first accept Offers, to agree to the terms, conditions, or other requirements of a Solicitation Document, or to agree to terms and conditions governing the Procurement, such as procedures that the Contracting Agency may use to attribute, authenticate or verify the accuracy of an Electronic Offer, or the actions that constitute an electronic Signature.

(4) Offer Process. A Contracting Agency may specify that Persons must submit an Electronic Offer by a particular date and time, or that Persons may submit multiple Electronic Offers during a period of time established in the Electronic Advertisement. When the Contracting Agency specifies that Persons may submit multiple Electronic Offers during a specified period of time, the Contracting Agency must designate a time and date on which Persons may begin to submit Electronic Offers, and a time and date after which Persons may no longer submit Electronic Offers. The date and time after which Persons may no longer submit Electronic Offers need not be specified by a particular date and time, but may be specified by a description of the conditions that, when they occur, will establish the date and time after which Persons may no longer submit Electronic Offers. When the Contracting Agency will accept Electronic Offers for a period of time, then at the designated date and time that the Contracting Agency will first receive Electronic Offers, the Contracting Agency must begin to accept real time Electronic Offers on the Contracting Agency's Electronic Procurement System, and shall continue to accept Electronic Offers in accordance with section (5)(b) of this rule until the date and time specified by the Contracting Agency, after which the Contracting Agency will no longer accept Electronic Offers.

(5) Receipt of Electronic Offers.

(a) When a Contracting Agency conducts an electronic Procurement that provides that all Electronic Offers must be submitted by a particular date and time, the Contracting Agency shall receive the Electronic Offers in accordance with these division 47 rules.

(b) When the Contracting Agency specifies that Persons may submit multiple Electronic Offers during a period of time, the Contracting Agency shall accept Electronic Offers, and Persons may submit Electronic Offers, in accordance with the following:

(A) Following receipt of the first Electronic Offer after the day and time the Contracting Agency first receives Electronic Offers the Contracting Agency shall post on the Contracting Agency's Electronic Procurement System, and updated on a real time basis, the lowest Electronic Offer price or the highest ranking Electronic Offer. At any time before the date and time after which the Contracting Agency will no longer receive Electronic Offers, a Person may revise its Electronic Offer, except that a Person may not lower its price unless that price is below the then lowest Electronic Offer.

(B) A Person may not increase the price set forth in an Electronic Offer after the day and time that the Contracting Agency first accepts Electronic Offers.

(C) A Person may withdraw an Electronic Offer only in compliance with these division 47 rules. If a Person withdraws an Electronic Offer, it may not later submit an Electronic Offer at a price higher than that set forth in the withdrawn Electronic Offer.

(6) Failure of the E-Procurement System. In the event of a failure of the Contracting Agency's Electronic Procurement System that interferes with the ability of Persons to submit Electronic Offers, protest or to otherwise participate in the Procurement, the Contracting Agency may cancel the Procurement in accordance with OAR 137-047-0660, or may extend the date and time for receipt of Electronic Offers by providing notice of the extension immediately after the Electronic Procurement System becomes available.

Stat. Auth.: ORS 279A.065 & 279B.055
Stats. Implemented: ORS 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

Bid and Proposal Preparation

137-047-0400
Offer Preparation

(1) Instructions. An Offeror shall submit and Sign its Offer in accordance with the instructions set forth in the Solicitation Document. An Offeror shall initial and submit any correction or erasure to its Offer prior to Opening in accordance with the requirements for submitting an Offer set forth in the Solicitation Document.

(2) Forms. An Offeror shall submit its Offer on the form(s) provided in the Solicitation Document, unless an Offeror is otherwise instructed in the Solicitation Document.

(3) Documents. An Offeror shall provide the Contracting Agency with all documents and Descriptive Literature required by the Solicitation Document.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-047-0410
Offer Submission

(1) Product Samples and Descriptive Literature. A Contracting Agency may require Product Samples or Descriptive Literature if the Contracting Agency determines either is necessary or desirable to evaluate the quality, features or characteristics of an Offer. The Contracting Agency will dispose of Product Samples, or make them available for the Offeror to retrieve in accordance with the Solicitation Document.

(2) Identification of Offers:

(a) To ensure proper identification and handling, Offers shall be submitted in a sealed envelope appropriately marked or in the envelope provided by the Contracting Agency, whichever is applicable. If the Contracting Agency permits Electronic Offers or facsimile Offers in the Solicitation Document, the Offeror may submit and identify Electronic Offers or facsimile Offers in accordance with these division 47 rules and the instructions set forth in the Solicitation Document. The Contracting Agency shall not consider facsimile or electronic Offers unless authorized by the Solicitation Document.

(b) The Contracting Agency is not responsible for Offers submitted in any manner, format or to any delivery point other than as required in the Solicitation Document.

(3) Receipt of Offers. The Offeror is responsible for ensuring the Contracting Agency receives its Offer at the required delivery point prior to the Closing, regardless of the method used to submit or transmit the Offer.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-047-0420
Pre-Offer Conferences

(1) Purpose. A Contracting Agency may hold pre-Offer conferences with prospective Offerors prior to Closing, to explain the Procurement requirements, obtain information, or to conduct site inspections.

(2) Required Attendance. The Contracting Agency may require attendance at the pre-Offer conference as a condition for making an Offer.

(3) Scheduled Time. If a Contracting Agency holds a pre-Offer conference, it shall be held within a reasonable time after the Solicitation Document has been issued, but sufficiently before the Closing to allow Offerors to consider information provided at that conference.

(4) Statements Not Binding. Statements made by a Contracting Agency's representative at the pre-Offer conference do not change the Solicitation Document unless the Contracting Agency confirms such statements with a Written Addendum to the Solicitation Document.

(5) Agency Announcement. The Contracting Agency must set forth notice of any pre-Offer conference in the Solicitation Document in accordance with OAR 137-047-0255(2) or 137-047-0260(2).

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

137-047-0430
Addenda to Solicitation Document

(1) Issuance; Receipt. The Contracting Agency may change a Solicitation Document only by Written Addenda. An Offeror shall provide Written acknowledgment of receipt of all issued Addenda with its Offer, unless the Contracting Agency otherwise specifies in the Addenda.

(2) Notice and Distribution. The Contracting Agency shall notify prospective Offerors of Addenda in a manner intended to foster competition and to make prospective Offerors aware of the Addenda. The Solicitation Document shall specify how the Contracting Agency will provide notice of Addenda and how the Contracting Agency will make the Addenda available before Closing, and at each subsequent step or tier of evaluation if the Contracting Agency will engage in a multistep competitive sealed Bid process in accordance with OAR 137-047-0257, or a multi-tiered or multistep competitive sealed Proposal process in accordance with 137-047-0261. The following is an example of how a Contracting Agency may specify how it will provide notice of Addenda: "Contracting Agency will not mail notice of Addenda, but will publish notice of any Addenda on Contracting Agency's web site. Addenda may be downloaded off the Contracting Agency's web site. Offerors should frequently check the Contracting Agency's web site until Closing, i.e., at least once weekly until the week of Closing and at least once daily the week of the Closing."

(3) Timelines; Extensions.

(a) The Contracting Agency shall issue Addenda within a reasonable time to allow prospective Offerors to consider the Addenda in preparing their Offers. The Contracting Agency may extend the Closing if the Contracting Agency determines prospective Offerors need additional time to review and respond to Addenda. Except to the extent justified by a countervailing public interest, the Contracting Agency shall not issue Addenda less than 72 hours before the Closing unless the Addendum also extends the Closing.

(b) Notwithstanding subsection 3(a) of this rule, an Addendum that modifies the evaluation criteria, selection process or procedure for any tier of competition under a multistep sealed Bid or a multi-tiered or multistep sealed Proposal issued in accordance with ORS 279B.060(6)(d) and OAR 137-047-0261 must be issued no fewer than five (5) Days before the beginning of that tier or step of competition, unless the Contracting Agency determines that a shorter period is sufficient to allow Offerors to prepare for that tier or step of competition. The Contracting Agency shall document the factors it considered in making that determination, which may include, without limitation, the scope of the changes to the Solicitation Document, the location of the remaining eligible Proposers, or whether shortening the period between issuing an Addendum and the beginning of the next tier or step of competition favors or disfavors any particular Proposer or Proposers.

(4) Request for Change or Protest. Unless a different deadline is set forth in the Addendum, an Offeror may submit a Written request for change or protest to the Addendum, as provided in OAR 137-047-0730, by the close of the Contracting Agency's next business day after issuance of the Addendum, or up to the last day allowed to submit a request for change or protest under 137-047-0730, whichever date is later. If the date established in the previous sentence falls after the deadline for receiving protests to the Solicitation Document in accordance with 137-047-0730, then the Contracting Agency may consider an Offeror's request for change or protest to the Addendum only, and the Contracting Agency shall not consider a request for change or protest to matters not added or modified by the Addendum. Notwithstanding any provision of this section (4) of this rule, a Contracting Agency is not required to provide a protest period for Addenda issued after initial Closing during a multi-tier or multistep Procurement process conducted pursuant to ORS 279B.055 or 279B.060.

Stat. Auth.: ORS 279A.065 & 279B.060
Stats. Implemented: ORS 279B.060
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

137-047-0440
Pre-Closing Modification or Withdrawal of Offers

(1) Modifications. An Offeror may modify its Offer in Writing prior to the Closing. An Offeror shall prepare and submit any modification to its Offer to the Contracting Agency in accordance with OAR 137-047-0400 and 137-047-0410, unless otherwise specified in the Solicitation Document. Any modification must include the Offeror's statement that the modification amends and supersedes the

prior Offer. The Offeror shall mark the submitted modification as follows:

(a) Bid (or Proposal) Modification; and

(b) Solicitation Document Number (or other identification as specified in the Solicitation Document).

(2) Withdrawals.

(a) An Offeror may withdraw its Offer by Written notice submitted on the Offeror's letterhead, Signed by an authorized representative of the Offeror, delivered to the individual and location specified in the Solicitation Document (or the place of Closing if no location is specified), and received by the Contracting Agency prior to the Closing. The Offeror or authorized representative of the Offeror may also withdraw its Offer in person prior to the Closing, upon presentation of appropriate identification and evidence of authority satisfactory to the Contracting Agency.

(b) The Contracting Agency may release an unopened Offer withdrawn under subsection (2)(a) of this rule to the Offeror or its authorized representative, after voiding any date and time stamp mark.

(c) The Offeror shall mark the Written request to withdraw an Offer as follows:

(A) Bid (or Proposal) Withdrawal; and

(B) Solicitation Document Number (or Other Identification as specified in the Solicitation Document).

(3) Documentation. The Contracting Agency shall include all documents relating to the modification or withdrawal of Offers in the appropriate Procurement file.

Stat. Auth.: ORS 279A.065 & 279B.055
Stats. Implemented: ORS 279B.055
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

137-047-0450
Receipt, Opening, and Recording of Offers; Confidentiality of Offers

(1) Receipt. A Contracting Agency shall electronically or mechanically time-stamp or hand-mark each Offer and any modification upon receipt. The Contracting Agency shall not open the Offer or modification upon receipt, but shall maintain it as confidential and secure until Opening. If the Contracting Agency inadvertently opens an Offer or a modification prior to the Opening, the Contracting Agency shall return the Offer or modification to its secure and confidential state until Opening. The Contracting Agency shall document the resealing for the Procurement file (e.g. "Contracting Agency inadvertently opened the Offer due to improper identification of the Offer.").

(2) Opening and Recording. A Contracting Agency shall publicly open Offers including any modifications made to the Offer pursuant to OAR 137-047-0440(1). In the case of Invitations to Bid, to the extent practicable, the Contracting Agency shall read aloud the name of each Bidder, and such other information as the Contracting Agency considers appropriate. However, the Contracting Agency may withhold from disclosure information in accordance with ORS 279B.055(5)(c) and 279B.060(6). In the case of Requests for Proposals or voluminous Bids, if the Solicitation Document so provides, the Contracting Agency will not read Offers aloud.

Stat. Auth.: ORS 279A.065 & 279B.055
Stats. Implemented: ORS 279B.055
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15

137-047-0460
Late Offers, Late Withdrawals and Late Modifications

Any Offer received after Closing is late. An Offeror's request for withdrawal or modification of an Offer received after Closing is late. An Agency shall not consider late Offers, withdrawals or modifications except as permitted in OAR 137-047-0470 or 137-047-0261.

Stat. Auth.: ORS 279A.065 & 279B.055
Stats. Implemented: ORS 279B.055
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

137-047-0470
Mistakes

(1) Generally. To protect the integrity of the competitive Procurement process and to assure fair treatment of Offerors, a Contracting Agency should carefully consider whether to permit waiver, correction or withdrawal of Offers for certain mistakes.

(2) Contracting Agency Treatment of Mistakes. A Contracting Agency shall not allow an Offeror to correct or withdraw an Offer for an error in judgment. If the Contracting Agency discovers certain mistakes in an Offer after Opening, but before Award of the Contract, the Contracting Agency may take the following action:

(a) A Contracting Agency may waive, or permit an Offeror to correct, a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Offer, or an insignificant mistake that can be waived or corrected without prejudice to other Offerors. Examples of minor informalities include an Offeror's failure to:

(A) Return the correct number of Signed Offers or the correct number of other documents required by the Solicitation Document;

(B) Sign the Offer in the designated block, provided a Signature appears elsewhere in the Offer, evidencing an intent to be bound; and

(C) Acknowledge receipt of an Addendum to the Solicitation Document, provided that it is clear on the face of the Offer that the Offeror received the Addendum and intended to be bound by its terms; or the Addendum involved did not affect price, quality or delivery.

(b) A Contracting Agency may correct a clerical error if the error is evident on the face of the Offer or other documents submitted with the Offer, and the Offeror confirms the Contracting Agency's correction in Writing. A clerical error is an Offeror's error in transcribing its Offer. Examples include typographical mistakes, errors in extending unit prices, transposition errors, arithmetical errors, instances in which the intended correct unit or amount is evident by simple arithmetic calculations (for example, a missing unit price may be established by dividing the total price for the units by the quantity of units for that item, or a missing or incorrect total price for an item may be established by multiplying the unit price by the quantity when those figures are available in the Offer). Unit prices shall prevail over extended prices in the event of a discrepancy between extended prices and unit prices.

(c) A Contracting Agency may permit an Offeror to withdraw an Offer based on one or more clerical errors in the Offer only if the Offeror shows with objective proof and by clear and convincing evidence:

(A) The nature of the error;

(B) That the error is not a minor informality under this subsection or an error in judgment;

(C) That the error cannot be corrected or waived under subsection (b) of this section;

(D) That the Offeror acted in good faith in submitting an Offer that contained the claimed error and in claiming that the alleged error in the Offer exists;

(E) That the Offeror acted without gross negligence in submitting an Offer that contained a claimed error;

(F) That the Offeror will suffer substantial detriment if the Contracting Agency does not grant the Offeror permission to withdraw the Offer;

(G) That the Contracting Agency's or the public's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on the Contracting Agency or the public it represents; and

(H) That the Offeror promptly gave notice of the claimed error to the Contracting Agency.

(d) The criteria in subsection (2)(c) of this rule shall determine whether a Contracting Agency will permit an Offeror to withdraw its Offer after Closing. These criteria also shall apply to the question of whether a Contracting Agency will permit an Offeror to withdraw its Offer without forfeiture of its Bid bond (or other Bid or Proposal security), or without liability to the Contracting Agency based on the difference between the amount of the Offeror's Offer and the amount

of the Contract actually awarded by the Contracting Agency, whether by Award to the next lowest Responsive and Responsible Bidder or the most Advantageous Responsive and Responsible Proposer, or by resort to a new solicitation.

(3) Rejection for Mistakes. The Contracting Agency shall reject any Offer in which a mistake is evident on the face of the Offer and the intended correct Offer is not evident or cannot be substantiated from documents submitted with the Offer.

(4) Identification of Mistakes after Award. The procedures and criteria set forth above are Offeror's only opportunity to correct mistakes or withdraw Offers because of a mistake. Following Award, an Offeror is bound by its Offer, and may withdraw its Offer or rescind a Contract entered into pursuant to this division 47 only to the extent permitted by applicable law.

Stat. Auth.: ORS 279A.065 & 279B.055
Stats. Implemented: ORS 279B.055
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-047-0480
Time for Agency Acceptance

An Offeror's Offer is a Firm Offer, irrevocable, valid and binding on the Offeror for not less than thirty (30) Days following Closing unless otherwise specified in the Solicitation Document.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

137-047-0490
Extension of Time for Acceptance of Offer

A Contracting Agency may request, orally or in Writing, that Offerors extend, in Writing, the time during which the Contracting Agency may consider their Offer(s). If an Offeror agrees to such extension, the Offer shall continue as a Firm Offer, irrevocable, valid and binding on the Offeror for the agreed-upon extension period.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

Qualifications and Duties

137-047-0500
Responsibility of Bidders and Proposers

Before Awarding a Contract the Contracting Agency shall determine that the Bidder submitting the lowest Bid or Proposer submitting the most Advantageous Proposal is Responsible. The Contracting Agency shall use the standards set forth in ORS 279B.110 and OAR 137-047-0640(1)(c)(F) to determine if a Bidder or Proposer is Responsible. In the event a Contracting Agency determines a Bidder or Proposer is not Responsible it shall prepare a Written determination of non-Responsibility as required by ORS 279B.110 and shall reject the Offer.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.110
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

137-047-0525
Qualified Products Lists

A Contracting Agency may develop and maintain a qualified products list pursuant to ORS 279B.115.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.115
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

137-047-0550
Prequalification of Prospective Offerors; Pre-negotiation of Contract Terms and Conditions

(1) A Contracting Agency may prequalify prospective Offerors pursuant to ORS 279B.120 and 279B.125.

(2) Notwithstanding the prohibition against revocation of prequalification in ORS 279B.120(3), a Contracting Agency may determine that a prequalified Offeror is not Responsible prior to Contract Award.

(3) A Contracting Agency may pre-negotiate some or all Contract terms and conditions including prospective Proposer Contract forms such as license agreements, maintenance and support agreements or similar documents for use in future Procurements. Such pre-negotiation of Contract terms and conditions (including prospective Proposer forms) may be part of the prequalification process of a Proposer in section (1) or the pre-negotiation may be a separate process and not part of a prequalification process. Unless required as part of the prequalification process, the failure of the Contracting Agency and the prospective Proposer to reach agreement on pre-negotiated Contract terms and conditions does not prohibit the prospective Proposer from responding to Procurements. A Contracting Agency may agree to different pre-negotiated Contract terms and conditions with different prospective Proposers. When a Contracting Agency has pre-negotiated different terms and conditions with Proposers or when permitted, Proposers offer different terms and conditions, a Contracting Agency may consider the terms and conditions in the Proposal evaluation process.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.015, 279B.120
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-047-0560
Personal Services Contract to Provide Specifications — State Agency Disqualification as Bidder or Proposer

(1) For the purposes of ORS 279B.040(1), a reasonable person would believe that a person who assisted a state contracting agency, under a personal services contract, in the development of a solicitation for goods or services (or that person's affiliate), would have an advantage in obtaining the public contract that is the subject of the solicitation if:

(a) The specifications recommended by the personal service contractor for the sequence of services, incorporation of special service or fabrication techniques, or design of any goods or components or elements of goods that the state contracting agency published in its solicitation documents call for, expressly or implicitly, requirements that only the personal services contractor (or the contractor's affiliate), or a limited class of individuals in the contractor's area of specialty, have the ability to perform or produce or have the rights to perform or produce.

(b) The rendering of solicitation document development assistance under the personal services contract gives the contractor knowledge of the state contracting agency's special needs or procedures, not generally known to the public, that give the contractor (or the contractor's affiliate) a material competitive advantage in competing for the contract for goods or services.

(c) The rendering of solicitation document development assistance under the personal services contract gives the contractor, significantly in advance of other prospective bidders or proposers, knowledge of the solicitation document requirements that would allow the personal services contractor (or the contractor's affiliate) a materially longer period in which to craft or refine a proposal in response to the solicitation documents.

(2) For the purposes of ORS 279B.040(1), a reasonable person would believe that a person who assisted a state contracting agency, under a personal services contract, in the development of a solicitation for goods or services (or that person's affiliate) would appear to have an advantage in obtaining the public contract that is the subject of the solicitation if:

(a) Taking into account the personal services contractor's announced areas of specialization, expertise or experience, the personal service contractor (or the contractor's affiliate), or only a limited class of individuals in the contractor's area of specialty, appear to have the capability to conform closely with the solicitation document requirements.

(b) Taking into account the personal services contractor's announced areas of specialization, expertise or experience, the personal service contractor (or the contractor's affiliate), or only a severely limited class of individuals in the contractor's area of specialty, appear to have the qualifications, training, experience or capacity to satisfy any minimum requirements that may be stated in the solicitation documents.

(c) The solicitation documents for a contract for goods or services contain restrictions, deadlines or requirements that do not, when viewed objectively, reasonably promote rational procurement objectives of the state contracting agency.

(3) If a state contracting agency engages a personal services contractor to advise or assist in the development of solicitation documents for a public contract for goods or services and the personal services contractor is engaged in the business of providing goods or services described in the solicitation documents, and the agency wishes to accept a bid or proposal from the personal services contractor under conditions described in section (2) or section (3) of this rule, the agency must apply to the Director of the Department of Administrative Services, as permitted by ORS 279B.040(2), for an exemption from the disqualification from the ability to submit a bid or proposal.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.040
Hist.: DOJ 8-2012, f. 7-2-12, cert. ef. 8-1-12; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15

137-047-0575
Debarment of Prospective Offerors

(1) Generally. A Contracting Agency may Debar prospective Offerors for the reasons set forth in ORS 279A.110 or after providing notice and the opportunity for hearing as set forth in ORS 279B.130.

(2) Responsibility. Notwithstanding the limitation on the term for Debarment in ORS 279B.130(1)(b), a Contracting Agency may determine that a previously Debarred Offeror is not Responsible prior to Contract Award.

(3) Imputed Knowledge. A Contracting Agency may attribute improper conduct of a Person or its affiliate or affiliates having a contract with a prospective Offeror to the prospective Offeror for purposes of Debarment where the impropriety occurred in connection with the Person's duty for or on behalf of, or with the knowledge, approval, or acquiescence of, the prospective Offeror.

(4) Limited Participation. A Contracting Agency may allow a Debarred Person to participate in solicitations and Contracts on a limited basis during the Debarment period upon Written determination that participation is Advantageous to a Contracting Agency. The determination shall specify the factors on which it is based and define the extent of the limits imposed.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.130
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

Offer Evaluation and Award

137-047-0600
Offer Evaluation and Award

(1) Contracting Agency Evaluation. The Contracting Agency shall evaluate Offers only as set forth in the Solicitation Document, pursuant to ORS 279B.055(6)(a) and 279B.060(6)(b), and in accordance with applicable law. The Contracting Agency shall not evaluate Offers using any other requirement or criterion.

(a) Evaluation of Bids.

(A) Nonresident Bidders. In determining the lowest Responsive Bid, the Contracting Agency shall apply the reciprocal preference set forth in ORS 279A.120(2)(b) and OAR 137-046-0310 for Nonresident Bidders.

(B) Public Printing. The Contracting Agency shall for the purpose of evaluating Bids apply the public printing preference set forth in ORS 282.210.

(C) Award When Bids are Identical. If the Contracting Agency determines that one or more Bids are identical under OAR 137-046-0300, the Contracting Agency shall Award a Contract in accordance with the procedures set forth in OAR 137-046-0300.

(b) Evaluation of Proposals.

(A) Award When Proposals are Identical. If the Contracting Agency determines that one or more Proposals are identical under OAR 137-046-0300, the Contracting Agency shall Award a Contract in accordance with the procedures set forth in OAR 137-046-0300.

(B) Public Printing. The Contracting Agency shall for the purpose of evaluating Proposals apply the public printing preference set forth in ORS 282.210.

(c) Recycled Materials. When procuring Goods, the Contracting Agency shall give preference for recycled materials as set forth in ORS 279A.125 and OAR 137-046-0320.

(2) Clarification of Bids or Proposals. After Opening, a Contracting Agency may conduct discussions with apparent Responsive Offerors for the purpose of clarification to assure full understanding of the Bids or Proposals. All Bids or Proposals, in the Contracting Agency's sole discretion, needing clarification must be accorded such an opportunity. The Contracting Agency shall document clarification of any Bidder's Bid in the Procurement file.

(3) Negotiations.

(a) Bids. A Contracting Agency shall not negotiate with any Bidder. After Award of the Contract the Contracting Agency and Contractor may only modify the Contract in accordance with OAR 137-047-0800.

(b) Requests for Proposals. A Contracting Agency may conduct discussions or negotiate with Proposers only in accordance with ORS 279B.060(6)(b) and OAR 137-047-0261. After Award of the Contract, the Contracting Agency and Contractor may only modify the Contract in accordance with OAR 137-047-0800.

(4) Award.

(a) General. If Awarded, the Contracting Agency shall Award the Contract to the Responsible Bidder submitting the lowest, Responsive Bid or the Responsible Proposer submitting the most Advantageous, Responsive Proposal. The Contracting Agency may Award by item, groups of items or the entire Offer provided such Award is consistent with the Solicitation Document and in the public interest.

(b) Multiple Items. An Invitation to Bid or Request for Proposals may call for pricing of multiple items of similar or related type with Award based on individual line item, group total of certain items, a "market basket" of items representative of the Contracting Agency's expected purchases, or grand total of all items.

(c) Multiple Awards — Bids.

(A) Notwithstanding subsection (4)(a) of this rule, a Contracting Agency may Award multiple Contracts under an Invitation to Bid in accordance with the criteria set forth in the Invitation to Bid. Multiple Awards shall not be made if a single Award will meet the Contracting Agency's needs, including but not limited to adequate availability, delivery, service, or product compatibility. A multiple Award may be made if Award to two or more Bidders of similar Goods or Services is necessary for adequate availability, delivery, service or product compatibility and skills. Multiple Awards may not be made for the purpose of dividing the Procurement into multiple solicitations, or to allow for user preference unrelated to utility or economy. A notice to prospective Bidders that multiple Contracts may be Awarded for any Invitation to Bid shall not preclude the Contracting Agency from Awarding a single Contract for such Invitation to Bid.

(B) If an Invitation to Bid permits the Award of multiple Contracts, the Contracting Agency shall specify in the Invitation to Bid the criteria it will use to choose from the multiple Contracts when purchasing Goods or Services.

(d) Multiple Awards — Proposals.

(A) Notwithstanding subsection 4(a) of this rule, a Contracting Agency may Award multiple Contracts under a Request for Proposals in accordance with the criteria set forth in the Request for Proposals. Multiple Awards shall not be made if a single Award will meet the Contracting Agency's needs, including but not limited to adequate availability, delivery, service or product compatibility. A multiple Award may be made if Award to two or more Proposers of similar Goods or Services is necessary for adequate availability, delivery, service or product compatibility. Multiple Awards may not be made for the purpose of dividing the Procurement into multiple solicitations, or to allow for user preference unrelated to obtaining the most Advantageous Contract. A notice to prospective Proposers that mul-

tiple Contracts may be Awarded for any Request for Proposals shall not preclude the Contracting Agency from Awarding a single Contract for such Request for Proposals.

(B) If a Request for Proposals permits the Award of multiple Contracts, the Contracting Agency shall specify in the Request for Proposals the criteria it will use to choose from the multiple Contracts when purchasing Goods or Services, which may include consideration and evaluation of the Contract terms and conditions agreed to by the Contractors.

(e) Partial Awards. If after evaluation of Offers, the Contracting Agency determines that an acceptable Offer has been received for only parts of the requirements of the Solicitation Document:

(A) The Contracting Agency may Award a Contract for the parts of the Solicitation Document for which acceptable Offers have been received; or

(B) The Contracting Agency may reject all Offers and may issue a new Solicitation Document on the same or revised terms, conditions and Specifications.

(f) All or none Offers. A Contracting Agency may Award all or none Offers if the evaluation shows an all or none Award to be the lowest cost for Bids or the most Advantageous for Proposals of those submitted.

Stat. Auth.: ORS 279A.065 & 279B.060
Stats. Implemented: ORS 279B.055 & 279B.060
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

137-047-0610
Notice of Intent to Award

(1) Notice of Intent to Award. The Contracting Agency shall provide Written notice of its intent to Award to all Bidders and Proposers pursuant to ORS 279B.135 at least seven (7) Days before the Award of a Contract, unless the Contracting Agency determines that circumstances justify prompt execution of the Contract, in which case the Contracting Agency may provide a shorter notice period. The Contracting Agency shall document the specific reasons for the shorter notice period in the Procurement file.

(2) Finality. The Contracting Agency's Award shall not be final until the later of the following:

(a) The expiration of the protest period provided pursuant to OAR 137-047-0740; or

(b) The Contracting Agency provides Written responses to all timely-filed protests denying the protests and affirming the Award.

Stat. Auth.: ORS 279A.065 & 279B.135
Stats. Implemented: ORS 279B.135
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-047-0620
Documentation of Award

(1) Basis of Award. After Award, the Contracting Agency shall make a record showing the basis for determining the successful Offeror part of the Contracting Agency's Procurement file.

(2) Contents of Award Record. The Contracting Agency's record shall include:

(a) For Bids:

(A) Bids;

(B) Completed Bid tabulation sheet; and

(C) Written justification for any rejection of lower Bids.

(b) For Proposals:

(A) Proposals;

(B) The completed evaluation of the Proposals;

(C) Written justification for any rejection of higher scoring Proposals; and

(D) If the Contracting Agency engaged in any of the methods of Contractor selection described in ORS 279B.060(6)(b) and OAR 137-047-0261, Written documentation of the content of any discussions, negotiations, best and final Offers, or any other procedures the Contracting Agency used to select a Proposer to which the Contracting Agency Awarded a Contract.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

137-047-0630
Availability of Award Decisions

(1) Contract Documents. To the extent required by the Solicitation Document, the Contracting Agency shall deliver to the successful Offeror a Contract, Signed purchase order, Price Agreement, or other Contract documents as applicable.

(2) Availability of Award Decisions. A Person may obtain tabulations of Awarded Bids or evaluation summaries of Proposals for a minimal charge, in person or by submitting to the Contracting Agency a Written request accompanied by payment. The requesting Person shall provide the Solicitation Document number and enclose a self-addressed, stamped envelope. In addition, the Contracting Agency may make available tabulations of Bids and Proposals through the Electronic Procurement System of the Contracting Agency or the Contracting Agency's website.

(3) Availability of Procurement Files. After notice of intent to Award, the Contracting Agency shall make Procurement files available in accordance with applicable law.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.055 & 279B.060
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

137-047-0640
Rejection of an Offer

(1) Rejection of an Offer.

(a) A Contracting Agency may reject any Offer as set forth in ORS 279B.100.

(b) The Contracting Agency shall reject an Offer upon the Contracting Agency's finding that the Offer:

(A) Is contingent upon the Contracting Agency's acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document;

(B) Takes exception to terms and conditions (including Specifications) set forth in the Solicitation Document;

(C) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of the Solicitation Document or in contravention of applicable law;

(D) Offers Goods or Services that fail to meet the Specifications of the Solicitation Document;

(E) Is late;

(F) Is not in substantial compliance with the Solicitation Document; or

(G) Is not in substantial compliance with all prescribed public Procurement procedures.

(c) The Contracting Agency shall reject an Offer upon the Contracting Agency's finding that the Offeror:

(A) Has not been prequalified under ORS 279B.120 and the Contracting Agency required mandatory prequalification;

(B) Has been Debarred as set forth in ORS 279B.130 or has been disqualified pursuant to OAR 137-046-0210(3) (DBE Disqualification);

(C) Has not met the requirements of ORS 279A.105, if required by the Solicitation Document;

(D) Has not submitted properly executed Bid or Proposal security as required by the Solicitation Document;

(E) Has failed to provide the certification of non-discrimination required under ORS 279A.110(4); or

(F) Is non-Responsible. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, the Contracting Agency must have information that indicates that the Offeror meets the applicable standards of Responsibility. To be a Responsible Offeror, the Contracting Agency must determine pursuant to ORS 279B.110 that the Offeror:

(i) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to meet all contractual responsibilities;

(ii) Has completed previous contracts of a similar nature with a satisfactory record of performance. A satisfactory record of performance means that to the extent the costs associated with and time available to perform a previous contract were within the Offeror's control, the Offeror stayed within the time and budget allotted for the

Procurement and otherwise performed the contract in a satisfactory manner. A Contracting Agency should carefully scrutinize an Offeror's record of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror's performance, the Contracting Agency should determine whether the Offeror's deficient performance was expressly excused under the terms of the contract, or whether the Offeror took appropriate corrective action. The Contracting Agency may review the Offeror's performance on both private and public contracts in determining the Offeror's record of contract performance. The Contracting Agency shall make its basis for determining an Offeror non-Responsible under this subparagraph part of the Procurement file pursuant to ORS 279B.110(2)(b);

(iii) Has a satisfactory record of integrity. An Offeror may lack integrity if a Contracting Agency determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to a Contracting Agency. A Contracting Agency may find an Offeror non-Responsible based on the lack of integrity of any Person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Person). The standards for Debarment under ORS 279B.130 may be used to determine an Offeror's integrity. A Contracting Agency may find an Offeror non-responsible based on previous convictions of offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the Offeror's performance of a contract or subcontract. The Contracting Agency shall make its basis for determining that an Offeror is non-Responsible under this subparagraph part of the Procurement file pursuant to 279B.110(2)(c);

(iv) Is legally qualified to contract with the Contracting Agency; and

(v) Has supplied all necessary information in connection with the inquiry concerning Responsibility. If the Offeror fails to promptly supply information requested by the Contracting Agency concerning Responsibility, the Contracting Agency shall base the determination of Responsibility upon any available information, or may find the Offeror non-Responsible.

(2) Form of Business Entity. For purposes of this rule, the Contracting Agency may investigate any Person submitting an Offer. The investigation may include that Person's officers, directors, owners, affiliates, or any other Person acquiring ownership of the Person to determine application of this rule or to apply the Debarment provisions of ORS 279B.130.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.100 & 279B.110
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 8-2012, f. 7-2-12, cert. ef. 8-1-12

137-047-0650
Rejection of All Offers

(1) Rejection. A Contracting Agency may reject all Offers as set forth in ORS 279B.100. The Contracting Agency shall notify all Offerors of the rejection of all Offers, along with the reasons for rejection of all Offers.

(2) Criteria. The Contracting Agency may reject all Offers based upon the following criteria:

(a) The content of or an error in the Solicitation Document, or the Procurement process unnecessarily restricted competition for the Contract;

(b) The price, quality or performance presented by the Offerors are too costly or of insufficient quality to justify acceptance of any Offer;

(c) Misconduct, error, or ambiguous or misleading provisions in the Solicitation Document threaten the fairness and integrity of the competitive process;

(d) Causes other than legitimate market forces threaten the integrity of the competitive process. These causes may include, without limitation, those that tend to limit competition, such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct, and inadvertent or intentional errors in the Solicitation Document;

(e) The Contracting Agency cancels the Procurement or solicitation in accordance with OAR 137-047-0660; or

(f) Any other circumstance indicating that Awarding the Contract would not be in the public interest.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.100
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

137-047-0660
Cancellation of Procurement or Solicitation

(1) Cancellation in the Public Interest. A Contracting Agency may cancel a Procurement or solicitation as set forth in ORS 279B.100.

(2) Notice of Cancellation Before Opening. If the Contracting Agency cancels a Procurement or solicitation prior to Opening, the Contracting Agency shall provide Written notice of cancellation in the same manner that the Contracting Agency initially provided notice of the solicitation. Such notice of cancellation shall:

(a) Identify the Solicitation Document;

(b) Briefly explain the reason for cancellation; and

(c) If appropriate, explain that an opportunity will be given to compete on any resolicitation.

(3) Notice of Cancellation After Opening. If the Contracting Agency cancels a Procurement or solicitation after Opening, the Contracting Agency shall provide Written notice of cancellation to all Offerors who submitted Offers.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.100
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

137-047-0670
Disposition of Offers if Procurement or Solicitation Canceled

(1) Prior to Opening. If the Contracting Agency cancels a Procurement or solicitation prior to Opening, the Contracting Agency shall return all Offers it received to Offerors unopened, provided the Offeror submitted its Offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the Contracting Agency shall open the Offer to determine the source and then return it to the Offeror. For Electronic Offers, the Contracting Agency shall delete the Offers from the Contracting Agency's Electronic Procurement System or information technology system.

(2) After Opening. If the Contracting Agency cancels a Procurement or solicitation after Opening, the Contracting Agency:

(a) May return Proposals in accordance with ORS 279B.060(56)(c); and

(b) Shall keep Bids in the Procurement file.

(3) Rejection of All Offers. If the Contracting Agency rejects all Offers, the Contracting Agency shall keep all Proposals and Bids in the Procurement file.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.100
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 8-2012, f. 7-2-12, cert. ef. 8-1-12

Legal Remedies

137-047-0700
Protests and Judicial Review of Special Procurements

(1) Purpose. An Affected Person may protest the approval of a Special Procurement. Pursuant to ORS 279B.400(1), before seeking judicial review of the approval of a Special Procurement, an Affected Person must file a Written protest with the Contract Review Authority for the Contracting Agency and exhaust all administrative remedies.

(2) Delivery. Notwithstanding the requirements for filing a writ of review under ORS Chapter 34 pursuant to ORS 279B.400(4)(a), an Affected Person must deliver a Written protest to the Contract Review Authority for the Contracting Agency within seven (7) Days after the first date of public notice of the approval of a Special Procurement by the Contract Review Authority for the Contracting Agency, unless a different protest period is provided in the public notice of the approval of a Special Procurement.

(3) Content of Protest. The Written protest must include:

(a) A detailed statement of the legal and factual grounds for the protest;

(b) A description of the resulting harm to the Affected Person; and

(c) The relief requested.

(4) Contract Review Authority Response. The Contract Review Authority shall not consider an Affected Person's protest of the approval of a Special Procurement submitted after the timeline established for submitting such protest under this rule or such different time period as may be provided in the public notice of the approval of a Special Procurement. The Contract Review Authority shall issue a Written disposition of the protest in a timely manner. If the Contract Review Authority upholds the protest, in whole or in part, it may in its sole discretion implement the sustained protest in the approval of the Special Procurement, or revoke the approval of the Special Procurement.

(5) Judicial Review. An Affected Person may seek judicial review of the Contract Review Authority's decision relating to a protest of the approval of a Special Procurement in accordance with ORS 279B.400.

Stat. Auth.: ORS 279A.065 & 279B.400
Stats. Implemented: ORS 279B.400
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-047-0710
Protests and Judicial Review of Sole-Source Procurements

(1) Purpose. For sole-source Procurements requiring public notice under OAR 137-047-0275, an Affected Person may protest the determination of the Contract Review Authority or designee that the Goods or Services or class of Goods or Services are available from only one source. Pursuant to ORS 279B.420(3)(f), before seeking judicial review, an Affected Person must file a Written protest with the Contract Review Authority or designee and exhaust all administrative remedies.

(2) Delivery. Unless otherwise specified in the public notice of the sole-source Procurement, an Affected Person must deliver a Written protest to the Contract Review Authority or designee within seven (7) Days after the first date of public notice of the sole-source Procurement, unless a different protest period is provided in the public notice of a sole-source Procurement.

(3) Content of Protest. The Written protest must include:

(a) A detailed statement of the legal and factual grounds for the protest;

(b) A description of the resulting harm to the Affected Person; and

(c) The relief requested.

(4) Contract Review Authority Response. The Contract Review Authority or designee shall not consider an Affected Person's sole-source Procurement protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the public notice of the sole-source Procurement. The Contract Review Authority or designee shall issue a Written disposition of the protest in a timely manner. If the Contract Review Authority or designee upholds the protest, in whole or in part, the Contracting Agency shall not enter into a sole-source Contract.

(5) Judicial Review. Judicial review of the Contract Review Authority's or designee's disposition of a sole-source Procurement protest shall be in accordance with ORS 279B.420.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.075
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

137-047-0720
Protests and Judicial Review of Multi-Tiered and Multistep Solicitations

(1) Purpose. An Affected Offeror may protest exclusion from the Competitive Range or from subsequent tiers or steps of a solicitation in accordance with the applicable Solicitation Document. When such a protest is permitted by the Solicitation Document, then pursuant to ORS 279B.420(3)(f), before seeking judicial review, an Affected Offeror must file a Written protest with the Contracting Agency and exhaust all administrative remedies.

(2) Basis for Protest. An Affected Offeror may protest its exclusion from a tier or step of competition only if the Offeror is Responsible and submitted a Responsive Offer and but for the Contracting Agency's mistake in evaluating the Offeror's or other Offerors' Offers, the protesting Offeror would have been eligible to participate in the next tier or step of competition. (For example, the protesting Offeror must claim it is eligible for inclusion in the Competitive Range if all ineligible higher-scoring Offerors are removed from consideration, and that those ineligible Offerors are ineligible for inclusion in the Competitive Range because: their Proposals were not Responsive, or the Contracting Agency committed a substantial violation of a provision in the Solicitation Document or of an applicable Procurement statute or administrative rule, and the protesting Offeror was unfairly evaluated and would have, but for such substantial violation, been included in the Competitive Range.)

(3) Delivery. Unless otherwise specified in the Solicitation Document, an Affected Offeror must deliver a Written protest to the Contracting Agency within seven (7) Days after issuance of the notice of the Competitive Range or notice of subsequent tiers or steps.

(4) Content of Protest. The Affected Offeror's protest shall be in Writing and must specify the grounds upon which the protest is based.

(5) Contracting Agency Response. The Contracting Agency shall not consider an Affected Offeror's multi-tiered or multistep solicitation protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Solicitation Document. The Contracting Agency shall issue a Written disposition of the protest in a timely manner. If the Contracting Agency upholds the protest, in whole or in part, the Contracting Agency may in its sole discretion either issue an Addendum under OAR 137-047-0430 reflecting its disposition or cancel the Procurement or solicitation under 137-047-0660.

(6) Judicial Review. Judicial review of the Contracting Agency's decision relating to a multi-tiered or multistep solicitation protest shall be in accordance with ORS 279B.420.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.060
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

137-047-0730
Protests and Judicial Review of Solicitations

(1) Purpose. A prospective Offeror may protest the Procurement process or the Solicitation Document for a Contract solicited under ORS 279B.055, 279B.060 and 279B.085 as set forth in 279B.405(2). Pursuant to 279B.405(3), before seeking judicial review, a prospective Offeror must file a Written protest with the Contracting Agency and exhaust all administrative remedies.

(2) Delivery. Unless otherwise specified in the Solicitation Document, a prospective Offeror must deliver a Written protest to the Contracting Agency not less than ten (10) Days prior to Closing.

(3) Content of Protest. In addition to the information required by ORS 279B.405(4), a prospective Offeror's Written protest shall include a statement of the desired changes to the Procurement process or the Solicitation Document that the prospective Offeror believes will remedy the conditions upon which the prospective Offeror based its protest.

(4) Contracting Agency Response. The Contracting Agency shall not consider a Prospective Offeror's solicitation protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Solicitation Document. The Contracting Agency shall consider the protest if it is timely filed and meets the conditions set forth in ORS 279B.405(4). The Contracting Agency shall issue a Written disposition of the protest in accordance with the timeline set forth in 279B.405(6). If the Contracting Agency upholds the protest, in whole or in part, the Contracting Agency may in its sole discretion either issue an Addendum reflecting its disposition under OAR 137-047-0430 or cancel the Procurement or solicitation under 137-047-0660.

(5) Extension of Closing. If the Contracting Agency receives a protest from a prospective Offeror in accordance with this rule, the Contracting Agency may extend Closing if the Contracting Agency

determines an extension is necessary to consider and respond to the protest.

(6) Clarification. Prior to the deadline for submitting a protest, a prospective Offeror may request that the Contracting Agency clarify any provision of the Solicitation Document. The Contracting Agency's clarification to an Offeror, whether orally or in Writing, does not change the Solicitation Document and is not binding on the Contracting Agency unless the Contracting Agency amends the Solicitation Document by Addendum.

(7) Judicial Review. Judicial review of the Contracting Agency's decision relating to a solicitation protest shall be in accordance with ORS 279B.405.

Stat. Auth.: ORS 279A.065 & 279B.405
Stats. Implemented: ORS 279B.405
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-047-0740
Protests and Judicial Review of Contract Award

(1) Purpose. An Offeror may protest the Award of a Contract, or the intent to Award of a Contract, whichever occurs first, if the conditions set forth in ORS 279B.410(1) are satisfied. An Offeror must file a Written protest with the Contracting Agency and exhaust all administrative remedies before seeking judicial review of the Contracting Agency's Contract Award decision.

(2) Delivery. Unless otherwise specified in the Solicitation Document, an Offeror must deliver a Written protest to the Contracting Agency within seven (7) Days after the Award of a Contract, or issuance of the notice of intent to Award the Contract, whichever occurs first.

(3) Content of Protest. An Offeror's Written protest shall specify the grounds for the protest to be considered by the Contracting Agency pursuant to ORS 279B.410(2).

(4) Contracting Agency Response. The Contracting Agency shall not consider an Offeror's Contract Award protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Solicitation Document. The Contracting Agency shall issue a Written disposition of the protest in a timely manner as set forth in ORS 279B.410(4). If the Contracting Agency upholds the protest, in whole or in part, the Contracting Agency may in its sole discretion either Award the Contract to the successful protestor or cancel the Procurement or solicitation.

(5) Judicial Review. Judicial review of the Contracting Agency's decision relating to a Contract Award protest shall be in accordance with ORS 279B.415.

Stat. Auth.: ORS 279A.065 & 279B.410
Stats. Implemented: ORS 279B.410 & 279B.415
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-047-0745
Protests and Judicial Review of Qualified Products List Decisions

(1) Purpose. A prospective Offeror may protest the Contracting Agency's decision to exclude the prospective Offeror's goods from the Contracting Agency's qualified products list under ORS 279B.115. A prospective Offeror must file a Written protest and exhaust all administrative remedies before seeking judicial review of the Contracting Agency's qualified products list decision.

(2) Delivery. Unless otherwise stated in the Contracting Agency's notice to prospective Offerors of the opportunity to submit goods for inclusion on the qualified products list, a prospective Offeror must deliver a Written protest to the Contracting Agency within seven (7) Days after issuance of the Contracting Agency's decision to exclude the prospective Offeror's goods from the qualified products list.

(3) Content of Protest. The prospective Offeror's protest shall be in Writing and must specify the grounds upon which the protest is based.

(4) Contracting Agency Response. The Contracting Agency shall not consider a prospective Offeror's qualified products list protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Contracting Agency's notice to prospective Offerors of the opportunity to submit goods for inclusion on the qualified products list. The Contracting Agency shall issue a Written disposition of the protest in a timely manner. If the Contracting Agency upholds the protest, it shall include the successful protestor's goods on the qualified products list.

(5) Judicial Review. Judicial review of the Contracting Agency's decision relating to a qualified products list protest shall be in accordance with ORS 279B.420.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.115
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-047-0750
Judicial Review of Other Violations

Any violation of ORS Chapter 279A or 279B by a Contracting Agency for which no judicial remedy is otherwise provided in the Public Contracting Code is subject to judicial review as set forth in 279B.420.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.420
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

137-047-0760
Review of Prequalification and Debarment Decisions

Review of the Contracting Agency's prequalification and Debarment decisions shall be as set forth in ORS 279B.425.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.425
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

137-047-0800
Amendments to Contracts and Price Agreements

(1) Generally. A Contracting Agency may amend a Contract without additional competition in any of the following circumstances:

(a) The amendment is within the scope of the Procurement as described in the Solicitation Documents, if any, or if no Solicitation Documents, as described in the sole source notice or the approved Special Procurement, if any. An amendment is not within the scope of the Procurement if the Agency determines that if it had described in the Procurement the changes to be made by the amendment, it would likely have increased competition or affected award of the Contract.

(b) These Model Rules otherwise permit the Contracting Agency to Award a Contract without competition for the goods or services to be procured under the Amendment.

(c) The amendment is necessary to comply with a change in law that affects performance of the Contract.

(d) The amendment results from renegotiation of the terms and conditions, including the Contract Price, of a Contract and the amendment is Advantageous to the Contracting Agency, subject to all of the following conditions:

(A) The Goods or Services to be provided under the amended Contract are the same as the Goods or Services to be provided under the unamended Contract.

(B) The Contracting Agency determines that, with all things considered, the amended Contract is at least as favorable to the Contracting Agency as the unamended Contract.

(C) The amended Contract does not have a total term greater than allowed in the Solicitation Documents, if any, or if no Solicitation Documents, as described in the sole source notice or the approved Special Procurement, if any, after combining the initial and extended terms. For example, a one-year Contract described as renewable each year for up to four additional years, may be renegotiated as a two to five-year Contract, but not beyond a total of five years.

(2) Small or Intermediate Contract. A Contracting Agency may amend a Contract Awarded as a small or intermediate Procurement pursuant to section (1) of this rule, provided that the total increase in Contract price does not exceed the amount set forth in OAR 137-

047-0265 for small Procurements or 137-047-0270 for intermediate Procurements.

(3) Price Agreements. A Contracting Agency may amend a Price Agreement as follows:

(a) As permitted by the Price Agreement;

(b) If the circumstances set forth in ORS 279B.140(2) exist; or

(c) As permitted by applicable law.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12; DOJ 8-2012, f. 7-2-12, cert. ef. 8-1-12

137-047-0810
Termination of Price Agreements

A Contracting Agency may terminate a Price Agreement as follows:

(1) As permitted by the Price Agreement;

(2) If the circumstances set forth in ORS 279B.140(2) exist; or

(3) As permitted by applicable law.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279B.140

Hist.: DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

DIVISION 48

MODEL RULES
CONSULTANT SELECTION: ARCHITECTURAL, ENGINEERING AND LAND SURVEYING SERVICES AND RELATED SERVICES CONTRACTS

137-048-0100
Application

(1) The Attorney General is required to prepare and maintain model rules of procedure that govern Public Contracting under the Public Contracting Code and that are appropriate for use by all Contracting Agencies. These division 48 rules apply to the screening and selection of Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors and providers of Related Services, under Contracts and set forth the following procedures:

(a) Procedures through which Contracting Agencies select Consultants to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services; and

(b) Two-tiered procedures for selection of Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors and providers of Related Services for certain public improvements owned and maintained by a Local Government.

(2) These division 48 rules apply to any Contracting Agency with independent contracting authority that is seeking the services of a Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services, if the Contracting Agency has not adopted its own rules of procedure for the screening and selection of Consultants to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, as provided in ORS 279A.065(a).

(3) The dollar threshold amounts that are applicable to the Direct Appointment Procedure, 137-048-0200, the Informal Selection Procedure, 137-048-0210, and the Formal Selection Procedure, 137-048-0220, are independent from and have no effect on the dollar threshold amounts that trigger the legal sufficiency review requirement for State Contracting Agencies under ORS 291.047.

Stat. Auth.: ORS 279A.065, OL 2011, ch 458

Stats. Implemented: ORS 279A.065, OL 2011, ch 458

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

137-048-0110
Definitions

In addition to the definitions set forth in ORS 279A.010, 279C.100, and OAR 137-046-0110, the following definitions apply to these division 48 rules:

(1) "**Consultant**" means an Architect, Engineer, Photogrammetrist, Transportation Planner, Land Surveyor or provider of Related Services. A Consultant includes a business entity that employs Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors or providers of Related Services, or any combination of the foregoing. Provided, however, when a Contracting Agency is entering into a direct Contract under OAR 137-048-0200(1)(c) or (d), the "Consultant" must be an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor, as required by ORS 279C.115(1).

(2) "**Estimated Fee**" means Contracting Agency's reasonably projected fee to be paid for a Consultant's services under the anticipated Contract, excluding all anticipated reimbursable or other non-professional fee expenses. The Estimated Fee is used solely to determine the applicable Contract solicitation method and is distinct from the total amount payable under the Contract. The Estimated Fee shall not be used as a basis to resolve other Public Contracting issues, including without limitation, direct purchasing authority or Public Contract review and approval under ORS 291.047.

(3) "**Price Agreement**," for purposes of this Division 48, is limited to mean an agreement related to the procurement of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services, under agreed-upon terms and conditions, including, but not limited to terms and conditions of later work orders or task orders for Project-specific Services, and which may include Consultant compensation information, with:

(a) No guarantee of a minimum or maximum purchase; or

(b) An initial work order, task order or minimum purchase, combined with a continuing Consultant obligation to provide Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services in which the Contracting Agency does not guarantee a minimum or maximum additional purchase.

(4) "**Project**" means all components of a Contracting Agency's planned undertaking that gives rise to the need for a Consultant's Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services, under a Contract.

(5) "**Transportation Planning Services**" are defined in ORS 279C.100. Transportation Planning Services include only Project-specific transportation planning involved in the preparation of categorical exclusions, environmental assessments, environmental impact statements and other documents required for compliance with the National Environmental Policy Act, 42 USC 4321 et. seq. Transportation Planning Services do not include transportation planning for corridor plans, transportation system plans, interchange area management plans, refinement plans and other transportation plans not directly associated with an individual Project that will require compliance with the National Environmental Policy Act, 42 USC 4321 et. seq. Transportation Planning Services also do not include transportation planning for Projects not subject to the National Environmental Policy Act, 42 USC 4321 et. seq.

Stat. Auth.: ORS 279A.065, OL 2011, ch 458

Stats. Implemented: ORS 279A.065, OL 2011, ch 458

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

137-048-0120
List of Interested Consultants; Performance Record

(1) Consultants who are engaged in the lawful practice of their profession and who are interested in providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, may annually submit a statement describing their qualifications and related performance information to Contracting Agencies' office addresses. Contracting

Agencies shall use this information to create a list of prospective Consultants and shall update this list at least once every two years.

(2) Contracting Agencies may compile and maintain a record of each Consultant's performance under Contracts with the particular Contracting Agency, including information obtained from Consultants during an exit interview. Upon request and in accordance with the Oregon Public Records Law (ORS 192.410 through 192.505), Contracting Agencies may make available copies of the records.

(3) State Contracting Agencies shall keep a record of all Contracts with Consultants and shall make these records available to the public, consistent with the requirements of the Oregon Public Records Law (ORS 192.410 through 192.505). State Contracting Agencies shall include the following information in the record:

(a) Locations throughout the state where the Contracts are performed;

(b) Consultants' principal office address and all office addresses in the State of Oregon;

(c) Consultants' direct expenses on each Contract, whether or not those direct expenses are reimbursed. "Direct expenses" include all amounts that are directly attributable to Consultants' services performed under each Contract, including personnel travel expenses, and that would not have been incurred but for the services being performed. The record must include all personnel travel expenses as a separate and identifiable expense on the Contract; and

(d) The total number of Contracts awarded to each Consultant over the immediately preceding 10-year period from the date of the record.

Stat. Auth.: ORS 279A.065, OL 2011, ch 458
Stats. Implemented: ORS 279A.065 & 279C.110, OL 2011, ch 458
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

137-048-0130
Applicable Selection Procedures; Pricing Information; Disclosure of Proposals; Conflicts of Interest

(1) When selecting the most qualified Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, Contracting Agencies shall follow the applicable selection procedure under either OAR 137-048-0200 (Direct Appointment Procedure), 137-048-0210 (Informal Selection Procedure) or 137-048-0220 (Formal Selection Procedure). Contracting Agencies selecting a Consultant under this section (1) may solicit or use pricing policies and pricing Proposals, or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead, to determine a Consultant's compensation only after the Contracting Agency has selected the most qualified Consultant in accordance with the applicable selection procedure; provided, however, this restriction on a Contracting Agency's solicitation or use of pricing policies, pricing Proposals or other pricing information does not apply to selection procedures used by the Contracting Agency to select a Consultant when the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services for the Project do not exceed $100,000 or in an Emergency, pursuant to ORS 279C.0110(8) and (9). In following the Direct Appointment Procedure under OAR 137-048-0200, a Contracting Agency may base its selection of a Consultant on any information available to the Agency prior to beginning the Direct Appointment Procedure for the Project involved.

(2) Contracting Agencies selecting a Consultant to perform Related Services shall follow one of the following selection procedures:

(a) When selecting a Consultant on the basis of qualifications alone, Contracting Agencies shall follow the applicable selection procedure under OAR 137-048-0200 (Direct Appointment Procedure), 137-048-0210 (Informal Selection Procedure), or 137-048-0220 (Formal Selection Procedure);

(b) When selecting a Consultant on the basis of price competition alone, Contracting Agencies shall follow the applicable provisions under OAR 137-048-0200 (Direct Appointment Procedure), the applicable provisions of 137-048-0210 (Informal Selection Procedure) pertaining to obtaining and evaluating price Proposals and other pricing information, or the applicable provisions of 137-048-0220 (Formal Selection Procedure) pertaining to obtaining and evaluating price Proposals and other pricing information; and

(c) When selecting a Consultant on the basis of price and qualifications, Contracting Agencies shall follow the applicable provisions under OAR 137-048-0200 (Direct Appointment Procedure), the applicable provisions of 137-048-0210 (Informal Selection Procedure) pertaining to obtaining and evaluating price and qualifications Proposals, or the applicable provisions of 137-048-0220 (Formal Selection Procedure) pertaining to obtaining and evaluating price and qualifications Proposals. For selections under the informal selection procedure of OAR 137-048-0210, Contracting Agencies may use abbreviated requests for Proposals that nevertheless meet the requirements of OAR 137-048-0210, when the Contracting Agency determines, in its sole discretion, that the characteristics of the Project and the Related Services required by the Contracting Agency would be adequately addressed by a more abbreviated request for Proposals document, generally comparable to the intermediate Procurement procedures and related documentation under ORS 279B.070 and OAR 137-047-0270. Contracting Agencies subject to this section (2) may request and consider a Proposer's pricing policies and pricing Proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead, submitted with a Proposal.

(3) A Contracting Agency is not required to follow the procedures in Section (1) or Section (2) of this rule, when the Contracting Agency has established Price Agreements with more than one Consultant and is selecting a single Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under an individual work order or task order. Provided, however, the criteria and procedures the Contracting Agency uses to select a single Consultant, when the Contracting Agency has established Price Agreements with more than one Consultant, must meet the requirements of OAR 137-048-0270 (Price Agreements).

(4) Contracting Agencies may use electronic methods to screen and select a Consultant in accordance with the procedures described in sections (1) and (2) of this rule. If a Contracting Agency uses electronic methods to screen and select a Consultant, the Contracting Agency shall first promulgate rules for conducting the screening and selection procedure by electronic means, substantially in conformance with OAR 137-047-0330 (Electronic Procurement).

(5) For purposes of these division 48 rules, a "mixed" Contract is one requiring the Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and also provide Related Services, other Services or other related Goods under the Contract. A Contracting Agency's classification of a procurement that will involve a "mixed" Contract will be determined by the predominant purpose of the Contract. A Contracting Agency will determine the predominant purpose of the Contract by determining which of the Services involves the majority of the total Estimated Fee to be paid under the Contract. If the majority of the total Estimated Fee to be paid under the Contract is for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, the Contracting Agency shall comply with the requirements of ORS 279C.110 and section (1) of this rule. If majority of the total Estimated Fee to be paid under the Contract is for Related Services, the Contracting Agency shall comply with the requirements of ORS 279C.120 and section (2) of this rule. If the majority of the total Estimated Fee to be paid under the Contract is for some other Services or Goods under the Public Contracting Code, the Contracting Agency shall comply with the applicable provisions of the Public Contracting Code and divisions 46, 47 and 49 of the Model Rules that match the predominant purpose of the Contract.

(6) In applying these rules, State Contracting Agencies shall support the state's goal of promoting a sustainable economy in the rural areas of the state.

(7) Consistent with the requirements of ORS 279C.107 and the remaining requirements of ORS 279C.100, 279C.105 and 279C.110

through 279C.125, the following provisions apply to Proposals received by a Contracting Agency for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services:

(a) The term "competitive proposal," for purposes of ORS 279C.107, includes Proposals under OAR 137-048-0200 (Direct Appointment Procedure), 137-048-0210 (Informal Selection Procedure), 137-048-0220 (Formal Selection Procedure) or 137-048-0130(2)(c) (selection based on price and qualifications) and any Proposals submitted in response to a selection process for a work order or task order under 137-048-0270 (Price Agreements).

(b) For purposes of Proposals received by a Contracting Agency under OAR 137-048-0200 (Direct Appointment Procedure), a formal notice of intent to award is not required. As a result, while a Contracting Agency may make Proposals under 137-048-0200 (Direct Appointment Procedure) open for public inspection following the Contracting Agency's decision to begin Contract negotiations with the selected Consultant, 137-048-0200 Proposals are not required to be open for public inspection until after the Contracting Agency has executed a Contract with the selected Consultant.

(c) In the limited circumstances permitted by ORS 279C.110, 279C.115 and 279C.120, where the Contracting Agency is conducting discussions or negotiations with Proposers who submit Proposals that the Contracting Agency has determined to be closely competitive or to have a reasonable chance of being selected for award, the Contracting Agency may open Proposals so as to avoid disclosure of Proposal contents to competing Proposers, consistent with the requirements of ORS 279C.107. Otherwise, Contracting Agencies may open Proposals in such a way as to avoid disclosure of the contents until after the Contracting Agency executes a Contract with the selected Consultant. If the Contracting Agency determines that it is in the best interest of the Contracting Agency to do so, the Contracting Agencies may make Proposals available for public inspection following the Contracting Agency's issuance of a notice of intent to award a Contract to a Consultant; and

(d) Disclosure of Proposals and Proposal information is otherwise governed by ORS 279C.107.

(8) As required by ORS 279C.307, pertaining to requirements to ensure the objectivity and independence of providers of certain Personal Services which are procured under ORS chapter 279C, Contracting Agencies may not:

(a) Procure the Personal Services identified in ORS 279C.307 from a Contractor or an affiliate of a Contractor who is a party to the Public Contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the Personal Services; or

(b) Procure the Personal Services identified in ORS 279C.307 through the Public Contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the Personal Services.

(9) The requirements of ORS 279C.307 and section (8) of this rule apply in the following circumstances, except as provided in section (10) of this rule:

(a) A Contracting Agency requires the Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Public Contract or performance under a Public Contract that is subject to ORS chapter 279C. A Public Contract that is "subject to ORS chapter 279C" includes a Public Contract for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, a Public Contract for Related Services or a Public Contract for construction services under ORS chapter 279C.

(b) The Procurements of Personal Services subject to the restrictions of ORS 279C.307 include, but are not limited to, the following:

(A) Procurements for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, which involve overseeing or monitoring the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C;

(B) Procurements for commissioning services, which involve monitoring, inspecting, evaluating or otherwise overseeing the performance of a Contractor providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C;

(C) Procurements for project management services, which involve administration, management, monitoring, inspecting, evaluating compliance with or otherwise overseeing the performance of a Contractor providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, construction services subject to ORS chapter 279C, commissioning services or other Related Services for a Project;

(D) Procurements for special inspections and testing services, which involve inspecting, testing or otherwise overseeing the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C; and

(E) Procurements for other Related Services or Personal Services, which involve administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing the Public Contracts described in Section (9)(a) of this rule.

(10) The restrictions of ORS 279C.307 do not apply in the following circumstances, except as further specified below:

(a) To a Contracting Agency's Procurement of both design services and construction services through a single "Design-Build" Procurement, as that term is defined in OAR 137-049-0610. Such a Design-Build Procurement includes a Procurement under an Energy Savings Performance Contract, as defined in ORS 279A.010. Provided, however, the restrictions of ORS 279C.307 do apply to a Contracting Agency's Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Design-Build Contract or performance under such a Contract resulting from a Design-Build Procurement; and

(b) To a Contracting Agency's Procurement of both pre-construction services and construction services through a single Procurement of Construction Manager/General Contractor Services, as that term is defined in ORS 279C.332(3). Provided, however, the restrictions of ORS 279C.307 do apply to a Contracting Agency's Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Construction Manager/General Contractor Services Contract or performance under such a Contract resulting from a Procurement of Construction Manager/General Contractor Services.

Stat. Auth.: ORS 279A.065, OL 2011, ch 458

Stats. Implemented: ORS 279A.065, 279C.100-279C.125, OL 2009, ch. 880, sec. 11, OL 2011, ch 458

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12; DOJ 8-2012, f. 7-2-12, cert. ef. 8-1-12; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15

Selection Procedures

137-048-0200
Direct Appointment Procedure

(1) Contracting Agencies may enter into a Contract directly with a Consultant without following the selection procedures set forth elsewhere in these rules if:

(a) Emergency. Contracting Agency finds that an Emergency exists; or

(b) Small Estimated Fee. The Estimated Fee to be paid under the Contract does not exceed $100,000; or

(c) Continuation of Project With Intermediate Estimated Fee. For Contracting Agencies where a Project is being continued, as more particularly described below, and where the Estimated Fee will not exceed $250,000, the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services to be performed under the Contract must meet the following requirements:

(A) The services consist of or are related to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services that have been substantially described, planned or otherwise previously studied in an earlier Contract with the same Consultant and are rendered for the same Project as the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services rendered under the earlier Contract;

(B) The Estimated Fee to be made under the Contract does not exceed $250,000; and

(C) The Contracting Agency used either the formal selection procedure under OAR 137-048-0220 (Formal Selection Procedure) or the formal selection procedure applicable to selection of the Consultant at the time of original selection to select the Consultant for the earlier Contract; or

(d) Continuation of Project With Extensive Estimated Fee. For Contracting Agencies where a Project is being continued, as more particularly described below, and where the Estimated Fee is expected to exceed $250,000, the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services to be performed under the Contract must meet the following requirements:

(A) The services consist of or are related to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services that have been substantially described, planned or otherwise previously studied under an earlier Contract with the same Consultant and are rendered for the same Project as the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services rendered under the earlier Contract;

(B) The Contracting Agency used either the formal selection procedure under OAR 137-048-0220 (Formal Selection Procedure) or the formal selection procedure applicable to selection of the Consultant at the time of original selection to select the Consultant for the earlier Contract; and

(C) The Contracting Agency makes written findings that entering into a Contract with the Consultant, whether in the form of an amendment to an existing Contract or a separate Contract for the additional scope of services, will:

(i) Promote efficient use of public funds and resources and result in substantial cost savings to the Contracting Agency; and,

(ii) Protect the integrity of the Public Contracting process and the competitive nature of the Procurement by not encouraging favoritism or substantially diminishing competition in the award of the Contract.

(2) Contracting Agencies may select a Consultant for a Contract under this rule from the following sources:

(a) The Contracting Agency's list of Consultants that is created under OAR 137-048-0120 (List of Interested Consultants; Performance Record);

(b) Another Contracting Agency's list of Consultants that the Contracting Agency has created under OAR 137-048-0120 (List of Interested Consultants; Performance Record), with written consent of that Contracting Agency; or

(c) All Consultants offering the required Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services that the Contracting Agency reasonably can identify under the circumstances.

(3) The Contracting Agency shall direct negotiations with a Consultant selected under this rule toward obtaining written agreement on:

(a) The Consultant's performance obligations and performance schedule;

(b) Payment methodology and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the Contracting Agency as determined solely by the Contracting Agency, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services; and

(c) Any other provisions the Contracting Agency believes to be in the Contracting Agency's best interest to negotiate.

Stat. Auth.: ORS 279A.065, OL 2011, ch 458
Stats. Implemented: ORS 279C110 & 279C.115, OL 2011, ch 458
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

137-048-0210
Informal Selection Procedure

(1) Contracting Agencies may use the informal selection procedure described in this rule to obtain a Contract if the Estimated Fee is expected not to exceed $250,000.

(2) Contracting Agencies using the informal selection procedure on the basis of qualifications alone or, for Related Services, on the basis of price and qualifications shall:

(a) Create a request for Proposals ("RFP") that includes at a minimum the following:

(A) A description of the Project for which a Consultant's Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services are needed and a description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services that will be required under the resulting Contract;

(B) The anticipated Contract performance schedule;

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including construction services;

(D) The date and time Proposals are due and other directions for submitting Proposals;

(E) Criteria upon which the most qualified Consultant will be selected. Selection criteria may include, but are not limited to, the following:

(i) The amount and type of resources and number of experienced staff the Consultant has committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP within the applicable time limits, including the current and projected workloads of such staff and the proportion of time such staff would have available for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services;

(ii) Proposed management techniques for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;

(iii) A Consultant's capability, experience and past performance history and record in providing similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, including but not limited to quality of work, ability to meet schedules, cost control methods and Contract administration practices;

(iv) A Consultant's approach to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP and design philosophy, if applicable;

(v) A Consultant's geographic proximity to and familiarity with the physical location of the Project;

(vi) Volume of work, if any, previously awarded to a Consultant, with the objective of effecting equitable distribution of Contracts among qualified Consultants, provided such distribution does not violate the principle of selecting the most qualified Consultant for the type of professional services required;

(vii) A Consultant's ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;

(viii) If the Contracting Agency is selecting a Consultant to provide Related Services, pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead.

(F) A Statement that Proposers responding to the RFP do so solely at their expense, and Contracting Agency is not responsible for any Proposer expenses associated with the RFP;

(G) A statement directing Proposers to the protest procedures set forth in these Division 48 rules; and

(H) A sample form of the Contract.

(b) Provide an RFP to a minimum of five (5) prospective Consultants. If fewer than five (5) prospective Consultants are available, Contracting Agencies shall provide the RFP to all available prospective Consultants and shall maintain a written record of the Contracting Agencies' efforts to locate available prospective Consultants for the RFP. Contracting Agencies shall draw prospective Consultants from:

(A) The Contracting Agency's list of Consultants that is created and maintained under OAR 137-048-0120 (List of Interested Consultants; Performance Record);

(B) Another Contracting Agency's list of Consultants that is created and maintained under OAR 137-048-0120 (List of Interested Consultants; Performance Record); or

(C) All Consultants that the Contracting Agency reasonably can locate that offer the desired Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, or any combination of the foregoing.

(c) Review and rank all Proposals received according to the criteria set forth in the RFP, and select the three highest ranked Proposers.

(3) Contracting Agencies using the informal selection procedure for Related Services on the basis of price Proposals and other pricing information alone shall:

(a) Create an RFP that includes at a minimum the following:

(A) A description of the Project for which a Consultant's Related Services are needed and a description of the Related Services that will be required under the resulting Contract;

(B) The anticipated Contract performance schedule;

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including construction services;

(D) The date and time Proposals are due and other directions for submitting Proposals;

(E) Any minimum or pass-fail qualifications that the Proposers must meet, including but not limited to any such qualifications in the subject matter areas described in section (2)(a)(E)(i) through section (2)(a)(E)(vii) of this rule that are related to the Related Services described in the RFP;

(F) Pricing criteria upon which the highest ranked Consultant will be selected. Pricing criteria may include, but are not limited to, the total price for the Related Services described in the RFP, Consultant pricing policies and other pricing information such as the Consultant's estimated number of staff hours needed to perform the Related Services described in the RFP, expenses, hourly rates and overhead;

(G) A statement directing Proposers to the protest procedures set forth in these Division 48 rules; and

(H) A sample form of the Contract.

(b) Provide the RFP to a minimum of five (5) prospective Consultants. If fewer than five (5) prospective Consultants are available, Contracting Agencies shall provide the RFP to all available prospective Consultants and shall maintain a written record of the Contracting Agencies' efforts to locate available prospective Consultants for the RFP. Contracting Agencies shall draw prospective Consultants from:

(A) The Contracting Agency's list of Consultants that is created and maintained under OAR 137-048-0120 (List of Interested Consultants; Performance Record);

(B) Another Contracting Agency's list of Consultants that is created and maintained under OAR 137-048-0120 (List of Interested Consultants; Performance Record); or

(C) All Consultants that the Contracting Agency reasonably can locate that offer the desired Related Services; and.

(c) Review and rank all responsive Proposals received, according to the total price for the Related Services described in the RFP, Consultant pricing policies and other pricing information requested in the RFP, including but not limited to the number of hours proposed for the Related Services required, expenses, hourly rates and overhead, and select the three highest-ranked Proposers.

(4) When the Estimated Fee in an informal selection procedure is expected not to exceed $150,000, the Contracting Agency is only required to provide the RFP under sections (2) and (3) of this rule to three (3) prospective Consultants. If fewer than three (3) prospective Consultants are available, the Contracting Agency shall provide the RFP to all available prospective Consultants and shall maintain a written record of the Contracting Agency's efforts to locate available prospective Consultants for the RFP.

(5) If the Contracting Agency does not cancel the RFP after it reviews the Proposals and ranks each Proposer, the Contracting Agency will begin negotiating a Contract with the highest ranked Proposer. The Contracting Agency shall direct Contract negotiations toward obtaining written agreement on the following:

(a) The Consultant's performance obligations and performance schedule;

(b) Payment methodology and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the Contracting Agency as determined solely by the Contracting Agency, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services; and

(c) Any other provisions the Contracting Agency believes to be in the Contracting Agency's best interest to negotiate.

(6) The Contracting Agency shall, either orally or in writing, formally terminate negotiations with the highest ranked Proposer, if the Contracting Agency and the Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. The Contracting Agency may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, in accordance with section (4) of this rule, until negotiations result in a Contract. If negotiations with any of the top three Proposers do not result in a Contract within a reasonable amount of time, the Contracting Agency may end the particular informal solicitation and thereafter may proceed with a new informal solicitation under this rule or proceed with a formal solicitation under OAR 137-048-0220 (Formal Selection Procedure).

(7) The Contracting Agency shall terminate the informal selection procedure and proceed with the formal selection procedure under OAR 137-048-0220 if the scope of the anticipated Contract is revised during negotiations so that the Estimated Fee will exceed $250,000.

Stat. Auth.: ORS 279A.065, OL 2011, ch 458
Stats. Implemented: ORS 279C.110, OL 2011, ch 458
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15

137-048-0220
Formal Selection Procedure

(1) Subject to OAR 137-048-0130 (Applicable Selection Procedures; Pricing Information; Disclosure of Proposals), Contracting Agencies shall use the formal selection procedure described in this rule to select a Consultant if the Consultant cannot be selected under either 137-048-0200 (Direct Appointment Procedure) or under 137-048-0210 (Informal Selection Procedure). The formal selection procedure described in this rule may otherwise be used at Contracting Agencies' discretion.

(2) Contracting Agencies using the formal selection procedure shall obtain Contracts through public advertisement of RFPs, or Requests for Qualifications followed by RFPs.

(a) Except as provided in subsection (b) of this section, a Contracting Agency shall advertise each RFP and RFQ at least once in at least one newspaper of general circulation in the area where the Project is located and in as many other issues and publications as may

be necessary or desirable to achieve adequate competition. Other issues and publications may include, but are not limited to, local newspapers, trade journals, and publications targeted to reach the minority, women and emerging small business enterprise audiences.

(A) A Contracting Agency shall publish the advertisement within a reasonable time before the deadline for the Proposal submission or response to the RFQ or RFP, but in any event no fewer than fourteen (14) calendar days before the closing date set forth in the RFQ or RFP.

(B) A Contracting Agency shall include a brief description of the following items in the advertisement:

(i) The Project;

(ii) A description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services the Contracting Agency seeks;

(iii) How and where Consultants may obtain a copy of the RFQ or RFP; and

(iv) The deadline for submitting a Proposal or response to the RFQ or RFP.

(b) In the alternative to advertising in a newspaper as described in subsection (2)(a) of this rule, the Contracting Agency shall publish each RFP and RFQ by one or more of the electronic methods identified in OAR 137-046-0110(14). The Contracting Agency shall comply with subsections (2)(a)(A) and (2)(a)(B) of this rule when publishing advertisements by electronic methods.

(c) A Contracting Agency may send notice of the RFP or RFQ directly to all Consultants on the Contracting Agency's list of Consultants that is created and maintained under OAR 137-048-0120 (List of Interested Consultants; Performance Record).

(3) Request for Qualifications Procedure. Contracting Agencies may use the RFQ procedure to evaluate potential Consultants and establish a short list of qualified Consultants to whom the Contracting Agency may issue an RFP for some or all of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ.

(a) A Contracting Agency shall include the following, at a minimum, in each RFQ:

(A) A brief description of the Project for which the Contracting Agency is seeking a Consultant;

(B) A description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services the Contracting Agency seeks for the Project;

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including but not limited to construction services;

(D) The deadline for submitting a response to the RFQ;

(E) A description of required Consultant qualifications for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services the Contracting Agency seeks;

(F) The RFQ evaluation criteria, including weights, points or other classifications applicable to each criterion;

(G) A statement whether or not the Contracting Agency will hold a pre-qualification meeting for all interested Consultants to discuss the Project and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ and if a pre-qualification meeting will be held, the location of the meeting and whether or not attendance is mandatory; and

(H) A Statement that Consultants responding to the RFQ do so solely at their expense, and that the Contracting Agency is not responsible for any Consultant expenses associated with the RFQ.

(b) A Contracting Agency may include a request for any or all of the following in each RFQ:

(A) A statement describing Consultants' general qualifications and related performance information;

(B) A description of Consultants' specific qualifications to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ including Consultants' committed resources and recent, current and projected workloads;

(C) A list of similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services and references concerning past performance, including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control and contract administration;

(D) A copy of all records, if any, of Consultants' performance under Contracts with any other Contracting Agency;

(E) The number of Consultants' experienced staff committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ, including such personnel's specific qualifications and experience and an estimate of the proportion of time that such personnel would spend on those services;

(F) Consultants' approaches to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ and design philosophy, if applicable;

(G) Consultants' geographic proximity to and familiarity with the physical location of the Project;

(H) Consultants' Ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;

(I) If the Contracting Agency is selecting a Consultant to provide Related Services, Consultants' pricing policies and pricing Proposals or other pricing information, including the number of hours estimated for the services required, expenses, hourly rates and overhead;

(J) Consultants' ability to assist a State Contracting Agency in complying with art acquisition requirements, pursuant to ORS 276.073 through 276.090;

(K) Consultants' ability to assist a State Contracting Agency in complying with State of Oregon energy efficient design requirements, pursuant to ORS 276.900 through 276.915;

(L) Consultants' ability to assist a Contracting Agency in complying with the energy technology requirements of ORS 279C.527 and 279C.528; and

(M) Any other information the Contracting Agency deems reasonably necessary to evaluate Consultants' qualifications.

(c) RFQ Evaluation Committee. The Contracting Agency shall establish an RFQ evaluation committee of at least two (2) individuals to review, score and rank the responding Consultants according to the evaluation criteria. The Contracting Agency may appoint to the evaluation committee Contracting Agency employees or employees of other public agencies with experience in Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, Related Services, construction services or Public Contracting. If the Contracting Agency procedure permits, the Contracting Agency may include on the evaluation committee private practitioners of architecture, engineering, photogrammetry, transportation planning, land surveying or related professions. The Contracting Agency shall designate one member of the evaluation committee as the evaluation committee chairperson.

(d) A Contracting Agency may use any reasonable screening or evaluation method to establish a short list of qualified Consultants, including but not limited to, the following:

(A) Requiring Consultants responding to an RFQ to achieve a threshold score before qualifying for placement on the short list;

(B) Placing a pre-determined number of the highest scoring Consultants on a short list;

(C) Placing on a short list only those Consultants with certain essential qualifications or experience, whose practice is limited to a particular subject area, or who practice in a particular geographic locale or region, provided that such factors are material, would not unduly restrict competition, and were announced as dispositive in the RFQ.

(e) After the evaluation committee reviews, scores and ranks the responding Consultants, the Contracting Agency shall establish a

short list of at least three qualified Consultants, if feasible; provided however, if four or fewer Consultants responded to the RFQ or if fewer than three Consultants fail to meet the Contracting Agency's minimum requirements, then:

(A) The Contracting Agency may establish a short list of fewer than three qualified Consultants; or

(B) The Contracting Agency may cancel the RFQ and issue an RFP.

(f) No Consultant will be eligible for placement on a Contracting Agency's short list established under subsection (3)(d) of this rule if Consultant or any of Consultant's principals, partners or associates are members of the Contracting Agency's RFQ evaluation committee.

(g) Except when the RFQ is cancelled, a Contracting Agency shall provide a copy of the subsequent RFP to each Consultant on the short list.

(4) Formal Selection of Consultants Through Request for Proposals. Contracting Agencies shall use the procedure described in section (4) of this rule when issuing an RFP for a Contract described in section (1) of this rule.

(a) RFP Required Contents. Contracting Agencies using the formal selection procedure shall include at least the following in each RFP, whether or not the RFP is preceded by an RFQ:

(A) General background information, including a description of the Project and the specific Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services sought for the Project, the estimated Project cost, the estimated time period during which the Project is to be completed, and the estimated time period in which the specific Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services sought will be performed;

(B) The RFP evaluation process and the criteria which will be used to select the most qualified Proposer, including the weights, points or other classifications applicable to each criterion. If the Contracting Agency does not indicate the applicable number of points, weights or other classifications, then each criterion is of equal value. Evaluation criteria may include, but are not limited to, the following:

(i) Proposers' availability and capability to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;

(ii) Experience of Proposers' key staff persons in providing similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services on comparable projects;

(iii) The amount and type of resources, and number of experienced staff persons Proposers have committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;

(iv) The recent, current and projected workloads of the staff and resources referenced in section (4)(a)(B)(iii), above;

(v) The proportion of time Proposers estimate that the staff referenced in section (4)(a)(B)(iii), above, would spend on the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;

(vi) Proposers' demonstrated ability to complete successfully similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services on time and within budget, including whether or not there is a record of satisfactory performance under OAR 137-048-0120 (List of Interested Consultants; Performance Record);

(vii) References and recommendations from past clients;

(viii) Proposers' performance history in meeting deadlines, submitting accurate estimates, producing high quality work, meeting financial obligations, price and cost data from previous projects, cost controls and contract administration;

(ix) Status and quality of any required license or certification;

(x) Proposers' knowledge and understanding of the Project and Architectural, Engineering and Land Surveying Services or Related Services described in the RFP as shown in Proposers' approaches to staffing and scheduling needs for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services and proposed solutions to any perceived design and constructability issues;

(xi) Results from interviews, if conducted;

(xii) Design philosophy, if applicable, and approach to the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;

(xiii) If the Contracting Agency is selecting a Consultant to provide Related Services, pricing policies and pricing Proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead; and

(xiv) Any other criteria that the Contracting Agency deems relevant to the Project and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP, including, where the nature and budget of the Project so warrant, a design competition between competing Proposers. Provided, however, these additional criteria cannot include pricing policies, pricing Proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead, when the sole purpose or predominant purpose of the RFP is to obtain Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services.

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including but not limited to construction services;

(D) Whether interviews are possible and if so, the weight, points or other classifications applicable to the potential interview;

(E) The date and time Proposals are due, and the delivery location for Proposals;

(F) Reservation of the right to seek clarifications of each Proposal;

(G) Reservation of the right to negotiate a final Contract that is in the best interest of the Contracting Agency;

(H) Reservation of the right to reject any or all Proposals and reservation of the right to cancel the RFP at any time if doing either would be in the public interest as determined by the Contracting Agency;

(I) A Statement that Proposers responding to the RFP do so solely at their expense, and Contracting Agency is not responsible for any Proposer expenses associated with the RFP;

(J) A statement directing Proposers to the protest procedures set forth in these division 48 rules;

(K) Special Contract requirements, including but not limited to disadvantaged business enterprise ("DBE"), minority business enterprise ("MBE"), women business enterprise ("WBE") and emerging small business enterprise ("ESB") participation goals or good faith efforts with respect to DBE, MBE, WBE and ESB participation, and federal requirements when federal funds are involved;

(L) A statement whether or not the Contracting Agency will hold a pre-Proposal meeting for all interested Consultants to discuss the Project and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP and if a pre- Proposal meeting will be held, the location of the meeting and whether or not attendance is mandatory;

(M) A request for any information the Contracting Agency deems reasonably necessary to permit the Contracting Agency to evaluate, rank and select the most qualified Proposer to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP; and

(N) A sample form of the Contract.

(b) RFP Contents for Related Services Selections Based on Price Only. Contracting Agencies using the formal selection proce-

dure shall include at least the following in each RFP, whether or not the RFP is preceded by an RFQ, when the formal selection procedure is for Related Services selected on the basis of price Proposals and other pricing information only:

(A) General background information, including a description of the Project and the specific Related Services sought for the Project, the estimated Project cost, the estimated time period during which the Project is to be completed, and the estimated time period in which the specific Related Services sought will be performed;

(B) The RFP evaluation process and the price criteria which will be used to select the highest ranked Proposer, including the weights, points or other classifications applicable to each criterion. If the Contracting Agency does not indicate the applicable number of points, weights or other classifications, then each criterion is of equal value. Evaluation price criteria may include, but are not limited to, the total price for the Related Services described in the RFP, Consultant pricing policies, and other pricing information such as the Consultant's estimated number of staff hours needed to perform the Related Services described in the RFP, expenses, hourly rates and overhead;

(C) Any minimum or pass-fail qualifications that the Proposers must meet, including but not limited to any such qualifications in the subject matter areas described in section (4)(a)(B)(i) through section (4)(a)(B)(xii) of this rule; and

(D) The information listed in section (4)(a)(C) through section (4)(a)(N) of this rule pertaining to the Related Services described in the RFP.

(c) RFP Evaluation Committee. The Contracting Agency shall establish a committee of at least three individuals to review, score and rank Proposals according to the evaluation criteria set forth in the RFP. If the RFP has followed an RFQ, the Contracting Agency may include the same members who served on the RFQ evaluation committee. The Contracting Agency may appoint to the evaluation committee Contracting Agency employees or employees of other public agencies with experience in Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying, Related Services, construction services or Public Contracting. At least one member of the evaluation committee must be a Contracting Agency employee. If the Contracting Agency procedure permits, the Contracting Agency may include on the evaluation committee private practitioners of architecture, engineering, land surveying or related professions. The Contracting Agency shall designate one of its employees who also is a member of the evaluation committee as the evaluation committee chairperson.

(A) No Proposer will be eligible for award of the Contract under the RFP if Proposer or any of Proposer's principals, partners or associates are members of the Contracting Agency's RFP evaluation committee for the Contract;

(B) If the RFP provides for the possibility of Proposer interviews, the evaluation committee may elect to interview Proposers if the evaluation committee considers it necessary or desirable. If the evaluation committee conducts interviews, it shall award weights, points or other classifications indicated in the RFP for the anticipated interview; and

(C) The evaluation committee shall provide to the Contracting Agency the results of the scoring and ranking for each Proposer.

(d) If the Contracting Agency does not cancel the RFP after it receives the results of the scoring and ranking for each Proposer, the Contracting Agency will begin negotiating a Contract with the highest ranked Proposer. The Contracting Agency shall direct negotiations toward obtaining written agreement on:

(A) The Consultant's performance obligations and performance schedule;

(B) Payment methodology and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the Contracting Agency as determined solely by the Contracting Agency, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services; and

(C) Any other provisions the Contracting Agency believes to be in the Contracting Agency's best interest to negotiate.

(e) The Contracting Agency shall, either orally or in writing, formally terminate negotiations with the highest ranked Proposer if the Contracting Agency and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. The Contracting Agency may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, and so on, in accordance with section (4)(c) of this rule, until negotiations result in a Contract. If negotiations with any Proposer do not result in a Contract within a reasonable amount of time, the Contracting Agency may end the particular formal solicitation. Nothing in this rule precludes a Contracting Agency from proceeding with a new formal solicitation for the same Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP that failed to result in a Contract.

Stat. Auth.: ORS 279A.065, OL 2011, ch 458
Stats. Implemented: ORS 279C.110, 279C.527, OL 2011, ch 458
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12; DOJ 8-2012, f. 7-2-12, cert. ef. 8-1-12; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15

137-048-0230
Ties Among Proposers

(1) If a Contracting Agency is selecting a Consultant on the basis of qualifications alone and determines after the ranking of Proposers that two or more Proposers are equally qualified, the Contracting Agency may select a candidate through any process that the Contracting Agency believes will result in the best value for the Contracting Agency taking into account the scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services. Provided, however, the tie breaking process established by the Contracting Agency under this section (1) cannot be based on the Consultant's pricing policies, pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead. The process must be designed to instill public confidence through ethical and fair dealing, honesty and good faith on the part of the Contracting Agency and Proposers and shall protect the integrity of the Public Contracting process. Once a tie is broken, the Contracting Agency and the selected Proposer shall proceed with negotiations under OAR 137-048-0210(3) or 137-048-0220(4)(c), as applicable.

(2) If a Contracting Agency is selecting a Consultant on the basis of price alone, or on the basis of price and qualifications, and determines after the ranking of Proposers that two or more Proposers are identical in terms of price or are identical in terms of price and qualifications, then the Contracting Agency shall follow the procedure set forth in OAR 137-046-0300, (Preferences for Oregon Goods and Services), to select the Consultant.

Stat. Auth.: ORS 279A.065, OL 2011, ch 458
Stats. Implemented: ORS 279C.110, OL 2011, ch 458
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

137-048-0240
Protest Procedures

(1) **RFP Protest and Request for Change**. Consultants may submit a written protest of anything contained in an RFP and may request a change to any provision, specification or Contract term contained in an RFP, no later than seven (7) calendar days prior to the date Proposals are due, unless a different deadline is indicated in the RFP. Each protest and request for change must include the reasons for the protest or request, and any proposed changes to the RFP provisions, specifications or Contract terms. The Contracting Agency may not consider any protest or request for change that is submitted after the submission deadline.

(2) **Protest of Consultant Selection**.

(a) Single Award. In the event of an award to a single Proposer, the Contracting Agency shall provide to all Proposers a copy of

the selection notice that the Contracting Agency sent to the highest ranked Proposer. A Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposer may submit a written protest of the selection to the Contracting Agency no later than seven (7) calendar days after the date of the selection notice unless a different deadline is indicated in the RFP. A Proposer submitting a protest must claim that the protesting Proposer is the highest ranked Proposer because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFP or because the higher ranked Proposers otherwise are not qualified to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP.

(b) Multiple Award. In the event of an award to more than one Proposer, the Contracting Agency shall provide to all Proposers copies of the selection notices that the Contracting Agency sent to the highest ranked Proposers. A Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposers may submit a written protest of the selection to the Contracting Agency no later than seven (7) calendar days after the date of the selection notices, unless a different deadline is indicated in the RFP. A Proposer submitting a protest must claim that the protesting Proposer is one of the highest ranked proposers because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFP, or because a sufficient number of Proposals of higher ranked Proposers failed to meet the requirements of the RFP. In the alternative, a Proposer submitting a protest must claim that the Proposals of all higher ranked Proposers, or a sufficient number of higher ranked Proposers, are not qualified to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP.

(c) **Effect of Protest Submission Deadline**. A Contracting Agency may not consider any protest that is submitted after the submission deadline.

(3) **Resolution of Protests**. A duly authorized representative of the Contracting Agency shall resolve all timely submitted protests within a reasonable time following the Contracting Agency's receipt of the protest and once resolved, shall promptly issue a written decision on the protest to the Proposer who submitted the protest. If the protest results in a change to the RFP, the Contracting Agency shall revise the RFP accordingly and shall re-advertise the RFP in accordance with these rules.

Stat. Auth.: ORS 279A.065, OL 2011, ch 458
Stats. Implemented: ORS 279A.065 & 279C.110, OL 2011, ch 458
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

137-048-0250
Solicitation Cancellation, Delay or Suspension; Rejection of All Proposals or Responses; Consultant Responsibility For Costs

A Contracting Agency may cancel, delay or suspend a solicitation, RFQ or other preliminary Procurement document, whether related to a Direct Appointment Procedure (OAR 137-048-0200), the Informal Selection Procedure (OAR 137-048-0210), and the Formal Selection Procedure (OAR 137-048-0220), or reject all Proposals, responses to RFQs, responses to other preliminary Procurement documents, or any combination of the foregoing, if the Contracting Agency believes it is in the public interest to do so. In the event of any such cancellation, delay, suspension or rejection, the Contracting Agency is not liable to any Proposer for any loss or expense caused by or resulting from any such cancellation, delay, suspension or rejection. Consultants responding to either solicitations, RFQs or other preliminary Procurement documents are responsible for all costs they may incur in connection with submitting Proposals, responses to RFQs or responses to other preliminary Procurement documents.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065, 279C.110
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

137-048-0260
Two-Tiered Selection Procedure for Local Contracting Agency Public Improvement Projects

(1) If a Local Contracting Agency requires an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for a public improvement owned and maintained by that Local Contracting Agency, and a State Agency will serve as the lead Contracting Agency and will enter into Contracts with Architects, Photogrammetrists, Transportation Planners, Engineers or Land Surveyors for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for that public improvement, the State Contracting Agency shall utilize the two-tiered selection process described below to obtain these Contracts with Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors.

(2) Tier One. A State Contracting Agency shall, when feasible, identify no fewer than the three (3) most qualified Proposers responding to an RFP that was issued under the applicable selection procedures described in OAR 137-048-0210 (Informal Selection Procedure) and 137-048-0220 (Formal Selection Procedure), or from among Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors identified under 137-048-0200 (Direct Appointment Procedure), and shall notify the Local Contracting Agency of the Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors selected.

(3) Tier Two. In accordance with the qualifications based selection requirements of ORS 279C.110, the Local Contracting Agency shall either:

(a) Select an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor from the State Contracting Agency's list of Proposers to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for Local Contracting Agency's public improvement; or

(b) Select an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for Local Contracting Agency's public improvement through an alternative process adopted by the Local Contracting Agency, consistent with the provisions of the applicable RFP, if any, and these division 48 rules. The Local Contracting Agency's alternative process must be described in the applicable RFP, may be structured to take into account the unique circumstances of the particular Local Contracting Agency and may include provisions to allow the Local Contracting Agency to perform its tier two responsibilities efficiently and economically, alone or in cooperation with other Local Contracting Agencies. The Local Contracting Agency's alternative process may include, but is not limited to, one or more of the following methods:

(A) A general written direction from the Local Contracting Agency to the State Contracting Agency, prior to the advertisement of a Procurement or series of Procurements or during the course of the Procurement or series of Procurements, that the Local Contracting Agency's tier two selection shall be the highest-ranked firm identified by the State Contracting Agency during the tier one process, and that no further coordination or consultation with the Local Contracting Agency is required. However, the Local Contracting Agency may provide written notice to the State Contracting Agency that the Local Contracting Agency's general written direction is not to be applied for a particular Procurement and describe the process that the Local Contracting Agency will utilize for the particular Procurement. In order for a written direction from the Local Contracting Agency consistent with this subsection to be effective for a particular Procurement, it must be received by the State Contracting Agency with adequate time for the State Contracting Agency to revise the RFP in order for Proposers to be notified of the tier two process to be utilized in the Procurement. In the event of a multiple award under the terms of the applicable Procurement, the written direction from the Local Contracting Agency may apply to the high-

est ranked firms that are selected under the terms of the Procurement document.

(B) An intergovernmental agreement between the Local Contracting Agency and the State Contracting Agency outlining the alternative process that the Local Contracting Agency has adopted for a Procurement or series of Procurements.

(C) Where multiple Local Government Agencies are involved in a two-tiered selection procedure, the Local Government Agencies may name one or more authorized representative(s) to act on behalf of all the Local Government Agencies, whether the Local Government Agencies are acting collectively or individually, to select the Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under the tier two selection process. In the event of a multiple award under the terms of the applicable Procurement, the authorized representative(s) of the Local Contracting Agencies may act on behalf of the Local Contracting Agencies to select the highest ranked firms that are required under the terms of the Procurement document, as part of the tier two selection process.

(4) The State Contracting Agency shall thereafter begin Contract negotiations with the selected Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor in accordance with the negotiation provisions in OAR 137-048-0200 (Direct Appointment Procedure), 137-048-0210 (Informal Selection Procedure) or 137-048-0220 (Formal Selection Procedure) as applicable.

(5) Nothing in these division 48 rules should be construed to deny or limit a Local Contracting Agency's ability to enter into a Contract directly with Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors pursuant to ORS 279C.125(4), through a selection process established by that Local Contracting Agency.

Stat. Auth.: ORS 279A.065, OL 2011, ch 458
Stats. Implemented: ORS 279C.110, 279C.125, OL 2011, ch 458
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

137-048-0270
Price Agreements

(1) A Contracting Agency may establish Price Agreements for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, when the Contracting Agency cannot determine the precise quantities of those Services which the Contracting Agency will require over a specified time period.

(2) When establishing Price Agreements under this rule, a Contracting Agency shall select no fewer than three Consultants, when feasible. The selection procedures for establishing Price Agreements shall be in accordance with OAR 137-048-0130(1) or 137-048-0130(2), as applicable. Contracting Agencies may select a single Consultant, when a Price Agreement is awarded to obtain services for a specific Project or a closely-related group of Projects.

(3) In addition to any other applicable solicitation requirements set forth in these division 48 rules, solicitation materials and the terms and conditions for a Price Agreement for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services must:

(a) Include a scope of services, menu of services, a specification for services or a similar description of the nature, general scope, complexity and purpose of the procurement that will reasonably enable a prospective bidder or Proposer to decide whether to submit a bid or proposal;

(b) Specify whether the Contracting Agency intends to award a Price Agreement to one Consultant or to multiple Consultants. If the Contracting Agency will award a Price Agreement to more than one Consultant, the solicitation document and Price Agreement shall describe the criteria and procedures the Contracting Agency will use to select a Consultant for each individual work order or task order. Subject to the requirements of ORS 279C.110, the criteria and procedures to assign work orders or task orders that only involve or predominantly involve Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services are at the Contracting Agency's sole discretion; provided, however, in circumstances where a direct contract is not permitted under OAR 137-048-0200, the selection criteria cannot be based on pricing policies, pricing proposals or other pricing information, including the number of hours proposed for the Services required, expenses, hourly rates and overhead. In accordance with OAR 137-048-0130(2) applicable to Related Services procurements, the selection criteria and procedures may be based solely on the qualifications of the Consultants, solely on pricing information, or a combination of both qualifications and pricing information. Pricing information may include the number of hours proposed for the Related Services required, expenses, hourly rates, overhead and other price factors. Work order or task order assignment procedures under Price Agreements may include direct appointments, subject to the requirements of OAR 137-048-0200; and

(c) Specify the maximum term for assigning Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under the Price Agreement.

(4) All Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services assigned under a Price Agreement require a written work order or task order issued by the Contracting Agency. Any work orders or task orders assigned under a Price Agreement must include, at a minimum, the following:

(a) The Consultant's performance obligations and performance schedule;

(b) The payment methodology and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the work order or task order that is fair and reasonable to the Contracting Agency, as determined solely by the Contracting Agency, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services;

(c) Language that incorporates all applicable terms and conditions of the Price Agreement into the work order or task order; and

(d) Any other provisions the Contracting Agency believes to be in the Contracting Agency's best interest.

Stat. Auth.: ORS 279A.065 & OL 2011, ch 458
Stats. Implemented: ORS 279A.065, 279C.110, 279C.120 & OL 2011, ch 458
Hist.: DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

Post-Selection Considerations

137-048-0300
Prohibited Payment Methodology; Purchase Restrictions

(1) Except as otherwise allowed by law, a Contracting Agency shall not enter into any Contract which includes compensation provisions that expressly provide for payment of:

(a) Consultant's costs under the Contract plus a percentage of those costs; or

(b) A percentage of the Project construction costs or total Project costs.

(2) Except as otherwise allowed by law, a Contracting Agency shall not enter into any Contract in which:

(a) The compensation paid under the Contract is solely based on or limited to the Consultant's hourly rates for the Consultant's personnel working on the Project and reimbursable expenses incurred during the performance of work on the Project (sometimes referred to as a "time and materials" Contract); and

(b) The Contract does not include a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract.

(3) Except in cases of Emergency or in the particular instances noted in the subsections below, a Contracting Agency shall not purchase any building materials, supplies or equipment for any building, structure or facility constructed by or for the Contracting Agency from any Consultant under a Contract with Contracting Agency

to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, for the building, structure or facility. This prohibition does not apply if either of the following circumstances exists:

(a) The Consultant is providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under a Contract with a Contracting Agency to perform Design-Build services or Energy Savings Performance Contract services (see OAR 137-049-0670 and 137-049-0680); or

(b) That portion of the Contract relating to the acquisition of building materials, supplies or equipment was awarded to the Consultant pursuant to applicable law governing the award of such a Contract.

Stat. Auth.: ORS 279A.065, OL 2011, ch 458
Stats. Implemented: ORS 279A.065, OL 2011, ch 458
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

137-048-0310
Expired or Terminated Contracts; Reinstatement

(1) If a Contracting Agency enters into a Contract for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services and that Contract subsequently expires or is terminated, the Contracting Agency may proceed as follows, subject to the requirements of subsection (2) of this rule:

(a) Expired Contracts. If the Contract has expired as the result of Project delay caused by the Contracting Agency or caused by any other occurrence outside the reasonable control of the Contracting Agency or the Consultant, and if no more than one year has passed since the Contract expiration date, the Contracting Agency may amend the Contract to extend the Contract expiration date, revise the description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract to reflect any material alteration of the Project made as a result of the delay, and revise the applicable performance schedule. Beginning on the effective date of the amendment, the Contracting Agency and the Consultant shall continue performance under the Contract as amended; or

(b) Terminated Contracts. If the Contracting Agency or both parties to the Contract have terminated the Contract for any reason and if no more than one year has passed since the Contract termination date, then the Contracting Agency may enter into a new Contract with the same Consultant to perform the remaining Architectural, Engineering and Land Surveying Services, or Related Services not completed under the original Contract, or to perform any remaining Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services not completed under the Contract as adjusted to reflect a material alteration of the Project.

(2) The Contracting Agency may proceed under either subsection (1)(a) or subsection (1)(b) of this rule only after making written findings that amending the existing Contract or entering into a new Contract with the Consultant will:

(a) Promote efficient use of public funds and resources and result in substantial cost savings to the Contracting Agency;

(b) Protect the integrity of the Public Contracting process and the competitive nature of the Procurement process by not encouraging favoritism or substantially diminishing competition in the award of Contracts; and

(c) Result in a Contract that is still within the scope of the final form of the original Procurement document.

Stat. Auth.: ORS 279A.065, OL 2011, ch 458
Stats. Implemented: ORS 279A.065 & 279C.110, OL 2011, ch 458
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

137-048-0320
Contract Amendments

(1) A Contracting Agency may amend any Contract if the Contracting Agency, in its sole discretion, determines that the amendment is within the scope of the Solicitation Document and that the amendment would not materially impact the field of competition for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the final form of the original Procurement document. In making this determination, the Contracting Agency shall consider potential alternative methods of procuring the services contemplated under the proposed amendment. An amendment would not materially impact the field of competition for the services described in the Solicitation Document, if the Contracting Agency reasonably believes that the number of Proposers would not significantly increase if the Procurement document were re-issued to include the additional services.

(2) The Contracting Agency may amend any Contract if the additional services are required by reason of existing or new laws, rules, regulations or ordinances of federal, state or local agencies, which affect performance of the original Contract.

(3) All amendments to Contracts must be in writing, must be signed by an authorized representative of the Consultant and the Contracting Agency and must receive all required approvals before the amendments will be binding on the Contracting Agency.

Stat. Auth.: ORS 279A.065, OL 2011, ch 458
Stats. Implemented: ORS 279A.065, 279C.110, OL 2011, ch 458
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

DIVISION 49

MODEL RULES GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTS FOR CONSTRUCTION SERVICES

137-049-0100
Application

(1) These division 49 rules apply to Public Improvement Contracts as well as Public Contracts for ordinary construction Services that are not Public Improvements. Model Rules that apply specifically to Public Improvement Contracts are so identified. These division 49 rules apply to Contracts for Construction Manager/General Contractor Services, whether the initial Contract between the parties includes both pre-construction services and construction services, or only contains pre-construction services, since the underlying procurement for Construction Manager/General Contractor Services authorizes Contracting Agencies to enter into Contracts for both pre-construction and construction services.

(2) These division 49 rules address matters covered in ORS Chapter 279C (with the exception of Architectural, Engineering, Land Surveying and Related Services, all of which are addressed in division 48 of the Model Rules).

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15

137-049-0110
Policies

In addition to the general Code policies set forth in ORS 279A.015, the 279C.300 policy on competition and the 279C.305 policy on least-cost for Public Improvements apply to these division 49 rules.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.300 & 279C.305
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

137-049-0120
Definitions

(1) "Conduct Disqualification" means a Disqualification pursuant to ORS 279C.440.

(2) "Disqualification" means the preclusion of a Person from contracting with a Contracting Agency for a period of time in accordance with OAR 137-049-0370. Disqualification may be a Conduct Disqualification or DBE Disqualification.

(3) "Foreign Contractor" means a Contractor that is not domiciled in or registered to do business in the State of Oregon. See OAR 137-049-0480.

(4) "Notice" means any of the alternative forms of public announcement of Procurements, as described in OAR 137-049-0210.

(5) "Work" means the furnishing of all services, materials, equipment, labor and incidentals necessary to successfully complete any individual item or the entire Contract and the carrying out and completion of all duties and obligations imposed by the Contract.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15

137-049-0130
Competitive Bidding Requirement

A Contracting Agency shall solicit Bids for Public Improvement Contracts by Invitation to Bid ("ITB"), except as otherwise allowed or required pursuant to ORS 279C.335 on competitive bidding exceptions and exemptions, 279A.030 on federal law overrides or 279A.100 on affirmative action. Also see OAR 137-049-0600 to 137-049-0690 regarding the use of Alternative Contracting Methods, use of Alternative Contracting Methods for projects which are excepted or exempt from the competitive bidding process, use of Alternative Contracting Methods within the competitive bidding process and the process for obtaining an exemption from competitive bidding requirements.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.335
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15

137-049-0140
Contracts for Construction Other Than Public Improvements

(1) **Procurement Under ORS Chapter 279B**. Pursuant to ORS 279C.320, Public Contracts for construction Services that are not Public Improvement Contracts may be procured and amended as general trade Services under the provisions of ORS Chapter 279B rather than under the provisions of ORS Chapter 279C and these division 49 rules. Emergency Contracts for construction Services are not Public Improvement Contracts and are regulated under ORS 279B.080.

(2) **Application of ORS Chapter 279C**. Non-procurement provisions of ORS Chapter 279C and these division 49 rules may still be applicable to the resulting Contracts. See, for example, particular statutes on Disqualification (279C.440, 445, 450); Legal Actions (279C.460 and 465); Required Contract Conditions (279C.505, 515, 520, 530); Hours of Labor (279C.540, 545); Retainage (279C.550, 560 and 565); Subcontracts (279C.580); Action on Payment Bonds (279C.600, 605, 610, 615, 620, 625); Termination (279C.650, 660, 670); and all of the Prevailing Wage Rates requirements (279C.800 through 870) for Public Works Contracts.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.320
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-049-0150
Emergency Contracts; Bidding and Bonding Exemptions

(1) Emergency Declaration. A Contracting Agency may declare that Emergency circumstances exist that require prompt execution of a Public Contract for Emergency construction or repair Work. The declaration shall be made at an administrative level consistent with the Contracting Agency's internal policies, by a Written declaration that describes the circumstances creating the Emergency and the anticipated harm from failure to enter into an Emergency Contract. The Emergency declaration shall be kept on file as a public record.

(2) Competition for Emergency Contracts. Pursuant to ORS 279C.320(1), Emergency Contracts are regulated under ORS 279B.080, which provides that, for an emergency procurement of construction services, the Contracting Agency shall ensure competition that is reasonable and appropriate under the Emergency circumstances, and may include Written requests for Offers, oral requests for Offers or direct appointments without competition in cases of extreme necessity, in whatever solicitation time periods the Contracting Agency considers reasonable in responding to the Emergency.

(3) Emergency Contract Scope. Although no dollar limitation applies to Emergency Contracts, the scope of the Contract must be limited to Work that is necessary and appropriate to remedy the conditions creating the Emergency as described in the declaration.

(4) Emergency Contract Modification. Emergency Contracts may be modified by change order or amendment to address the conditions described in the original declaration or an amended declaration that further describes additional Work necessary and appropriate for related Emergency circumstances.

(5) Excusing Bonds. Pursuant to ORS 279C.380(4) and this rule, the Emergency declaration may also state that the Contracting Agency waives the requirement of furnishing a performance bond and payment bond for the Emergency Contract. After making such an Emergency declaration those bonding requirements are excused for the procurement, but this Emergency declaration does not affect the separate Public Works bond requirement for the benefit of the Bureau of Labor and Industries (BOLI) in enforcing prevailing wage rate and overtime payment requirements. See OAR 137-049-0815 and BOLI rules at OAR 839-025-0015.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.080, 279C.320, 279C.380
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-049-0160
Intermediate Procurements; Competitive Quotes and Amendments

(1) **General**. Public Improvement Contracts estimated by the Contracting Agency not to exceed $100,000 may be Awarded in accordance with intermediate level procurement procedures for competitive quotes established by this rule.

(2) **Selection Criteria**. The selection criteria may be limited to price or some combination of price, experience, specific expertise, availability, project understanding, contractor capacity, responsibility and similar factors.

(3) **Request for Quotes**. Contracting Agencies shall utilize Written requests for quotes whenever reasonably practicable. Written Request for Quotes shall include the selection criteria to be utilized in selecting a Contractor and, if the criteria are not of equal value, their relative value or ranking. When requesting quotations orally, prior to requesting the price quote the Contracting Agency shall state any additional selection criteria and, if the criteria are not of equal value, their relative value. For Public Works Contracts, oral quotations may be utilized only in the event that Written copies of the prevailing wage rates are not required by the Bureau of Labor and Industries.

(4) **Number of Quotes; Record Required**. Contracting Agencies shall seek at least three competitive quotes, and keep a Written record of the sources and amounts of the quotes received. If three quotes are not reasonably available the Contracting Agency shall make a Written record of the effort made to obtain those quotes.

(5) **Award**. If Awarded, the Contracting Agency shall Award the Contract to the prospective contractor whose quote will best serve the interests of the Contracting Agency, taking into account the announced selection criteria. If Award is not made to the Offeror offering the lowest price, the Contracting Agency shall make a Written record of the basis for Award.

(6) **Price Increases**. Intermediate level Public Improvement Contracts obtained by competitive quotes may be increased above the original amount of Award by Contracting Agency issuance of a Change to the Work or Amendment, pursuant to OAR 137-049-0910, within the following limitations:

(a) Up to an aggregate Contract Price increase of 25% over the original Contract amount when a Contracting Agency's contracting officer determines that a price increase is warranted for additional reasonably related Work, and;

(b) Up to an aggregate Contract Price increase of 50% over the original Contract amount, when a Contracting Agency's contracting officer determines that a price increase is warranted for additional reasonably related Work and a Contracting Agency official, board or governing body with administrative or review authority over the contracting officer approves the increase.

(7) **Amendments**. Amendments of intermediate level Public Improvement Contracts that exceed the thresholds stated in section (1) are specifically authorized by the Code, when made in accordance with this rule. Accordingly, such amendments are not considered new procurements and do not require an exemption from competitive bidding.

Stat. Auth.: ORS 279A.065

Stats. Implemented: Temporary provisions relating to competitive quotes were not codified but compiled as Legislative Counsel notes following ORS 279C.410.

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

Formal Procurement Rules

137-049-0200
Solicitation Documents; Required Provisions; Assignment or Transfer

(1) Solicitation Document. Pursuant to ORS 279C.365 and this rule, the Solicitation Document shall include the following:

(a) General Information:

(A) Identification of the Public Improvement project, including the character of the Work, and applicable plans, Specifications and other Contract documents;

(B) Notice of any pre-Offer conference as follows:

(i) The time, date and location of any pre-Offer conference;

(ii) Whether attendance at the conference will be mandatory or voluntary; and

(iii) That statements made by the Contracting Agency's representatives at the conference are not binding upon the Contracting Agency unless confirmed by Written Addendum.

(C) The deadline for submitting mandatory prequalification applications and the class or classes of Work for which Offerors must be prequalified if prequalification is a requirement;

(D) The name and title of the authorized Contracting Agency Person designated for receipt of Offers and contact Person (if different);

(E) Instructions and information concerning the form and submission of Offers, including the address of the office to which Offers must be delivered, any Bid or Proposal security requirements, and any other required information or special information, e.g., whether Offers may be submitted by facsimile or electronic means (See OAR 137-049-0300 regarding facsimile Bids or Proposals and OAR 137-049-0310 regarding electronic Procurement);

(F) The time, date and place of Opening;

(G) The time and date of Closing after which a Contracting Agency will not accept Offers, which time shall be not less than five Days after the date of the last publication of the advertisement. Although a minimum of five Days is prescribed, Contracting Agencies are encouraged to use at least a 14 Day solicitation period when feasible. If the Contracting Agency is issuing an ITB that may result in a Public Improvement Contract with a value in excess of $100,000, the Contracting Agency shall designate a time of Closing consistent with the first-tier subcontractor disclosure requirements of ORS 279C.370(1)(b) and OAR 137-049-0360. For timing issues relating to Addenda, see OAR 137-049-0250;

(H) The office where the Specifications for the Work may be reviewed;

(I) A statement that each Bidder to an ITB must identify whether the Bidder is a "resident Bidder," as defined in ORS 279A.120;

(J) If the Contract resulting from a solicitation will be a Contract for a Public Work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 3141 to 3148), a statement that no Offer will be received or considered by the Contracting Agency unless the Offer contains a statement by the Offeror as a part of its Offer that "Contractor agrees to be bound by and will comply with the provisions of 279C.838, 279C.840 or 40 U.S.C. 3141 to 3148."

(K) A statement that the Contracting Agency will not receive or consider an Offer for a Public Improvement Contract unless the Offeror is registered with the Construction Contractors Board, or is licensed by the State Landscape Contractors Board, as specified in OAR 137-049-0230;

(L) Whether a Contractor or a subcontractor under the Contract must be licensed under ORS 468A.720 regarding asbestos abatement projects;

(M) Contractor's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See OAR 137-049-0440(3));

(N) How the Contracting Agency will notify Offerors of Addenda and how the Contracting Agency will make Addenda available (See OAR 137-049-0250); and

(O) When applicable, instructions and forms regarding First-Tier Subcontractor Disclosure requirements, as set forth in OAR 137-049-0360.

(b) Evaluation Process:

(A) A statement that the Contracting Agency may reject any Offer not in compliance with all prescribed Public Contracting procedures and requirements, including the requirement to demonstrate the Bidder's responsibility under ORS 279C.375(3)(b), and may reject for good cause all Offers after finding that doing so is in the public interest;

(B) The anticipated solicitation schedule, deadlines, protest process and evaluation process, if any;

(C) Evaluation criteria, including the relative value applicable to each criterion, that the Contracting Agency will use to determine the Responsible Bidder with the lowest Responsive Bid (where Award is based solely on price) or the Responsible Proposer or Proposers with the best Responsive Proposal or Proposals (where use of competitive Proposals is authorized under ORS 279C.335 and OAR 137-049-0620), along with the process the Contracting Agency will use to determine acceptability of the Work;

(i) If the Solicitation Document is an Invitation to Bid, the Contracting Agency shall set forth any special price evaluation factors in the Solicitation Document. Examples of such factors include, but are not limited to, conversion costs, transportation cost, volume weighing, trade-in allowances, cash discounts, depreciation allowances, cartage penalties, and ownership or life-cycle cost formulas. Price evaluation factors need not be precise predictors of actual future costs; but, to the extent possible, such evaluation factors shall be objective, reasonable estimates based upon information the Contracting Agency has available concerning future use;

(ii) If the Solicitation Document is a Request for Proposals, the Contracting Agency shall refer to the additional requirements of OAR 137-049-0650; and

(c) Contract Provisions. The Contracting Agency shall include all Contract terms and conditions, including warranties, insurance and bonding requirements, that the Contracting Agency considers appropriate for the Public Improvement project. The Contracting Agency must also include all applicable Contract provisions required by Oregon law as follows:

(A) Prompt payment to all Persons supplying labor or material; contributions to Industrial Accident Fund; liens and withholding taxes (ORS 279C.505(1));

(B) Demonstrate that an employee drug testing program is in place (ORS 279C.505(2));

(C) If the Contract calls for demolition Work described in ORS 279C.510(1), a condition requiring the Contractor to salvage or recycle construction and demolition debris, if feasible and cost-effective;

(D) If the Contract calls for lawn or landscape maintenance, a condition requiring the Contractor to compost or mulch yard waste material at an approved site, if feasible and cost effective (ORS 279C.510(2);

(E) Payment of claims by public officers (ORS 279C.515(1));

(F) Contractor and first-tier subcontractor liability for late payment on Public Improvement Contracts pursuant to ORS 279C.515(2), including the rate of interest;

(G) Person's right to file a complaint with the Construction Contractors Board for all Contracts related to a Public Improvement Contract (ORS 279C.515(3));

(H) Hours of labor in compliance with ORS 279C.520;

(I) Environmental and natural resources regulations (ORS 279C.525);

(J) Payment for medical care and attention to employees (ORS 279C.530(1));

(K) A Contract provision substantially as follows: "All employers, including Contractor, that employ subject workers who work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements." (ORS 279C.530(2));

(L) Maximum hours, holidays and overtime (ORS 279C.540);

(M) Time limitation on claims for overtime (ORS 279C.545);

(N) Prevailing wage rates (ORS 279C.800 to 279C.870);

(O) BOLI Public Works bond (ORS 279C.830(2));

(P) Retainage (ORS 279C.550 to 279C.570);

(Q) Prompt payment policy, progress payments, rate of interest (ORS 279C.570);

(R) Contractor's relations with subcontractors (ORS 279C.580);

(S) Notice of claim (ORS 279C.605);

(T) Contractor's certification of compliance with the Oregon tax laws in accordance with ORS 305.385; and

(U) Contractor's certification that all subcontractors performing Work described in ORS 701.005(2) (i.e., construction Work) will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055 before the subcontractors commence Work under the Contract.

(2) Assignment or Transfer Restricted. Unless otherwise provided in the Contract, the Contractor shall not assign, sell, dispose of, or transfer rights, or delegate duties under the Contract, either in whole or in part, without the Contracting Agency's prior Written consent. Unless otherwise agreed by the Contracting Agency in Writing, such consent shall not relieve the Contractor of any obligations under the Contract. Any assignee or transferee shall be considered the agent of the Contractor and be bound to abide by all provisions of the Contract. If the Contracting Agency consents in Writing to an assignment, sale, disposal or transfer of the Contractor's rights or delegation of Contractor's duties, the Contractor and its surety, if any, shall remain liable to the Contracting Agency for complete performance of the Contract as if no such assignment, sale, disposal, transfer or delegation had occurred unless the Contracting Agency otherwise agrees in Writing.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.110, 279A.120, 279C.365, 279C.370, 279C.390, 279C.505 - 580, 279C.605, 305.385, 468A.720, 701.005 & 701.055
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-049-0210
Notice and Advertising Requirements; Posting

(1) Notice and Distribution Fee. A Contracting Agency shall furnish "Notice" as set forth below in subsections (a) through (c), to a number of Persons sufficient for the purpose of fostering and promoting competition. The Notice shall indicate where, when, how and for how long the Solicitation Document may be obtained and generally describe the Public Improvement project or Work. The Notice may contain any other appropriate information. The Contracting Agency may charge a fee or require a deposit for the Solicitation Document. The Contracting Agency may furnish Notice using any method determined to foster and promote competition, including:

(a) Mailing Notice of the availability of Solicitation Documents to Persons that have expressed an interest in the Contracting Agency's Procurements;

(b) Placing Notice on the Contracting Agency's Electronic Procurement System; or

(c) Placing Notice on the Contracting Agency's Internet Web site.

(2) Advertising. Pursuant to ORS 279C.360 and this rule, a Contracting Agency shall advertise every solicitation for competitive Bids or competitive Proposals for a Public Improvement Contract, unless the Contract Review Authority for that Contracting Agency has exempted the solicitation from the advertisement requirement as part of a competitive bidding exemption under ORS 279C.335.

(a) Unless the Contracting Agency publishes by Electronic Advertisement as permitted under subsection 2(b), the Contracting Agency shall publish the advertisement for Offers at least once in at least one newspaper of general circulation in the area where the Contract is to be performed and in as many additional issues and publications as the Contracting Agency may determine to be necessary or desirable to foster and promote competition.

(b) A Contracting Agency may publish by Electronic Advertisement if the Contract Review Authority for the Contracting Agency determines Electronic Advertisement is likely to be cost effective and, by rule or order, authorizes Electronic Advertisement.

(c) In addition to the Contracting Agency's publication required under subsection 2(a) or 2(b), the Contracting Agency shall also publish an advertisement for Offers in at least one trade newspaper of general statewide circulation if the Contract is for a Public Improvement with an estimated cost in excess of $125,000.

(d) All advertisements for Offers shall set forth:

(A) The Public Improvement project;

(B) The office where Contract terms, conditions and Specifications may be reviewed;

(C) The date that Persons must file applications for prequalification under ORS 279C.340, if prequalification is a requirement, and the class or classes of Work for which Persons must be prequalified;

(D) The scheduled Closing, which shall not be less than five Days after the date of the last publication of the advertisement;

(E) The name, title and address of the Contracting Agency Person authorized to receive Offers;

(F) The scheduled Opening; and

(G) If applicable, that the Contract is for a Public Work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 3141 to 3148).

(3) Minority, Women Emerging Small Business. State Contracting Agencies shall provide timely notice of all solicitations to the Advocate for Minority, Women and Emerging Small Business if the estimated Contract Price exceeds $5,000. See ORS 200.035.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.360 & 200.035
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-049-0220
Prequalification of Offerors

(1) Prequalification. Pursuant to ORS 279C.430 and this rule, two types of prequalification are authorized:

(a) Mandatory Prequalification. A Contracting Agency may, by rule, resolution, ordinance or other law or regulation, require mandatory prequalification of Offerors on forms prescribed by the Contracting Agency's Contract Review Authority. A Contracting Agency must indicate in the Solicitation Document if it will require mandatory prequalification. Mandatory prequalification is when a Contracting Agency conditions a Person's submission of an Offer upon the Person's prequalification. The Contracting Agency shall not consider an Offer from a Person that is not prequalified if the Contracting Agency required prequalification.

(b) Permissive Prequalification. A Contracting Agency may prequalify a Person for the Contracting Agency's solicitation list on

forms prescribed by the Contracting Agency's Contract Review Authority, but in permissive prequalification the Contracting Agency shall not limit distribution of a solicitation to that list.

(2) Prequalification Presumed. If an Offeror is currently prequalified by either the Oregon Department of Transportation or the Oregon Department of Administrative Services to perform Contracts, the Offeror shall be rebuttably presumed qualified to perform similar Work for other Contracting Agencies.

(3) Standards for Prequalification. A Person may prequalify by demonstrating to the Contracting Agency's satisfaction:

(a) That the Person's financial, material, equipment, facility and personnel resources and expertise, or ability to obtain such resources and expertise, indicate that the Person is capable of meeting all contractual responsibilities;

(b) The Person's record of performance;

(c) The Person's record of integrity;

(d) The Person is qualified to contract with the Contracting Agency. (See, OAR 137-049-0390(2) regarding standards of responsibility.)

(4) Notice of Denial. If a Person fails to prequalify for a mandatory prequalification, the Contracting Agency shall notify the Person, specify the reasons under section (3) of this rule and inform the Person of the Person's right to a hearing under ORS 279C.445 and 279C.450.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.430 & 279C.435
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-049-0230
Eligibility to Bid or Propose; Registration or License

(1) **Construction Contracts**. A Contracting Agency shall not consider a Person's Offer to do Work as a contractor, as defined in ORS 701.005(2), unless the Person has a current, valid certificate of registration issued by the Construction Contractors Board at the time the Offer is made.

(2) **Landscape Contracts**. A Contracting Agency shall not consider a Person's Offer to do Work as a landscape contractor as defined in ORS 671.520(2), unless the Person has a current, valid landscape contractors license issued pursuant to 671.560 by the State Landscape Contractors Board at the time the offer is made.

(3) **Noncomplying Entities**. The Contracting Agency shall deem an Offer received from a Person that fails to comply with this rule nonresponsive and shall reject the Offer as stated in ORS 279C.365(1)(k), unless contrary to federal law or subject to different timing requirements set by federal funding agencies.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.365, 671.530 & 701.055
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

137-049-0240
Pre-Offer Conferences

(1) **Purpose**. A Contracting Agency may hold pre-Offer conferences with prospective Offerors prior to Closing, to explain the Procurement requirements, obtain information or to conduct site inspections.

(2) **Required attendance**. The Contracting Agency may require attendance at the pre-Offer conference as a condition for making an Offer. Unless otherwise specified in the Solicitation Document, a mandatory attendance requirement is considered to have been met if, at any time during the mandatory meeting, a representative of an offering firm is present.

(3) **Scheduled time**. If a Contracting Agency holds a pre-Offer conference, it shall be held within a reasonable time after the Solicitation Document has been issued, but sufficiently before the Closing to allow Offerors to consider information provided at that conference.

(4) **Statements Not Binding**. Statements made by a Contracting Agency's representative at the pre-Offer conference do not change the Solicitation Document unless the Contracting Agency confirms such statements with a Written Addendum to the Solicitation Document.

(5) **Contracting Agency Announcement**. The Contracting Agency must set forth notice of any pre-Offer conference in the Solicitation Document in accordance with OAR 137-049-0200(1)(a)(B).

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.365 & 279C.370
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

137-049-0250
Addenda to Solicitation Documents

(1) **Issuance; Receipt**. The Contracting Agency may change a Solicitation Document only by Written Addenda. An Offeror shall provide Written acknowledgement of receipt of all issued Addenda with its Offer, unless the Contracting Agency otherwise specifies in the Addenda or in the Solicitation Document.

(2) **Notice and Distribution**. The Contracting Agency shall notify prospective Offerors of Addenda consistent with the standards of Notice set forth in OAR 137-049-0210(1). The Solicitation Document shall specify how the Contracting Agency will provide notice of Addenda and how the Contracting Agency will make the Addenda available (see, 137-049-0200(1)(a)(N).

For example, "Contracting Agency will not mail notice of Addenda, but will publish notice of any Addenda on Contracting Agency's Web site. Addenda may be downloaded off the Contracting Agency's Web site. Offerors should frequently check the Contracting Agency's Web site until closing, i.e., at least once weekly until the week of Closing and at least once daily the week of the Closing."

(3) **Timelines; Extensions**. The Contracting Agency shall issue Addenda within a reasonable time to allow prospective Offerors to consider the Addenda in preparing their Offers. The Contracting Agency may extend the Closing if the Contracting Agency determines prospective Offerors need additional time to review and respond to Addenda. Except to the extent required by public interest, the Contracting Agency shall not issue Addenda less than 72 hours before the Closing unless the Addendum also extends the Closing.

(4) **Request for Change or Protest**. Unless a different deadline is set forth in the Addendum, an Offeror may submit a Written request for change or protest to the Addendum, as provided in OAR 137-049-0260, by the close of the Contracting Agency's next business day after issuance of the Addendum, or up to the last day allowed to submit a request for change or protest under 137-049-0260, whichever date is later. The Contracting Agency shall consider only an Offeror's request for change or protest to the Addendum; the Contracting Agency shall not consider a request for change or protest to matters not added or modified by the Addendum, unless the Offeror submits the request for change or protest before the deadline for the Contracting Agency's receipt of request for change or protests as set forth in 137-049-0260(2) and (3).

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.395 & 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

137-049-0260
Request for Clarification or Change; Solicitation Protests

(1) Clarification. Prior to the deadline for submitting a Written request for change or protest, an Offeror may request that the Contracting Agency clarify any provision of the Solicitation Document. The Contracting Agency's clarification to an Offeror, whether orally or in Writing, does not change the Solicitation Document and is not binding on the Contracting Agency unless the Contracting Agency amends the Solicitation Document by Addendum.

(2) Request for Change.

(a) Delivery. An Offeror may request in Writing a change to the Specifications or Contract terms and conditions. Unless otherwise specified in the Solicitation Document, an Offeror must deliver the Written request for change to the Contracting Agency not less than 10 Days prior to Closing;

(b) Content of Request for Change.

(A) An Offeror's Written request for change shall include a statement of the requested change(s) to the Contract terms and conditions, including any Specifications, together with the reason for the requested change.

(B) An Offeror shall mark its request for change as follows:

(i) "Contract Provision Request for Change"; and

(ii) Solicitation Document number (or other identification as specified in the Solicitation Document).

(3) Protest.

(a) Delivery. An Offeror may protest Specifications or Contract terms and conditions. Unless otherwise specified in the Solicitation Document, an Offeror must deliver a Written protest on those matters to the Contracting Agency not less than 10 Days prior to Closing;

(b) Content of Protest.

(A) An Offeror's Written protest shall include:

(i) A detailed statement of the legal and factual grounds for the protest;

(ii) A description of the resulting prejudice to the Offeror; and

(iii) A statement of the desired changes to the Contract terms and conditions, including any Specifications.

(B) An Offeror shall mark its protest as follows:

(i) "Contract Provision Protest"; and

(ii) Solicitation Document number (or other identification as specified in the Solicitation Document).

(4) Contracting Agency Response. The Contracting Agency is not required to consider an Offeror's request for change or protest after the deadline established for submitting such request or protest. The Contracting Agency shall provide notice to the applicable Person if it entirely rejects a protest. If the Contracting Agency agrees with the Person's request or protest, in whole or in part, the Contracting Agency shall either issue an Addendum reflecting its determination under OAR 137-049-0260 or cancel the solicitation under OAR 137-049-0270.

(5) Extension of Closing. If a Contracting Agency receives a Written request for change or protest from an Offeror in accordance with this rule, the Contracting Agency may extend Closing if the Contracting Agency determines an extension is necessary to consider the request or protest and issue an Addendum, if any, to the Solicitation Document.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.345 & 279C.365

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-049-0270
Cancellation of Solicitation Document

(1) Cancellation in the Public Interest. A Contracting Agency may cancel a solicitation for good cause if the Contracting Agency finds that cancellation is in the public interest. The Contracting Agency's reasons for cancellation shall be made part of the solicitation file.

(2) Notice of Cancellation. If the Contracting Agency cancels a solicitation prior to Opening, the Contracting Agency shall provide Notice of cancellation in accordance with OAR 137-049-0210(1). Such notice of cancellation shall:

(a) Identify the solicitation;

(b) Briefly explain the reason for cancellation; and

(c) If appropriate, explain that an opportunity will be given to compete on any resolicitation.

(3) Disposition of Offers.

(a) Prior to Offer Opening. If the Contracting Agency cancels a solicitation prior to Offer Opening, the Contracting Agency shall return all Offers it received to Offerors unopened, provided the Offeror submitted its Offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the Contracting Agency shall open the Offer to determine the source and then return it to the Offeror.

(b) After Offer Opening. If the Contracting Agency rejects all Offers, the Contracting Agency shall retain all such Offers as part of the Contracting Agency's solicitation file.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.395

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-049-0280
Offer Submissions

(1) **Offer and Acceptance**. The Bid or Proposal is the Bidder's or Proposer's offer to enter into a Contract.

(a) In competitive bidding and competitive Proposals, the Offer is always a "Firm Offer," i.e., the Offer shall be held open by the Offeror for the Contracting Agency's acceptance for the period specified in OAR 137-049-0410. The Contracting Agency may elect to accept the Offer at any time during the specified period, and the Contracting Agency's Award of the Contract to a Bidder constitutes acceptance of the Offer and binds the Offeror to the Contract.

(b) Notwithstanding the fact that a competitive Proposal is a "Firm Offer" for the period specified in OAR 137-049-0410, the Contracting Agency may elect to discuss or negotiate certain contractual provisions, as identified in these rules or in the Solicitation Document, with the Proposer. See 137-049-0650 on Requests for Proposals and 137-049-0290 on Bid or Proposal Security. Where negotiation is permitted by the rules or the Solicitation Document, Proposers are bound to an obligation to negotiate in good faith and only on those terms that the rules or the Solicitation Document has reserved for negotiation.

(2) **Responsive Offer**. A Contracting Agency may Award a Contract only to a Responsible Offeror with a Responsive Offer.

(3) **Contingent Offers**. Except to the extent that an Offeror is authorized to propose certain terms and conditions pursuant to OAR 137-049-0650, an Offeror shall not make an Offer contingent upon the Contracting Agency's acceptance of any terms or conditions (including Specifications) other than those contained in the Solicitation Document.

(4) **Offeror's Acknowledgement**. By signing and returning the Offer, the Offeror acknowledges it has read and understands the terms and conditions contained in the Solicitation Document and that it accepts and agrees to be bound by the terms and conditions of the Solicitation Document. If the Request for Proposals permits Proposal of alternative terms under OAR 137-049-0650, the Offeror's Offer includes the nonnegotiable terms and conditions and any proposed terms and conditions offered for negotiation upon and to the extent accepted by the Contracting Agency in Writing.

(5) **Instructions**. An Offeror shall submit and Sign its Offer in accordance with the Solicitation Document. An Offeror shall initial and submit any correction or erasure to its Offer prior to the Opening in accordance with the requirements for submitting an Offer under the Solicitation Document.

(6) **Forms**. An Offeror shall submit its Offer on the form(s) provided in the Solicitation Document, unless an Offeror is otherwise instructed in the Solicitation Document.

(7) **Documents**. An Offeror shall provide the Contracting Agency with all documents and Descriptive Literature required under the Solicitation Document.

(8) **Facsimile or Electronic Submissions**. If the Contracting Agency permits facsimile or electronic Offers in the Solicitation Document, the Offeror may submit facsimile or electronic Offers in accordance with the Solicitation Document. The Contracting Agency shall not consider facsimile or electronic Offers unless authorized by the Solicitation Document.

(9) **Product Samples and Descriptive Literature**. A Contracting Agency may require Product Samples or Descriptive Literature if it is necessary or desirable to evaluate the quality, features or characteristics of the offered items. The Contracting Agency will dispose of Product Samples, or return or make available for return Product Samples to the Offeror in accordance with the Solicitation Document.

(10) **Identification of Offers**.

(a) To ensure proper identification and handling, Offers shall be submitted in a sealed envelope appropriately marked or in the envelope provided by the Contracting Agency, whichever is applicable.

(b) The Contracting Agency is not responsible for Offers submitted in any manner, format or to any delivery point other than as required in the Solicitation Document.

(11) **Receipt of Offers**. The Offeror is responsible for ensuring that the Contracting Agency receives its Offer at the required deliv-

ery point prior to the Closing, regardless of the method used to submit or transmit the Offer.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.365 & 279C.375
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-049-0290
Bid or Proposal Security

(1) Security Amount. If a Contracting Agency requires Bid or Proposal security, it shall be not more than 10% or less than 5% of the Offeror's Bid or Proposal, consisting of the base Bid or Proposal together with all additive alternates. A Contracting Agency shall not use Bid or Proposal security to discourage competition. The Contracting Agency shall clearly state any Bid or Proposal security requirements in its Solicitation Document. The Offeror shall forfeit Bid or Proposal security after Award if the Offeror fails to execute the Contract and promptly return it with any required performance bond, payment bond and any required proof of insurance. See ORS 279C.365(5) and 279C.385.

(2) Requirement for Bid Security (Optional for Proposals). Unless a Contracting Agency has otherwise exempted a solicitation or class of solicitations from Bid security pursuant to ORS 279C.390, the Contracting Agency shall require Bid security for its solicitation of Bids for Public Improvements. This requirement applies only to Public Improvement Contracts with a value, estimated by the Contracting Agency, of more than $100,000 or, in the case of Contracts for highways, bridges and other transportation projects, more than $50,000. See ORS 279C.365(6). The Contracting Agency may require Bid security even if it has exempted a class of solicitations from Bid security. Contracting Agencies may also require Proposal security in RFPs. See ORS 279C.400(5).

(3) Form of Bid or Proposal Security. A Contracting Agency may accept only the following forms of Bid or Proposal security:

(a) A surety bond from a surety company authorized to do business in the State of Oregon;

(b) An irrevocable letter of credit issued by an insured institution as defined in ORS 706.008; or

(c) A cashier's check or Offeror's certified check.

(4) Return of Security. A Contracting Agency shall return or release the Bid or Proposal security of all unsuccessful Offerors after a Contract has been fully executed and all required bonds and insurance have been provided, or after all Offers have been rejected. The Contracting Agency may return the Bid or Proposal security of unsuccessful Offerors prior to Award if the return does not prejudice Contract Award and the security of at least the Bidders with the three lowest Bids, or the Proposers with the three highest scoring Proposals, is retained pending execution of a Contract.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.365, 279C.385 & 279C.390
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-049-0300
Facsimile Bids and Proposals

(1) **Contracting Agency Authorization**. A Contracting Agency may authorize Offerors to submit facsimile Offers. If the Contracting Agency determines that Bid or Proposal security is or will be required, the Contracting Agency shall not authorize facsimile Offers unless the Contracting Agency has established a method for receipt of such security. Prior to authorizing the submission of facsimile Offers, the Contracting Agency shall determine that the Contracting Agency's equipment and personnel are capable of receiving the size and volume of anticipated Offers within a short period of time. In addition, the Contracting Agency shall establish administrative procedures and controls:

(a) To receive, identify, record and safeguard facsimile Offers;

(b) To ensure timely delivery of Offers to the location of Opening; and

(c) To preserve the Offers as sealed.

(2) **Provisions To Be Included in Solicitation Document**. In addition to all other requirements, if the Contracting Agency authorizes a facsimile Offer for Bids or Proposals, the Contracting Agency shall include in the Solicitation Document (other than in a Request for Quotes) the following:

(a) A provision substantially in the form of the following: "A 'facsimile Offer,' as used in this Solicitation Document, means an Offer, modification of an Offer, or withdrawal of an Offer that is transmitted to and received by the Contracting Agency via a facsimile machine";

(b) A provision substantially in the form of the following: "Offerors may submit facsimile Offers in response to this Solicitation Document. The entire response must arrive at the place and by the time specified in this Solicitation Document.";

(c) A provision that requires Offerors to Sign their facsimile Offers;

(d) A provision substantially in the form of the following: "The Contracting Agency reserves the right to Award the Contract solely on the basis of the facsimile Offer. However, upon the Contracting Agency's request the apparent successful Offeror shall promptly submit its complete original Signed Offer.";

(e) The data and compatibility characteristics of the Contracting Agency's receiving facsimile machine as follows:

(A) Telephone number; and

(B) Compatibility characteristics, e.g., make and model number, receiving speed, communications protocol; and

(f) A provision that the Contracting Agency is not responsible for any failure attributable to the transmission or receipt of the facsimile Offer including, but not limited to the following:

(A) Receipt of garbled or incomplete documents;

(B) Availability or condition of the receiving facsimile machine;

(C) Incompatibility between the sending and receiving facsimile machine;

(D) Delay in transmission or receipt of documents;

(E) Failure of the Offeror to properly identify the Offer documents;

(F) Illegibility of Offer documents; and

(G) Security and confidentiality of data.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.365
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-049-0310
Electronic Procurement

(1) **General**. Contracting Agencies may utilize Electronic Advertisement of Public Improvement Contracts in accordance with ORS 279C.360(1), provided that advertisement of such Contracts with an estimated Contract Price in excess of $125,000 must also be published in a trade newspaper of general statewide circulation, and may post notices of intent to Award electronically as provided by ORS 279C.410(7).

(2) **Alternative Procedures**. In the event that a Contracting Agency desires to direct or permit the submission and receipt of Offers for a Public Improvement Contract by electronic means, as allowed under ORS 279C.365(1)(d), it shall first promulgate supporting procedures substantially in conformance with OAR 137-047-0330 (Electronic Procurement under ORS Chapter 279B), taking into account ORS Chapter 279C requirements for Written bids, opening bids publicly, bid security, first-tier subcontractor disclosure and inclusion of prevailing wage rates.

(3) **Interpretation**. Nothing in this rule shall be construed as prohibiting Contracting Agencies from making procurement documents for Public Improvement Contracts available in electronic format as well as in hard copy when Bids are to be submitted only in hard copy. See ORS 279C.365(2).

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.365
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-049-0320
Pre-Closing Modification or Withdrawal of Offers

(1) Modifications. An Offeror may modify its Offer in Writing prior to the Closing. An Offeror shall prepare and submit any modification to its Offer to the Contracting Agency in accordance with OAR 137-049-0280, unless otherwise specified in the Solicitation Document. Any modification must include the Offeror's statement that the modification amends and supersedes the prior Offer. The Offeror shall mark the submitted modification as follows:

(a) Bid (or Proposal) Modification; and

(b) Solicitation Number (or Other Identification as specified in the Solicitation Document).

(2) Withdrawals.

(a) An Offeror may withdraw its Offer by Written notice submitted on the Offeror's letterhead, Signed by an authorized representative of the Offeror, delivered to the location specified in the Solicitation Document (or the place of Closing if no location is specified), and received by the Contracting Agency prior to the Closing. The Offeror or authorized representative of the Offeror may also withdraw its Offer in Person prior to the Closing, upon presentation of appropriate identification and satisfactory evidence of authority.

(b) The Contracting Agency may release an unopened Offer withdrawn under subsection 2(a) to the Offeror or its authorized representative, after voiding any date and time stamp mark.

(c) The Offeror shall mark the Written request to withdraw an Offer as follows:

(A) Bid (or Proposal) Withdrawal; and

(B) Solicitation Number (or Other Identification as specified in the Solicitation Document).

(3) Documentation. The Contracting Agency shall include all documents relating to the modification or withdrawal of Offers in the appropriate solicitation file.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.360, 279C.365, 279C.375 & 279C.395
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-049-0330
Receipt, Opening and Recording of Offers; Confidentiality of Offers

(1) Receipt. A Contracting Agency shall electronically or mechanically time-stamp or hand-mark each Offer and any modification upon receipt. The Contracting Agency shall not open the Offer or modification upon receipt, but shall maintain it as confidential and secure until Opening. If the Contracting Agency inadvertently opens an Offer or a modification prior to the Opening, the Contracting Agency shall return the Offer or modification to its secure and confidential state until Opening. The Contracting Agency shall document the resealing for the Procurement file (e.g. "Contracting Agency inadvertently opened the Offer due to improper identification of the Offer").

(2) Opening and Recording. A Contracting Agency shall publicly open Offers including any modifications made to the Offer pursuant to OAR 137-049-0320. In the case of Invitations to Bid, to the extent practicable, the Contracting Agency shall read aloud the name of each Bidder, the Bid price(s), and such other information as the Contracting Agency considers appropriate. In the case of Requests for Proposals or voluminous Bids, if the Solicitation Document so provides, the Contracting Agency will not read Offers aloud.

(3) Availability. After Opening, the Contracting Agency shall make Bids available for public inspection, but pursuant to ORS 279C.410 Proposals are not required to be available for public inspection until after notice of intent to award is issued. In any event Contracting Agencies may withhold from disclosure those portions of an Offer that the Offeror designates as trade secrets or as confidential proprietary data in accordance with applicable law. See ORS 192.501(2); 646.461 to 646.475. To the extent the Contracting Agency determines such designation is not in accordance with applicable law, the Contracting Agency shall make those portions available for public inspection. The Offeror shall separate information designated as confidential from other nonconfidential information at the time of submitting its Offer. Prices, makes, model or catalog numbers of items offered, scheduled delivery dates, and terms of payment are not confidential, and shall be publicly available regardless of an Offeror's designation to the contrary.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.365, 279C.375 & 279C.395
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-049-0340
Late Bids, Late Withdrawals and Late Modifications

Any Offer received after Closing is late. An Offeror's request for withdrawal or modification of an Offer received after Closing is late. A Contracting Agency shall not consider late Offers, withdrawals or modifications except as permitted in OAR 137-049-0350 or 137-049-0390.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.365, 279C.375 & 279C.395
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

137-049-0350
Mistakes

(1) Generally. To protect the integrity of the competitive Procurement process and to assure fair treatment of Offerors, a Contracting Agency should carefully consider whether to permit waiver, correction or withdrawal of Offers for certain mistakes.

(2) Contracting Agency Treatment of Mistakes. A Contracting Agency shall not allow an Offeror to correct or withdraw an Offer for an error in judgment. If the Contracting Agency discovers certain mistakes in an Offer after Opening, but before Award of the Contract, the Contracting Agency may take the following action:

(a) A Contracting Agency may waive, or permit an Offeror to correct, a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Offer, or an insignificant mistake that can be waived or corrected without prejudice to other Offerors. Examples of minor informalities include an Offeror's failure to:

(A) Return the correct number of Signed Offers or the correct number of other documents required by the Solicitation Document;

(B) Sign the Offer in the designated block, provided a Signature appears elsewhere in the Offer, evidencing an intent to be bound; and

(C) Acknowledge receipt of an Addendum to the Solicitation Document, provided that it is clear on the face of the Offer that the Offeror received the Addendum and intended to be bound by its terms; or the Addendum involved did not affect price, quality or delivery.

(b) A Contracting Agency may correct a clerical error if the error is evident on the face of the Offer or other documents submitted with the Offer, and the Offeror confirms the Contracting Agency's correction in Writing. A clerical error is an Offeror's error in transcribing its Offer. Unit prices shall prevail over extended prices in the event of a discrepancy between extended prices and unit prices.

(c) A Contracting Agency may permit an Offeror to withdraw an Offer based on one or more clerical errors in the Offer only if the Offeror shows with objective proof and by clear and convincing evidence:

(A) The nature of the error;

(B) That the error is not a minor informality under this subsection or an error in judgment;

(C) That the error cannot be corrected or waived under subsection (b) of this section;

(D) That the Offeror acted in good faith in submitting an Offer that contained the claimed error and in claiming that the alleged error in the Offer exists;

(E) That the Offeror acted without gross negligence in submitting an Offer that contained a claimed error;

(F) That the Offeror will suffer substantial detriment if the Contracting Agency does not grant the Offeror permission to withdraw the Offer;

(G) That the Contracting Agency's or the public's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on the Contracting Agency or the public it represents; and

(H) That the Offeror promptly gave notice of the claimed error to the Contracting Agency.

(d) The criteria in subsection (2)(c) of this rule shall determine whether a Contracting Agency will permit an Offeror to withdraw its Offer after Closing. These criteria also shall apply to the question of whether a Contracting Agency will permit an Offeror to withdraw its Offer without forfeiture of its Bid bond (or other Bid or Proposal security), or without liability to the Contracting Agency based on the difference between the amount of the Offeror's Offer and the amount of the Contract actually awarded by the Contracting Agency, whether by Award to the next lowest Responsive and Responsible Bidder or the best Responsive and Responsible Proposer, or by resort to a new solicitation.

(3) Rejection for Mistakes. The Contracting Agency shall reject any Offer in which a mistake is evident on the face of the Offer and the intended correct Offer is not evident or cannot be substantiated from documents submitted with the Offer.

(4) Identification of Mistakes after Award. The procedures and criteria set forth above are Offeror's only opportunity to correct mistakes or withdraw Offers because of a mistake. Following Award, an Offeror is bound by its Offer, and may withdraw its Offer or rescind a Contract entered into pursuant to this division 49 only to the extent permitted by applicable law.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.375 & 279C.395
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-049-0360
First-Tier Subcontractors; Disclosure and Substitution

(1) Required Disclosure. Within two working hours after the Bid Closing on an ITB for a Public Improvement having a Contract Price anticipated by the Contracting Agency to exceed $100,000, all Bidders shall submit to the Contracting Agency a disclosure form as described by ORS 279C.370(2), identifying any first-tier subcontractors (those Entities that would be contracting directly with the prime contractor) that will be furnishing labor or labor and materials on the Contract, if Awarded, whose subcontract value would be equal to or greater than:

(a) Five percent of the total Contract Price, but at least $15,000; or

(b) $350,000, regardless of the percentage of the total Contract Price.

(2) Bid Closing, Disclosure Deadline and Bid Opening. For each ITB to which this rule applies, the Contracting Agency shall:

(a) Set the Bid Closing on a Tuesday, Wednesday or Thursday, and at a time between 2 p.m. and 5 p.m., except that these Bid Closing restrictions do not apply to an ITB for maintenance or construction of highways, bridges or other transportation facilities, and provided that the two-hour disclosure deadline described by this rule would not then fall on a legal holiday;

(b) Open Bids publicly immediately after the Bid Closing; and

(c) Consider for Contract Award only those Bids for which the required disclosure has been submitted by the announced deadline on forms prescribed by the Contracting Agency.

(3) Bidder Instructions and Disclosure Form. For the purposes of this rule, a Contracting Agency in its solicitation shall:

(a) Prescribe the disclosure form that must be utilized, substantially in the form set forth in ORS 279C.370(2); and

(b) Provide instructions in a notice substantially similar to the following:

"Instructions for First-Tier Subcontractor Disclosure
Bidders are required to disclose information about certain first-tier subcontractors (see ORS 279C.370). Specifically, when the contract amount of a first-tier subcontractor furnishing labor or labor and materials would be greater than or equal to: (i) 5% of the project Bid, but at least $15,000; or (ii) $350,000 regardless of the percentage, the Bidder must disclose the following information about that subcontract either in its Bid submission, or within two hours after Bid Closing:

(A) The subcontractor's name;

(B) The category of Work that the subcontractor would be performing, and

(C) The dollar value of the subcontract. If the Bidder will not be using any subcontractors that are subject to the above disclosure requirements, the Bidder is required to indicate "NONE" on the accompanying form.

THE CONTRACTING AGENCY MUST REJECT A BID IF THE BIDDER FAILS TO SUBMIT THE DISCLOSURE FORM WITH THIS INFORMATION BY THE STATED DEADLINE (see OAR 137-049-0360)."

(4) Submission. A Bidder shall submit the disclosure form required by this rule either in its Bid submission, or within two working hours after Bid Closing in the manner specified by the ITB.

(5) Responsiveness. Compliance with the disclosure and submittal requirements of ORS 279C.370 and this rule is a matter of Responsiveness. Bids that are submitted by Bid Closing, but for which the disclosure submittal has not been made by the specified deadline, are not Responsive and shall not be considered for Contract Award.

(6) Contracting Agency Role. Contracting Agencies shall obtain, and make available for public inspection, the disclosure forms required by ORS 279C.370 and this rule. Contracting Agencies shall also provide copies of disclosure forms to the Bureau of Labor and Industries as required by ORS 279C.835. Contracting Agencies are not required to determine the accuracy or completeness of the information provided on disclosure forms.

(7) Substitution. Substitution of affected first-tier subcontractors shall be made only in accordance with ORS 279C.585. Contracting Agencies shall accept Written submissions filed under that statute as public records. Aside from issues involving inadvertent clerical error under ORS 279C.585, Contracting Agencies do not have a statutory role or duty to review, approve or resolve disputes concerning such substitutions. See ORS 279C.590 regarding complaints to the Construction Contractors Board on improper substitution.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.370, 279C.585, 279C.590 & 279C.835
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-049-0370
Disqualification of Persons

(1) **Authority**. A Contracting Agency may disqualify a Person from consideration of Award of the Contracting Agency's Contracts after providing the Person with notice and a reasonable opportunity to be heard in accordance with sections (2) and (4) of this rule.

(a) Standards for Conduct Disqualification. As provided in ORS 279C.440, a Contracting Agency may disqualify a Person for:

(A) Conviction for the commission of a criminal offense as an incident in obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.

(B) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty that currently, seriously and directly affects the Person's responsibility as a contractor.

(C) Conviction under state or federal antitrust statutes.

(D) Violation of a contract provision that is regarded by the Contracting Agency to be so serious as to justify Conduct Disqualification. A violation under this subsection (1)(a)(D) may include but is not limited to material failure to perform the terms of a contract or an unsatisfactory performance in accordance with the terms of the contract. However, a Person's failure to perform or unsatisfactory performance caused by acts beyond the Person's control is not a basis for Disqualification.

(b) Standards for DBE Disqualification. As provided in ORS 200.065, 200.075 or 279A.110, a Contracting Agency may disqualify a Person's right to submit an Offer or to participate in a Contract (e.g. subcontractors) as follows:

(A) For a DBE Disqualification under ORS 200.065, the Contracting Agency may disqualify a Person upon finding that:

(i) The Person fraudulently obtained or retained or attempted to obtain or retain or aided another Person to fraudulently obtain or

retain or attempt to obtain or retain certification as a disadvantaged, minority, women or emerging small business enterprise; or

(ii) The Person knowingly made a false claim that any Person is qualified for certification or is certified under ORS 200.055 for the purpose of gaining a Contract or subcontract or other benefit; or

(iii) The Person has been disqualified by another Contracting Agency pursuant to ORS 200.065.

(B) For a DBE Disqualification under ORS 200.075, the Contracting Agency may disqualify a Person upon finding that:

(i) The Person has entered into an agreement representing that a disadvantaged, minority, women, or emerging small business enterprise, certified pursuant to ORS 200.055 ("Certified Enterprise"), will perform or supply materials under a Public Improvement Contract without the knowledge and consent of the Certified Enterprise; or

(ii) The Person exercises management and decision-making control over the internal operations, as defined by ORS 200.075(1)(b), of any Certified Enterprise; or

(iii) The Person uses a Certified Enterprise to perform Work under a Public Improvement Contract to meet an established Certified Enterprise goal, and such enterprise does not perform a commercially useful function, as defined by ORS 200.075(3), in performing its obligations under the contract.

(iv) If a Person is Disqualified for a DBE Disqualification under ORS 200.075, the affected Contracting Agency shall not permit such Person to participate in that Contracting Agency's Contracts.

(C) For a DBE Disqualification under ORS 279A.110, a Contracting Agency may disqualify a Person if the Contracting Agency finds that the Person discriminated against minority, women or emerging small business enterprises in awarding a subcontract under a contract with that Contracting Agency.

(2) **Notice of Intent to Disqualify**. The Contracting Agency shall notify the Person in Writing of a proposed Disqualification personally or by registered or certified mail, return receipt requested. This notice shall:

(a) State that the Contracting Agency intends to disqualify the Person;

(b) Set forth the reasons for the Disqualification;

(c) Include a statement of the Person's right to a hearing if requested in Writing within the time stated in the notice and that if the Contracting Agency does not receive the Person's Written request for a hearing within the time stated, the Person shall have waived its right to a hearing;

(d) Include a statement of the authority and jurisdiction under which the hearing will be held;

(e) Include a reference to the particular sections of the statutes and rules involved;

(f) State the proposed Disqualification period; and

(g) State that the Person may be represented by legal counsel.

(3) **Hearing**. The Contracting Agency shall schedule a hearing upon the Contracting Agency receipt of the Person's timely request. The Contracting Agency shall notify the Person of the time and place of the hearing and provide information on the procedures, right of representation and other rights related to the conduct of the hearing prior to hearing.

(4) **Notice of Disqualification**. The Contracting Agency will notify the Person in Writing of its Disqualification, personally or by registered or certified mail, return receipt requested. The notice shall contain:

(a) The effective date and period of Disqualification;

(b) The grounds for Disqualification; and

(c) A statement of the Person's appeal rights and applicable appeal deadlines. For a Conduct Disqualification or a DBE Disqualification under ORS 279A.110, the disqualified person must notify the Contracting Agency in Writing within three business Days after receipt of the Contracting Agency's notice of Disqualification if the Person intends to appeal the Contracting Agency's decision.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 200.065, 200.075, 279C.440, 279C.445, 279C.450 & 279A.110

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-049-0380
Bid or Proposal Evaluation Criteria

(1) General. A Public Improvement Contract, if Awarded, must be Awarded to the Responsible Bidder submitting the lowest Responsive Bid, or to the Responsible Proposer submitting the best Responsive Proposal. (See OAR 137-049-0390, and Rules for Alternative Contracting Methods at 137-049-0600 to 137-049-0690.)

(2) Bid Evaluation Criteria. Invitations to Bid may solicit lump-sum Offers, unit-price Offers or a combination of the two.

(a) Lump Sum. If the ITB requires a lump-sum Bid, without additive or deductive alternates, or if the Contracting Agency elects not to award additive or deductive alternates, Bids must be compared on the basis of lump-sum prices, or lump-sum base Bid prices, as applicable. If the ITB calls for a lump-sum base Bid, plus additive or deductive alternates, the total Bid price must be calculated by adding to or deducting from the base Bid those alternates selected by the Contracting Agency, for the purpose of comparing Bids.

(b) Unit Price. If the Bid includes unit pricing for estimated quantities, the total Bid price must be calculated by multiplying the estimated quantities by the unit prices submitted by the Bidder, and adjusting for any additive or deductive alternates selected by the Contracting Agency, for the purpose of comparing Bids. Contracting Agencies shall specify within the Solicitation Document the estimated quantity of the procurement to be used for determination of the low Bidder. In the event of mathematical discrepancies between unit price and any extended price calculations submitted by the Bidder, the unit price governs. (See OAR 137-049-0350(2)(b).)

(3) Proposal Evaluation Criteria. If the Contracting Agency's Contract Review Authority has exempted the Procurement of a Public Improvement from the competitive bidding requirements of ORS 279C.335(1), and has directed the Contracting Agency to use an Alternative Contracting Method under 279C.335(4), the Contracting Agency shall set forth the evaluation criteria in the Solicitation Documents. (See OAR 137-049-0640, 137-049-0650, 137-049-0670, 137-049-0690, ORS 279C.335 and 279C.405.)

Stat. Auth.: ORS 279A.065, OL 2011, ch 458

Stats. Implemented: ORS 279C.335, OL 2011, ch 458

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15

137-049-0390
Offer Evaluation and Award; Determination of Responsibility

(1) General. If Awarded, the Contracting Agency shall Award the Contract to the Responsible Bidder submitting the lowest, Responsive Bid or the Responsible Proposer or Proposers submitting the best, Responsive Proposal or Proposals, provided that such Person is not listed by the Construction Contractors Board as disqualified to hold a Public Improvement Contract (ORS 279C.375(3)(a)) or is ineligible for Award as a nonresident education service district (ORS 279C.325). The Contracting Agency may Award by item, groups of items or the entire Offer provided such Award is consistent with the Solicitation Document and in the public interest. Where Award is based on competitive Bids, ORS 279C.375(5) permits multiple contract awards when specified in the ITB.

(2) Determination of Responsibility. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, the Contracting Agency must have information that indicates that the Offeror meets the standards of responsibility set forth in ORS 279C.375(3)(b). To be a Responsible Offeror, the Contracting Agency must determine that the Offeror:

(a) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to meet all contractual responsibilities;

(b) Has completed previous contracts of a similar nature with a satisfactory record of performance. A satisfactory record of performance means that, to the extent the costs associated with and time available to perform a previous contract were within the Offeror's control, the Offeror stayed within the time and budget allotted for the

procurement and otherwise performed the contract in a satisfactory manner. A Contracting Agency should carefully scrutinize an Offeror's record of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror's performance, the Contracting Agency should determine whether the Offeror's deficient performance was expressly excused under the terms of contract, or whether the Offeror took appropriate corrective action. The Contracting Agency may review the Offeror's performance on both private and Public Contracts in determining the Offeror's record of contract performance. The Contracting Agency shall make its basis for determining an Offeror not Responsible under this paragraph part of the Solicitation file;

(c) Has a satisfactory record of integrity. An Offeror may lack integrity if a Contracting Agency determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to a Contracting Agency. A Contracting Agency may find an Offeror not Responsible based on the lack of integrity of any Person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Person). The standards for Conduct Disqualification under OAR 137-049-0370 may be used to determine an Offeror's integrity. A Contracting Agency may find an Offeror non-responsible based on previous convictions of offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the Offeror's performance of a contract or subcontract. The Contracting Agency shall make its basis for determining that an Offeror is not Responsible under this paragraph part of the Solicitation file;

(d) Is legally qualified to contract with the Contracting Agency; and

(e) Has supplied all necessary information in connection with the inquiry concerning responsibility. If the Offeror fails to promptly supply information requested by the Contracting Agency concerning responsibility, the Contracting Agency shall base the determination of responsibility upon any available information, or may find the Offeror not Responsible.

(3) Documenting Agency Determinations. Contracting Agencies shall document their compliance with ORS 279C.375(3) and the above sections of this rule on a Responsibility Determination Form substantially as set forth in 279.375(3)(c), and file that form with the Construction Contractors Board within 30 days after Contract Award.

(4) Contracting Agency Evaluation. The Contracting Agency shall evaluate an Offer only as set forth in the Solicitation Document and in accordance with applicable law. The Contracting Agency shall not evaluate an Offer using any other requirement or criterion.

(5) Offeror Submissions.

(a) The Contracting Agency may require an Offeror to submit Product Samples, Descriptive Literature, technical data, or other material and may also require any of the following prior to Award:

(A) Demonstration, inspection or testing of a product prior to Award for characteristics such as compatibility, quality or workmanship;

(B) Examination of such elements as appearance or finish; or

(C) Other examinations to determine whether the product conforms to Specifications.

(b) The Contracting Agency shall evaluate product acceptability only in accordance with the criteria disclosed in the Solicitation Document to determine that a product is acceptable. The Contracting Agency shall reject an Offer providing any product that does not meet the Solicitation Document requirements. A Contracting Agency's rejection of an Offer because it offers nonconforming Work or materials is not Disqualification and is not appealable under ORS 279C.445.

(6) Evaluation of Bids. The Contracting Agency shall use only objective criteria to evaluate Bids as set forth in the ITB. The Contracting Agency shall evaluate Bids to determine which Responsible Offeror offers the lowest Responsive Bid.

(a) Nonresident Bidders. In determining the lowest Responsive Bid, the Contracting Agency shall, in accordance with OAR 137-046-0310, add a percentage increase to the Bid of a nonresident Bidder equal to the percentage, if any, of the preference given to that Bidder in the state in which the Bidder resides.

(b) Clarifications. In evaluating Bids, a Contracting Agency may seek information from a Bidder only to clarify the Bidder's Bid. Such clarification shall not vary, contradict or supplement the Bid. A Bidder must submit Written and Signed clarifications and such clarifications shall become part of the Bidder's Bid.

(c) Negotiation Prohibited. The Contracting Agency shall not negotiate scope of Work or other terms or conditions under an Invitation to Bid process prior to Award.

(7) Evaluation of Proposals. See OAR 137-049-0650 regarding rules applicable to Requests for Proposals.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.335, 279C.365, 279C.375 & 279C.395
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-049-0395
Notice of Intent to Award

(1) **Notice**. At least seven days before the Award of a Public Improvement Contract, the Contracting Agency shall issue to each Bidder (pursuant to ORS 279C.375(2)) and each Proposer (pursuant to 279C.410(7)), or post electronically or otherwise, a notice of the Contracting Agency's intent to Award the Contract. This requirement does not apply to Award of a small (under $5,000) or intermediate (informal competitive quotes) Public Improvement Contract awarded under 279C.335(1)(c) or (d).

(2) **Form and Manner of Posting**. The form and manner of posting notice shall conform to customary practices within the Contracting Agency's procurement system, and may be made electronically.

(3) **Finalizing Award**. The Contracting Agency's Award shall not be final until the later of the following:

(a) Seven Days after the date of the notice, unless the Solicitation Document provided a different period for protest; or

(b) The Contracting Agency provides a Written response to all timely-filed protests that denies the protest and affirms the Award.

(4) **Prior Notice Impractical**. Posting of notice of intent to award shall not be required when the Contracting Agency determines that it is impractical due to unusual time constraints in making prompt Award for its immediate procurement needs, documents the Contract file as to the reasons for that determination, and posts notice of that action as soon as reasonably practical.

Stat. Auth,: ORS 279A.065
Stats. Implemented: ORS 279C.375
Hist.: DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-049-0400
Documentation of Award; Availability of Award Decisions

(1) Basis of Award. After Award, the Contracting Agency shall make a record showing the basis for determining the successful Offeror part of the Contracting Agency's solicitation file.

(2) Contents of Award Record for Bids. The Contracting Agency's record shall include:

(a) All submitted Bids;

(b) Completed Bid tabulation sheet; and

(c) Written justification for any rejection of lower Bids.

(3) Contents of Award Record for Proposals. Where the use of Requests for Proposals is authorized as set forth in OAR 137-049-0650, the Contracting Agency's record shall include:

(a) All submitted Proposals.

(b) The completed evaluation of the Proposals;

(c) Written justification for any rejection of higher scoring Proposals or for failing to meet mandatory requirements of the Request for Proposal; and

(d) If the Contracting Agency permitted negotiations in accordance with OAR 137-049-0650, the Contracting Agency's completed evaluation of the initial Proposals and the Contracting Agency's completed evaluation of final Proposals.

(4) Contract Document. The Contracting Agency shall deliver a fully executed copy of the final Contract to the successful Offeror.

(5) Bid Tabulations and Award Summaries. Upon request of any Person the Contracting Agency shall provide tabulations of Awarded Bids or evaluation summaries of Proposals for a nominal charge which may be payable in advance. Requests must contain the Solicitation Document number and, if requested, be accompanied by a self-addressed, stamped envelope. Contracting Agencies may also provide tabulations of Bids and Proposals Awarded on designated Web sites or on the Contracting Agency's Electronic Procurement System.

(6) Availability of Solicitation Files. The Contracting Agency shall make completed solicitation files available for public review at the Contracting Agency.

(7) Copies from Solicitation Files. Any Person may obtain copies of material from solicitation files upon payment of a reasonable copying charge.

(8) Minority, Women Emerging Small Business. State Contracting Agencies shall provide timely notice of Contract Award to the Advocate for Minority, Women and Emerging Small Business if the estimated Contract Price exceeds $5,000. See ORS 200.035.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.365 & 279C.375
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-049-0410
Time for Contracting Agency Acceptance; Extension

(1) **Time for Offer Acceptance**. An Offeror's Bid, or Proposal submitted as a Firm Offer (see OAR 137-049-0280), is irrevocable, valid and binding on the Offeror for not less than 30 Days from Closing unless otherwise specified in the Solicitation Document.

(2) **Extension of Acceptance Time**. A Contracting Agency may request, orally or in Writing, that Offerors extend, in Writing, the time during which the Contracting Agency may consider and accept their Offer(s). If an Offeror agrees to such extension, the Offer shall continue as a Firm Offer, irrevocable, valid and binding on the Offeror for the agreed-upon extension period.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.375
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

137-049-0420
Negotiation With Bidders Prohibited

(1) **Bids**. Except as permitted by ORS 279C.340 and OAR 137-049-0430 when all bids exceed the cost estimate, a Contracting Agency shall not negotiate with any Bidder prior to Contract Award. After Award of the Contract, the Contracting Agency and Contractor may modify the resulting Contract only by change order or amendment to the Contract in accordance with 137-049-0910.

(2) **Requests for Proposals**. A Contracting Agency may conduct discussions or negotiations with Proposers only in accordance with the requirements of OAR 137-049-0650.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.340 & 279C.375
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-049-0430
Negotiation When Bids Exceed Cost Estimate

(1) Generally. In accordance with ORS 279C.340, if all Responsive Bids from Responsible Bidders on a competitively Bid Project exceed the Contracting Agency's Cost Estimate, prior to Contract Award the Contracting Agency may negotiate Value Engineering and Other Options with the Responsible Bidder submitting the lowest, Responsive Bid in an attempt to bring the Project within the Contracting Agency's Cost Estimate. The subcontractor disclosure and substitution requirements of OAR 137-049-0360 do not apply to negotiations under this rule.

(2) Definitions. The following definitions apply to this administrative rule:

(a) "Cost Estimate" means the Contracting Agency's most recent pre-Bid, good faith assessment of anticipated Contract costs, consisting either of an estimate of an architect, engineer or other qualified professional, or confidential cost calculation work sheets, where available, and otherwise consisting of formal planning or budgetary documents.

(b) "Other Options" means those items generally considered appropriate for negotiation in the RFP process, relating to the details of Contract performance as specified in OAR 137-049-0650, but excluding any material requirements previously announced in the solicitation process that would likely affect the field of competition.

(c) "Project" means a Public Improvement.

(d) "Value Engineering" means the identification of alternative methods, materials or systems which provide for comparable function at reduced initial or life-time cost. It includes proposed changes to the plans, Specifications, or other Contract requirements which may be made, consistent with industry practice, under the original Contract by mutual agreement in order to take advantage of potential cost savings without impairing the essential functions or characteristics of the Public Improvement. Cost savings include those resulting from life cycle costing, which may either increase or decrease absolute costs over varying time periods.

(3) Rejection of Bids. In determining whether all Responsive Bids from Responsible Bidders exceed the Cost Estimate, only those Bids that have been formally rejected, or Bids from Bidders who have been formally disqualified by the Contracting Agency, shall be excluded from consideration.

(4) Scope of Negotiations. Contracting Agencies shall not proceed with Contract Award if the scope of the Project is significantly changed from the original Bid. The scope is considered to have been significantly changed if the pool of competition would likely have been affected by the change; that is, if other Bidders would have been expected by the Contracting Agency to participate in the Bidding process had the change been made during the solicitation process rather than during negotiation. This rule shall not be construed to prohibit resolicitation of trade subcontracts.

(5) Discontinuing Negotiations. The Contracting Agency may discontinue negotiations at any time, and shall do so if it appears to the Contracting Agency that the apparent low Bidder is not negotiating in good faith or fails to share cost and pricing information upon request. Failure to rebid any portion of the project, or to obtain subcontractor pricing information upon request, shall be considered a lack of good faith.

(6) Limitation. Negotiations may be undertaken only with the lowest Responsive, Responsible Bidder pursuant to ORS 279C.340. That statute does not provide any additional authority to further negotiate with Bidders next in line for Contract Award.

(7) Public Records. To the extent that a Bidder's records used in Contract negotiations under ORS 279C.340 are public records, they are exempt from disclosure until after the negotiated Contract has been awarded or the negotiation process has been terminated, at which time they are subject to disclosure pursuant to the provisions of the Oregon Public Records Law, ORS 192.410 to 192.505.

Stat. Auth.: ORS 279C.340 & 279A.065
Stats. Implemented: ORS 279C.340
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-049-0440
Rejection of Offers

(1) Rejection of an Offer.

(a) A Contracting Agency may reject any Offer upon finding that to accept the Offer may impair the integrity of the Procurement process or that rejecting the Offer is in the public interest.

(b) The Contracting Agency shall reject an Offer upon the Contracting Agency's finding that the Offer:

(A) Is contingent upon the Contracting Agency's acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document;

(B) Takes exception to terms and conditions (including Specifications);

(C) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of Solicitation Document or in contravention of applicable law;

(D) Offers Work that fails to meet the Specifications of the Solicitation Document;

(E) Is late;

(F) Is not in substantial compliance with the Solicitation Documents;

(G) Is not in substantial compliance with all prescribed public solicitation procedures.

(c) The Contracting Agency shall reject an Offer upon the Contracting Agency's finding that the Offeror:

(A) Has not been prequalified under ORS 279C.430 and the Contracting Agency required mandatory prequalification;

(B) Has been Disqualified;

(C) Has been declared ineligible under ORS 279C.860 by the Commissioner of Bureau of Labor and Industries and the Contract is for a Public Work;

(D) Is listed as not qualified by the Construction Contractors Board, if the Contract is for a Public Improvement;

(E) Has not met the requirements of ORS 279A.105 if required by the Solicitation Document;

(F) Has not submitted properly executed Bid or Proposal security as required by the Solicitation Document;

(G) Has failed to provide the certification required under section 3 of this rule;

(H) Is not Responsible. See OAR 137-049-0390(2) regarding Contracting Agency determination that the Offeror has met statutory standards of responsibility.

(2) Form of Business. For purposes of this rule, the Contracting Agency may investigate any Person submitting an Offer. The investigation may include that Person's officers, Directors, owners, affiliates, or any other Person acquiring ownership of the Person to determine application of this rule or to apply the Disqualification provisions of ORS 279C.440 to 279C.450 and OAR 137-049-0370.

(3) Certification of Non-Discrimination. The Offeror shall certify and deliver to the Contracting Agency Written certification, as part of the Offer that the Offeror has not discriminated and will not discriminate against minority, women or emerging small business enterprises in obtaining any required subcontracts. Failure to do so shall be grounds for disqualification.

(4) Rejection of all Offers. A Contracting Agency may reject all Offers for good cause upon the Contracting Agency's Written finding it is in the public interest to do so. The Contracting Agency shall notify all Offerors of the rejection of all Offers, along with the good cause justification and finding.

(5) Criteria for Rejection of All Offers. The Contracting Agency may reject all Offers upon a Written finding that:

(a) The content of or an error in the Solicitation Document, or the solicitation process unnecessarily restricted competition for the Contract;

(b) The price, quality or performance presented by the Offerors is too costly or of insufficient quality to justify acceptance of the Offer;

(c) Misconduct, error, or ambiguous or misleading provisions in the Solicitation Document threaten the fairness and integrity of the competitive process;

(d) Causes other than legitimate market forces threaten the integrity of the competitive Procurement process. These causes include, but are not limited to, those that tend to limit competition such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct and inadvertent or intentional errors in the Solicitation Document;

(e) The Contracting Agency cancels the solicitation in accordance with OAR 137-049-0270; or

(f) Any other circumstance indicating that Awarding the Contract would not be in the public interest.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.375, 279C.380, 279C.395, 279A.105 & 279A.110

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-049-0450

Protest of Contractor Selection, Contract Award

(1) **Purpose**. An adversely affected or aggrieved Offeror must exhaust all avenues of administrative review and relief before seeking judicial review of the Contracting Agency's Contractor selection or Contract Award decision.

(2) **Notice of Competitive Range**. Unless otherwise provided in the RFP, when the competitive Proposal process is authorized under OAR 137-049-0650, the Contracting Agency shall provide Written notice to all Proposers of the Contracting Agency's determination of the Proposers included in the Competitive Range. The Contracting Agency's notice of the Proposers included in the Competitive Range shall not be final until the later of the following:

(a) 10 Days after the date of the notice, unless otherwise provided therein; or

(b) Until the Contracting Agency provides a Written response to all timely-filed protests that denies the protest and affirms the notice of the Proposers included in the Competitive Range.

(3) **Notice of Intent to Award**. The Contracting Agency shall provide Written notice to all Offerors of the Contracting Agency's intent to Award the Contract, as provided by OAR 137-049-0395.

(4) **Right to Protest Award**.

(a) An adversely affected or aggrieved Offeror may submit to the Contracting Agency a Written protest of the Contracting Agency's intent to Award within seven Days after issuance of the notice of intent to Award the Contract, unless a different protest period is provided under the Solicitation Document.

(b) The Offeror's protest must be in Writing and must specify the grounds upon which the protest is based.

(c) An Offeror is adversely affected or aggrieved only if the Offeror is eligible for Award of the Contract as the Responsible Bidder submitting the lowest Responsive Bid or the Responsible Proposer submitting the best Responsive Proposal and is next in line for Award, i.e., the protesting Offeror must claim that all lower Bidders or higher-scored Proposers are ineligible for Award:

(A) Because their Offers were nonresponsive; or

(B) The Contracting Agency committed a substantial violation of a provision in the Solicitation Document or of an applicable Procurement statute or administrative rule, and the protesting Offeror was unfairly evaluated and would have, but for such substantial violation, been the Responsible Bidder offering the lowest Bid or the Responsible Proposer offering the highest-ranked Proposal.

(d) The Contracting Agency shall not consider a protest submitted after the time period established in this rule or such different period as may be provided in the Solicitation Document. A Proposer may not protest a Contracting Agency's decision not to increase the size of the Competitive Range above the size of the Competitive Range set forth in the RFP.

(5) **Right to Protest Competitive Range**.

(a) An adversely affected or aggrieved Proposer may submit to the Contracting Agency a Written protest of the Contracting Agency's decision to exclude the Proposer from the Competitive Range within seven Days after issuance of the notice of the Competitive Range, unless a different protest period is provided under the Solicitation Document. (See procedural requirements for the use of RFPs at OAR 137-049-0650.)

(b) The Proposer's protest shall be in Writing and must specify the grounds upon which the protest is based.

(c) A Proposer is adversely affected only if the Proposer is responsible and submitted a Responsive Proposal and is eligible for inclusion in the Competitive Range, i.e., the protesting Proposer must claim it is eligible for inclusion in the Competitive Range if all ineligible higher-scoring Proposers are removed from consideration, and that those ineligible Proposers are ineligible for inclusion in the Competitive Range because:

(A) Their Proposals were not responsive; or

(B) The Contracting Agency committed a substantial violation of a provision in the RFP or of an applicable Procurement statute or administrative rule, and the protesting Proposer was unfairly evaluated and would have, but for such substantial violation, been included in the Competitive Range.

(d) The Contracting Agency shall not consider a protest submitted after the time period established in this rule or such different period as may be provided in the Solicitation Document. A Proposer may not protest a Contracting Agency's decision not to increase the size of the Competitive Range above the size of the Competitive Range set forth in the RFP.

(6) **Authority to Resolve Protests**. The head of the Contracting Agency, or such Person's designee, may settle or resolve a Written protest submitted in accordance with the requirements of this rule.

(7) **Decision**. If a protest is not settled, the head of the Contracting Agency, or such Person's designee, shall promptly issue a Written decision on the protest. Judicial review of this decision will be available if provided by statute.

(8) **Award**. The successful Offeror shall promptly execute the Contract after the Award is final. The Contracting Agency shall execute the Contract only after it has obtained all applicable required documents and approvals.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.375, 279C.380, 279C.385 & 279C.460
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-049-0460
Performance and Payment Security; Waiver

(1) **Public Improvement Contracts**. Unless the required performance bond is waived under ORS 279C.380(1)(a), excused in cases of emergency under 279C.380(4), or unless the Contracting Agency's Contract Review Authority exempts a Contract or classes of contracts from the required performance bond and payment bond pursuant to 279C.390, the Contractor shall execute and deliver to the Contracting Agency a performance bond and a payment bond each in a sum equal to the Contract Price for all Public Improvement Contracts. This requirement applies only to Public Improvement Contracts with a value, estimated by the Contracting Agency, of more than $100,000 or, in the case of Contracts for highways, bridges and other transportation projects, more than $50,000. See 279C.380(5). Under 279C.390(3)(b) the Director of the Oregon Department of Transportation may reduce the performance bond amount for contracts financed from the proceeds of bonds issued under 367.620(3)(a). Also see OAR 137-049-0815 and BOLI rules at 839-025-0015 regarding the separate requirement for a Public Works bond.

(2) **Other Construction Contracts**. A Contracting Agency may require performance security for other construction Contracts that are not Public Improvement Contracts. Such requirements shall be expressly set forth in the Solicitation Document.

(3) **Requirement for Surety Bond**. The Contracting Agency shall accept only a performance bond furnished by a surety company authorized to do business in Oregon unless otherwise specified in the Solicitation Document (i.e., the Contracting Agency may accept a cashier's check or certified check in lieu or all or a portion of the required performance bond if specified in the Solicitation Document). The payment bond must be furnished by a surety company authorized to do business in Oregon, and in an amount equal to the full Contract Price.

(4) **Time for Submission**. The apparent successful Offeror must promptly furnish the required performance security upon the Contracting Agency's request. If the Offeror fails to furnish the performance security as requested, the Contracting Agency may reject the Offer and Award the Contract to the Responsible Bidder with the next lowest Responsive Bid or the Responsible Proposer with the next highest-scoring Responsive Proposal, and, at the Contracting Agency's discretion, the Offeror shall forfeit its Bid or Proposal security.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.375, 279C.380 & 279C.390
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-049-0470
Substitute Contractor

If the Contractor provided a performance bond, the Contracting Agency may afford the Contractor's surety the opportunity to provide a substitute contractor to complete performance of the Contract. A substitute contractor shall perform all remaining Contract Work and comply with all terms and conditions of the Contract, including the provisions of the performance bond and the payment bond. Such substitute performance does not involve the Award of a new Contract and shall not be subject to the competitive Procurement provisions of ORS Chapter 279C.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.365, 279C.370, 279C.375, 279C.380 & 279C.390
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

137-049-0490
Foreign Contractor

If the Contract Price exceeds $10,000 and the Contractor is a Foreign Contractor, the Contractor shall promptly report to the Oregon Department of Revenue on forms provided by the Department of Revenue, the Contract Price, terms of payment, Contract duration and such other information as the Department of Revenue may require before final payment can be made on the Contract. A copy of the report shall be forwarded to the Contracting Agency. The Contracting Agency Awarding the Contract shall satisfy itself that the above requirements have been complied with before it issues final payment on the Contract.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.120
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

Alternative Contracting Methods

137-049-0600
Purpose

OAR 137-049-0600 to 137-049-0690 are intended to provide guidance to Contracting Agencies regarding the use of Alternative Contracting Methods for Public Improvement Contracts, as may be directed by a Contracting Agency's Contract Review Authority under ORS 279C.335. These Alternative Contracting Methods include, but are not limited to, the following forms of contracting: Design-Build, Energy Savings Performance Contract and the Construction Manager/General Contractor Method. To the extent any such Alternative Contracting Methods are utilized within the competitive bidding process set forth in 279C.335(1), these OAR 137-049-0600 to 137-049-0690 rules are advisory only and may be used or referred to by a Contracting Agency in whole, in part or not at all, within the discretion of the Contracting Agency. As to ESPC contracting, these 137-049-0600 to 137-049-0690 rules implement the requirements of ORS 279C.335 pertaining to the adoption of Model Rules appropriate for use by all Contracting Agencies to govern the procedures for entering into ESPCs. As to contracting for Construction Manager/General Contractor Services requiring an exemption from competitive bidding under 279C.335(2) , OAR 137-049-0600 to 137-049-0690 include mandatory and optional provisions pertaining to the procurement of Construction Manager/General Contractor Services, pursuant to the requirements of ORS 279C.337.

Stat. Auth.: ORS 279C.335, 279A.065 & 351.086
Stats. Implemented: ORS 279C.335, 279C.337, 279A.065 & 351.086
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15

137-049-0610
Definitions for Alternative Contracting Methods

The following definitions shall apply to these OAR 137-049-0600 to 137-049-0690 rules, unless the context requires otherwise:

(1) Affiliate has the meaning set forth in ORS 279C.332(1).

(2) Alternative Contracting Methods means innovative techniques for procuring or performing Public Improvement Contracts, utilizing processes other than the traditional methods involved in the design-bid-build construction contracting method (with Award of a Public Improvement Contract based solely on price, in which a final

design is issued with formal Bid documents, construction Work is obtained by sealed Bid Awarded to the Responsible Bidder submitting the lowest Responsive Bid, and the project is built in accordance with those documents). In industry practice, such methods commonly include variations of Design-Build contracting, CM/GC forms of contracting and ESPCs, which are specifically addressed in these OAR 137-049-0600 to 137-049-0690 rules. These methods also include other developing techniques, which include but are not limited to general "performance contracting," "cost plus time" contracting (as more particularly described in ORS 279C.332(3)(b)(D)(iii)(I)) and "qualifications plus project approach" contracting (as more particularly described in ORS 279C.332(3)(b)(D)(iii)(II)). Procedural requirements for these methods are identified in these OAR 137-049-0600 to 137-049-0690 rules, when a Contracting Agency uses an Alternative Contracting Method in a procurement that requires an exemption from competitive bidding under ORS 279C.335(2) or in an ESPC procurement that is excepted from competitive bidding under ORS 279.335(1).

(3) Construction Manager/General Contractor (or "CM/GC") has the meaning set forth in ORS 279C.332(2).

(4) Construction Manager/General Contractor Method (or "CM/GC Method") means the Alternative Contracting Method which involves a Contracting Agency's selection of a CM/GC to perform CM/GC Services for a project or projects.

(5) Construction Manager/General Contractor Services (or "CM/GC Services") has the meaning set forth in ORS 279C.332(3).

(6) Design-Build means a form of Procurement that results in a Public Improvement Contract in which the construction Contractor also provides or obtains specified design services, participates on the project team with the Contracting Agency, and manages both design and construction. In this form of Contract, a single Person provides the Contracting Agency with all of the Personal Services and construction Work necessary to both design and construct the project.

(7) Early Work means construction services, construction materials and other Work authorized by the parties to be performed under the CM/GC Contract in advance of the establishment of the GMP, fixed price or other maximum, not-to-exceed price for the project. Permissible Early Work shall be limited to early procurement of materials and supplies, early release of bid or proposal packages for site development and related activities, and any other advance Work related to important components of the project for which performance prior to establishment of the GMP will materially and positively affect the development or completion of the project.

(8) Energy Conservation Measures (or "ECMs") (also known as "energy efficiency measures") means, as used in ESPC Procurement, any equipment, fixture or furnishing to be added to or used in an existing building or structure, and any repair, alteration or improvement to an existing building or structure that is designed to reduce energy consumption and related costs, including those costs related to electrical energy, thermal energy, water consumption, waste disposal, and future contract-labor costs and materials costs associated with maintenance of the building or structure. For purposes of these OAR 137-049-0600 to 137-049-0690 rules, use of either or both of the terms "building" or "structure" shall be deemed to include existing energy, water and waste disposal systems connected or related to or otherwise used for the building or structure when such system(s) are included in the project, either as part of the project together with the building or structure, or when such system(s) are the focus of the project. Maintenance services are not Energy Conservation Measures, for purposes of these 137-049-0600 to 137-049-0690 rules.

(9) Energy Savings Guarantee means the energy savings and performance guarantee provided by the ESCO under an ESPC Procurement, which guarantees to the Contracting Agency that certain energy savings and performance will be achieved for the project covered by the RFP, through the installation and implementation of the agreed-upon ECMs for the project. The Energy Savings Guarantee shall include, but shall not be limited to, the specific energy savings and performance levels and amounts that will be guaranteed, provisions related to the financial remedies available to the Contracting Agency in the event the guaranteed savings and performance are not achieved, the specific conditions under which the ESCO will guarantee energy savings and performance (including the specific responsibilities of the Contracting Agency after final completion of the design and construction phase), and the term of the energy savings and performance guarantee.

(10) Energy Savings Performance Contract (or "ESPC") means a Public Improvement Contract between a Contracting Agency and a Qualified Energy Service Company for the identification, evaluation, recommendation, design and construction of Energy Conservation Measures, including a Design-Build Contract, that guarantee energy savings or performance.

(11) General Conditions Work (or "GC Work") means a general grouping of project Work required to support construction operations on the project that is not included within the Contractor's overhead or fee.

(12) Guaranteed Maximum Price (or "GMP") has the meaning set forth in ORS 279C.332(4), pertaining to procurements for CM/GC Services. For Alternative Contracting Methods other than the CM/GC Method, "Guaranteed Maximum Price" or "GMP" means the total maximum price provided to the Contracting Agency by the Contractor and accepted by the Contracting Agency that includes all reimbursable costs and fees for completion of the Contract Work and any particularly identified contingency amounts, as defined by the Public Improvement Contract.

(13) Measurement and Verification (or "M & V") means, as used in ESPC Procurement, the examination of installed ECMs using the International Performance Measurement and Verification Protocol ("IPMVP"), or any other comparable protocol or process, to monitor and verify the operation of energy-using systems pre-installation and post-installation.

(14) Project Development Plan means a secondary phase of Personal Services and Work performed by an ESCO in an ESPC Procurement when the ESCO performs more extensive design of the agreed-upon ECMs for the project, provides the detailed provisions of the ESCO's Energy Savings Guarantee that the fully installed and commissioned ECMs will achieve a particular energy savings level for the building or structure, and prepares an overall report or plan summarizing the ESCO's Work during this secondary phase of the Work and otherwise explaining how the agreed-upon ECMs will be implemented during the design and construction phase of the Work; The term "Project Development Plan" can also refer to the report or plan provided by the ESCO at the conclusion of this phase of the Work.

(15) Qualified Energy Service Company (or "ESCO") means, as used in ESPC Procurement, a company, firm or other legal Person with the following characteristics: demonstrated technical, operational, financial and managerial capabilities to design, install, construct, commission, manage, measure and verify, and otherwise implement Energy Conservation Measures and other Work on building systems or building components that are directly related to the ECMs in existing buildings and structures; a prior record of successfully performing ESPCs on projects involving existing buildings and structures that are comparable to the project under consideration by the Contracting Agency; and the financial strength to effectively guarantee energy savings and performance under the ESPC for the project in question, or the ability to secure necessary financial measures to effectively guarantee energy savings under an ESPC for that project.

(16) Savings has the meaning set forth in ORS 279C.337(4), pertaining to CM/GC Services procurements. For other Alternative Contracting Methods, "Savings" means a positive difference between a Guaranteed Maximum Price or other maximum not-to-exceed price set forth in a Public Improvement Contract and the actual cost of the Contractor's performance of the Contract Work payable by the Contracting Agency under the terms of the Contract, including costs for which a Contracting Agency reimburses a Contractor and fees, profits or other payments the Contractor earns.

(17) Technical Energy Audit means, as used in ESPC Procurement, the initial phase of Personal Services to be performed by an ESCO that includes a detailed evaluation of an existing building or

structure, an evaluation of the potential ECMs that could be effectively utilized at the facility, and preparation of a report to the Contracting Agency of the ESCO's Findings during this initial phase of the Work; the term "Technical Energy Audit" can also refer to the report provided by the ESCO at the conclusion of this phase of the Work.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.332, 279C.335 & 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15

137-049-0620
Use of Alternative Contracting Methods

(1) Competitive Bidding Exemptions. ORS Chapter 279C requires a competitive bidding process for Public Improvement Contracts, unless a statutory exception applies, a class of Contracts has been exempted from the competitive bidding process, or an individual Contract has been exempted from the competitive bidding process, in accordance with 279C.335 and any applicable Contracting Agency administrative rules. Use of Alternative Contracting Methods may be directed by the Contracting Agency if that use is within the competitive bidding process, if feasible, or through an available statutory exception to the competitive bidding process. Use of Alternative Contracting Methods must be directed through a Contracting Agency's Contract Review Authority, however, when use of the Alternative Contracting Method requires an exemption to the prescribed competitive bidding requirement of 279C.335. In any of these circumstances, use of Alternative Contracting Methods must be justified in accordance with any applicable Code and Contracting Agency requirements and, if required, these OAR 137-049-0600 to 137-049-0690 rules. See 137-049-0630 regarding required Findings and restrictions on exemptions from the competitive bidding requirement under ORS 279C.335.

(2) Energy Savings Performance Contracts. ESPCs are excepted from the competitive bidding requirements for Public Improvement Contracts pursuant to ORS 279C.335(1)(f), if the Contracting Agency complies with the procedures set forth in OAR 137-049-0600 to 137-049-0690 or parallel administrative rules meeting the requirements of ORS 279A.065 related to the solicitation, negotiation and contracting for ESPC Work. If those procedures are not followed, an ESPC procurement may still be exempted from competitive bidding requirements by following the general exemption procedures within 279C.335.

(3) Post-Project Evaluation. ORS 279C.355 requires that the Contracting Agency prepare a formal post-project evaluation of Public Improvement projects in excess of $100,000 when the Contracting Agency does not use the competitive bidding process required by 279C.335. The purpose of this evaluation is to determine whether it was actually in the Contracting Agency's best interest to use an Alternative Contracting Method outside the competitive bidding process. The evaluation must be delivered to the Contracting Agency's Contract Review Authority within 30 Days of the date the Contracting Agency "accepts" the Public Improvement project, which event is typically defined in the Contract. In the absence of such definition, acceptance of the Project occurs on the later of the date of final payment or the date of final completion of the Contract Work. ORS 279C.355 describes the timing and content of this evaluation, with three required elements:

(a) Financial information, consisting of cost estimates, any Guaranteed Maximum Price, changes and actual costs;

(b) A narrative description of successes and failures during design, engineering and construction; and

(c) An objective assessment of the use of the Alternative Contracting Method as compared to the exemption Findings.

Stat. Auth.: ORS 279C.335 & 279A.065
Stats. Implemented: ORS 279C.335, 279A.065, 279C.355 & 351.086
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15

137-049-0630
Findings, Notice and Hearing

(1) Cost Savings and Other Substantial Benefits Factors. When Findings are required under ORS 279C.335 to exempt a Contract or class of Contracts from the competitive bidding requirements, the "substantial cost savings and other substantial benefits" criteria at 279C.335(2)(b) require consideration of the type, cost and amount of the Contract and, to the extent applicable, the other factors set forth in 279C.335(2)(b). If a particular factor has no application whatsoever to the particular Public Improvement Contract or class of Public Improvement Contracts, the Director of the Oregon Department of Administrative Services, the Director of Transportation or the local contract review board does not need to consider that factor, and the Contracting Agency is not required to address the factor, other than to explain why the factor has no application whatsoever to the particular Public Improvement Contract or class of Public Improvement Contracts..

(2) Required Information. The statutory definition of "Findings" at ORS 279C.330(2), which applies to exemptions from competitive bidding under ORS 279C.335, means the justification for a Contracting Agency or State Agency conclusion regarding the factors listed in both ORS 279C.335(2)(a) and 279C.335(2)(b) or, in the alternative, both 279C.335(2)(a) and 279C.335(2)(c). For an exemption granted by the Director of the Oregon Department of Administrative Services or the Director of Transportation under ORS 279C.350 by order, however, the order must also include the findings listed in ORS 279C.330(1).

(3) Addressing Cost Savings. Accordingly, when the Contract or class of Contracts under consideration for an exemption contemplates the use of Alternative Contracting Methods, the "substantial cost savings and other substantial benefits" requirement may be addressed by a combination of:

(a) Specified Findings that address the factors and other information specifically identified by statute, including, but not limited to, an analysis or reasonable forecast of present and future cost savings and other substantial benefits; and

(b) Additional Findings that address industry practices, surveys, trends, past experiences, evaluations of completed projects required by ORS 279C.355 and related information regarding the expected benefits and drawbacks of particular Alternative Contracting Methods. To the extent practicable, such Findings shall relate back to the specific characteristics of the project or projects at issue in the exemption request.

(c) As an alternative to the "substantial cost savings and other substantial benefits" requirement in ORS 279C.335(2)(b), if an Alternative Contracting Method has not been previously used, the Contracting Agency or State Agency may make a Finding that identifies the project as a "pilot project" under ORS 279C.335(2)(c). Nevertheless, the Contracting Agency or State Agency must still make the findings required in ORS 279C.335(2)(a).

(4) Favoritism and Competition. The criteria at ORS 279C.335(2)(a) that the exemption "is unlikely to encourage favoritism" or "substantially diminish competition" may be addressed in contemplating the use of Alternative Contracting Methods by specifying the manner in which an RFP process will be utilized, that the Procurement will be formally advertised with public notice and disclosure of the planned Alternative Contracting Method, competition will be encouraged, Award made based upon identified selection criteria and an opportunity to protest that Award.

(5) Descriptions. Findings supporting a competitive bidding exemption must describe with specificity any Alternative Contracting Method to be used in lieu of competitive bidding, including, but not limited to, whether a one-step (request for Proposals), two-step (beginning with a Request for Qualifications, followed by a request for Proposals) or other solicitation process will be utilized. The Findings may also describe anticipated characteristics or features of the resulting Public Improvement Contract. However, the purpose of an exemption from competitive bidding is limited to a determination of the Procurement method. Any unnecessary or incidental descriptions of the specific details of the anticipated Contract within the supporting Findings are not binding upon the Contracting Agency. The

parameters of the Public Improvement Contract are those characteristics or specifics that are announced in the Solicitation Document.

(6) Class Exemptions. In making the findings supporting a class exemption the Contracting Agency shall clearly identify the "class" with respect to its defining characteristics, pursuant to the requirements of ORS 279C.335(3). The class must meet the following requirements:

(a) The class cannot be based on a single characteristic or factor, so that an Agency directly or indirectly creates a class whereby the Agency uses, for example, the CM/GC Method for all Agency construction projects or all Agency construction projects over a particular dollar amount, unidentified future Agency construction projects of a particular work category, or all Agency construction projects from a particular funding source such as the sale of bonds; and

(b) The class must include a combination of factors, be defined by the Agency through characteristics that reasonably relate to the exemption criteria set forth in ORS 279C.335(2) and must reflect a detailed evaluation of those characteristics so that the class is defined in a limited way that effectively meets the Agency's objectives while allowing for impartial and open competition, and protecting the integrity of the exemption process. An example of a class that might be permitted under the statute is a series of projects, such as a specific group of building renovation projects, that

(A) Involve renovations for a common purpose;

(B) Require completion on a related schedule in order to avoid unnecessary disruption of Contracting Agency operations;

(C) Share common characteristics, such as historic building considerations, the presence of asbestos or other hazardous substances, or the presence of agency staff during construction;

(D) Otherwise possess characteristics that meet the requirements of ORS 279C.335(2); and

(E) Otherwise meet the requirements of the Director of the Oregon Department of Administrative Services, the Director of Transportation or the local contract review board, as applicable.

(7) Public Hearing. Before final adoption of Findings exempting a Public Improvement Contract or class of Contracts from the requirement of competitive bidding, a Contracting Agency or State Agency shall give notice and hold a public hearing as required by ORS 279C.335(5). The hearing shall be for the purpose of receiving public comment on the Contracting Agency's or State Agency's draft Findings.

(8) Prior Review of Draft Findings. State Contracting Agencies shall submit draft Findings to their Contract Review Authority for review and concurrence prior to advertising the public hearing required by ORS 279C.335(5). State Contracting Agencies shall also submit draft Findings to the Department of Justice for review and comment prior to advertising the public hearing.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.335 & 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15

137-049-0640
Competitive Proposals; Procedure

Contracting Agencies may utilize the following RFP process for Public Improvement Contracts, allowing flexibility in both Proposal evaluation and Contract negotiation, only in accordance with ORS 279C.330 to 279C.337, 279C.400 to 279C.410 and OAR 137-049-0600 to 137-049-0690, unless other applicable statutes control a Contracting Agency's use of competitive Proposals for Public Improvement Contracts. Also see the subdivision of rules in this division 49 entitled "Formal Procurement Rules," 137-049-0200 to 137-049-0480, and RFP related rules under the Alternative Contracting Methods subdivision at 137-049-0640 to 137-049-0660. For ESPCs, the following RFP process as further specified in 137-049-0645, 137-049-0650, 137-049-0660 and 137-049-0680 shall be utilized, if a Contracting Agency desires the Procurement process to be exempt from the competitive bidding requirements of ORS 279C.335. The RFP process for the Alternative Contracting Methods identified in OAR 137-049-0600 to 137-049-0690 includes the following steps:

(1) Proposal Evaluation. Factors in addition to price may be considered in the selection process, but only as set forth in the RFP. Proposal evaluation shall be as objective as possible. Evaluation factors need not be precise predictors of future costs and performance, but to the extent possible such evaluation factors shall:

(a) Be reasonable estimates based on information available to the Contracting Agency;

(b) Treat all Proposals equitably; and

(c) Recognize that public policy requires that Public Improvements be constructed at the least overall cost to the Contracting Agency. See ORS 279C.305. For ESPC Proposal evaluations, the Contracting Agency may provide in the RFP that qualifications-based evaluation factors will outweigh the Contracting Agency's consideration of price-related factors, due to the fact that prices for the major components of the Work to be performed during the ESPC process contemplated by the RFP will likely not be determinable at the time of Proposal evaluation. For CM/GC Services Proposal evaluations, the Contracting Agency must comply with ORS 279C.337.

(2) Evaluation Factors.

(a) In basic negotiated construction contracting, where the only reason for an RFP is to consider factors other than price, those factors may consist of firm and personnel experience on similar projects, adequacy of equipment and physical plant, sources of supply, availability of key personnel, financial capacity, past performance, safety records, project understanding, proposed methods of construction, proposed milestone dates, references, service, and related matters that could affect the cost or quality of the Work.

(b) In CM/GC contracting, in addition to (a) above, those factors may also include the ability to respond to the technical complexity or unique character of the project, analyze and propose solutions or approaches to complex project problems, analyze and propose value engineering options, analyze and propose energy efficiency measures or alternative energy options, coordinate multiple disciplines on the project, effectively utilize the time available to commence and complete the improvement, and related matters that could affect the cost or quality of the Work.

(c) In Design-Build contracting, in addition to (a) and (b) above, those factors may also include design professional qualifications, specialized experience, preliminary design submittals, technical merit, design-builder team experience and related matters that could affect the cost or quality of the Work.

(d) In ESPC contracting, in addition to the factors set forth in subsections (a), (b) and (c) above, those factors may also include sample Technical Energy Audits from similar projects, sample M & V reports, financial statements and related information of the ESCO for a time period established in the RFP, financial statements and related information of joint venturers comprising the ESCO, the ESCO's capabilities and experience in performing energy baseline studies for facilities (independently or in cooperation with an independent third-party energy baseline consultant), past performance of the ESCO in meeting energy guarantee Contract levels, the specific Person that will provide the Energy Savings Guarantee to be offered by the ESCO, the ESCO's management plan for the project, information on the specific methods, techniques and equipment that the ESCO will use in the performance of the Work under the ESPC, the ESCO's team members and consultants to be assigned to the project, the ESCO's experience in the Energy Savings Performance Contracting field, the ESCO's experience acting as the prime contractor on previous ESPC projects (as opposed to a sub-contractor or consultant to a prime ESCO), the ESCO's vendor and product neutrality related to the development of ECMs, the ESCO's project history related to removal from an ESPC project or the inability or unwillingness of the ESCO to complete an ESPC project, the ESCO's M & V capabilities and experience (independently or in cooperation with an independent third-party M & V consultant), the ESCO's ability to explain the unique risks associated with ESPC projects and the assignment of risk in the particular project between the Contracting Agency and the ESCO, the ESCO's equipment performance guarantee policies and procedures, the ESCO's energy savings and cost savings guarantee policies and procedures, the ESCO's project cost guarantee policies and procedures, the ESCO's pricing

methodologies, the price that the ESCO will charge for the Technical Energy Audit phase of the Work and the ESCO's fee structure for all phases of the ESPC.

(3) Contract Negotiations. Contract terms may be negotiated to the extent allowed by the RFP and OAR 137-049-0600 to 137-049-0690, provided that the general Work scope remains the same and that the field of competition does not change as a result of material changes to the requirements stated in the Solicitation Document. See 137-049-0650. Terms that may be negotiated consist of details of Contract performance, methods of construction, timing, assignment of risk in specified areas, fee, and other matters that could affect the cost or quality of the Work. For the CM/GC Method, terms that may be negotiated also include the specific scope of pre-construction services, the GC Work, any Early Work and other construction Work to be performed by the CM/GC, and any other terms that the Contracting Agency has identified as being subject to negotiation, consistent with the requirements of OAR 137-049-0690. In ESPC contracting, terms that may be negotiated also include the scope of preliminary design of ECMs to be evaluated by the parties during the Technical Energy Audit phase of the Work, the scope of Personal Services and Work to be performed by the ESCO during the Project Development Plan phase of the Work, the detailed provisions of the Energy Savings Guarantee to be provided by the ESCO and scope of Work, methodologies and compensation terms and conditions during the design and construction phase and M & V phase of the Work, consistent with the requirements of OAR 137-049-0680.

Stat. Auth.: ORS 279C.335 & 279A.065
Stats. Implemented: ORS 279C.335, 279A.065 & 351.086
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15

137-049-0645
Requests for Qualifications (RFQ)

As provided by ORS 279C.405(1), Contracting Agencies may utilize Requests for Qualifications (RFQs) to obtain information useful in the preparation or distribution of a Request for Proposals (RFPs). When using RFQs as the first step in a two step solicitation process, in which distribution of the RFPs will be limited to the firms identified as most qualified through their submitted statements of qualification, Contracting Agencies shall first advertise and provide notice of the RFQ in the same manner in which RFPs are advertised, specifically stating that RFPs will be distributed only to the firms selected in the RFQ process. In such cases the Contracting Agencies shall also provide within the RFQ a protest provision substantially in the form of OAR 137-049-0450(5) regarding protests of the Competitive Range. Thereafter, contracting agencies may distribute RFPs to the selected firms without further advertisement of the solicitation.

Stat. Auth.: ORS 279C.405, 279A.065
Stats. Implemented: ORS 279C.405
Hist.: DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-049-0650
Requests for Proposals ("RFP")

(1) Generally. The use of competitive Proposals must be specially authorized for a Public Improvement Contract under the competitive bidding exception and exemption requirements of ORS 279C.335, OAR 137-049-0130 and 137-049-0600 to 137-049-0690. Also see ORS 279C.337 and 279C.400 to 279C.410 for statutory requirements regarding competitive Proposals and OAR 137-049-0640 regarding competitive Proposal procedures.

(2) Solicitation Documents. In addition to the Solicitation Document requirements of OAR 137-049-0200, this rule applies to the requirements for RFPs. RFP Solicitation Documents shall conform to the following standards:

(a) The Contracting Agency shall set forth selection criteria in the Solicitation Document. Examples of evaluation criteria include price or cost, quality of a product or service, past performance, management, capability, personnel qualification, prior experience, compatibility, reliability, operating efficiency, expansion potential, experience of key personnel, adequacy of equipment or physical plant, financial wherewithal, sources of supply, references and warranty provisions. See OAR 137-049-0640 regarding Proposal evaluation and evaluation factors. Evaluation factors need not be precise predictors of actual future costs and performance, but to the extent possible, such factors must be reasonable estimates based on information available to the Contracting Agency. Subject to ORS 279C.410(4), the Solicitation Document may provide for discussions with Proposers to be conducted for the purpose of Proposal evaluation prior to award or prior to establishing any Competitive Range;

(b) When the Contracting Agency is willing to negotiate terms and conditions of the Contract or allow submission of revised Proposals following discussions, the Contracting Agency shall identify the specific terms and conditions in or provisions of the Solicitation Document that are subject to negotiation or discussion and authorize Offerors to propose certain alternative terms and conditions in lieu of the terms and conditions the Contracting Agency has identified as authorized for negotiation. The Contracting Agency shall describe the evaluation, discussion and negotiation processes, including how the Contracting Agency will establish the Competitive Range, if any;

(c) The anticipated size of any Competitive Range must be stated in the Solicitation Document, but may be decreased if the number of Proposers that submit responsive Proposals is less that the specified number, or may be increased as provided in OAR 137-049-0650(4)(a)(B);

(d) When the Contracting Agency intends to Award Contracts to more than one Proposer, the Contracting Agency shall identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award. The Contracting Agency shall also include the criteria it will use to determine how the Contracting Agency will endeavor to achieve optimal value, utility and substantial fairness when selecting a particular Contractor to provide Personal Services or Work from those Contractors Awarded Contracts.

(3) Evaluation of Proposals.

(a) Evaluation. The Contracting Agency shall evaluate Proposals only in accordance with criteria set forth in the RFP and applicable law. The Contracting Agency shall evaluate Proposals to determine the Responsible Proposer or Proposers submitting the best Responsive Proposal or Proposals.

(A) Clarifications. In evaluating Proposals, a Contracting Agency may seek information from a Proposer to clarify the Proposer's Proposal. A Proposer shall submit Written and Signed clarifications and such clarifications shall become part of the Proposer's Proposal.

(B) Limited Negotiation. If the Contracting Agency did not permit negotiation in its RFP, the Contracting Agency may, nonetheless, negotiate with the highest-ranked Proposer, but may then only negotiate the:

(i) Statement of Work; and

(ii) Contract Price as it is affected by negotiating the statement of Work. The process for discussions or negotiations that is outlined and explained in subsections (5)(b) and (6) of this rule does not apply to this limited negotiation.

(b) Discussions; Negotiations. If the Contracting Agency permitted discussions or negotiations in the RFP, the Contracting Agency shall evaluate Proposals and establish the Competitive Range, and may then conduct discussions and negotiations in accordance with this rule.

(A) If the Solicitation Document provided that discussions or negotiations may occur at Contracting Agency's discretion, the Contracting Agency may forego discussions and negotiations and evaluate all Proposals in accordance with this rule.

(B) If the Contracting Agency proceeds with discussions or negotiations, the Contracting Agency shall establish a negotiation team tailored for the acquisition. The Contracting Agency's team may include legal, technical, auditing and negotiating personnel.

(c) Cancellation. Nothing in this rule shall restrict or prohibit the Contracting Agency from canceling the solicitation at any time.

(4) Competitive Range; Protest; Award.

(a) Determining Competitive Range.

(A) If the Contracting Agency does not cancel the solicitation, after the Opening the Contracting Agency will evaluate all Proposals in accordance with the evaluation criteria set forth in the RFP. After evaluation of all Proposals in accordance with the criteria set forth in the RFP, the Contracting Agency will rank the Proposers based on the Contracting Agency's scoring and determine the Competitive Range.

(B) The Contracting Agency may increase the number of Proposers in the Competitive Range if the Contracting Agency's evaluation of Proposals establishes a natural break in the scores of Proposers indicating a number of Proposers greater than the initial Competitive Range are closely competitive, or have a reasonable chance of being determined the best Proposer after the Contracting Agency's evaluation of revised Proposals submitted in accordance with the process described in this rule.

(b) Protesting Competitive Range. The Contracting Agency shall provide Written notice to all Proposers identifying Proposers in the Competitive Range. A Proposer that is not within the Competitive Range may protest the Contracting Agency's evaluation and determination of the Competitive Range in accordance with OAR 137-049-0450.

(c) Intent to Award; Discuss or Negotiate. After the protest period provided in accordance with these rules expires, or after the Contracting Agency has provided a final response to any protest, whichever date is later, the Contracting Agency may either:

(A) Provide Written notice to all Proposers in the Competitive Range of its intent to Award the Contract to the highest-ranked Proposer in the Competitive Range.

(i) An unsuccessful Proposer may protest the Contracting Agency's intent to Award in accordance with OAR 137-049-0450.

(ii) After the protest period provided in accordance with OAR 137-049-0450 expires, or after the Contracting Agency has provided a final response to any protest, whichever date is later, the Contracting Agency shall commence final Contract negotiations with the highest-ranked Proposer in the Competitive Range; or

(B) Engage in discussions with Proposers in the Competitive Range and accept revised Proposals from them, and, following such discussions and receipt and evaluation of revised Proposals, conduct negotiations with the Proposers in the Competitive Range.

(5) Discussions; Revised Proposals. If the Contracting Agency chooses to enter into discussions with and receive revised Proposals from the Proposers in the Competitive Range, the Contracting Agency shall proceed as follows:

(a) Initiating Discussions. The Contracting Agency shall initiate oral or Written discussions with all of the Proposers in the Competitive Range regarding their Proposals with respect to the provisions of the RFP that the Contracting Agency identified in the RFP as the subject of discussions. The Contracting Agency may conduct discussions for the following purposes:

(A) Informing Proposers of deficiencies in their initial Proposals;

(B) Notifying Proposers of parts of their Proposals for which the Contracting Agency would like additional information; and

(C) Otherwise allowing Proposers to develop revised Proposals that will allow the Contracting Agency to obtain the best Proposal based on the requirements and evaluation criteria set forth in the RFP.

(b) Conducting Discussions. The Contracting Agency may conduct discussions with each Proposer in the Competitive Range necessary to fulfill the purposes of this section, but need not conduct the same amount of discussions with each Proposer. The Contracting Agency may terminate discussions with any Proposer in the Competitive Range at any time. However, the Contracting Agency shall offer all Proposers in the Competitive Range the opportunity to discuss their Proposals with Contracting Agency before the Contracting Agency notifies Proposers of the date and time pursuant to this section that revised Proposals will be due.

(A) In conducting discussions, the Contracting Agency:

(i) Shall treat all Proposers fairly and shall not favor any Proposer over another;

(ii) Shall not discuss other Proposers' Proposals;

(iii) Shall not suggest specific revisions that a Proposer should make to its Proposal, and shall not otherwise direct the Proposer to make any specific revisions to its Proposal.

(B) At any time during the time allowed for discussions, the Contracting Agency may:

(i) Continue discussions with a particular Proposer;

(ii) Terminate discussions with a particular Proposer and continue discussions with other Proposers in the Competitive Range; or

(iii) Conclude discussions with all remaining Proposers in the Competitive Range and provide notice to the Proposers in the Competitive Range to submit revised Proposals.

(c) Revised Proposals. If the Contracting Agency does not cancel the solicitation at the conclusion of the Contracting Agency's discussions with all remaining Proposers in the Competitive Range, the Contracting Agency shall give all remaining Proposers in the Competitive Range notice of the date and time by which they must submit revised Proposals. This notice constitutes the Contracting Agency's termination of discussions, and Proposers must submit revised Proposals by the date and time set forth in the Contracting Agency's notice.

(A) Upon receipt of the revised Proposals, the Contracting Agency shall evaluate the revised Proposals based upon the evaluation criteria set forth in the RFP, and rank the revised Proposals based on the Contracting Agency's scoring.

(B) The Contracting Agency may conduct discussions with and accept only one revised Proposal from each Proposer in the Competitive Range unless otherwise set forth in the RFP.

(d) Intent to Award; Protest. The Contracting Agency shall provide Written notice to all Proposers in the Competitive Range of the Contracting Agency's intent to Award the Contract. An unsuccessful Proposer may protest the Contracting Agency's intent to Award in accordance with OAR 137-049-0450. After the protest period provided in accordance with that rule expires, or after the Contracting Agency has provided a final response to any protest, whichever date is later, the Contracting Agency shall commence final Contract negotiations.

(6) Negotiations.

(a) Initiating Negotiations. The Contracting Agency may determine to commence negotiations with the highest-ranked Proposer in the Competitive Range following the:

(A) Initial determination of the Competitive Range; or

(B) Conclusion of discussions with all Proposers in the Competitive Range and evaluation of revised Proposals.

(b) Conducting Negotiations. Scope. The Contracting Agency may negotiate:

(A) The statement of Work;

(B) The Contract Price as it is affected by negotiating the statement of Work; and

(C) Any other terms and conditions reasonably related to those expressly authorized for negotiation in the RFP. Accordingly, Proposers shall not submit, and Contracting Agency shall not accept, for negotiation any alternative terms and conditions that are not reasonably related to those expressly authorized for negotiation in the RFP.

(c) Continuing Negotiations. If the Contracting Agency terminates negotiations with a Proposer, the Contracting Agency may then commence negotiations with the next highest scoring Proposer in the Competitive Range, and continue the process described in this rule until the Contracting Agency has:

(A) Determined to Award the Contract to the Proposer with whom it is currently negotiating; or

(B) Completed one round of negotiations with all Proposers in the Competitive Range, unless the Contracting Agency provided for more than one round of discussions or negotiations in the RFP, in which case the Contracting Agency may proceed with any authorized further rounds of discussions or negotiations.

(7) Terminating Discussions or Negotiations. At any time during discussions or negotiations conducted in accordance with this rule, the Contracting Agency may terminate discussions or negotiations with the Proposer with whom it is currently conducting dis-

cussions or negotiations if the Contracting Agency reasonably believes that:

(a) The Proposer is not discussing or negotiating in good faith; or

(b) Further discussions or negotiations with the Proposer will not result in the parties agreeing to the terms and conditions of a final Contract in a timely manner.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.400 - 279C.410
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15

137-049-0660
RFP Pricing Mechanisms

(1) An RFP may result in a Contract with a lump-sum Contract Price or a fixed Contract Price, as in the case of competitive bidding. Alternatively, an RFP may result in a cost reimbursement Contract with a GMP or some other maximum price specified in the Contract.

(2) Economic incentives or disincentives may be included to reflect stated Contracting Agency purposes related to time of completion, safety or other Public Contracting objectives, including but not limited to total least cost mechanisms such as life cycle costing.

(3) A Guaranteed Maximum Price may be used as the pricing mechanism for CM/GC Services Contracts where a total Contract Price is provided in the design phase in order to assist the Contracting Agency in determining whether the project scope is within the Contracting Agency's budget, and allowing for design changes during preliminary design rather than after final design services have been completed.

(a) If the collaborative process described above in this section (3) is successful, the Contractor shall propose a final GMP, which may be accepted by the Contracting Agency and included within the Contract.

(b) If the collaborative process described above in this section (3) is not successful, and no mutually agreeable resolution on the GMP for the project construction Work can be achieved with the Contractor, then the Contracting Agency shall terminate the Contract. The public Contracting Agency may then proceed to negotiate a new Contract (and GMP) with the firm that was next ranked in the original selection process, or employ other means for continuing the project under ORS Chapter 279C.

(4) When cost reimbursement Contracts are utilized, regardless of whether a GMP is included, the Contracting Agency shall provide for audit controls that will effectively verify rates and ensure that costs are reasonable, allowable and properly allocated.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.335
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15

137-049-0670
Design-Build Contracts

(1) General. The Design-Build form of contracting, as defined at OAR 137-049-0610(3), has technical complexities that are not readily apparent. Contracting Agencies shall use this contracting method only with the assistance of knowledgeable staff or consultants who are experienced in its use. In order to use the Design-Build process, the Contracting Agency must be able to reasonably anticipate the following types of benefits:

(a) Obtaining, through a Design-Build team, engineering design, plan preparation, value engineering, construction engineering, construction, quality control and required documentation as a fully integrated function with a single point of responsibility;

(b) Integrating value engineering suggestions into the design phase, as the construction Contractor joins the project team early with design responsibilities under a team approach, with the potential of reducing Contract changes;

(c) Reducing the risk of design flaws, misunderstandings and conflicts inherent in construction Contractors building from designs in which they have had no opportunity for input, with the potential of reducing Contract claims;

(d) Shortening project time as construction activity (early submittals, mobilization, subcontracting and advance Work) commences prior to completion of a "Biddable" design, or where a design solution is still required (as in complex or phased projects); or

(e) Obtaining innovative design solutions through the collaboration of the Contractor and design team, which would not otherwise be possible if the Contractor had not yet been selected.

(2) Authority. Contracting Agencies shall utilize the Design-Build form of contracting only in accordance with the requirements of these OARs 137-049-0600 to 137-049-0690 rules. See particularly 137-049-0620 on "Use of Alternative Contracting Methods" and 137-049-0680 pertaining to ESPCs.

(3) Selection. Design-Build selection criteria may include those factors set forth above in OAR 137-049-0640(2)(a), (b) and (c).

(4) QBS Inapplicable. Because the value of construction Work predominates the Design-Build form of contracting, the qualifications based selection (QBS) process mandated by ORS 279C.110 for State Contracting Agencies in obtaining certain consultant Personal Services is not applicable.

(5) Licensing. If a Design-Build Contractor is not an Oregon licensed design professional, the Contracting Agency shall require that the Design-Build Contractor disclose in its Written Offer that it is not an Oregon licensed design professional, and identify the Oregon licensed design professional(s) who will provide design services. See ORS 671.030(2)(g) regarding the offer of architectural services, and 672.060(11) regarding the offer of engineering services that are appurtenant to construction Work.

(6) Performance Security. ORS 279C.380(1)(a) provides that for Design-Build Contracts the surety's obligation on performance bonds, or the Bidder's obligation on cashier's or certified checks accepted in lieu thereof, includes the preparation and completion of design and related Personal Services specified in the Contract. This additional obligation, beyond performance of construction Work, extends only to the provision of Personal Services and related design revisions, corrective Work and associated costs prior to final completion of the Contract (or for such longer time as may be defined in the Contract). The obligation is not intended to be a substitute for professional liability insurance, and does not include errors and omissions or latent defects coverage.

(7) Contract Requirements. Contracting Agencies shall conform their Design-Build contracting practices to the following requirements:

(a) Design Services. The level or type of design services required must be clearly defined within the Procurement documents and Contract, along with a description of the level or type of design services previously performed for the project. The Personal Services and Work to be performed shall be clearly delineated as either design Specifications or performance standards, and performance measurements must be identified.

(b) Professional Liability. The Contract shall clearly identify the liability of design professionals with respect to the Design-Build Contractor and the Contracting Agency, as well as requirements for professional liability insurance.

(c) Risk Allocation. The Contract shall clearly identify the extent to which the Contracting Agency requires an express indemnification from the Design-Build Contractor for any failure to perform, including professional errors and omissions, design warranties, construction operations and faulty Work claims.

(d) Warranties. The Contract shall clearly identify any express warranties made to the Contracting Agency regarding characteristics or capabilities of the completed project (regardless of whether errors occur as the result of improper design, construction, or both), including any warranty that a design will be produced that meets the stated project performance and budget guidelines.

(e) Incentives. The Contract shall clearly identify any economic incentives and disincentives, the specific criteria that apply and their relationship to other financial elements of the Contract.

(f) Honoraria. If allowed by the RFP, honoraria or stipends may be provided for early design submittals from qualified finalists dur-

ing the solicitation process on the basis that the Contracting Agency is benefited from such deliverables.

Stat. Auth.: ORS 279C.335 & 279A.065
Stats. Implemented: ORS 279C.335, 279A.065, 279C.110 & 351.086
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-049-0680
Energy Savings Performance Contracts (ESPC)

(1) Generally. These OAR 137-049-0600 to 137-049-0690 rules include a limited, efficient method for Contracting Agencies to enter into ESPCs outside the competitive bidding requirements of ORS 279C.335 for existing buildings or structures, but not for new construction. See ORS 279C.335(1)(f). If a Contracting Agency chooses not to utilize the ESPC Procurement method provided for by these OAR 137-049-0600 to 137-049-0690 rules, the Contracting Agency may still enter into an ESPC by complying with the competitive bidding exemption process set forth in ORS 279C.335, or by otherwise complying with the Procurement requirements applicable to any Contracting Agency not subject to all the requirements of 279C.335.

(2) ESPC Contracting Method. The ESPC form of contracting, as defined at OAR 137-049-0610(6), has unique technical complexities associated with the determination of what ECMs are feasible for the Contracting Agency, as well as the additional technical complexities associated with a Design-Build Contract. Contracting Agencies shall only utilize the ESPC contracting method with the assistance of knowledgeable staff or consultants who are experienced in its use. In order to utilize the ESPC contracting process, the Contracting Agency must be able to reasonably anticipate one or more of the following types of benefits:

(a) Obtaining, through an ESCO, the following types of integrated Personal Services and Work: facility profiling, energy baseline studies, ECMs, Technical Energy Audits, project development planning, engineering design, plan preparation, cost estimating, life cycle costing, construction administration, project management, construction, quality control, operations and maintenance staff training, commissioning services, M & V services and required documentation as a fully integrated function with a single point of responsibility;

(b) Obtaining, through an ESCO, an Energy Savings Guarantee;

(c) Integrating the Technical Energy Audit phase and the Project Development Plan phase into the design and construction phase of Work on the project;

(d) Reducing the risk of design flaws, misunderstandings and conflicts inherent in the construction process, through the integration of ESPC Personal Services and Work;

(e) Obtaining innovative design solutions through the collaboration of the members of the ESCO integrated ESPC team;

(f) Integrating cost-effective ECMs into an existing building or structure, so that the ECMs pay for themselves through savings realized over the useful life of the ECMs;

(g) Preliminary design, development, implementation and an Energy Savings Guarantee of ECMs into an existing building or structure through an ESPC, as a distinct part of a major remodel of that building or structure that is being performed under a separate remodeling Contract; and

(h) Satisfying local energy efficiency design criteria or requirements.

(3) Authority. Contracting Agencies desiring to pursue an exemption from the competitive bidding requirements of ORS 279C.335 (and, if applicable, ORS 351.086), shall utilize the ESPC form of contracting only in accordance with the requirements of these OAR 137-049-0600 to 137-049-0690 rules.

(4) No Findings Required. A Contracting Agency is only required to comply with the ESPC contracting procedures set forth in these OAR 137-049-0600 to 137-049-0690 rules in order for the ESPC to be exempt from the competitive bidding processes of ORS 279C.335. No Findings are required for an ESPC to be exempt from the competitive bidding process for Public Improvement Contracts pursuant to 279C.335, unless the Contracting Agency is subject to the requirements of 279C.335 and chooses not to comply with the ESPC contracting procedures set forth in OAR 137-049-0600 to 137-049-0690.

(5) Selection. ESPC selection criteria may include those factors set forth above in OAR 137-049-0640(2)(a), (b), (c) and (d). Since the Energy Savings Guarantee is such a fundamental component in the ESPC contracting process, Proposers must disclose in their Proposals the identity of any Person providing (directly or indirectly) any Energy Savings Guarantee that may be offered by the successful ESCO during the course of the performance of the ESPC, along with any financial statements and related information pertaining to any such Person.

(6) QBS Inapplicable. Because the value of construction Work predominates in the ESPC method of contracting, the qualifications based selection (QBS) process mandated by ORS 279C.110 for State Contracting Agencies in obtaining certain consultant services is not applicable.

(7) Licensing. If the ESCO is not an Oregon licensed design professional, the Contracting Agency shall require that the ESCO disclose in the ESPC that it is not an Oregon licensed design professional, and identify the Oregon licensed design professional(s) who will provide design services. See ORS 671.030(5) regarding the offer of architectural services, and 672.060(11) regarding the offer of engineering services that are appurtenant to construction Work.

(8) Performance Security. At the point in the ESPC when the parties enter into a binding Contract that constitutes a Design-Build Contract, the ESCO must provide a performance bond and a payment bond, each for 100% of the full Contract Price, including the construction Work and design and related Personal Services specified in the ESPC Design-Build Contract, pursuant to ORS 279C.380(1)(a). For ESPC Design-Build Contracts, these "design and related services" include conventional design services, commissioning services, training services for the Contracting Agency's operations and maintenance staff, and any similar Personal Services provided by the ESCO under the ESPC Design-Build Contract prior to final completion of construction. M & V services, and any Personal Services or Work associated with the ESCO's Energy Savings Guarantee are not included in these 279C.380(1)(a) "design and related services." Nevertheless, a Contracting Agency may require that the ESCO provide performance security for M & V services and any Personal Services or Work associated with the ESCO's Energy Savings Guarantee, if the Contracting Agency so provides in the RFP.

(9) Contracting Requirements. Contracting Agencies shall conform their ESPC contracting practices to the following requirements:

(a) General ESPC Contracting Practices. An ESPC involves a multi-phase project, which includes the following contractual elements:

(A) A contractual structure which includes general Contract terms describing the relationship of the parties, the various phases of the Work, the contractual terms governing the Technical Energy Audit for the project, the contractual terms governing the Project Development Plan for the project, the contractual terms governing the final design and construction of the project, the contractual terms governing the performance of the M & V services for the project, and the detailed provisions of the ESCO's Energy Savings Guarantee for the project.

(B) The various phases of the ESCO's Work will include the following:

(i) The Technical Energy Audit phase of the Work;

(ii) The Project Development Plan phase of the Work;

(iii) A third phase of the Work that constitutes a Design-Build Contract, during which the ESCO completes any plans and Specifications required to implement the ECMs that have been agreed to by the parties to the ESPC, and the ESCO performs all construction, commissioning, construction administration and related Personal Services or Work to actually construct the project; and

(iv) A final phase of the Work, whereby the ESCO, independently or in cooperation with an independent consultant hired by the Contracting Agency, performs M & V services to ensure that the Energy Savings Guarantee identified by the ESCO in the earlier phases of the Work and agreed to by the parties has actually been achieved.

(b) Design-Build Contracting Requirements in ESPCs. At the point in the ESPC when the parties enter into a binding Contract that constitutes a Design-Build Contract, the Contracting Agency shall conform its Design-Build contracting practices to the Design-Build contracting requirements set forth in OAR 137-040-0560(7) above.

(c) Pricing Alternatives. The Contracting Agency may utilize one of the following pricing alternatives in an ESPC:

(A) A fixed price for each phase of the Personal Services and Work to be provided by the ESCO;

(B) A cost reimbursement pricing mechanism, with a maximum not-to-exceed price or a GMP; or

(C) A combination of a fixed fee for certain components of the Personal Services to be performed, a cost reimbursement pricing mechanism for the construction Work to be performed with a GMP, a single or annual fixed fee for M & V services to be performed for an identified time period after final completion of the construction Work, and a single or annual Energy Savings Guarantee fixed fee payable for an identified time period after final completion of the construction Work that is conditioned on certain energy savings being achieved at the facility by the ECMs that have been implemented by the ESCO during the project (in the event an annual M & V services fee and annual Energy Savings Guarantee fee is utilized by the parties, the parties may provide in the Design-Build Contract that, at the sole option of the Contracting Agency, the ESCO's M & V services may be terminated prior to the completion of the M & V/Energy Savings Guarantee period and the Contracting Agency's future obligation to pay the M & V services fee and Energy Savings Guarantee fee will likewise be terminated, under terms agreed to by the parties).

(d) Permitted ESPC Scope of Work. The scope of Work under the ESPC is restricted to implementation and installation of ECMs, as well as other Work on building systems or building components that are directly related to the ECMs, and that, as an integrated unit, will pay for themselves over the useful life of the ECMs installed. The permitted scope of Work for ESPCs resulting from a solicitation under these 137-049-0600 to 137-049-0690 rules does not include maintenance services for the project facility.

Stat. Auth.: ORS 279C.335 & 279A.065
Stats. Implemented: ORS 279C.335, 279A.065, 279C.110 & 351.086
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-049-0690
Construction Manager/General Contractor Services ("CM/GC Services")

(1) General. The CM/GC Method is a technically complex project delivery system. Contracting Agencies shall use this contracting method only with the assistance of legal counsel with substantial experience and necessary expertise in using the CM/GC Method, as well as knowledgeable staff, consultants or both staff and consultants who have a demonstrated capability of managing the CM/GC process in the necessary disciplines of engineering, construction scheduling and cost control, accounting, legal, Public Contracting and project management. Unlike the Design-Build form of contracting, the CM/GC Method does not contemplate a "single point of responsibility" under which the CM/GC is responsible for successful completion of all Work related to a performance Specification. The CM/GC has defined contract obligations, including responsibilities as part of the project team along with the Contracting Agency and design professional, although with the CM/GC Method there is a separate contract between the Contracting Agency and design professional. In order to utilize the CM/GC Method, the Contracting Agency must be able to reasonably anticipate the following types of benefits:

(a) Time Savings. With the CM/GC Method, the Public Improvement has significant schedule ramifications, such that concurrent design and construction are necessary in order to meet critical deadlines and shorten the overall duration of construction. The Contracting Agency may consider operational and financial data that show significant savings or increased opportunities for generating revenue as a result of early completion, as well as less disruption to public facilities as a result of shortened construction periods;

(b) Cost Savings. With the CM/GC Method, early CM/GC input during the design process is expected to contribute to significant cost savings. The Contracting Agency may consider value engineering, building systems analysis, life cycle costing analysis and construction planning that lead to cost savings. The Contracting Agency shall specify any special factors influencing this analysis, including high rates of inflation, market uncertainty due to material and labor fluctuations or scarcities, and the need for specialized construction expertise due to technical challenges; or

(c) Technical Complexity. With the CM/GC Method, the Public Improvement presents significant technical complexities that are best addressed by a collaborative or team effort between the Contracting Agency, design professionals, any Contracting Agency project management or technical consultants and the CM/GC, in which the CM/GC will assist in addressing specific project challenges through pre-construction Personal Services. The Contracting Agency may consider the need for CM/GC input on issues such as operations of the facility during construction, tenant occupancy, public safety, delivery of an early budget or GMP, financing, historic preservation, difficult remodeling projects and projects requiring complex phasing or highly coordinated scheduling.

(2) Authority. Contracting Agencies shall use the CM/GC form of contracting only in accordance with the requirements of these division 49 Model Rules and ORS 279C.337, when a competitive bidding exemption is approved. See particularly OAR 137-049-0600 on "Purpose" and 137-049-0620 on "Use of Alternative Contracting Methods".

(3) Selection. CM/GC selection criteria may include those factors set forth above in OAR 137-049-0640(2)(b).

(4) Basis for Payment. The CM/GC process adds specified construction manager Personal Services to traditional design-bid-build general contractor Work, requiring full Contract performance within a negotiated GMP, fixed Contract Price or other maximum Contract Price. For a GMP pricing method, the basis for payment is reimbursable direct costs as defined under the Contract, plus a fee constituting full payment for construction Work and Personal Services rendered, which together shall not exceed the GMP. See GMP definition at OAR 137-049-0610 and Pricing Mechanisms at 137-049-0660.

(5) Contract Requirements. Contracting Agencies shall conform their CM/GC contracting practices to the following requirements:

(a) Nature of the Initial CM/GC Services Contract Document. A solicitation for CM/GC Services is a Procurement for a Public Improvement, since the scope of the Procurement includes not only pre-construction Personal Services to be performed by the CM/GC, but also construction Work that is expected to result in a completed Public Improvement. In the traditional CM/GC Services contracting approach, the text of the resulting CM/GC Services Contract will include comprehensive contract provisions that will not only fully govern the relationship between the Contracting Agency and the CM/GC for the pre-construction Personal Services, but will also include the general contract provisions that will control the CM/GC's providing of the construction Work necessary to complete the project (with any remaining necessary construction-related contract provisions being added through Early Work amendments to the Contract, the GMP amendment to the Contract or, if necessary, a conventional amendment to the Contract). The traditional CM/GC Services contracting approach, however, also contemplates that the Contracting Agency will only authorize the CM/GC to perform the pre-construction Personal Services when the Contract is first executed unless construction Work is specifically included in the initial CM/GC Contract. Under this approach, the construction phase or phases of the CM/GC Services project are not yet authorized and the Contract only becomes a Public Improvement Contract once the parties amend the Contract, through an Early Work or a GMP amendment, to authorize the construction of a portion of the project or the entire project. See also OAR 839-025-0020, regarding the Bureau of Labor and Industries' determination of when a Contract for CM/GC Services becomes a "public works" Contract for purposes of paying prevailing wage rates for construction Work under the CM/GC Contract.

(b) Setting the GMP, Fixed Contract Price or Other Maximum Contract Price. The GMP, fixed Contract Price or other maximum Contract Price shall be set at an identified time consistent with industry practice and project conditions and after supporting information reasonably considered necessary to its use has been developed, which will normally take place by the end of the design development phase of the project. The supporting information for the GMP must define with particularity both what Personal Services and construction Work are included and excluded from the GMP, fixed Contract Price or other maximum Contract Price. A set of project drawings and Specifications shall be produced establishing the scope of construction Work contemplated by the GMP, fixed Contract Price or other maximum Contract Price.

(c) Adjustments to the GMP, Fixed Contract Price or Other Maximum Contract Price. The Contract shall clearly identify the standards or factors under which changes or additional construction Work will be considered outside of the Work scope that warrants an increase in the GMP, fixed Contract Price or other maximum Contract Price, as well as criteria for decreasing the GMP, fixed Contract Price or other maximum Contract Price. The GMP, fixed Contract Price or other maximum Contract Price shall not be increased without a concomitant increase to the scope of the Work defined at the establishment of the GMP, fixed Contract Price or other maximum Contract Price or most recent amendment to the GMP, fixed Contract Price or other maximum Contract Price. An increase to the scope of the Work may take the form of conventional additions to the project scope, as well as corrections to the Contract terms and conditions, additions to insurance coverage required by the Contracting Agency and other changes to the Work.

(d) Cost Savings. The Contract shall clearly identify the disposition of any Cost Savings resulting from completion of the Work below the GMP, fixed Contract Price or other maximum Contract Price; that is, under what circumstances, if any, the CM/GC might share in those Cost Savings, or whether the Cost Savings accrue only to the Contracting Agency's benefit. Unless there is a clearly articulated reason for sharing the Cost Savings set forth in the Contract, the Cost Savings must accrue to the Contracting Agency.

(e) Cost Reimbursement. The Contract shall clearly identify what items or categories of items are eligible for cost reimbursement within the GMP, fixed Contract Price or other maximum Contract Price, including any category of GC Work costs, and may also incorporate a mutually-agreeable cost-reimbursement standard.

(f) Audit. Cost reimbursements shall be made subject to final audit adjustment, and the Contract shall establish an audit process to ensure that Contract costs are allowable, properly allocated and reasonable.

(g) Fee. Compensation for the CM/GC's Personal Services and construction Work, where the Contract uses a GMP, shall include a fee that is inclusive of profit, overhead and all other indirect or non-reimbursable costs. Costs determined to be included within the fee shall be expressly defined in the Contract terms and conditions at the time the Contracting Agency selects the CM/GC. The fee, which may be expressed as either a fixed dollar amount or as a proposed percentage of all reimbursable costs, shall be identified during and become an element of the selection process. It shall subsequently be expressed as a fixed amount for particular construction Work authorized to be performed, when Early Work is added to the Contract through an amendment and when the GMP is established. The CM/GC fee does not include any fee paid to the CM/GC for performing pre-construction services during a separate pre-construction phase.

(h) Incentives. The Contract shall clearly identify any economic incentives, the specific criteria that apply and their relationship to other financial elements of the Contract (including the GMP, fixed Contract Price or other maximum Contract Price).

(i) Controlled Insurance Programs. For projects where an owner-controlled or contractor-controlled insurance program is permitted under ORS 737.602, the Contract shall clearly identify whether an owner-controlled or contractor-controlled insurance program is anticipated or allowable. If so, the Contract shall clearly identify (1) anticipated cost savings from reduced premiums, claims reductions and other factors, (2) the allocation of cost savings, and (3) safety responsibilities, incentives or both safety responsibilities and incentives.

(j) Early Work. The RFP shall clearly identify, whenever feasible, the circumstances under which any Early Work may be authorized and undertaken for compensation prior to establishing the GMP, fixed Contract Price or other maximum Contract Price.

(k) Subcontractor Selection. Subcontracts under the Contract are not Public Contracts within the meaning of the Code. However, the Contract must include provisions that clearly meet the requirements of ORS 279C.337(3) and other Contracting Agency requirements. Within the scope of 279C.337(3), the CM/GC's subcontractor selection process must meet the following parameters:

(A) Absent a written justification prepared by the CM/GC and approved by the Contracting Agency as more particularly provided for in this section, the CM/GC's Subcontractor selection process must be "competitive", meaning that the process should include publicly-advertised subcontractor solicitations and be based on a low-bid competitive method, a low-quote competitive method for contracts in a specified dollar range agreeable to the Contracting Agency, or a method whereby both price and qualifications of the subcontractors are evaluated in a competitive environment, consistent with the RFP and Contract requirements;

(B) When the Subcontractor selection process for a particular Work package will not be "competitive" as provided for in this section, the process must meet the following requirements:

(i) The CM/GC must prepare and submit a written justification to the Contracting Agency, explaining the project circumstances that support a non-competitive Subcontractor selection process for a particular Work package, including, but not limited to, Emergency circumstances, the CM/GC's need to utilize a key Subcontractor member of the CM/GC's project team consistent with the CM/GC's project Proposal, the need to meet other specified Contract requirements, the continuation or expansion of an existing Subcontractor agreement that was awarded through a "competitive process" along with facts supporting the continuation or expansion of the Subcontractor agreement, or a "sole source" justification;

(ii) For a "sole source" selection of a subcontractor to proceed, the Contracting Agency must evaluate the written justification provided by the CM/GC and must find that critical project efficiencies require utilization of labor, services or materials from one subcontractor; that technical compatibility issues on the project require labor, services or materials from one subcontractor; that particular labor, services or materials are needed as part of an experimental or pilot project or as part of an experimental or pilot aspect of the project; or that other project circumstances exist to support the conclusion that the labor, services or materials are available from only one subcontractor;

(iii) The CM/GC must provide an independent cost estimate for the Work package that will be subject to the non-competitive process, if required by the Contracting Agency;

(iv) The CM/GC must fully respond to any questions or comments submitted to the CM/GC by the Contracting Agency; and

(v) The Contracting Agency must approve the CM/GC's use of the non-competitive Subcontractor selection process prior to the CM/GC's pursuit of the non-competitive process.

(C) A competitive selection process may be preceded by a publicly advertised sub-contractor pre-qualification process, with only those subcontractors meeting the pre-qualification requirements being invited to participate in the later competitive process through which the CM/GC will select the subcontractor to perform the construction Work described in the selection process;

(D) If the CM/GC or an Affiliate or subsidiary of the CM/GC will be included in the subcontractor selection process to perform particular construction Work on the project, the CM/GC must disclose that fact in the selection process documents and announcements. The Contract must also identify the conditions, processes and procedures the CM/GC will utilize in that competitive process in order to make the process impartial, competitive and fair, including but not limited to objective, independent review and opening of bids

or proposals for the elements of Work involved, by a representative of the Contracting Agency or another independent third party.

(l) Subcontractor Approvals and Protests. The Contract shall clearly establish whether the Contracting Agency must approve subcontract awards, and to what extent, if any, the Contracting Agency will resolve or be involved in the resolution of protests of the CM/GC's selection of subcontractors and suppliers. The procedures and reporting mechanisms related to the resolution of sub-contractor and supplier protests shall be established in the Contract with certainty, including the CM/GC's roles and responsibilities in this process and whether the CM/GC's subcontracting records are considered to be public records. In any event, the Contracting Agency must retain the right to monitor the subcontracting process in order to protect the Contracting Agency's interests and to confirm the CM/GC's compliance with the Contract and with applicable statutes, administrative rules and other legal requirements.

(m) CM/GC Self-Performance or Performance by CM/GC Affiliates or Subsidiaries Without Competition. Consistent with the requirements of ORS 279C.337(3)(c), the Contract must establish the conditions under which the CM/GC or an Affiliate or subsidiary of the CM/GC may perform elements of the construction Work without competition from subcontractors, including, for example, job-site GC Work. Other than for GC Work, in order for the CM/GC or an Affiliate or subsidiary of the CM/GC to perform elements of the construction Work without competition from subcontractors, the CM/GC must provide, or must have included in the CM/GC's RFP Proposal to perform CM/GC Services for the project, a detailed proposal for performance of the Work by the CM/GC or an Affiliate or subsidiary of the CM/GC. If required by the Contracting Agency, the CM/GC's proposal to perform the construction Work must be supported by at least one independent cost estimate prior to the Work being included in the Contract.

(n) Unsuccessful Subcontractor Briefing. ORS 279C.337(3)(e) is designed to allow a subcontractor who was not selected by the CM/GC to perform a particular element of the construction Work to obtain specific information from the CM/GC, and meet with the CM/GC to discuss the subcontractor qualification and selection process involved and the CM/GC's subcontractor selection decisions, in order to better understand why the subcontractor was not successful in being selected to perform the particular element of the Work and to improve the subcontractor's substantive qualifications or the subcontractor's methods in competing for elements of the Work for the particular project involved, or for future projects. The briefing meetings may be held with individual subcontractors or, if the subcontractors agree, in groups of subcontractors, with those groups established by bid package or other designation agreed to by the contracting agency and the CM/GC. Nevertheless, the CM/GC is not obligated to provide this briefing opportunity unless the CM/GC receives a written request from a subcontractor to discuss the subcontractor qualification and selection process involved. Unless the Contracting Agency and the CM/GC agree on a different schedule, the CM/GC Contract should include provisions:

(A) Allowing a subcontractor 60 days from the CM/GC's notice of award of a subcontract for a particular Work package to request, in writing, a post-selection meeting with the CM/GC under this section; and

(B) Requiring the CM/GC to set a meeting with the subcontractor under this section within 45 days of the subcontractor's written request.

(o) Performance and Payment Bonds. Provided no construction Work is included with the pre-construction services to be performed under the initial form of the CM/GC Contract, no performance bond or payment bond is required to be provided by the CM/GC at the time of Contract signing, consistent with ORS 279C.380. Once construction Work is included in the Contract and authorized by the Contracting Agency to be performed by the CM/GC, however, the CM/GC must provide a performance bond and payment bond each in the full amount of any Early Work to be performed by the CM/GC, or the full amount of the GMP, fixed Contract Price or other maximum Contract Price, as applicable. Furthermore, in the event additional Early Work is added to the CM/GC Contract after the initial Early Work or in the event an amendment to the CM/GC Contract is made so that the GMP, fixed Contract Price or other maximum Contract Price must be increased, the performance bond and the payment bond must each be increased in an amount equal to the additional Early Work or the increased GMP, fixed Contract Price or other maximum Contract Price.

(p) Independent Review of CM/GC Performance; Conflicts of Interest. If a Contracting Agency requires independent review, monitoring, inspection or other oversight of a CM/GC's performance of pre-construction Personal Services, construction Work or both pre-construction Personal Services and construction Work, the Contracting Agency must obtain those independent review services from a Contractor independent of the CM/GC, the CM/GC's Affiliates and the CM/GC's Subcontractors, pursuant to the requirements of ORS 279C.307. However, ORS 279C.307 does not prohibit the following:

(A) The CM/GC's performance of both pre-construction Personal Services and construction Work that are included within the definition of CM/GC Services, consistent with ORS 279C.307(2); or

(B) The CM/GC's performance of internal quality control services, quality assurance services or other internal peer review of CM/GC work product that is intended to confirm the CM/GC's performance of the CM/GC Contract according to its terms.

(q) Socio-Economic Programs. The Contract shall clearly identify conditions relating to any required socio-economic programs (such as Affirmative Action or Prison Inmate Labor Programs), including the manner in which such programs affect the CM/GC's subcontracting requirements, the enforcement mechanisms available, and the respective responsibilities of the CM/GC and Contracting Agency.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.335, 279C.337 & 279C.380(2)
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15

Contract Provisions

137-049-0800
Required Contract Clauses

Except as provided by OAR 137-0490-0150 and 137-049-0160, Contracting Agencies shall include in all Solicitation Documents for Public Improvement Contracts all of the ORS Chapter 279C required Contract clauses, as set forth in the checklist contained in OAR 137-049-0200(1)(c) regarding Solicitation Documents. The following series of rules provides further guidance regarding particular Public Contract provisions.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 297C.505 - 279C.545 & 279C.800 - 279C.870
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-049-0810
Waiver of Delay Damages Against Public Policy

Contracting Agencies shall not place any provision in a Public Improvement Contract purporting to waive, release, or extinguish the rights of a Contractor to damages resulting from a Contracting Agency's unreasonable delay in performing the Contract. However, Contract provisions requiring notice of delay, providing for alternative dispute resolution such as arbitration (where allowable) or mediation, providing other procedures for settling contract disputes, or providing for reasonable liquidated damages, are permissible.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.315
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

137-049-0815
BOLI Public Works Bond

Pursuant to ORS 279C.830(2), the specifications for every Public Works Contract shall contain a provision stating that the Contractor and every subcontractor must have a Public Works bond filed with the Construction Contractors Board before starting Work on the project, unless otherwise exempt. This bond is in addition to performance bond and payment bond requirements. See BOLI rule at OAR 839-025-0015.

Stat. Auth: ORS 279A.065
Stats. Implemented: ORS 279C.830
Hist.: DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-049-0820
Retainage

(1) Withholding of Retainage. A Contracting Agency shall not retain an amount in excess of five percent of the Contract Price for Work completed. If the Contractor has performed at least 50 percent of the Contract Work and is progressing satisfactorily, upon the Contractor's submission of Written application containing the surety's Written approval, the Contracting Agency may, in its discretion, reduce or eliminate retainage on any remaining progress payments. The Contracting Agency shall respond in Writing to all such applications within a reasonable time. When the Contract Work is 97-1/2 percent completed, the Contracting Agency may, at its discretion and without application by the Contractor, reduce the retained amount to 100 percent of the value of the remaining unperformed Contract Work. A Contracting Agency may at any time reinstate retainage. Retainage shall be included in the final payment of the Contract Price.

(2) Form of Retainage. Unless a Contracting Agency that reserves an amount as retainage finds in writing that accepting a bond or instrument described in part (a) or (b) of this section poses an extraordinary risk that is not typically associated with the bond or instrument, the Contracting Agency, in lieu of withholding moneys from payment, shall accept from the Contractor:

(a) Bonds, securities or other instruments that are deposited and accepted as provided in subsection (4)(a) of this rule; or

(b) A surety bond deposited as provided in subsection (4)(b) of this rule.

(3) Deposit in interest-bearing accounts. Upon request of the Contractor, a Contracting Agency shall deposit cash retainage in an interest-bearing account in a bank, savings bank, trust company, or savings association, for the benefit of the Contracting Agency. Earnings on such account shall accrue to the Contractor. State Contracting Agencies shall establish the account through the State Treasurer.

(4) Alternatives to cash retainage. In lieu of cash retainage to be held by a Contracting Agency, the Contractor may substitute one of the following:

(a) Deposit of bonds, securities or other instruments:

(A) The Contractor may deposit bonds, securities or other instruments with the Contracting Agency or in any bank or trust company to be held for the benefit of the Contracting Agency. If the Contracting Agency accepts the deposit, the Contracting Agency shall reduce the cash retainage by an amount equal to the value of the bonds and securities, and reimburse the excess to the Contractor.

(B) Bonds, securities or other instruments deposited or acquired in lieu of cash retainage must be of a character approved by the Oregon Department of Administrative Services, which may include, without limitation:

(i) Bills, certificates, notes or bonds of the United States.

(ii) Other obligations of the United States or agencies of the United States.

(iii) Obligations of a corporation wholly owned by the Federal Government.

(iv) Indebtedness of the Federal National Mortgage Association.

(v) General obligation bonds of the State of Oregon or a political subdivision of the State of Oregon.

(vii) Irrevocable letters of credit issued by an insured institution, as defined in ORS 706.008.

(C) Upon the Contracting Agency's determination that all requirements for the protection of the Contracting Agency's interests have been fulfilled, it shall release to the Contractor all bonds and securities deposited in lieu of retainage.

(b) Deposit of surety bond. A Contracting Agency, at its discretion, may allow the Contractor to deposit a surety bond in a form acceptable to the Contracting Agency in lieu of all or a portion of funds retained or to be retained. A Contractor depositing such a bond shall accept surety bonds from its subcontractors and suppliers in lieu of retainage. In such cases, retainage shall be reduced by an amount equal to the value of the bond, and the excess shall be reimbursed.

(5) Recovery of costs. A Contracting Agency may recover from the Contractor all costs incurred in the proper handling of retainage by reduction of the final payment.

(6) Additional Retainage When Certified Payroll Statements Not Filed. Pursuant to ORS 279C.845(7), if a Contractor is required to file certified payroll statements and fails to do so, the Contracting Agency shall retain 25 percent of any amount earned by the Contractor on a Public Works Contract until the Contractor has filed such statements with the Contracting Agency. The Contracting Agency shall pay the Contractor the amount retained under this provision within 14 days after the Contractor files the certified statements, regardless of whether a subcontractor has filed such statements (but see 279C.845(1) regarding the requirement for both contractors and subcontractors to file certified statements with the Contracting Agency). See BOLI rule at OAR 839-025-0010.

Stat. Auth.: ORS 279A.065 & 279C.845
Stats. Implemented: ORS 279C.560, 279C.570 & 701.420
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15

137-049-0830
Contractor Progress Payments

(1) **Request for progress payments**. Each month the Contractor shall submit to the Contracting Agency its Written request for a progress payment based upon an estimated percentage of Contract completion. At the Contracting Agency's discretion, this request may also include the value of material to be incorporated in the completed Work that has been delivered to the premises and appropriately stored. The sum of these estimates is referred to as the "value of completed Work." With these estimates as a base, the Contracting Agency will make a progress payment to the Contractor, which shall be equal to:

(a) The value of completed Work;

(b) Less those amounts that have been previously paid;

(c) Less other amounts that may be deductible or owing and due to the Contracting Agency for any cause; and

(d) Less the appropriate amount of retainage.

(2) **Progress payments do not mean acceptance of Work**. Progress payments shall not be construed as an acceptance or approval of any part of the Work, and shall not relieve the Contractor of responsibility for defective workmanship or material.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.570
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

137-049-0840
Interest

(1) **Prompt payment policy**. A Contracting Agency shall pay promptly all payments due and owing to the Contractor on Contracts for Public Improvements.

(2) **Interest on progress payments**. Late payment interest shall begin to accrue on payments due and owing on the earlier of 30 Days after receipt of invoice or 15 Days after Contracting Agency approval of payment (the "Progress Payment Due Date"). The interest rate shall equal three times the discount rate on 90-day commercial paper in effect on the Progress Payment Due Date at the Federal Reserve Bank in the Federal Reserve district that includes Oregon, up to a maximum rate of 30 percent.

(3) **Interest on final payment**. Final payment on the Contract Price, including retainage, shall be due and owing no later than 30 Days after Contract completion and acceptance of the Work. Late-payment interest on such final payment shall thereafter accrue at the rate of one and one-half percent per month until paid.

(4) **Settlement or judgment interest**. In the event of a dispute as to compensation due a Contractor for Work performed, upon settlement or judgment in favor of the Contractor, interest on the amount of the settlement or judgment shall be added to, and not made part of, the settlement or judgment. Such interest, at the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the

Federal Reserve District that includes Oregon, shall accrue from the later of the Progress Payment Due Date, or thirty Days after the Contractor submitted a claim for payment to the Contracting Agency in Writing or otherwise in accordance with the Contract requirements.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.570
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

137-049-0850
Final Inspection

(1) **Notification of Completion; inspection**. The Contractor shall notify the Contracting Agency in Writing when the Contractor considers the Contract Work completed. Within 15 Days of receiving Contractor's notice, the Contracting Agency will inspect the project and project records, and will either accept the Work or notify the Contractor of remaining Work to be performed.

(2) **Acknowledgment of acceptance**. When the Contracting Agency finds that all Work required under the Contract has been completed satisfactorily, the Contracting Agency shall acknowledge acceptance of the Work in Writing.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.570
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

137-049-0860
Public Works Contracts

(1) Generally. ORS 279C.800 to 279C.870 regulates Public Works Contracts, as defined in 279C.800(6), and requirements for payment of prevailing wage rates. Also see administrative rules of the Bureau of Labor and Industries (BOLI) at OAR chapter 839.

(2) Required Contract Conditions. As detailed in the above statutes and rules, every Public Works Contract must contain the following provisions:

(a) Contracting Agency authority to pay certain unpaid claims and charge such amounts to Contractors, as set forth in ORS 279C.515(1).

(b) Maximum hours of labor and overtime, as set forth in ORS 279C.520(1).

(c) Employer notice to employees of hours and days that employees may be required to work, as set forth in ORS 279C.520(2).

(d) Contractor required payments for certain services related to sickness or injury, as set forth in ORS 279C.530.

(e) A requirement for payment of prevailing rate of wage, as set forth in ORS 279C.830(1). If both state and federal prevailing rates of wage apply, the contract and every subcontract must provide that all workers must be paid the higher of the applicable state or federal prevailing rate of wage.

(f) A requirement for filing a public works bond by contractor and every subcontractor, as set forth in ORS 279C.830(2).

(3) Requirements for Specifications. The Specifications for every Public Works Contract, consisting of the procurement package (such as the project manual, Bid or Proposal booklets, request for quotes or similar procurement Specifications), must contain the following provisions:

(a) The state prevailing rate of wage, and, if applicable, the federal prevailing rate of wage, as required by ORS 279C.830(1)(a):

(A) Physically contained within or attached to hard copies of procurement Specifications;

(B) Included by a statement incorporating the applicable wage rate publication into the Specifications by reference, in compliance with OAR 839-025-0020; or, (iii) when the rates are available electronically or by Internet access, the rates may be incorporated into the Specifications by referring to the rates and providing adequate information on how to access them in compliance with OAR 839-025-0020.

(b) If both state and federal prevailing rates of wage apply, a requirement that the contractor shall pay the higher of the applicable state or federal prevailing rate of wage to all workers. See BOLI rules at OAR 839-025-0020 and 0035.

(c) A requirement for filing a public works bond by contractor and every subcontractor, as set forth in ORS 279C.830(2).

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.800 - 279C.870, OL 2011, ch 458
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

137-049-0870
Specifications; Brand Name Products

(1) **Generally**. The Contracting Agency's Solicitation Document shall not expressly or implicitly require any product by brand name or mark, nor shall it require the product of any particular manufacturer or seller, except pursuant to an exemption granted under ORS 279C.345(2).

(2) **Equivalents**. A Contracting Agency may identify products by brand names as long as the following language: "approved equal"; "or equal"; "approved equivalent" or "equivalent," or similar language is included in the Solicitation Document. The Contracting Agency shall determine, in its sole discretion, whether an Offeror's alternate product is "equal" or "equivalent."

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.345
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-049-0880
Records Maintenance; Right to Audit Records

(1) **Records Maintenance; Access**. Contractors and subcontractors shall maintain all fiscal records relating to Contracts in accordance with generally accepted accounting principles ("GAAP"). In addition, Contractors and subcontractors shall maintain all other records necessary to clearly document: (i) their performance; and (ii) any claims arising from or relating to their performance under a Public Contract. Contractors and subcontractors shall make all records pertaining to their performance and any claims under a Contract (the books, fiscal records and all other records, hereafter referred to as "Records") accessible to the Contracting Agency at reasonable times and places, whether or not litigation has been filed as to such claims.

(2) **Inspection and Audit**. A Contracting Agency may, at reasonable times and places, have access to and an opportunity to inspect, examine, copy, and audit the Records of any Person that has submitted cost or pricing data according to the terms of a Contract to the extent that the Records relate to such cost or pricing data. If the Person must provide cost or pricing data under a Contract, the Person shall maintain such Records that relate to the cost or pricing data for 3 years from the date of final payment under the Contract, unless a shorter period is otherwise authorized in Writing.

(3) **Records Inspection; Contract Audit**. The Contracting Agency, and its authorized representatives, shall be entitled to inspect, examine, copy, and audit any Contractor's or subcontractor's Records, as provided in section 1 of this rule. The Contractor and subcontractor shall maintain the Records and keep the Records accessible and available at reasonable times and places for a minimum period of 3 years from the date of final payment under the Contract or subcontract, as applicable, or until the conclusion of any audit, controversy or litigation arising out of or related to the Contract, whichever date is later, unless a shorter period is otherwise authorized in Writing.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.030, 279C.375, 279C.380 & 279C.440
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

137-049-0890
Contracting Agency Payment for Unpaid Labor or Supplies

(1) **Contract incomplete**. If the Contract is still in force, the Contracting Agency may, in accordance with ORS 279C.515(1), pay a valid claim to the Person furnishing the labor or services, and charge the amount against payments due or to become due to the Contractor under the Contract. If a Contracting Agency chooses to make such a payment as provided in 279C.515(1), the Contractor and the Contractor's surety shall not be relieved from liability for unpaid claims.

(2) **Contract completed**. If the Contract has been completed and all funds disbursed to the prime Contractor, all claims shall be referred to the Contractor's surety for resolution. The Contracting

Agency shall not make payments to subcontractors or suppliers for Work already paid for by the Contracting Agency.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.515
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

137-049-0900
Contract Suspension; Termination Procedures

(1) **Suspension of Work**. In the event a Contracting Agency suspends performance of Work for any reason considered by the Contracting Agency to be in the public interest other than a labor dispute, the Contractor shall be entitled to a reasonable extension of Contract time, and to reasonable compensation for all costs, including a reasonable allowance for related overhead, incurred by the Contractor as a result of the suspension.

(2) **Termination of Contract by mutual agreement for reasons other than default**.

(a) Reasons for termination. The parties may agree to terminate the Contract or a divisible portion thereof if:

(A) The Contracting Agency suspends Work under the Contract for any reason considered to be in the public interest (other than a labor dispute, or any judicial proceeding relating to the Work filed to resolve a labor dispute); and

(B) Circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the Work.

(b) Payment. When a Contract, or any divisible portion thereof, is terminated pursuant to this section (2), the Contracting Agency shall pay the Contractor a reasonable amount of compensation for preparatory Work completed, and for costs and expenses arising out of termination. The Contracting Agency shall also pay for all Work completed, based on the Contract Price. Unless the Work completed is subject to unit or itemized pricing under the Contract, payment shall be calculated based on percent of Contract completed. No claim for loss of anticipated profits will be allowed.

(3) **Public interest termination by Contracting Agency**. A Contracting Agency may include in its Contracts terms detailing the circumstances under which the Contractor shall be entitled to compensation as a matter of right in the event the Contracting Agency unilaterally terminates the Contract for any reason considered by the Contracting Agency to be in the public interest.

(4) **Responsibility for completed Work**. Termination of the Contract or a divisible portion thereof pursuant to this rule shall not relieve either the Contractor or its surety of liability for claims arising out of the Work performed.

(5) **Remedies cumulative**. The Contracting Agency may, at its discretion, avail itself of any or all rights or remedies set forth in these rules, in the Contract, or available at law or in equity.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.650, 279C.655, 279C.660, 279C.665 & 279C.670
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-049-0910
Changes to the Work and Contract Amendments

(1) **Definitions for Rule**. As used in this rule:

(a) "**Amendment**" means a Written modification to the terms and conditions of a Public Improvement Contract, other than by Changes to the Work, within the general scope of the original Procurement that requires mutual agreement between the Contracting Agency and the Contractor.

(b) "**Changes to the Work**" means a mutually agreed upon change order, or a construction change directive or other Written order issued by the Contracting Agency or its authorized representatives to the Contractor requiring a change in the Work within the general scope of a Public Improvement Contract and issued under its changes provisions in administering the Contract and, if applicable, adjusting the Contract Price or contract time for the changed Work.

(2) **Changes Provisions**. Changes to the Work are anticipated in construction and, accordingly, Contracting Agencies shall include changes provisions in all Public Improvement Contracts that detail the scope of the changes clause, provide pricing mechanisms, authorize the Contracting Agency or its authorized representatives to issue Changes to the Work and provide a procedure for addressing Contractor claims for additional time or compensation. When Changes to the Work are agreed to or issued consistent with the Contract's changes provisions they are not considered to be new Procurements and an exemption from competitive bidding is not required for their issuance by Contracting Agencies.

(3) **Change Order Authority**. Contracting Agencies may establish internal limitations and delegations for authorizing Changes to the Work, including dollar limitations. Dollar limitations on Changes to the Work are not set by these Model Rules, but such changes are limited by the above definition of that term.

(4) **Contract Amendments**. Contract Amendments within the general scope of the original Procurement are not considered to be new Procurements and an exemption from competitive bidding is not required in order to add components or phases of Work specified in or reasonably implied from the Solicitation Document. Amendments to a Public Improvement Contract may be made only when:

(a) They are within the general scope of the original Procurement;

(b) The field of competition and Contractor selection would not likely have been affected by the Contract modification. Factors to be considered in making that determination include similarities in Work, project site, relative dollar values, differences in risk allocation and whether the original Procurement was accomplished through competitive bidding, competitive Proposals, competitive quotes, sole source or Emergency contract;

(c) In the case of a Contract obtained under an Alternative Contracting Method, any additional Work was specified or reasonably implied within the findings supporting the competitive bidding exemption; and

(d) The Amendment is made consistent with this rule and other applicable legal requirements.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065, 279C.335 & 279C.400
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

DIVISION 50

SUPPORT ENFORCEMENT

Procedural Rules

137-050-0700
General Provisions

(1) ORS 25.270 through 25.280 require that child support be calculated according to a formula. The formula is known as the "Oregon Child Support Guidelines" ("guidelines" or "guideline") and is contained in OAR 137-050-0700 through 137-050-0765 and in the "Obligation Scale" which is located in the appendix.

(2) Any change to the guidelines applies to all calculations prepared on or after the effective date of the change. The court, administrator, or administrative law judge may issue a final order based on a calculation prepared prior to the guidelines change. However, if support is recalculated after the new guidelines become effective, the calculation must be prepared using the new guidelines.

(3) Changes to these rules do not constitute a substantial change in circumstances for purposes of modifying a support order.

(4) Calculate support for a Child Attending School who is age 18, living with a parent, and attending high school in the same manner as support for a minor child.

Stat. Auth.: ORS 25.270 - 25.290 & 180.345
Stats. Implemented: ORS 25.270 - 25.290
Hist.: DOJ 16-2009, f. 12-1-09, cert. ef. 1-4-10; DOJ 5-2010(Temp), f. & cert. ef. 2-12-10 thru 8-10-10; DOJ 11-2010, f. & cert. ef. 7-1-10; DOJ 15-2010(Temp), f. & cert. ef. 10-1-10 thru 3-22-11; DOJ 18-2010, f. 12-20-10, cert. ef. 1-4-11; DOJ 3-2013, f. 5-15-13, cert. ef. 7-1-13

137-050-0710
Calculating Support

(1) To calculate the guideline support amount:

(a) Determine each parent's income as provided in OAR 137-050-0715.

(b) Determine each parent's adjusted income and percentage share of adjusted income as provided in OAR 137-050-0720.

(c) Determine each parent's income available for support ("available income") by deducting the self-support reserve from the parent's adjusted income as provided in OAR 137-050-0745.

(d) Determine the basic support obligation and each parent's share, of the basic support obligation as provided in OAR 137-050-0725.

(e) Add to each parent's basic support obligation the parent's share of child care costs as provided in OAR 137-050-0735.

(f) Determine each parent's medical support obligation as provided in OAR 137-050-0750. Add each parent's share of health care coverage costs to the parent's obligation. Round cash medical support, if any, to the nearest dollar.

(g) Determine each parent's parenting time credit as provided in OAR 137-050-0730.

(h) Credit each parent's cash child support obligation for:

(A) parenting time as provided in OAR 137-050-0730,

(B) the parent's allowed out-of pocket costs for child care as provided in OAR 137-050-0735(1)-(4), and

(C) the parent's out-of-pocket health insurance costs for the child as provided in OAR 137-050-0750.

(i) Determine whether the parent will be ordered to pay cash child support or cash medical support for minor children as follows:

(A) Only the parent with the greater net support obligation for minor children may be ordered to pay cash child support and, if applicable, cash medical support, for the minor children, except as provided in subsection (D).

(B) To determine each parent's net obligation for minor children, determine the minor children's share of the parent's basic support obligation determined in OAR 137-050-0725(6). Add the parent's share of child care costs determined in 137-050-0735(5), and the minor children's share of the parent's health care coverage costs determined in 137-050-0750(14). Subtract each parent's parenting time credit determined in 137-050-0730(7), child care credit determined in section (1)(h)(B) of this rule, and the minor children's share of the health care coverage costs credit determined in section (1)(h)(C) of this rule.

(C) For purposes of determining the minor children's shares under this subsection, each child is allocated an equal share of the total obligation, cost, or credit.

(D) If a minor child lives with a caretaker or is in state care, both parents may be ordered to pay cash child support and, if applicable, cash medical support for minor children.

(j) Determine whether the minimum order applies and apply any necessary increase as provided in OAR 137-050-0755.

(k) Apply any reduction in support for Social Security or Veteran's benefits as determined in OAR 137-050-0740.

(l) If the parent will be ordered to pay cash child support for minor children, determine the amount by dividing each parent's cash child support obligation by the total number of joint children and multiplying the result by the number of joint minor children. Round the result to the nearest dollar.

(m) Determine the cash child support obligation for joint Children Attending School by dividing each parent's cash child support obligation by the total number of joint children and multiplying the result by the number of joint Children Attending School. Round the result to the nearest dollar.

(n) Allocate cash medical support to joint minor children and joint Children Attending School in the same manner provided for cash child support in sections (1)(l) and (1)(m) of this rule.

(2) Round all dollar figures to the nearest penny, except as otherwise provided. Example: $12.34. Round all percentages to the nearest one-hundredth of one percent. Example: 12.34%.

(3) If all of the minor children for whom support is being calculated live with a caretaker other than a parent or the children are in the care or custody of the state, and the action is determining the support obligation of only one parent, consider only that parent's information. For the second parent in these single-parent calculations, use the same income, spousal support, union dues, parent's own health care coverage cost, and non-joint children as for the parent whose obligation is being calculated. Include the caretaker's child care costs, if any. Do not include any other information for the "other parent".

(4) The obligations to pay cash child support and cash medical support, and to provide health care coverage under this rule together constitute the guideline child support obligation and are presumed just and appropriate, subject to the agreed support amount in OAR 137-050-0765 and rebuttal as provided in OAR 137-050-0760.

Stat. Auth.: ORS 25.270 - 25.290 & 180.345
Stats. Implemented: ORS 25.270 - 25.290
Hist.: DOJ 16-2009, f. 12-1-09, cert. ef. 1-4-10; DOJ 5-2010(Temp), f. & cert. ef. 2-12-10 thru 8-10-10; DOJ 11-2010, f. & cert. ef. 7-1-10; DOJ 3-2013, f. 5-15-13, cert. ef. 7-1-13; DOJ 8-2014, f. & cert. ef. 5-22-14

137-050-0715
Income

(1) "Income" means the actual or potential gross income of a parent as determined in this rule. Actual and potential income may be combined when a parent has actual income and is unemployed or employed at less than the parent's potential.

(2) "Actual income" means a parent's gross earnings and income from any source, including those sources listed in section (4), except as provided in section (45).

(3) "Potential income" means the parent's ability to earn based on relevant work history, including hours typically worked by or available to the parent, occupational qualifications, education, physical and mental health, employment potential in light of prevailing job opportunities and earnings levels in the community, and any other relevant factors. A determination of potential income includes potential income from any source described in section 4 of this rule.

(4) Actual income includes but is not limited to:

(a) Employment-related income including salaries, wages, commissions, advances, bonuses, dividends, recurring overtime pay, severance pay, pensions, and honoraria;

(b) Expense reimbursements, allowances, or in-kind payments to a parent, to the extent they reduce personal living expenses;

(c) Annuities, trust income, including distribution of trust assets, and return on capital, such as interest and dividends;

(d) Income replacement benefit payments including Social Security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, and Department of Veterans Affairs disability benefits;

(e) Inheritances, gifts and prizes, including lottery winnings; and

(f) Income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, minus costs of goods sold, minus ordinary and necessary expenses required for self-employment or business operation, including one-half of the parent's self-employment tax, if applicable. Specifically excluded from ordinary and necessary expenses are amounts allowable by the Internal Revenue Service for the accelerated component of depreciation expenses, investment tax credits, or any other business expenses determined by the fact finder to be inappropriate or excessive for determining gross income.

(5) Child support, food stamps, Social Security or Veterans benefits received on behalf of a child in the household, adoption assistance, guardianship assistance, and foster care subsidies are not considered income for purposes of this calculation.

(6) If a parent's actual income is less than the parent's potential income, the court, administrator, or administrative law judge may impute potential income to the parent.

(7) If insufficient information about the parent's income history is available to make a determination of actual or potential income, the parent's income is the amount the parent could earn working full-time at the minimum wage in the state in which the parent resides.

(8) Potential income may not be imputed to:

(a) A parent unable to work full-time due to a verified disability;

(b) A parent receiving workers' compensation benefits;

(c) An incarcerated obligor as defined in OAR 137-055-3300; or

(d) A parent whose order is being temporarily modified under ORS 416.425(13).

(9) To determine monthly income when the employee is paid:

(a) Weekly, multiply the weekly earnings by 52 and divide by 12.

(b) Every two weeks, multiply the bi-weekly earnings by 26 and divide by 12.

(c) Semimonthly (twice per month), multiply the semimonthly earnings by 2.

(10) Notwithstanding any other provision of this rule, if the parent receives Temporary Assistance for Needy Families, the parent's income is presumed to be the amount which could be earned by full-time work at the minimum wage in the state in which the parent resides. This income presumption is solely for the purposes of the support calculation and not to overcome the rebuttable presumption of inability to pay in ORS 25.245.

(11) As used in this rule, "full-time" means 40 hours of work in a week except in those industries, trades or professions in which most employers, due to custom, practice or agreement, utilize a normal work week of more or less than 40 hours in a week.

Stat. Auth.: ORS 25.270 - 25.290 & 180.345
Stats. Implemented: ORS 25.270 - 25.290
Hist.: DOJ 16-2009, f. 12-1-09, cert. ef. 1-4-10; DOJ 6-2010(Temp), f. & cert. ef. 2-12-10 thru 7-1-10; DOJ 11-2010, f. & cert. ef. 7-1-10; DOJ 3-2013, f. 5-15-13, cert. ef. 7-1-13

137-050-0720
Adjusted Income

(1) To determine "adjusted income," begin with income, as determined in OAR 137-050-0715, and then:

(a) Deduct mandatory contributions to a union or other labor organization;

(b) Deduct the parent's cost for the parent's own health insurance;

(c) Deduct the parent's monetary spousal support obligation to this or a different party, whether ordered in the same or a different proceeding, and whether paid or not;

(d) Add the amount of court-ordered monetary spousal support owed to the parent, whether ordered in the same or a different proceeding, by this or a different party and whether paid or not; and

(e) Subtract the non-joint child deduction described in section (2) of this rule.

(2) A parent is entitled to a non-joint child income deduction when the parent is legally responsible for the support of a child not included in the current calculation.

(a) To qualify for the non-joint child deduction, the minor child must reside in the parent's household or the parent must be ordered to pay ongoing support for that child.

(b) A child attending school, as defined in ORS 107.108 and OAR 137-055-5110, qualifies the parent for the non-joint child deduction only if the parent is ordered to pay ongoing support for the child attending school, or as provided in subsection (c).

(c) A child who has reached the age of 18 but is not yet 19, lives with a parent and attends high school, qualifies that parent for the non-joint child deduction, whether or not the child has qualified as a Child Attending School under ORS 107.108.

(d) A stepchild only qualifies a parent for the non-joint child deduction if the parent is ordered to pay ongoing support for the stepchild.

(e) To calculate a parent's non-joint child deduction:

(A) Apply the adjustments described in subsections 1(a)-1(d) of this rule to the parent's income;

(B) Using the parent's income after the adjustments in section 2(e)(A) of this rule and total number of joint and non-joint children, reference the obligation scale and determine the applicable support amount; and

(C) Divide the result by the total number of the parent's joint and non-joint children and multiply by the number of non-joint children to determine the amount of the non-joint child deduction.

(3) Determine each parent's percentage share of adjusted income by dividing the parent's adjusted income by the parents' combined adjusted income.

Stat. Auth.: ORS 25.270 - 25.290 & 180.345
Stats. Implemented: ORS 25.270 - 25.290
Hist.: DOJ 16-2009, f. 12-1-09, cert. ef. 1-4-10; DOJ 3-2013, f. 5-15-13, cert. ef. 7-1-13

137-050-0725
Basic Support Obligation

(1) The scale of basic child support obligations, found in the appendix to these rules, must be used in every support calculation made under ORS 25.270 to 25.280. The scale is based on national data on childrearing expenditures relative to family income. The scale applies regardless of where the parent resides or works.

(2) Determine the basic child support obligation by referencing the scale using the number of children for whom support is sought and the combined adjusted income of the parents.

(3) If the combined adjusted gross income of the parents is more than $30,000 per month, the basic child support obligation is the same for parents with combined adjusted income of $30,000 per month.

(4) The basic child support obligation for more than ten children is the same as for ten children.

(5) When the parents' combined income falls between two income amounts on the scale, use the lower income amount on the scale to determine the basic child support obligation.

(6) Determine each parent's share of the basic support obligation by multiplying the combined basic support obligation by the parent's percentage share of adjusted income as provided by OAR 137-050-0720. The basic support amount may not exceed the parent's income available for support as provided in OAR 137-050-0745.

NOTE: Link to the appendix (the scale): http://oregonchildsupport.gov/laws/rules/docs/guidelines_scale.pdf
[ED. NOTE: Appendix referenced is available from the agency.]
Stat. Auth.: ORS 25.270 - 25.290 & 180.345
Stats. Implemented: ORS 25.270 - 25.290
Hist.: DOJ 16-2009, f. 12-1-09, cert. ef. 1-4-10; DOJ 3-2013, f. 5-15-13, cert. ef. 7-1-13

137-050-0730
Parenting Time Credit

(1) For the purposes of this rule:

(a) "Primary physical custody" means the parent provides the primary residence for the child and is responsible for the majority of the day-to-day decisions concerning the child.

(b) "Split custody" means that there are two or more children and each parent has at least one child more than 50 percent of the time.

(2) If there is a current written parenting time agreement or court order providing for parenting time, calculate each parent's overnights for the minor children as follows:

(a) Determine the average number of overnights using two consecutive years.

(b) Add the total number of overnights the parent is allowed with each minor child and divide by the total number of minor children.

(c) Notwithstanding the calculation provided in subsections (2)(a) and (2)(b), parenting time may be determined using a method other than overnights if the parents have an alternative parenting time schedule in which a parent has significant time periods where the minor child is in the parent's physical custody but does not stay overnight. For example, in lieu of overnights, 12 continuous hours may be counted as one day. Additionally, blocks of time of four hours up to 12-hours may be counted as half-days, but not in conjunction with overnights. Regardless of the method used, blocks of time may not be used to equal more than one full day per 24-hour period.

(3) If the parents have split custody but no written parenting time agreement, determine each parent's parenting time overnights by dividing the number of minor children with the parent by the total number of children and multiplying by 365.

(4) If there is no current written parenting time agreement or court order providing for parenting time, the parent or party having

primary physical custody of the minor child will be treated as having all of the parenting time for that child unless a court or administrative law judge determines actual parenting time.

(5) If the court or administrative law judge determines actual parenting time exercised by a parent is different than what is provided in a written parenting plan or court order, the parenting time overnights may be calculated using the actual parenting time exercised by the parent.

(6) Determine each parent's parenting time credit percentage as follows: credit percentage = 1/(1+e^(-7.14*((overnights/365)-0.5)))-2.74%+(2*2.74%*(overnights/365)). The precisely computed credit percentage is preferred. However, where this is impractical (for example, when calculating support by hand) an approximate credit percentage can be determined by referencing the table at the end of this rule using the parents' average overnights determined in step 2, 3, or 4, rounding up or down to the nearest whole number of overnights.

(7) To determine the amount of each parent's parenting time credit:

(a) Determine the minor children's portion of the combined basic support obligation, as determined in OAR 137-050-0725(2), by dividing the combined basic support obligation by the total number of minor children and children attending school and multiply the result by the number of minor children only.

(b) Multiply the result by each parent's parenting time credit percentage.

Stat. Auth.: ORS 25.270B - 25.290 & 180.345
Stats. Implemented: ORS 25.270B - 25.290
Hist.: DOJ 16-2009, f. 12-1-09, cert. ef. 1-4-10; DOJ 11-2010, f. & cert. ef. 7-1-10; DOJ 3-2013, f. 5-15-13, cert. ef. 7-1-13

137-050-0735
Child Care Costs

(1) Adjust the support obligation for child care costs paid by either parent or the child's caretaker if the child for whom support is being calculated is disabled or under the age of 13.

(2) Child care costs must be related to the parent's or caretaker's employment, job search, or training or education necessary to obtain a job. Only actual costs paid by a parent or caretaker for child care that can be documented and determined may be used to compute an adjustment under these rules.

(3) Child care costs are allowable only to the extent that they are reasonable and, except as provided in section (4), do not exceed the maximum amounts set out in Table 1.

(4) The maximum amounts allowed by the Department of Human Services as shown in the Employment-Related Day Care Allowance tables in OAR 461-155-0150, available on line at http://arcweb.sos.state.or.us/pages/rules/oars_400/oar_461/461_tofc.html or http://dhsmanuals.hr.state.or.us/EligManual/07cc-f.htm#RateCharts, may be used when those amounts are greater than the amounts in the abbreviated table in section (3).

(5) Each parent's obligation for child care costs is that parent's income share percentage as provided by OAR 137-050-0720 multiplied by the total allowed child care costs. A parent's child care cost obligation may not exceed the parent's available income after deducting the parent's basic support obligation.

(6) As used in section 1 of this rule, "disabled" refers to a child who has a physical or mental disability that substantially limits one or more major life activities (for example, self-care, performing manual tasks, walking, seeing, speaking, hearing, eating, sleeping, standing, lifting, bending, breathing, learning, reading, concentrating, thinking, communicating, and working).

[ED. NOTE: Table referenced is available from the agency.]
Stat. Auth.: ORS 25.270B - 25.290, 180.345
Stats. Implemented: ORS 25.270B - 25.290
Hist.: DOJ 16-2009, f. 12-1-09, cert. ef. 1-4-10; DOJ 3-2013, f. 5-15-13, cert. ef. 7-1-13; DOJ 8-2014, f. & cert. ef. 5-22-14

137-050-0740
Social Security and Veterans Benefits; Dollar-for-Dollar Reduction in Support Obligation

(1) For the purposes of this rule:

(a) "Apportioned Veterans benefits" means the amount the U.S. Department of Veterans Affairs deducts from an obligated parent's Veterans benefits and disburses to the child or to the child's representative payee; and

(b) "Social Security benefits" refer to those benefits paid on behalf of a disabled or retired obligated parent to a child or a child's representative payee.

(2) The child support obligation may be reduced dollar for dollar in consideration of any Social Security or apportioned Veterans benefits; and

(3) The child support obligation must be reduced dollar for dollar in consideration of any Survivors' and Dependents' Educational Assistance (Veterans benefit) under 38 U.S.C. chapter 35.

(4) A parent is not entitled to a reduction in support for Veterans or Social Security benefits:

(a) That result from the child's own disability,

(b) For which the obligated parent is the representative payee, or

(c) That do not result from the obligated parent's own disability or retirement, or, in the case of subsection (3), from that parent's military service.

Stat. Auth: ORS 25.270 – 25.290 & 180.345
Stats. Implemented: ORS 25.270 – 25.290
Hist.: DOJ 16-2009, f. 12-1-09, cert. ef. 1-4-10; DOJ 3-2013, f. 5-15-13, cert. ef. 7-1-13; DOJ 8-2014, f. & cert. ef. 5-22-14; DOJ 3-2015(Temp), f. & cert. ef. 2-4-15 thru 8-2-15; DOJ 5-2015, f. & cert. ef. 3-30-15

137-050-0745
Self-Support Reserve

(1) The support calculation must leave an obligated parent enough income to meet his or her own basic needs.

(2) To determine the amount of the parent's income available for support ("available income"), subtract the self-support reserve of $1135 from the parent's adjusted income;

(3) The parent's total obligation, including the parent's shares of the basic support obligation, child care costs, health insurance, and cash medical support, may not exceed the parent's available income, except as provided in OAR 137-050-0750(7).

(4) The limitation on support described in this rule is reflected in the specific provisions of OAR 137-050-0710 (Calculating Support), 137-050-0725 (Basic Support Obligation), 137-050-0735 (Child Care Costs), and 137-050-0750 (Medical Support).

(5) The amount of the self-support reserve is based on the federal poverty guideline, multiplied by 1.167 to account for estimated taxes. This rule will be reviewed and updated annually to reflect changes in the federal poverty guideline.

Stat. Auth.: ORS 25.275, 25.280 & 180.345
Stats. Implemented: ORS 25.275 & 25.280
Hist.: DOJ 16-2009, f. 12-1-09, cert. ef. 1-4-10; DOJ 1-2011(Temp), f. & cert. ef. 1-26-11 thru 7-24-11; DOJ 5-2011, f. & cert. ef. 7-1-11; DOJ 9-2012, f. & cert. ef. 7-2-12; DOJ 3-2013, f. 5-15-13, cert. ef. 7-1-13; DOJ 8-2014, f. & cert. ef. 5-22-14

137-050-0750
Medical Support

(1) The basic support obligation (OAR 137-050-0725) includes ordinary unreimbursed medical costs of $250 per child per year. These costs represent everyday expenses such as bandages, non-prescription medication, and co-pays for doctor's well visits. The basic support obligation does not account for health care coverage costs or for extraordinary medical expenses.

(2) "Cash medical support", as used in OAR 137-050-0700 through 137-050-0765, has the meaning given in ORS 25.321(1).

(3) For purposes of this rule, "to provide" health care coverage means to apply to enroll the child and pay any costs associated with the enrollment, even if the cost to the parent is zero.

(4) For purposes of ORS 25.323, private health care coverage may be "available" to a parent from any source, including but not limited to an employer, spouse, or domestic partner.

(5) Private health care coverage is reasonable in cost if it costs no more than the total of four percent of each parent's adjusted income as determined in OAR 137-050-0720.

(a) The amount calculated for each parent in this section may not exceed that parent's available income after deducting the parent's shares of basic support obligation and child care costs.

(b) The reasonable cost contribution of a parent whose income is at or below the Oregon minimum wage for full-time employment is zero.

(6) A parent with income at or below the Oregon minimum wage for full-time employment may be ordered to provide health care coverage only if it is available at no cost.

(7) Compelling factors may support a finding that health care coverage is reasonable in cost at an amount greater than the amount determined in section 5 of this rule so long as the providing parent has income greater than full-time employment at the Oregon minimum wage.

(8) In determining the cost of private health care coverage, consider only the cost to the parents of covering the children for whom support is sought. To calculate the amount to be considered:

(a) If there is a known cost for self-only coverage for the providing parent, deduct that cost from the cost of family coverage. Divide the remainder by the total number of people covered, excluding the providing parent. Multiply the result by the number of children for whom coverage is sought in the present calculation.

(b) If there is no self-only coverage option or the cost cannot be determined, divide the total cost of coverage by total number of people covered, including the providing parent. Multiply the result by the number of children for whom coverage is sought in the present calculation.

(9) If only one parent has private health care coverage that is appropriate and available under ORS 25.323, that parent must be ordered to provide it.

(10) If both parents have access to appropriate, available private health care coverage, the parent with the greater share of parenting time as determined in OAR 137-050-0730 (Parenting Time Credit) may select which coverage will be ordered.

(a) If the parent with the greater share of parenting time does not select between the parents' coverage, or each parent has exactly 50% or 182.5 overnights of parenting time and the parents do not agree on which policy should be ordered, the policy with the lower out-of-pocket premium cost will be ordered unless the court, administrator, or administrative law judge makes a finding that the more expensive policy should be ordered.

(b) The parents may agree that both parents will be ordered to provide private coverage if both parents have appropriate coverage available so long as the total coverage to be provided is reasonable in cost under sections 5 or 7 of this rule.

(11) If the child lives with a caretaker, both parents are parties to the action, and both parents have appropriate and available private health care coverage, the caretaker may select which coverage will be ordered. If the caretaker does not select between the parents' coverage, the policy with the lower out-of-pocket premium cost will be ordered unless the court, administrator, or administrative law judge makes a finding that the more expensive policy should be ordered.

(12) If neither parent has access to appropriate, available private health care coverage:

(a) One or both parents must be ordered to provide appropriate private health care coverage at any time whenever it becomes available;

(b) The parent with custody of the child may be ordered to provide public health care coverage for the child; and

(c) Either or both parents who are found to have a cash child support obligation as provided in OAR 137-050-0710(1)(i) must be ordered to pay cash medical support, or the order must include a finding explaining why cash medical support is not ordered. The amount of the cash medical support obligation is the lesser of:

(A) Four percent of the parent's adjusted income as determined in OAR 137-050-0720,

(B) The parent's available income after deducting the parent's shares of basic support obligation and child care costs, or

(C) Zero, if the parent's income is at or below the Oregon minimum wage for full-time employment.

(13) A medical support clause may order an obligor to provide appropriate private health care coverage whenever it is available to the obligor, and to pay cash medical support whenever the obligor does not provide appropriate private health care coverage.

(14) Determine each parent's share of the cost of health care coverage to be ordered under this rule by multiplying the total cost by each parent's percentage share of the parents' combined reasonable in cost limitation, as determined in section 5 of this rule. If only one parent has income above the minimum wage, that parent is responsible for all health care coverage costs. No share of the cost is apportioned to a parent with income at or below minimum wage.

(15) When enforcing the health insurance provision of a child support judgment entered under this rule, health insurance is reasonable in cost if the premium cost for the child is equal to or less than the amount that was determined reasonable in cost under section 5 of this rule based on both parents' income at the time support was calculated, regardless of whether that cost exceeds either:

(a) The providing parent's individual contribution to the reasonable cost cap, or

(b) The actual cost of insurance allocated to the providing parent under section 14 of this rule.

Stat. Auth.: ORS 25.270 – 25.290, 25.323 & 180.345
Stats. Implemented: ORS 25.270 – 25.290 & 25.321 – 25.343
Hist.: DOJ 16-2009, f. 12-1-09, cert. ef. 1-4-10; DOJ 12-2011, f. 12-30-11, cert. ef. 1-3-12; DOJ 3-2013, f. 5-15-13, cert. ef. 7-1-13

137-050-0755
Minimum Order

(1) Except as provided in OAR 137-050-0740, 137-050-0760, 137-050-0765 and this rule, it is rebuttably presumed that an obligated parent is able to pay at least $100 per month as child support. If an obligated parent's total support is less than $100, increase cash child support by the amount needed for total support to equal $100. For purposes of this rule total support equals cash child support plus the greater of cash medical support or the total out of pocket cost for health care coverage the parent is ordered to provide pursuant to OAR 137-050-0750.

(2) The presumption in this rule does not apply when:

(a) Each parent has exactly 182.5 annual average overnights as determined by OAR 137-050-0730;

(b) The administrator is entering an order which requires only medical support; or

(c) The parent from whom support is sought:

(A) Has disability benefits as a sole source of income;

(B) Is incarcerated and without ability to pay as described in OAR 137-055-3300(4); or

(C) Receives public benefits as defined in ORS 25.245.

Stat. Auth.: ORS 25.270 - 25.290 & 180.345
Stats. Implemented: ORS 25.270 - 25.280
Hist.: DOJ 16-2009, f. 12-1-09, cert. ef. 1-4-10; DOJ 3-2013, f. 5-15-13, cert. ef. 7-1-13; DOJ 8-2014, f. & cert. ef. 5-22-14

137-050-0760
Rebuttals

The presumption that the guideline support amount as provided in OAR 137-050-0700 through 137-050-0755 is the correct support amount may be rebutted by a finding that sets out the presumed amount, concludes that it is unjust or inappropriate, and sets forth a different amount and a reason it should be ordered. A supplemental calculation is not required but may be used in support of the rebuttal. The criteria that may be the basis for rebuttal include but are not limited to:

(1) Evidence of the other available resources of the parent;

(2) The reasonable necessities of the parent;

(3) The net income of the parent remaining after withholding required by law or as a condition of employment;

(4) A parent's ability to borrow;

(5) The number and needs of other dependents of a parent;

(6) The special hardships of a parent affecting the parent's ability to pay support, including, but not limited to, any medical circumstances, extraordinary travel costs related to the exercise of parenting time, or requirements of a reunification plan if the child is in state-financed care;

(7) The desirability of the custodial parent remaining in the home as a full-time parent or working less than full-time to fulfill the role of parent and homemaker;

(8) The tax consequences, if any, to both parents resulting from spousal support awarded, the determination of which parent will name the child as a dependent, child tax credits, or the earned income tax credit received by either parent;

(9) The financial advantage afforded a parent's household by the income of a spouse or domestic partner;

(10) The financial advantage afforded a parent's household by benefits of employment including, but not limited to, those provided by a family owned corporation or self-employment, such as housing, food, clothing, health benefits and the like, but only if unable to include those benefits as income under OAR 137-050-0715;

(11) Evidence that a child who is subject to the support order is not living with either parent;

(12) Findings in a judgment, order, decree or settlement agreement that the existing support award is or was made in consideration of other property, debt or financial awards, and those findings remain relevant;

(13) The net income of the parent remaining after payment of mutually incurred financial obligations;

(14) The tax advantage or adverse tax effect of a parent's income or benefits;

(15) The extraordinary or diminished needs of the child, except:

(a) Expenses for extracurricular activities and

(b) Social Security benefits paid to a child because of a child's disability;

(16) The return of capital.

(17) The financial costs of supporting a Child Attending School at school, including room, board, tuition and fees, and discretionary expenses, the ability of the Child Attending School to meet those expenses with scholarships, grants and loans, and the ability of a parent to provide support for the Child Attending School, either in kind where a child continues to live in a parent's home or with cash if there are parental resources to provide financial support over and above the amount for a Child Attending School generated by the child support calculator.

Stat. Auth.: ORS 25.270 - 25.290 & 180.345
Stats. Implemented: ORS 25.270 - 25.290
Hist.: DOJ 17-2009(Temp), f. 12-1-09, cert. ef. 1-4-10 thru 7-1-10; DOJ 3-2010(Temp), f. & cert. ef. 1-8-10 thru 7-1-10; DOJ 6-2010(Temp), f. & cert. ef. 2-12-10 thru 7-1-10; DOJ 11-2010, f. & cert. ef. 7-1-10; DOJ 3-2013, f. 5-15-13, cert. ef. 7-1-13

137-050-0765
Agreed Support Amount

(1) It is in the best interest of children to have support orders reached by agreement of the parents. Entering orders with the parents' consent promotes positive parental involvement and prompt, consistent payment of the support obligation. Parents who enter into agreed support amounts avoid the uncertainty of hearings and possible appeals.

(2) The guideline support amount and rebuttal factors are intended to meet the needs of most families. Likewise, the rebuttal factors in OAR 137-050-0760 address most situations in which the guideline amount is inappropriate. However, there will be families for whom the support amount, even rebutted, is not correct and who value the certainty of agreed support amounts.

(3) In consideration of foregoing hearing and appeal rights, the parties may consent to a support amount that is within 15 percent of the amount determined under rules 137-050-0700 through 137-050-0760. The order must be entered with the written consent of the parties.

(4) Apply any change to the support amount under this rule proportionally to cash child support and cash medical support, and to minor children and Children Attending School. Round each result to the nearest dollar.

(5) An agreed support amount entered pursuant to this rule is presumed to be just and appropriate within the meaning of ORS 25.280.

Stat. Auth.: ORS 25.270B - 25.290 & 180.345
Stats. Implemented: ORS 25.270B - 25.290
Hist.: DOJ 16-2009, f. 12-1-09, cert. ef. 1-4-10; DOJ 3-2013, f. 5-15-13, cert. ef. 7-1-13

DIVISION 55

OREGON CHILD SUPPORT PROGRAM

137-055-1020
Child Support Program Definitions

The following definitions apply to OAR 137-055-1040 through 137-055-7190:

(1) Unless otherwise stated, "administrator" means either the Administrator of the Division of Child Support of the Department of Justice or a district attorney, or the administrator's or a district attorney's authorized representative.

(2) "Assignee" means the Department of Human Services (DHS), the Oregon Health Authority (OHA), the Division of Child Support, Oregon Youth Authority (OYA) or equivalent agencies in any other state or Tribe to which support rights for a person are assigned.

(3) "Assignment" or "Assigned" means all or a portion of support payments owed to a person will be kept by the state if the person or a beneficiary of the person is receiving Temporary Assistance for Needy Families (TANF) cash assistance, foster care, or OYA services. Support payments will be distributed as provided in OAR 137-055-6022. Additionally, if a person receives Title XIX medical assistance, medical support rights are assigned.

(4) "Beneficiary" means any child, spouse or former spouse for whom an obligor has been ordered (or has agreed) to pay support, under a court or administrative order, or a voluntary agreement.

(5) "Child Support Award" means a money award or administrative order that requires the payment of child support.

(6) "Child Support Program" or ACSP" is the program authorized under title IV-D of the Social Security Act to provide child support enforcement services required by federal and state law. The CSP director in Oregon is the Administrator of the Division of Child Support. The CSP includes the Division of Child Support and those district attorneys that contract to provide services described in ORS 25.080.

(7) "Class Order" means a support order for multiple children that does not specify an amount of support per child and requires the payment of the entire amount until the last child attains majority or until the order is prospectively modified.

(8) "Court Order" means any judgment or order of the court requiring an obligor to provide child or spousal and/or health care coverage, for specified beneficiaries.

(9) "Court ordered Amount", or "COA", means the periodic payment amount, usually monthly, ordered by the administrator, an administrative law judge or by a court for support. The COA can be either the amount for each beneficiary on a support case, or the total amount for all beneficiaries in a single support case.

(10) "Department of Human Services", or "DHS", is the state's health and human services agency. DHS is responsible for public assistance programs such as: TANF, Food Stamps, child-protective services, and foster care and adoption programs.

(11) "Disbursement" means dispensing or paying out collected support.

(12) "Distribution" means allocating or apportioning collected support.

(13) "District Attorney", or "DA", means the district attorney for an Oregon county responsible for providing services under ORS 25.080.

(14) "Division of Child Support", or "DCS", is the Division of Oregon's Department of Justice that is responsible for providing services under ORS 25.080.

(15) "Guidelines" refers to the guidelines, the formula, and related provisions established by DCS, in OAR 137-050-0705 through 137-050-0765.

(16) "Income Withholding" means a judicial or administrative process under which an obligor's employer, trustee, or other provider of income is ordered to withhold a specified percentage, or a spec-

ified amount, from each and every paycheck or benefit payment of an obligor, for the purpose of paying current and past due support. Income withholding is distinguished from garnishment as follows: income withholding will occur continuously under a single order and is not subject to claim of exemption; a garnishment occurs for only a limited duration under a single writ and is subject to certain property exemptions provided by law.

(17) "Initiating agency" means a state or tribal IV-D agency, or a child support agency in a reciprocating foreign country, in which an individual has applied for or is receiving child support services.

(18) "Intergovernmental" means a case or action that involves a tribe, another country, or another state's child support agency.

(19) "Issuing jurisdiction" means the state, tribe or reciprocating foreign country in which a tribunal issues a support order or renders a judgment determining parentage and includes an "issuing state" as defined in ORS 110.303(9).

(20) "Judgment Lien" means the effect of a judgment on real property for the county in which the judgment is entered, or such other county where the lien is recorded, and includes any support arrearage lien attaching to real property.

(21) "Judgment Remedy" means the ability of a judgment creditor to enforce a judgment, including enforcement through a judgment lien.

(22) "Legal proceeding" means any action related to the support order that requires service of documents on the parties. For the purposes of OAR 137-055-1140 and 137-055-1160, "legal proceeding" means a proceeding initiated by the administrator.

(23) "Medicaid" refers to Title XIX of the Social Security Act (see the definition under "Title XIX").

(24) "Money Award" means a judgment or portion of a judgment that requires the payment of money. A money award will always refer to a sum certain and will not require a payment in installments.

(25) "Oregon Health Authority" or "OHA" is the State of Oregon agency acting as the state Medicaid agency for administration of funds from Title XIX and XXI of the Social Security Act and to administer medical assistance under ORS chapter 414.

(26) "Oregon Youth Authority", or "OYA", is the State of Oregon agency responsible for the supervision, management, and administration of state parole and probation services, community out-of-home placements, and youth correction facilities for youth offenders, and other functions related to state programs for youth corrections.

(27) "Party" means an obligor, obligee, a child attending school under ORS 107.108 and OAR 137-055-5110, and includes any person who has been joined to the proceeding.

(28) "Responding agency" means the agency that is providing services in response to a referral from an initiating agency in an intergovernmental case.

(29) "Subsequent child" means a child whose paternity or support has not been established and who is born to the same parents of another child, or who has not been included in a support order for another child with the same parties.

(30) "Support" means monetary payments, health care coverage payments or premiums, cash medical payments or other benefits or payments that a person has been ordered by a court or by administrative process, or has voluntarily agreed, to provide for the benefit and maintenance of another person.

(31) "Support Arrearage Lien" means a lien that attaches to real property when an installment becomes due under the terms of a support award and is not paid.

(32) "Support Award" means a money award or administrative order that requires the payment of child or spousal support.

(33) "Support Order" means a judgment or order, whether temporary, final or subject to modification, which reflects an obligation to contribute to the support of a child, a spouse or a former spouse, and requires an obligor to provide monetary support, health care, arrears or reimbursement. A support order may include related costs and fees, interest, income withholding, attorney fees and other relief.

(34) "TANF" means "Temporary Assistance for Needy Families", a public assistance program which provides case management and cash assistance to low income families with minor children. It is designed to promote personal responsibility and accountability for parents. The goal of the program is to reduce the number of families living in poverty through employment services and community resources. Title IV-A of the Social Security Act is the specific provision that gives grants to states and Tribes for aid and services to needy families with dependent children.

(35) "Tiered" order means an order which includes an amount of support to be paid if an adult child becomes a child attending school under ORS 107.108 and OAR 137-055-5110.

(36) "Title IV-A" refers to Title IV-A of the Social Security Act, which is the specific provision that gives grants to states and Tribes for aid and services to needy families with dependent children (see "TANF"). Applicants for assistance from IV-A programs are automatically referred to their state IV-D agency in order to identify and locate the non-custodial parent, establish paternity or a child support order, and obtain child support payments.

(37) "Title IV-D" refers to Title IV-D of the Social Security Act, which requires each state to create a program to locate noncustodial parents, establish paternity, establish and enforce child support obligations, and collect, distribute and disburse support payments. Recipients of IV-A (TANF), IV-E (foster care), XIX (Medicaid), and Oregon Youth Authority (OYA) assistance are referred to their state's IV-D child support program. States must also accept applications from families who do not receive assistance, if requested, to assist in collection of child support. Title IV-D also established the federal Office of Child Support Enforcement.

(38) "Title IV-E" refers to Title IV-E of the Social Security Act which established a federal-state program known as Foster Care that provides financial support to a person, family, or institution that is raising a child or children that is not their own. The funding for IV-E foster care programs is primarily from federal sources.

(39) "Title XIX", known as Medicaid, refers to Title XIX of the Social Security Act which mandates health care coverage by states for TANF recipients and certain other means-tested categories of persons. Within broad national guidelines which the federal government provides, each state: establishes its own eligibility standards; determines the type, amount, duration, and scope of services; sets the rate of payment for services; and administers its own program. In Oregon, the program is administered by OHA.

Stat. Auth.: ORS 18.005, 180.345
Stats. Implemented: ORS 25.080
Hist.: AFS 10-1990, f. 3-14-90, cert. ef. 4-1-90; AFS 14-1990, f. & cert. ef. 6-7-90; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0001; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1020; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1020; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 1-2006, f & cert. ef. 1-3-06; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; DOJ 1-2007, f. & cert. ef. 1-2-07; DOJ 5-2007, f. & cert. ef. 7-2-07; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 1-2010, f. & cert. ef. 1-4-10; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11

137-055-1040
"Party Status" in Court and Administrative Proceedings

(1) In any proceeding to establish, modify or enforce a paternity or support obligation initiated by the administrator (as defined in OAR 137-055-1020), the administrator represents only the interests of the state.

(2) In any action taken under ORS 25.080, the State of Oregon, the obligor, and the obligee are parties.

(3) In any action taken under ORS 25.080, for purposes of Oregon Administrative Rules, chapter 137, division 55, a child attending school as defined in ORS 107.108 and OAR 137-055-5110, is a necessary party to all legal proceedings.

Stat. Auth.:ORS 18.005, 180.345
Stats. Implemented: ORS 25.080
Hist.: AFS 23-1992, f. 8-14-92, cert. ef. 9-1-92; AFS 3-1994, f. & cert. ef. 2-1-94; AFS 18-1994, f. 8-25-94, cert. ef. 9-1-94; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0065; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1040; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1040; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-1060
Uniform Application for Child Support Enforcement Services

(1) The administrator will provide a standard application form to any person requesting child support enforcement services. Except for the application form, the notice required under section (3) of this rule, and any statements necessary to respond to inquiries about these forms, or as provided in OAR 137-055-5110, no other written or oral statements concerning an applicant's qualification for services nor any contract for service will be offered.

(2) The application form must:

(a) Contain a statement that the applicant is requesting child support services;

(b) Require the applicant's signature and date of application.

(3) The administrator will provide a notice to applicants for child support enforcement services, which includes the following information:

(a) The applicant's rights and responsibilities;

(b) An explanation of enforcement activities for which fees are charged;

(c) Policies on cost recovery; and

(d) Policies on distribution and disbursement of collections.

(4) A standardized application form and the notice required under section (3) will be readily available to the public in each Child Support Program (CSP) office:

(a) The administrator will provide a standardized application form, and the notice required under section (3), upon request to any individual who requests services in person;

(b) When a request for child support enforcement services is made in writing or by telephone, the administrator will send the individual a standardized application form and the notice required under section (3), within five working days from the date the request is made.

(5) The administrator will accept an application as it is filed, on the day it is received.

(6) The administrator will create a case on the computerized system within two working days of receipt of the application providing circumstances beyond the control of the administrator do not occur.

(7) The administrator will provide the notice required under section (3) of this rule:

(a) If the requesting individual or a beneficiary of such person is not receiving assistance in the form of TANF cash assistance, Medicaid, foster care or Oregon Youth Authority (OYA) services, along with a standard application form;

(b) If the requesting individual or a beneficiary of such person receives assistance in the form of TANF cash assistance, Medicaid, foster care or OYA services, within five working days of referral from the Department of Human Services (DHS) or the OYA.

(8) Once an application for child support services is accepted, if necessary for establishment and/or enforcement purposes, the administrator will solicit additional relevant information by means of a form approved by the CSP.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 25.080
Hist.: AFS 16-1994, f. 8-4-94, cert. ef. 12-1-94; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0043; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1060; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1060; DOJ 12-2004, f. & cert. ef. 10-1-04; DOJ 1-2006, f & cert. ef. 1-3-06; DOJ 10-2008, f. & cert. ef. 7-1-08

137-055-1070
Provision of Services

(1) For the purposes of this rule, the following definitions apply:

(a) "Full services case" means a case in which the full range of support enforcement services required under ORS 25.080(4) are provided;

(b) "Limited services case" means a case in which the provisions of ORS 25.080 do not apply and one or more collection, accounting, distribution and disbursement or enforcement services are provided pursuant to state or federal law;

(c) An "establishing paternity only" case means a case in which the only service requested under ORS 25.080 by a party is the establishment of paternity for a minor child.

(2) When any Oregon judgment or support order for child and/or spousal support is received, the administrator will:

(a) If the order requires payment of child support or child and spousal support and seeks collection, accounting, distribution, disbursement and enforcement services:

(A) Create a full services case on the Child Support Enforcement Automated System (CSEAS) if one does not already exist;

(B) Initiate appropriate enforcement action;

(C) Unless the order contains the signed request of a party, send the parties a standardized application form; and

(D) Send the parties the information required in OAR 137-055-1060(3);

(b) If the order requires payment of spousal support only and seeks collection, accounting, distribution, disbursement and enforcement services, process the order pursuant to OAR 137-055-2045.

(c) If the order is silent, unclear or contradictory on the services to be provided and no application or other written request for support enforcement services has been received:

(A) Create an information only case on the CSEAS for the state case registry if one does not already exist; and

(B) Send the parties a letter explaining that no services will be provided and why. The letter must include a statement that the parties may apply for support enforcement services at any time if the order includes a provision for child support.

(d) If the order seeks only payment through the Department of Justice and no application or other written request for support enforcement services has been received:

(A) Create an information only case on the CSEAS for the state case registry, if one does not already exist, to receive and disburse payments in accordance with OAR 137-055- 6021; and

(B) Send the parties a letter explaining that the program will only provide disbursement of support payments and why. The letter must include a statement that a party may apply for support enforcement services at any time if the order includes a provision for child support.

(e) If the order seeks only services sufficient to permit establishment of income withholding for child support or child and spousal support as provided in ORS 25.381(2)(a):

(A) Create a limited services case on the CSEAS if one does not already exist;

(B) Establish income withholding under ORS 25.378; and

(C) Receive and disburse payments in accordance with OAR 137-055-6021.

(f) If the provisions of subsection (c) or subsection (d) apply and a party subsequently completes an application or other written request for support enforcement services, the administrator will process the application or request in accordance with OAR 137-055-1060.

(3) When a person applies for services under OAR 137-055-1060 for establishment or enforcement of a child support order, the case is a full services case.

(a) The administrator will perform all mandated services under state and federal law; and

(b) The administrator will determine which non-mandated services will be provided, but may consider input from the applicant in making that determination.

(4)(a) When a person applies for services under OAR 137-055-1060 and there is more than one parent who may be obligated to pay support, the applicant may apply for services:

(A) To establish and collect support from only one parent; or

(B) To establish and collect support from more than one parent.

(b) A separate application under OAR 137-055-1060 is required for each parent the applicant wishes to pursue.

(5) When a parent or alleged parent applies for "establishing paternity only" services as defined in subsection (1)(c), the program will accept the case and provide only paternity establishment services if:

(a) The child was born in Oregon;

(b) The administrator has jurisdiction to establish paternity;

(c) There is no legal presumption of paternity under ORS 109.070, or if there is, the husband and wife are seeking to add the husband to the birth record;

(d) Paternity is not already established;

(e) The child does not receive public assistance; and

(f) The program is not already providing full services.

(6) A parent or alleged parent applying for "establishing paternity only" services as defined in subsection (1)(c) must complete an application for services in substantially the same form as an application under OAR 137-055-1060.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.020, 25.080, 25.140, 25.164, 25.381 & 107.108

Hist.: AFS 20-2002, f. 12-20-02 cert. ef. 1-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1070; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1070; DOJ 10-2004, f. & cert. ef. 7-1-04; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f & cert. ef. 1-3-06; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 10-2008, f. & cert. ef. 7-1-08; DOJ 2-2010(Temp), f. & cert. ef. 1-4-10 thru 7-1-10; DOJ 8-2010, f. & cert. ef. 4-1-10

137-055-1080
Fees

(1) As used in this rule, reporting year means October 1 of one year through September 30 of the following year.

(2) As required by 45 CFR 302.33, the Oregon Child Support Program (CSP) will assess:

(a) A $1 application fee on behalf of each applicant whose family is not receiving assistance in the form of TANF cash assistance, Medicaid, foster care or Oregon Youth Authority services and who applies to the CSP for support enforcement services;

(b) A $25 annual fee for each support case where:

(A) The obligee, child, or a child attending school as defined in OAR 137-055-5110, has never received assistance under a state program funded under Title IV-A of the Social Security Act;

(B) At least $500 of child support has been disbursed to the family in the reporting year; and

(C) Oregon is not providing services at the request of another state pursuant to 45 CFR 303.7.

(3) The Department of Justice (DOJ) may collect the fee specified in subsection (2)(a) of this rule from each applicant by deducting it from any unassigned support receipted by DOJ.

(4) Notwithstanding any other provision of CSP administrative rule, and except as provided in section (5), DOJ may collect the fee specified in subsection (2)(b) of this rule from each obligee or child attending school, if applicable, by deducting it from any unassigned child support receipted by DOJ during the reporting year.

(5) Fees specified in subsection (2)(b) of this rule may not be collected from an applicant or child attending school, if applicable, who is a resident of a foreign country.

(6) Fees recovered pursuant to section (4) of this rule may be recovered on a pro rata basis from both the obligee and any child attending school if the provisions of OAR 137-055-5110 apply.

(7) If payment of child support is such that the entire amount of the fee cannot be collected in a single reporting year, the amount that remains owing:

(a) Will not accumulate or accrue from reporting year to reporting year; and

(b) Will be paid by DOJ for the reporting year in which the fee became due.

(8) Once a fee has been collected, it will not be returned, even if the obligee, child or a child attending school later receives TANF.

Stat. Auth.: ORS 180.345, 45 CFR 302.33

Stats. Implemented: ORS 25.080, 25.150

Hist.: AFS 56-1985(Temp), f. & ef. 10-1-85; AFS 2-1986, f. & ef. 1-17-86; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89, Renumbered from 461-035-0048; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0045; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1080; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1080; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07

137-055-1090
Good Cause

(1) For the purposes of OAR chapter 137, division 55, good cause means the Child Support Program (CSP) is exempt from providing services as defined in ORS 25.080. Specifically excluded from this definition are good cause for not withholding as defined in 25.396 and OAR 137-055-4060 and good cause found for not disbursing support to a child attending school under ORS 107.108 and OAR 137-055-5110.

(2) If an obligee believes that physical or emotional harm to the family may result if services under ORS 25.080 are provided, the obligee may request, either verbally or in writing, that the administrator discontinue all activity against the obligor. Upon such a request by an obligee, the administrator will:

(a) On an open TANF or Medicaid case, immediately suspend all activity on the case, notify DHS or OHA to add good cause coding, and send a safety packet to the obligee requesting a response be sent to DHS; or

(b) On any other case, immediately suspend all activity on the case, add good cause case coding pending a final determination, and send a Client Safety Packet on Good Cause to the obligee requesting a response within 30 days.

(3) Good cause must be determined by:

(a) The Department of Human Services (DHS), pursuant to OAR 413-100-0830, 461-120-0350, 461-135-1200 or 461-135-1205, if TANF or Title IV-E benefits are being provided;

(b) The Oregon Health Authority (OHA), pursuant to OAR 461-120-0350 and 410-200-0220, if Medicaid benefits are being provided;

(c) The Oregon Youth Authority (OYA), pursuant to OAR 416-100-0020 and Policy Statement I-B-7.0, if the child is in OYA's custody;

(d) The Director of the CSP when the provisions of OAR 137-055-3080 apply; or

(e) The administrator when the provisions of subsections (a) through (d) of this section do not apply.

(4) When the provisions of subsection (3)(e) apply and the obligee makes a written claim that the provision of services may result in emotional or physical harm to the child or obligee or completes and returns the good cause form, the administrator will:

(a) Make a finding and determination that it is in the best interests of the child not to provide services;

(b) Proceed with case closure pursuant to OAR 137-055-1120; and

(c) File credit all arrears.

(5) In determining whether providing services is in the best interest of the child under section (3)(d), the CSP Director will consider:

(a) The likelihood that provision of services will result in physical or emotional harm to the child or obligee, taking into consideration:

(A) Information received from the obligee; or

(B) Records or corroborative statements of past physical or emotional harm to the child or obligee, if any.

(b) The likelihood that failure to provide services will result in physical or emotional harm to the child or obligee;

(c) The degree of cooperation needed to complete the service;

(d) The availability and viability of other protections, such as a finding of risk and order for non-disclosure pursuant to OAR 137-055-1160; and

(e) The extent of involvement of the child in the services sought.

(6) A finding and determination by the CSP Director that good cause does not apply, may be appealed as provided in ORS 183.484.

(7) A finding and determination of good cause applies to any case which involves the same obligee and child, or any case in which a child is no longer in the physical custody of the obligee, but there is a support order for the child in favor of the obligee.

(8) When an application for services is received from an obligee and TANF, Title IV-E or Medicaid benefits are not being provided, the child is not in OYA's custody, and there has been a previous finding and determination of good cause, the administrator will:

(a) Notify the obligee of the previous finding and determination of good cause and provide a Client Safety Packet;

(b) Allow the obligee 30 days to retract the application for services or return appropriate documents from the Client Safety Packet; and

(c) If no objection to proceeding or good cause form is received from the obligee, document CSEAS, remove the good cause designation and, if the case has been closed, reopen the case.

(9) When an application for services is received from a physical custodian of a child, the physical custodian is not the obligee who originally claimed good cause and TANF, Title IV-E or Medicaid benefits are not being provided, the child is not in OYA's custody and there is no previous support award, the administrator will open a new case without good cause coding with the physical custodian as the obligee.

(10)(a) When an application for services is received from a physical custodian of a child, the physical custodian is not the obligee who originally claimed good cause and TANF, Title IV-E or Medicaid benefits are not being provided, the child is not in OYA's custody, and the case in which there has been a finding and determination of good cause has a support award in favor of the obligee who originally claimed good cause, the administrator will:

(A) Notify the obligee who originally claimed good cause that an application has been received and provide a Client Safety Packet; and

(B) Advise the obligee who originally claimed good cause that the previous good cause finding and determination will be treated as a claim of risk as provided in OAR 137-055-1160; and

(C) Allow the obligee 30 days to provide a contact address as provided in OAR 137-055-1160.

(b) If an objection or good cause form is received from the obligee who originally claimed good cause, or if the location of the obligee who originally claimed good cause is unknown, the administrator will forward the objection, form or case to the Director of the CSP for a determination of whether to proceed;

(c) If no objection or good cause form is received from the obligee who originally claimed good cause, the administrator will document CSEAS, make a finding of risk and order for non-disclosure pursuant to OAR 137-055-1160 for that obligee, remove the good cause designation, and, if the case has been closed, reopen the case.

(11)(a) If a request for services under ORS chapter 110 is received from another jurisdiction and TANF, Title IV-E or Medicaid benefits are not being provided by the State of Oregon, the child is not in OYA's custody and there has been a finding and determination of good cause, the administrator will:

(A) Notify the referring jurisdiction of the finding and determination of good cause and request that the jurisdiction consult with the obligee to determine whether good cause should still apply; and

(B) If the location of the obligee is known, notify the obligee that the referral has been received, provide a Client Safety Packet and ask the obligee to contact both the referring agency and the administrator if there is an objection to proceeding; and

(C) Advise the obligee who originally claimed good cause that the previous good cause finding and determination will be treated as a claim of risk as provided in OAR 137-055-1160; and

(D) Allow the obligee 30 days to provide a contact address as provided in OAR 137-055-1160.

(b) If an objection or good cause form is received from the obligee, the administrator will forward the objection, form or case to the Director of the CSP for a determination of whether to proceed.

(c) If there is no objection or good cause form received from the obligee, or if the obligees address is unknown, and the referring jurisdiction advises that the finding and determination of good cause no longer applies, the administrator will document CSEAS, remove the good cause designation and, if the case has been closed, reopen the case.

(12) If a referral for services under ORS 25.080 is received because TANF, Title IV-E or Medicaid benefits are being provided or the child is in OYAs custody, and there has been a good cause determination, the administrator will notify the state agency currently providing services of the previous good cause determination. The administrator will not provide services unless the program currently providing services determines good cause no longer applies and requests the administrator remove the coding.

(13) Notwithstanding any other provision of this rule, when a case has not previously had a good cause finding and determination and TANF, Title IV-E or Medicaid benefits are being provided or the child is in OYA's custody, and DHS, OHA or OYA makes a current good cause finding and determination on a related case, the administrator will not provide services on the case or related cases unless and until good cause coding is removed by DHS, OHA or OYA.

(14) In any case in which a good cause finding and determination has been made and subsequently removed, past support under ORS 416.422 and OAR 137-055-3220 may not be sought for any periods prior to the determination that good cause no longer applies.

(15) In any case in which a good cause finding and determination has been made, and a child attending school as defined in ORS 107.108 and OAR 137-055-5110 is a party to the case, the child attending school may file an application for services pursuant to OAR 137-055-1060, 137-055-1070 and 137-055-5110.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 25.080
Hist.: DOJ 4-2005, f. & cert. ef. 4-1-05; DOJ 1-2006, f & cert. ef. 1-3-06; DOJ 6-2006, f. & cert. ef. 10-2-06; DOJ 12-2009, f. & cert. ef. 10-1-09; DOJ 1-2010, f. & cert. ef. 1-4-10; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11; DOJ 1-2015, f. & cert. ef. 1-5-15

137-055-1100
Continuation of Services

(1) When a family's assistance grant is closed, services under ORS 25.080 will automatically be continued. The Division of Child Support (DCS) will notify the support obligee and any child attending school under 107.108 and OAR 137-055-5110, in writing, of the services to be provided and the consequences of receiving those services, including a listing of available services, fees, the state's policy on cost recovery and its distribution policies. DCS will notify the obligee, and the child attending school that subject to the obligor's right to request services:

(a) An obligee or applicant for services may at any time request that support enforcement services no longer be provided. If the obligee or applicant so requests and case closure procedures pursuant to OAR 137-055-1120 have been completed, all support enforcement services on behalf of the obligee or applicant will be discontinued. However, except as provided in 137-055-1090, if an order has already been established, DCS will continue efforts to collect arrears assigned to the state. DCS will apply any collections received against the assigned arrears until this amount has been collected.

(b) An obligee may also request under OAR 137-055-1090 that support enforcement services no longer be provided for either the obligee or the state.

(c) A child attending school who is an applicant for services may, under subsection (1)(a), request that support enforcement services no longer be provided on his or her behalf. A child attending school who is not an applicant for services may discontinue all support enforcement services on his or her behalf by redirecting his or her support to the obligee under OAR 137-055-5110(5)(b).

(2) In cases where current child support is not assigned to the state but medical support is assigned to the state, the obligee may elect to not pursue establishment and enforcement of a child support obligation other than medical child support. In those cases, if the obligee so elects, the administrator will provide only those services necessary to establish and enforce an order for medical child support, including establishment of paternity where necessary.

(3) If a case has been closed pursuant to this rule, an obligee or applicant may at any time request the child support case be reopened by completing a new application for services. If an application for services is received, arrears may be reestablished pursuant to OAR 137-055-3240 or 137-055-5120, except for permanently assigned arrears which have been satisfied or which accrued to the state prior to the reapplication for services.

Stat. Auth.: ORS 25.080 & 180.345
Stats. Implemented: ORS 25.080

Hist.: AFS 34-1986(Temp), f. & ef. 4-14-86; AFS 65-1986, f. & ef. 9-19-86; AFS 28-1988, f. & cert. ef. 4-5-88; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89, Renumbered from 461-035-0054; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0055; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; AFS 15-2002, f. 10-30-02, ef. 11-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1100; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1100; DOJ 4-2005, f. & cert. ef. 4-1-05; DOJ 9-2005, f. & cert. ef. 10-3-05; DOJ 1-2006, f & cert. ef. 1-3-06; DOJ 6-2006, f. & cert. ef. 10-2-06; DOJ 1-2007, f. & cert. ef. 1-2-07; DOJ 12-2009, f. & cert. ef. 10-1-09; DOJ 13-2011, f. 12-30-11, cert. ef. 1-3-12; DOJ 7-2014, f. & cert. ef. 4-1-14

137-055-1120
Case Closure

(1) The administrator may close a child support case whenever the case meets at least one of the following criteria for case closure:

(a) There is no longer a current support order, arrears are under $500 and there are no reasonable expectations for collection or the arrears are uncollectible under state law. For the purposes of this subsection, "no longer a current support order" means the support order is not currently accruing or there never was a support order. This subsection specifically includes but is not limited to cases in which:

(A) Action to establish support has not been initiated and the child is at least 18 years old;

(B) The child has been adopted;

(C) The child is deceased; or

(D) Parental rights for the child have been terminated;

(b) The non-custodial parent or putative father is deceased and no further action, including a levy against the estate, can be taken;

(c) Paternity cannot be established because:

(A) A parentage test, or a court or administrative process, has excluded the putative father and no other putative father can be identified;

(B) The identity of the biological father is unknown and cannot be identified after diligent efforts, including at least one interview by the administrator with the recipient of services;

(C) Action to establish paternity has not been initiated and the child is at least 18 years old; or

(D) In a case involving incest or forcible rape, or where legal proceedings for adoption are pending, the administrator has determined that it would not be in the best interests of the child to establish paternity. For the purposes of this paragraph, a determination by the Department of Human Services (DHS) or the Oregon Youth Authority (OYA) that paternity establishment is not in the best interests of the child is sufficient for the administrator to make the same finding.

(d) The location of the non-custodial parent is unknown, and the state parent locator service has made regular attempts using multiple sources, all of which have been unsuccessful, to locate the non-custodial parent:

(A) Over a three-year period when there is sufficient information to initiate an automated locate effort; or

(B) Over a one-year period when there is not sufficient information to initiate an automated locate effort;

(e) When paternity is not at issue and the non-custodial parent cannot pay support for the duration of the child's minority because the parent is both:

(A) Institutionalized in a psychiatric facility, is incarcerated with no chance for parole, or has a medically verified total and permanent disability with no evidence of support potential; and

(B) Without available income or assets which could be levied or attached for support;

(f) The non-custodial parent:

(A) Is a citizen of, and lives in, a foreign country;

(B) Does not work for the Federal government or for a company or state with headquarters in or offices in the United States;

(C) Has no reachable income or assets in the United States; and

(D) Oregon has been unable to establish reciprocity with the country;

(g) The state parent locator service has provided location-only services based upon a request under 45 CFR 302.35(c)(3);

(h) The custodial parent or recipient of services requests closure, and:

(A) There is no assignment to the state of medical support; and

(B) There is no assignment of arrears that have accrued on the case;

(i) An initiating agency requests closure and the agency requesting closure:

(A) Has closed its case; or

(B) Has advised Oregon that services are no longer needed.

(j) The custodial parent or recipient of services is deceased and no trustee or personal representative has requested services to collect arrears;

(k) DHS, OYA, the Oregon Health Authority or the administrator pursuant to OAR 137-055-1090, has made a finding of good cause or other exceptions to cooperation and has determined that support enforcement may not proceed without risk or harm to the child or caretaker;

(l) In a non-TANF case (excluding a Medicaid case), the administrator is unable to contact the custodial parent, or recipient of services, within 60 calendar days, despite an attempt of at least one letter sent by first class mail to the last known address;

(m) In a non-TANF case, the administrator documents the circumstances of non-cooperation by the custodial parent, or recipient of services, and an action by the custodial parent, or applicant for services, is essential for the next step in providing enforcement services; or

(n) The administrator documents failure by the initiating agency to take an action which is essential for the next step in providing services.

(2)(a)(A) Except as otherwise provided in this section, if the administrator elects to close a case pursuant to subsection (1)(a), (1)(e), (1)(f), (1)(j) or (1)(l) through (1)(n) of this rule, the administrator will notify all parties to the case in writing at least 60 calendar days prior to closure of the case of the intent to close the case.

(B) If the administrator elects to close a case pursuant to subsection (1)(b) through (1)(d) of this rule, the administrator:

(i) Will notify the obligee and any child attending school in writing at least 60 days prior to closure of the case of the intent to close the case;

(ii) Is not required to notify the obligor of the intent to close the case; and

(iii) If the provisions of paragraph (1)(c)(D) apply, is not required to notify any other party.

(C) If the administrator elects to close a case pursuant to subsection (1)(g) or (1)(i) of this rule, the administrator is not required to notify any party of the intent to close the case. However, if the case is closed pursuant to paragraph (1)(i), the administrator will send a courtesy notice to the parties advising the reason for closure.

(D) If the administrator elects to close a case pursuant to subsection (1)(h) of this rule, the administrator will notify all parties to the case in writing at least 60 calendar days prior to closure of the case of the intent to close the case, except:

(i) When the case is a Child Welfare or Oregon Youth Authority case in which the child has left state care, an order under OAR 137-055-3290 is not appropriate, and a notice and finding has not been initiated, the case will be closed immediately; and

(ii) No closure notice will be sent to the parents unless a parent had contact with the Child Support Program, Child Welfare or the Oregon Youth Authority regarding the child support case.

(E) If the administrator elects to close a case pursuant to subsection (1)(k) of this rule, the administrator will:

(i) Notify the obligee and any child attending school in writing at least 60 days prior to closure of the case of the intent to close the case; and

(ii) Not notify the obligor of the intent to close the case.

(b) The 60-day time frame in paragraph (2)(a)(A) is independent of the 60-day calendar time frame in subsection (1)(l).

(c) The administrator will document the notice of case closure by entering a narrative line, or lines, on the child support computer system and will include the date of the notice.

(d) The content of the notice in paragraph (2)(a)(A) must include, but is not limited to, the specific reason for closure, actions a party can take to prevent closure, and a statement that an individual may reapply for services at any time.

(3) Notwithstanding paragraph (2)(a)(A) of this rule, a case may be closed immediately if:

(a) All parties agree to waive the notice of intent to close and the 60-day objection period when the notice of intent to close has not yet been sent; or

(b) All parties agree to waive the remainder of the 60-day objection period when the notice of intent to close has already been sent.

(4) The administrator will keep a case open if, in response to the notice sent pursuant to paragraph (2)(a)(A) of this rule:

(a) The applicant or recipient of services:

(A) Supplies information which could lead to the establishment of paternity or of a support order, or enforcement of an order; or

(B) Reestablishes contact with the administrator, in cases where the administrator proposed to close the case under subsection (1)(l) of this rule; or

(b) The party who is not the applicant or recipient of services completes an application for services.

(5) A party may request at a later date that the case be reopened if there is a change in circumstances that could lead to the establishment of paternity or a support order, or enforcement of an order, by completing a new application for services.

(6) The administrator will document the justification for case closure by entering a narrative line or lines on the child support computer system in sufficient detail to communicate the basis for the case closure.

Stat. Auth.: ORS 25.080 & 180.345

Stats. Implemented: ORS 25.020 & 25.080

Hist.: AFS 35-1986(Temp), f. & ef. 4-14-86; AFS 66-1986, f. & ef. 9-19-86; AFS 27-1988, f. & cert. ef. 4-5-88; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89, Renumbered from 461-035-0055; AFS 15-1993, f. 8-13-93, cert. ef. 8-15-93; AFS 13-1999, f. 10-29-99, cert. ef. 11-1-99; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0050; AFS 2-2001, f. 1-31-01, cert. ef. 2-1-01; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1120; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1120; DOJ 4-2005, f. & cert. ef. 4-1-05; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f & cert. ef. 1-3-06; DOJ 6-2006, f. & cert. ef. 10-2-06; DOJ 1-2007, f. & cert. ef. 1-2-07; DOJ 1-2010, f. & cert. ef. 1-4-10; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11

137-055-1140
Confidentiality of Records in the Child Support Program

(1)(a) As used in this rule, "employee" means a person employed by the Department of Justice (DOJ) or a district attorney office that provides Child Support Program (CSP) services;

(b) "Party" has the meaning given in OAR 137-055-1020, or a party's attorney.

(2) For purposes of this rule, and subject to the limitations set forth in section (3) of this rule, the contents of a case record include, but are not limited to:

(a) The names of the obligor, beneficiary and obligee or other payee;

(b) The addresses of the obligor, beneficiary and obligee or other payee;

(c) The contact address and address of service of the obligee, beneficiary or obligor;

(d) The name and address of the obligor's employer;

(e) The social security numbers of the obligor, the obligee and beneficiaries;

(f) The record of all legal and collection actions taken on the case;

(g) The record of all accrual and billings, payments, distribution and disbursement of payments;

(h) The narrative record; and

(i) The contents of any paper file maintained for purposes of establishment and/or enforcement of a child support order or for accounting purposes.

(3) Any data listed in section (2) of this rule or any other data that resides on the Child Support Enforcement Automated System (CSEAS) that is extracted from computer interfaces with other agencies' computer systems is not considered to be child support information until or unless the data is used for child support purposes. Until such data is used for child support purposes it is not subject to any exceptions to confidentiality and it may not be released to any other person or agency in any circumstance, except as provided in ORS 25.260(5) and as may be provided in other agency rule.

(4) Child support case related records, files, papers and communications are confidential and may not be disclosed or used for purposes other than those directly connected to the administration of the CSP except:

(a) Information may be shared as provided in ORS 25.260(5), OAR 137-055-1320 and 137-055-1360 and as may be provided in other agency rule;

(b) Information may be shared for purposes of any investigation, prosecution or criminal or civil proceeding conducted in connection with the administration of:

(A) Title IV-D of the Social Security Act, child support programs in Oregon and other states;

(B) Title IV-A of the Social Security Act, Temporary Assistance to Needy Families; or

(C) Title XIX of the Social Security Act, Medicaid programs;

(c) Information may be shared as required by state or federal statute or rule;

(d)(A) Elected federal and state legislators and the Governor are considered to be within the chain of oversight of the CSP. Information about a child support case may be shared with these elected officials and their staff in response to issues brought by constituents who are parties to the case;

(B) County commissioners exercise a constituent representative function in county government for county administered programs. District attorney offices that operate child support programs may respond to constituent issues brought by county commissioners of the same county if the constituent is a party in a case administered by that office. District attorneys are DOJ sub-recipients. CSP Administration may also respond to constituent issues brought by county commissioners on district attorney administered child support cases where the constituent is a party;

(C) Information disclosed under paragraphs (A) and (B) of this subsection is subject to the restrictions in subsections (6)(a) and (b) of this rule;

(e) When a party requires the use of an interpreter in communicating with the administrator, information given to such an interpreter is not a violation of any provision of this rule; and

(f) A person who is the executor of the estate or personal representative of a deceased party is entitled to receive any information that the deceased party would have been entitled to receive.

(5)(a) The CSP may release information to a private industry council as provided in 42 USC 654a(f)(5).

(b) The information released under subsection (a) of this section may be provided to a private industry council only for the purpose of identifying and contacting noncustodial parents regarding participation of the noncustodial parents in welfare-to-work grants under 42 USC 603(a)(5).

(c) For the purposes of this section, "private industry council" means, with respect to a service delivery area, the private industry council or local workforce investment board established for the service delivery area pursuant to Title I of the Workforce Investment Act (29 USC 2801, et seq.). "Private industry council" includes workforce centers and one-stop career centers.

(6)(a) Information from a case record may be disclosed to a party in that case outside a legal proceeding, except for the following personal information about the other party:

(A) The residence or mailing address of the other party if that other party is not the state;

(B) The social security number of the other party;

(C) The name, address and telephone number of the other party's employers;

(D) The telephone number of the other party;

(E) Financial institution account information of the other party;

(F) The driver's license number of the other party; and

(G) Any other information which may identify the location of the minor child or other party, such as day care provider's name and address.

(b) Except for personal information described in subsection (a) of this section, information from a case record may be provided to a party via the CSP web page if appropriate personal identifiers, such as social security number, case number or date of birth are required to be provided in order to access such information.

(7) Notwithstanding the provisions of subsections (6)(a) and (b) of this rule, a party's personal information may be released to a state agency under the provisions of 45 CFR 303.21.

(8) Notwithstanding the provisions of subsection (6)(a), an employee may disclose personal information described in paragraphs (6)(a)(A) through (6)(a)(G) to a party, if disclosure of the information is otherwise required by rule or statute.

(9) Any information from the case record, including any information derived from another agency, that was used for any calculations or determinations relevant to the legal action may be disclosed to a party. Where there is a finding of risk and order for nondisclosure of information pursuant to OAR 137-055-1160, all nondisclosable information must be redacted before documents are released.

(10) Requestors may be required to pay for the actual costs of staff time and materials to produce copies of case records before documents are released.

(11)(a) Information from case records may be disclosed to persons not a party to the child support case who are making contact with the CSP on behalf of a party, if the following conditions are met:

(A) The person who is not a party to the case provides the social security number of the party for whom they are making the inquiry or the child support case number;

(B) The person who is not a party to the case making the contact on behalf of the party is the current spouse or domestic partner of the party and residing with the party or a parent or legal guardian of the party; and

(C) The CSP determines that the person is making case inquiries on behalf of the party and disclosure of such information would normally be made to the party in reply to such an inquiry.

(b) Disclosure of information is limited to the specific inquiries made on behalf of the party and is subject to the restrictions in subsections (6)(a) and (b) of this rule.

(12) Except as provided in subsections (11)(a) and (b) of this rule, information from a case record may not be disclosed to a person who is not a party to the case unless:

(a) The party has granted written consent to release the information to the person; or

(b) The person has power of attorney for the party, the duration and scope of which authorizes release of information from a case record at the time that the person requests such information. The power of attorney remains in effect until a written request to withdraw the power of attorney is submitted by the party or by the person, unless otherwise noted on the power of attorney.

(13) A child support case account balance is derived from the child support judgment, which is public information, and from the record of payments, which is not. Therefore, the case balance is not public information, is confidential and may not be released to persons not a party except as otherwise provided in this rule.

(14) Information obtained from the Internal Revenue Service and/or the Oregon Department of Revenue is subject to confidentiality rules imposed by those agencies even if those rules are more restrictive than the standards set in this rule, and may not be released for purposes other than those specified by those agencies.

(15) Criminal record information obtained from the Law Enforcement Data System or any other law enforcement source may be used for child support purposes only and may not be disclosed to parties or any other person or agency outside of the CSP. Information about the prosecution of child support related crimes initiated by the administrator may be released to parties in the child support case.

(16) Employees with access to computer records or records of any other nature available to them as employees may not access such records that pertain to their own child support case or the child support case of any relative or other person with whom the employee has a personal friendship or business association. No employee may perform casework on their own child support case or the case of any relative or other person with whom the employee has a personal friendship or business association.

(17) When an employee receives information that gives reasonable cause to believe that a child has suffered abuse as defined in ORS 419B.005(1)(a) the employee must make a report to the Department of Human Services as the agency that provides child welfare services and, if appropriate, to a law enforcement agency if abuse is discovered while providing program services.

(18) Employees who are subject to the Disciplinary Rules of the Oregon Code of Professional Responsibility must comply with those rules regarding mandatory reporting of child abuse. To the extent that those rules mandate a stricter standard than required by this rule, the Disciplinary Rules also apply.

(19) If an employee discloses or uses the contents of any child support records, files, papers or communications in violation of this rule, the employee is subject to progressive discipline, up to and including dismissal from employment.

(20) To ensure knowledge of the requirements of this rule, employees with access to computer records, or records of any other nature available to them as employees, are required annually to:

(a) Review this rule and the CSP Director's automated tutorial on confidentiality;

(b) Complete with 100 percent success the CSP Director's automated examination on confidentiality; and

(c) Sign a certificate acknowledging confidentiality requirements. The certificate must be in the form prescribed by the CSP Director.

(21)(a) For DOJ employees, each signed certificate must be forwarded to DOJ Human Resources, with a copy kept in the employee's local office drop file;

(b) For district attorney employees, each signed certificate must be kept in accordance with county personnel practices.

(22) Notwithstanding any other provision of this rule, an employee may release a party's name and address to a local law enforcement agency when necessary to prevent a criminal act that is likely to result in death or substantial bodily harm.

Stat. Auth.: ORS 25.260, 180.345

Stats. Implemented: ORS 25.260, 127.005, 411.320

Hist.: AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 19-1998, f. 10-5-98, cert. ef. 10-7-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0291; SSP 4-2003, f. 2-25-03, cert. ef. 3-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1160; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1160; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 12-2004, f. & cert. ef. 10-1-04; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f & cert. ef. 1-3-06; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 1-2010, f. & cert. ef. 1-4-10; DOJ 11-2011(Temp), f. 12-1-11, cert. ef. 12-5-11 thru 5-29-12; DOJ 13-2011, f. 12-30-11, cert. ef. 1-3-12

137-055-1160

Confidentiality — Finding of Risk and Order for Nondisclosure of Information

(1) For the purposes of this rule in addition to the definitions found in OAR 137-055-1020, the following definitions apply:

(a) "Claim of risk for nondisclosure of information" means a claim by a party to a paternity or support case made to the administrator, an administrative law judge or the court that there is reason to not contain or disclose the information specified in ORS 25.020(8)(a) or OAR 137-055-1140(6)(a) because the health, safety or liberty of a party or child would unreasonably be put at risk by disclosure of such information;

(b) "Finding of risk and order for nondisclosure of information" means a finding and order by the administrator, an administrative law judge or the court, which may be made ex parte, that there is reason to not contain or disclose the information specified in ORS 25.020(8)(a) or OAR 137-055-1140(6)(a) because the health, safety or liberty of a party or child would unreasonably be put at risk by disclosure of such information.

(2) A claim of risk for nondisclosure of information may be made to the administrator by a party at any time that a child support case is open. Forms for making a claim of risk for nondisclosure of information will be available from all child support offices and be made available to other community resources. At the initiation of any legal process that would result in a judgment or administrative order establishing paternity or including a provision concerning support, the administrator will provide parties an opportunity to make a claim of risk for nondisclosure of information.

(3)(a) When a party makes a written and signed claim of risk for nondisclosure of information pursuant to section (2) of this rule, the administrator will make a finding of risk and order for nondisclosure of information unless the party does not provide a contact address pursuant to section (5) of this rule;

(b) When a party is accepted into the Address Confidentiality Program (ACP), the administrator will make a finding of risk and order for nondisclosure of information. The party's contact address will be the ACP substitute address designated by the Attorney General pursuant to OAR 137-079-0150.

(4) An administrative law judge will make a finding of risk and order for nondisclosure of information when a party makes a claim of risk for nondisclosure of information in a hearing unless the party does not provide a contact address pursuant to section (5) of this rule.

(5) A party who makes a claim of risk for nondisclosure of information under subsection (3)(a) or section (4) must provide a contact address that is releasable to the other party(ies) in legal proceedings. The claim of risk for nondisclosure of information form provided to the party by the administrator must have a place in which to list a contact address. If a requesting party does not provide a contact address, a finding of risk and order for nondisclosure of information will not be made.

(6) When an order for nondisclosure of information has been made, the administrator must ensure that all pleadings, returns of service, orders or any other documents that would be sent to the parties or would be available as public information in a court file does not contain or must have deleted any of the identifying information specified in ORS 25.020(8)(a) or OAR 137-055-1140(6)(a). Any document sent to the court that contains any of the information specified in ORS 25.020(8)(a) or OAR 137-055-1140(6)(a) must be in a sealed envelope with a cover sheet informing the court of the confidential nature of the contents or in the manner provided by UTCR 2.130.

(7) A finding of risk and order for nondisclosure of information entered pursuant to this rule will be documented on the child support case file and will remain in force until such time as the ACP participant or party who requested a claim of risk retracts the claim or requests dismissal in writing.

(8) A party who requested a claim of risk may retract the claim on a form provided by the administrator. When a signed retraction form is received by the administrator, the administrator will enter, or will ask the court to enter, a finding and order terminating the order for nondisclosure of information.

(9) Any information previously protected under an order for nondisclosure of information will be subject to disclosure when the order for nondisclosure of information is terminated. The retraction form provided by the administrator will advise the requestor that previously protected information may be released to the other party(ies).

(10) In cases where the administrator is not involved in the preparation of the support order or judgment establishing paternity, or when child support services under ORS 25.080 are not being provided, any claim of risk for nondisclosure of information pursuant to ORS 25.020 must be made to the court.

(11) Notwithstanding section (5) of this rule, where the court has made a finding of risk and order for nondisclosure of information and the case is receiving or subsequently receives child support services pursuant to ORS 25.080, the administrator will implement the court's finding pursuant to this rule. In such a case, the administrator will use, in order of preference, the party's contact address as contained in the court file, or the party's contact address previously provided to the Child Support Program. If no contact address is available through either of these sources, the administrator will send a written request to the party, asking that the party provide a contact address. The written request from the administrator must advise the party that if no contact address is provided within 30 days, the administrator will use, in order of preference, the party's mailing or residence address as the contact address, and the new contact address may be released to the other party(ies).

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 25.020 & 180.345

Stats. Implemented: ORS 25.020, 192.820–192.858

Hist.: AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 19-1998, f. 10-5-98, cert. ef. 10-7-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0291; SSP 4-2003, f. 2-25-03, cert. ef. 3-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1160; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1160; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 12-2004, f. & cert. ef. 10-1-04; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f & cert. ef. 1-3-06; DOJ 1-2007, f. & cert. ef. 1-2-07; DOJ 5-2007, f. & cert. ef. 7-2-07; DOJ 8-2009, f. 7-1-09, cert. ef. 8-1-09; DOJ 12-2010(Temp), f. 7-1-10, cert. ef. 9-1-10 thru 2-25-11; DOJ 16-2010, f. & cert. ef. 10-1-10; DOJ 8-2011(Temp), f. & cert. ef. 11-2-11 thru 4-28-12; DOJ 13-2011, f. 12-30-11, cert. ef. 1-3-12

137-055-1200

Use of Social Security Number by the Child Support Program

(1) Under the provisions of 42 USC 405(c)(2)(C), individuals who are affected by the Child Support Program (CSP) will be required to provide their social security numbers to the administrator.

(2) Social security numbers provided under this rule will be used by the administrator as necessary for the following purposes:

(a) The identification of individuals who are affected by the administration of the CSP;

(b) The establishment, modification and enforcement of child and medical support obligations;

(c) The accounting, distribution and disbursement of support payments;

(d) The administration of the general public assistance laws of the State of Oregon.

(3) The CSP will provide written notice to individuals who are required to provide a social security number under section (1) of this rule that will include the following:

(a) That providing the social security number is mandatory;

(b) The authority for such requirement; and

(c) The purpose(s) for which the social security number will be used.

(4) When the social security number for an individual is obtained from a source other than that individual, there is no requirement that the CSP provide additional notice to the individual regarding disclosure or use of such social security number.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.020, 25.081, 25.785

Hist.: AFS 4-1996, f. 2-21-96, cert. ef. 7-1-96; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0015; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1200; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1200; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07

137-055-1320

Access to FPLS for Purposes of Parentage Establishment; Child Support Establishment, Modification or Enforcement; or Determining Who Has or May Have Parental Rights

(1) For the purposes of this rule and OAR 137-055-1360, the following definitions apply:

(a) "FPLS" means the Federal Parent Locator Service operated by the United States Department of Health and Human Services.

(b) "Original requestor" means a party to a paternity or child support case who is seeking FPLS information, directly, through an attorney, or through court request.

(c) "Custodial Parent" includes a caretaker or caretaker relative as defined in OAR 461-120-0610.

(d) "Legal Guardian" means a person appointed as a guardian under ORS chapter 125 or similar provision.

(e) "Reasonable evidence of possible domestic violence" means:

(A) A record on the Oregon Judicial Information Network or the Law Enforcement Data System that an order of protection has or had been issued against the original requestor in favor of the person being sought; or

(B) A record that the person being sought has or had been granted good cause pursuant to ORS 412.024 not to establish paternity or to establish or enforce a support order against the original requestor; or

(C) A record that the person being sought has or had been granted an order for nondisclosure of information or an ACP order for nondisclosure of information pursuant to OAR 137-055-1160 in a case where the original requestor is or was the other party in a legal action.

(f) "Reasonable evidence of possible child abuse" means that there is a record with the Department of Human Services child welfare program that the original requestor has been investigated for alleged abuse of any child.

(2) For the purposes of this rule, an authorized person is:

(a) A custodial parent, legal guardian, attorney, or agent of a child (other than a child receiving Temporary Assistance for Needy Families (TANF)), seeking to establish parentage or to establish, modify or enforce a support order.

(b) A court or agent of the court which has the authority to issue an order of paternity or support and maintenance of a child or to serve as the initiating court to seek such an order from another state; or

(c) A state agency responsible for administering an approved child welfare plan or an approved foster care and adoption assistance plan.

(3) An authorized person as defined in section (2) of this rule, may request information to facilitate the discovery or location of any individual:

(a) Who is under an obligation to pay child support;

(b) Against whom a child support obligation is sought;

(c) To whom a child support obligation is owed; or

(d) Who has or may have parental rights with respect to a child.

(4) If available from FPLS, the information that may be provided about an individual described in subsections (3)(a)-(d) of this rule includes:

(a) The address and verification of the social security number of the individual sought;

(b) The name, address and federal employer identification number of the employer of the individual sought; and

(c) Information about income from employment and benefits from employment, including health care coverage.

(5) A request pursuant to this rule must be made in writing directly to the Division of Child Support (DCS) and must contain:

(a) The purposes for which the information is requested;

(b) The full name, social security number (if known) and date of birth or approximate date of birth of the individual sought;

(c) The full name and date of birth and social security number of the person making the request;

(d) Whether the individual is or has been a member of the armed forces or if the individual is receiving federal compensation or benefits, if known;

(e) If the request is from the court, the signature of the judge or agent of the court; and

(f) If the request is from an individual not receiving TANF, the individual must attest:

(A) That the request is made to obtain information or facilitate discovery for the purpose of establishing parentage or establishing, modifying or enforcing child support obligations;

(B) That the information will be used solely for those reasons and will be kept confidential; and

(C) If the individual is a parent, that he or she is the parent with physical custody of the child.

(6) The request may be made on a form adopted by the Child Support Program (CSP) and available from any CSP office.

(7) When DCS receives a request from an authorized person pursuant to subsections (2)(a) or (2)(b) of this rule, it will determine if there is any record of possible domestic violence by the original requestor against the individual sought or any record of possible child abuse by the original requestor.

(8) If reasonable evidence of domestic violence or child abuse is found pursuant to section (7) or FPLS does not return information due to a family violence indicator, an authorized person may ask the court to determine, pursuant to 42 USC 653(b)(2)(B), whether disclosure of the information could be harmful to the parent or child sought.

(a) If the court concludes that disclosure of the information would not be harmful to the parent or child, DCS will submit the request along with the court's determination to FPLS.

(b) If the court concludes that disclosure of the information would be harmful to the parent or child, the request will be denied.

Stat. Auth.: ORS 25.265 & 180.345

Stats. Implemented: ORS 25.265, 180.380

Hist.: AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0279; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1320; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1320; DOJ 7-2004, f. 3-30-04, cert. ef. 4-1-04; DOJ 16-2004, f. 12-30-04, cert. ef. 1-3-05; DOJ 1-2007, f. & cert. ef. 1-2-07; DOJ 3-2009, f. & cert. ef. 4-1-09; DOJ 16-2010, f. & cert. ef. 10-1-10

137-055-1360

Access to FPLS for Parental Kidnapping, Child Custody or Visitation Purposes

(1) For the purposes of this rule, an authorized person is:

(a) Any agent or attorney of any state who has the duty or authority under the law of that state to enforce a child custody or visitation order;

(b) Any court having jurisdiction to make or enforce a child custody or visitation determination, or any agent of such court;

(c) Any agent or attorney of the United States or of a state who has the duty or authority to investigate, enforce or bring a prosecution with respect to the unlawful taking or restraint of a child. The unlawful taking or restraint of a child includes;

(A) Custodial interference as provided in ORS 163.245 and 163.257; or

(B) Any other State or Federal law with respect to the unlawful taking or restraint of a child.

(2) An authorized person as defined in section (1) of this rule, may request information to facilitate the discovery or location of a parent, legal guardian, or child. Information is limited to the most recent address and place of employment of the person sought.

(3) A request pursuant to this rule must be made in writing directly to Division of Child Support (DCS) and must contain:

(a) The purpose for which the information is requested;

(b) The full name, social security number (if known) and date of birth or approximate date of birth of the individual sought;

(c) The full name and date of birth and social security number of the person making the request;

(d) Whether the individual is or has been a member of the armed forces or is receiving any federal compensation or benefits, if known; and

(e) If the request is from the court, the signature of the judge or agent of the court.

(4) The request may be made on a form adopted by DCS and available from any DCS or District Attorney child support office.

(5) If FPLS does not return information due to a family violence indicator, as defined in OAR 137-055-1320, the authorized person may ask the court to determine, pursuant to 42 USC 653(b)(2)(B), whether disclosure of the information could be harmful to the parent, legal guardian or child sought.

(a) If the court concludes that disclosure of the information would not be harmful to the parent, legal guardian or child, DCS will re-submit the request along with the court's determination to FPLS.

(b) If the court concludes that disclosure of the information would be harmful to the parent, legal guardian or child, the request will be denied.

(6) The court may disclose FPLS information, to the extent necessary, to an authorized person to process and adjudicate an action for the establishment or enforcement of a child custody or visitation determination.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 25.265, 180.380
Hist.: AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0281; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1360; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1360; DOJ 7-2004, f. 3-30-04, cert. ef. 4-1-04; DOJ 12-2004, f. & cert. ef. 10-1-04; DOJ 16-2010, f. & cert. ef. 10-1-10

137-055-1500
Incentive Payments

(1) For purposes of this rule, the following definitions apply:

(a) Centralized services may include, but are not limited to: accounting functions, bankruptcy case management, central registry for interstate cases, computer charges, constituent desk, Child Support Program directors office administrative costs, garnishments resulting from a Financial Institution Data Match, locate services, mainframe, Oregon District Attorney Association liaison position, postage, receipt, distribution and disbursement of support payments, and unemployment compensation and workers compensation withholdings;

(b) County or Counties means the county district attorneys under cooperative agreements to provide support enforcement services under ORS 25.080 and any county which enters into an agreement with the Division of Child Support (DCS) under 25.080(5) on or after May 1, 2001, for DCS to assume the functions of the district attorney;

(c) Counties Collection Base is that portion of the States Collection Base attributable only to amounts for cases assigned to the counties;

(d) DCS Collection Base is that portion of the States Collection Base attributable only to amounts for cases assigned to DCS;

(e) States Collection Base has the meaning given in 45 CFR 305.31(f);

(f) Available incentive payment pool is the projected amount from the biennial budget of the gross amount of incentives to be received from the federal Department of Health and Human Services (DHHS) for the current fiscal year.

(2) Beginning with incentive payments received for federal fiscal year (FFY) 2002 (October 1, 2001 through September 30, 2002), incentive payments received by the Oregon Child Support Program from the federal DHHS pursuant to 45 CFR 305 et seq. will be allocated to each county and DCS based on their performance in four program areas:

(a) Support order establishment;

(b) Current support collections;

(c) Collection on arrears; and

(d) Cost-effectiveness.

(3) The incentive calculations for the current federal fiscal year will be based on the performance data from the final Office of Child Support Enforcement 157 report for the previous FFY and the states available incentive payment pool for the current FFY.

(4) The formulas to compute each countys and DCSs performance for the four program areas identified in section (2) of this rule are as stated in 45 CFR 305.2.

(5)(a) The level of performance of each county and DCS as calculated using the formulas referenced in section (4) of this rule determines the applicable percentage for each of the four performance measures as set out in tables in 45 CFR 305.33;

(b) The cost effectiveness performance category will include an addition to the total expenditures of the counties for the cost of centralized services and a subtraction of the same amount from the DCS total expenditures for the cost of centralized services provided to the counties.

(6) For the support order establishment and current support collections performance measures, the applicable percentages as determined per subsections (5)(a) and (b) of this rule are multiplied by 100% of the counties collection base for county computations or 100% of DCS collection base for DCS computations.

(7) For cases receiving an arrears payment and the cost effectiveness performance measures, the applicable percentages as determined per subsections (5)(a) and (b) of this rule are multiplied by 75% of the counties collection base for county computations or 75% of DCS collection base for DCS computations.

(8) The incentive calculations for the four performance areas calculated in sections (6) and (7) of this rule are added together to obtain the following amounts:

(a) The incentive base amount for each individual county; and

(b) The incentive base amount for DCS.

(9) The sum of the incentive base amounts for all the counties as calculated in subsection (8)(a) is the total incentive base amount for all the counties.

(10) The state aggregate incentive base amount is the sum of the total incentive base amount for all the counties as calculated in section (9), and the incentive base amount for DCS as calculated in subsection (8)(b).

(11)(a) The counties collective incentive payment share is determined by dividing the total incentive base amount for all the counties as calculated in section (9), by the state aggregate incentive base amount as calculated in section (10), then multiplying the resulting percentage by the available incentive payment pool for the current FFY.

(b) The counties collective incentive payment share will be reduced by a proportionate share of costs for centralized services, as determined upon review and agreement pursuant to section (15) of this rule, to be retained by DCS to offset the costs of such services provided to the counties by DCS.

(c) Each individual countys incentive payment is determined by dividing its countys incentive base amount by the total incentive base amount for all the counties, then multiplying the resulting percentage by the counties collective incentive payment share as determined in subsection (11)(b).

(12) DCS incentive payment is determined by dividing the DCS incentive base amount by the state aggregate incentive base amount as calculated in section (10), then multiplying the resulting percentage by the available incentive payment pool for the current FFY.

(13) Each countys and DCS incentive payment, as calculated respectively in subsection (11)(c) and section (12) of this rule, will be distributed in equal quarterly payments for the current FFY based on the counties and DCS performance for the prior FFY.

(14) When the federal DHHS reconciles and determines the actual annual incentive payment to the state following the end of each FFY, any resulting positive or negative incentive adjustment amount will be apportioned according to the calculations in sections (4) through (12) of this rule using the performance figures for the corresponding prior FFY:

(a) If the adjustment results in a positive incentive to the counties, such payment will be distributed and, as appropriate, disbursed no later than 60 days following the states receipt of the incentive adjustment from the federal DHHS; or

(b) If the adjustment results in a negative incentive and incentive overpayment to the counties, such overpayment will be recovered from future incentive payments.

(15) The allocation of incentive payments as set out in this rule and the cost of centralized services will be reviewed every two years, commencing in January 2004.

Stat. Auth.: ORS 180.345, 45 CFR 305.2, 45 CFR 305.33
Stats. Implemented: ORS 180.345
Hist.: AFS 80-1985(Temp), f. & ef. 12-31-85; AFS 14-1986, f. & ef. 2-11-86; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89, Renumbered from 461-035-0052; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0255; SSP 4-2003, f. 2-25-03, cert. ef. 3-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1500; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1500; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07

137-055-1600
Child Support Program Participant Grievance

(1) For the purposes of this rule the following definitions apply;

(a) "Program participant" means any obligor, obligee or beneficiary in an Oregon child support case or any person denied services after submitting an application.

(b) "Grievance" means a formal complaint filed against the administrator.

(c) "Grievant" means a program participant who has filed a grievance as set out in this rule.

(2) Program participants are entitled to fair, professional, courteous and accurate service. A grievance procedure has been established to enable program participants a means to formally express when they perceive that they have not received fair, professional, courteous or accurate service. This grievance procedure will be handled by the Division of Child Support (DCS) under the oversight of the Oregon Child Support Program (CSP) Director.

(3) Grievances may be filed by program participants or attorneys or other employees of law offices representing program participants.

(4) It is recognized that child support enforcement activities may create negative reactions among some program participants. It is further recognized that a high level of service may not result in desired support payments. Therefore, a grievance filed against the administrator must be investigated to determine if the grievance has merit. Grievances which will be considered to be without merit include:

(a) Grievances that protest actions that are prescribed or permitted by state administrative rule, state law, child support program approved written policy or procedure, federal law or federal regulation;

(b) Grievances that protest that support payments have not been made if the administrator has taken appropriate steps in accordance with state and federal rules to obtain payments;

(c) Grievances filed regarding actions taken by, or failure to take action by, another agency or a child support agency of another state;

(d) Grievances that protest that actions have not been taken but the case record reflects otherwise; or

(e) Grievances that do not constitute a complaint but merely convey information to, or request an action by the administrator.

(5) The decision to find the grievance to be without merit or send it to the appropriate office for resolution will be made by the CSP.

(6) Grievances may be made on a form developed by the CSP.

(7) Nothing in this rule precludes any program participant or any other person or entity from expressing complaints to the administrator by any other method.

(8) Grievance forms will be available to program participants through any CSP office. The address and telephone number where a grievance form can be obtained and information about the grievance process will be:

(a) Conspicuously posted in all CSP offices;

(b) Included in the standard application for support enforcement services;

(c) Included in initial letters sent to parties by the CSP;

(d) Included in the CSP's general information pamphlet;

(e) Included in or with an annual notice mailed to the parties.

(9) Grievants must file the completed grievance forms with the CSP constituent desk. Completed grievance forms or photocopies of these forms filed with the administrator will be immediately forwarded to the CSP's constituent desk. Upon receipt of the grievance, the CSP constituent desk will:

(a) Record receipt of the grievance;

(b) Investigate the grievance to determine if the grievance is without merit per section

(4) Of this rule;

(c) If the grievance is without merit per section (4) of this rule, the grievance will be returned to the grievant with an explanation about why it has been returned;

(d) If the grievance is not returned to the grievant it will be forwarded to the grievance coordinator(s) in the appropriate branch office for resolution.

(10) Upon receipt of the grievance, the office against whom the grievance has been filed will investigate the grievance. That office will either take corrective action and notify the grievant or contact the grievant to explain why corrective action is not appropriate. The CSP constituent desk will set time limits for the administrator to address the grievance, not to exceed 90 days from the date the grievance is received at DCS. The date received by the CSP constituent desk will be considered to be the date the grievance is screened and accepted.

(11) Upon completion of grievance processing the office against whom the grievance has been filed will send the grievance form to the CSP constituent desk with a report of the grievance investigation and the disposition.

(12) Grievances that allege serious violations of personnel rules or standards of personal conduct, such as, but not limited to, allegations of racial or sexual discrimination or sexual harassment, in which allegations are substantiated, will be removed from this grievance process and be part of the personnel process of the office against whom the grievance has been filed.

(13) A record of grievances and dispositions will be maintained by the CSP for a period of three years.

(14) The administrator against whom a grievance has been filed will not discriminate against the grievant because a grievance has been filed.

(15) Performance reviews will include examination of the administrator's compliance with these grievance procedures and an examination of grievances filed against the administrator and resolution to such grievances for the previous calendar year.

Stat. Auth.: ORS 25.243 & 180.345
Stats. Implemented: ORS 25.080 & 25.243
Hist.: AFS 1-1995, f. 1-3-95, cert. ef. 5-2-95; AFS 32-1995, f. & cert. ef. 11-8-95; AFS 20-1997, f. & cert. ef. 11-7-97; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0010; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1600; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1600; DOJ 7-2004, f. 3-30-04, cert. ef. 4-1-04; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-1700
Division of Child Support as Garnishee — Service of Writ

Pursuant to ORS 18.655(1)(f); the Department of Justice, Division of Child Support, designates the Special Collections Unit, 4600 25th Ave. NE, Suite 180, Salem, Oregon 97301, as the authorized office to receive service or delivery of a writ of garnishment for property of a debtor with regard to child support or spousal support payments. Service or delivery of a writ of garnishment at an office or address other than the one designated in this rule will not be considered valid.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 18.655
Hist.: DOJ 5-2005, f. & cert. ef. 7-15-05

137-055-1800
Limited English Proficiency

For the purposes of providing child support services required by ORS 25.080 to Limited English Proficiency (LEP) persons, the following provisions apply:

(1)(a) "Eligible population" means persons eligible to receive child support services pursuant to ORS 25.080.

(b) "Vital information" means information that:

(A) Affects a person's substantive rights;

(B) Notifies a person about rights or services;

(C) Tells a person what process to use to respond; or

(D) Tells a person what the findings are or what to pay.

(2) At least once each biennium, the CSP will identify languages for which vital information will be translated without the need for a request from a party. To determine the languages, the CSP will use the following criteria:

(a) The estimated size of the eligible population speaking the specific language;

(b) The number of language line calls made over the last two years for the specific language; and

(c) The cost of the translation.

(3) If the number in subsection (2)(a) is 1,000 or 5% of the eligible population in Oregon, whichever is less, vital information for that language will be translated without the need for a request from a party.

(4) If the number of language line calls in subsection (2)(b) is 500 or more, vital information for that language will be translated without the need for a request from a party.

(5) Notwithstanding any other provision of this rule, if the cost of the translation for a single document is $500 or more, the CSP may choose to not translate the document.

(6) When an LEP person needs a translation and the language needed does not meet the standards in sections (3) or (4), the CSP may choose to either translate the vital information for that language or refer the LEP person to other translation services, including language lines or other providers.

(7) When an LEP person needs to verbally communicate with the CSP, the program may use certified bilingual or multilingual staff to communicate or may use a language line.

Stat. Auth: ORS 180.345 & 28 CFR 42.405
Stats. Implemented: ORS 25.080
Hist.: DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 13-2011, f. 12-30-11, cert. ef. 1-3-12

137-055-2020
Case Assignment

(1) Except as provided in OAR 137-055-1090, the Division of Child Support (DCS) must provide services pursuant to ORS 25.080 for all children for whom support rights are or have been assigned to the state because the child(ren) are receiving or have received cash assistance, services from the Oregon Youth Authority, foster care or medical assistance when one or both parents are absent from the benefit group.

(2) Notwithstanding section (1) of this rule, if a District Attorney (DA) is providing services pursuant to ORS 25.080(1)(b) on a case where the family, or a family member, assigns medical child support rights, the DA will continue to provide services on that case.

(3)(a) Once a case is assigned to a DCS office, barring error, it will remain assigned to a DCS office, even if no support remains assigned to the state; and

(b) The provisions of subsection (3)(a) do not apply if the DCS office to which the case is assigned is a DCS office providing services in lieu of a DA office and the case would have been assigned to a DA office under this rule.

(4) Notwithstanding the provisions of section (3), a DCS office and DA office may agree to transfer a case or may co-work a case or conclude pending legal proceedings. Before a case may be transferred from one office to another, approval must be obtained from each office manager or management equivalent and narrated on the computer record for the case.

(5) The matrix set out in Exhibit 1 is offered as an aid in applying sections (1) through (4) of this rule. [Exhibit not included. See ED. NOTE.]

(6) Sections (7) to (11) apply only to cases assigned to DA offices or to counties in which DCS offices provide DA services.

(7)(a) Except as provided in subsection (b) of this section, the DA of the applicant's county will be assigned the case and must provide services;

(b) If the obligor resides in the same county where the operative support order is entered, the DA of the order county will be assigned the case and must provide the services.

(8)(a) Except as provided in subsection (b) of this section, when continued services as required in OAR 137-055-1100 must be provided, the DA of the county in which the person receiving services resides will be assigned the case and must provide services;

(b) If the obligor resides in the same county where the operative support order is entered, the DA of the order county must provide the services.

(9) When the person applying for or receiving services resides in another state, the DA where the obligor resides must provide services, even if there is a support order in another county.

(10) When both the person applying for services and the obligor reside in another state:

(a) If there is an Oregon order, the DA of the order county must provide the services;

(b) If there is no Oregon order, the DA of the county where the child resides or where the obligor's income or property is located must provide the services;

(c) If there is no Oregon order and the obligor has no income or property located in the state, but it is anticipated that the obligee will be moving to this state, the DA of the county where the obligee is anticipated to reside must provide the services;

(d) If there is no Oregon order, the obligor has no income or property located in the state, the obligee is not anticipated to be moving to this state, but continuation of services is being provided pursuant to OAR 137-055-1100, the DA where the case was previously assigned must provide the services.

(11) The matrix set out in Exhibit 2 is offered as an aid in applying sections (7) through (10) of this rule. [Exhibit not included. See ED. NOTE.]

[ED. NOTE: Exhibits referenced are available from the agency.]
Stat. Auth.: ORS 25.080 & 180.345
Stats. Implemented: ORS 25.080
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 4-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0035; AFS 7-2002, f. & cert. ef. 4-25-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-2020; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-2020; DOJ 9-2009, f. & cert. ef. 7-1-09

137-055-2045
Spousal Support

(1) For the purposes of this rule, the following applies:

(a) A "spousal support only" case is a case in which there is a continuing spousal support obligation or arrears, no current child support obligation or child support arrears; and

(b) "Public assistance" means SNAP benefits, general assistance, medical assistance, old-age assistance, TANF, aid to the blind, aid to the permanently and totally disabled, and any other assistance granted by the Department of Human Services or the Oregon Health Authority, in accordance with state and federal laws.

(2) When an Oregon judgment or support order for spousal support only is received, the judgment does not include child support, the order seeks collection, accounting, distribution, disbursement and enforcement services, and the obligee is receiving public assistance, the administrator will:

(a) Create a limited services case, as defined in OAR 137-055-1070, on the Child Support Enforcement Automated System (CSEAS) if one does not already exist;

(b) If applicable, add arrears under ORS 25.015 or establish arrears under 25.167 or 416.429; and

(c) Initiate income withholding under ORS 25.372 to 25.427.

(3) When an Oregon judgment for spousal support is received, does not include child support, seeks collection, accounting, distribution, disbursement and enforcement services, and it is unknown whether the obligee is receiving public assistance, the administrator will:

(a) Create an information only case on the CSEAS; and

(b) Send the obligee an application for spousal support services or authorization to access assistance records, explaining that spousal support services may not be provided until assistance records can be checked and verified.

(4) New spousal support only cases in which the obligee is receiving assistance will be assigned to the appropriate Division of Child Support office for provision of services as required by ORS 25.381.

(5) Notwithstanding any other provisions of this rule, each county district attorney may elect to provide services in spousal support only cases, subject to the following:

(a) Written criteria must be established to determine under what circumstances services will be provided and to identify what services will be provided;

(b) The written criteria established in subsection (5)(a) must be posted in a public place; and

(c) Claims for time spent providing services on spousal support only cases and any other expenses may not be submitted with claims for federal financial participation.

(6) When services are being provided under section (5) of this rule, accounting, distribution and disbursement services will be provided by the Department of Justice.

(7) The administrator may close a spousal support only case and notify the parties if:

(a) The obligee is not on any form of public assistance, there is no known employer for the obligor and no income withholding in place, and a payment has not been received within the last six months;

(b) The obligee requests closure;

(c) The obligee or obligor dies;

(d) There is no longer a current spousal support order, arrears are under $500 and there are no reasonable expectations for collection or the arrears are uncollectible under state law;

(e) The location of the obligor is unknown, and no payment has been received in the last six months;

(f) The obligor cannot pay support for the duration of the order because the obligor is institutionalized in a psychiatric facility, incarcerated with no chance for parole, or has a medically verified total and permanent disability with no evidence of support potential, and is without income for withholding;

(g) The obligor is a citizen of, and lives in, a foreign country; does not work for the Federal government or for a company or state with headquarters in or offices in the United States; and has no reachable income for withholding in the United States;

(h) The administrator has lost contact with the obligee; or

(i) The obligee fails to cooperate in any manner necessary or helpful in providing these services.

(8) The administrator will document the justification for case closure by a notation on the case record.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 25.381
Hist.: DOJ 1-2006, f & cert. ef. 1-3-06; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 9-2014, f. & cert. ef. 5-22-14

137-055-2060
Cases with Contradictory Purposes

(1) Cases with contradictory purposes are defined as two or more child support cases in which the same person is, or has been, both an obligee and obligor in those cases and the cases are, or have been, assigned to the same Child Support Program (CSP) office.

(2) The administrator represents the interests of the state. There is no conflict of interest when the same CSP office is assigned cases where the same person is, or has been, both an obligor and an obligee. The administrator is responsible for impartial application of the law. Nothing in this rule precludes a CSP office from having cases assigned to them in which the same person is, or has been, both an obligor and obligee.

(3) It is recognized that a person receiving child support services or a person eligible to receive child support services may be reluctant to pursue those services because the CSP office through which they do or would receive services is, or has been, the same CSP office in another case where the person is, or has been, the opposite party.

(4) A person who has cases in which that person is, or has been, or upon application would be, both an obligor and obligee with cases assigned to the same CSP office may ask the CSP office manager to transfer one of the cases to a different CSP office. The CSP office manager will consider the request and either grant the transfer or explain to the requestor why the transfer is not granted.

(5) If a case is transferred, the assignment to a different CSP office will take into consideration the needs of the requestor and the other party(ies).

(6) If the CSP office manager denies the request for transfer, the requestor may ask the CSP Director to review the decision of the administrator and to facilitate a resolution.

Stat. Auth.: Sec. 2, Ch. 73 OL 2003
Stats. Implemented: ORS 25.080
Hist.: AFS 6-1995, f. 2-17-95, cert. ef. 3-1-95; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0042; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-2060; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-2060; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-2080
Office Responsible for Providing Services when Conflict of Interest

(1) The Child Support Program (CSP) will, to the maximum extent possible, assign support cases to avoid the potential for or the appearance of a conflict of interest.

(2) If an actual or potential conflict of interest is identified by either an employee or a party or potential party to a case, the manager of the affected office shall make a determination whether the case should:

(a) Remain assigned to the current employee;

(b) Be reassigned to another employee within the same office; or

(c) Be reassigned to a different office.

(3) If the determination made under section (2) of this rule is to reassign the case to a different office, the manager of the affected office shall contact the manager of another CSP office, which may be either a district attorney or Division of Child Support office, to reach an agreement and arrange for the case to be reassigned.

(4) If the branch offices cannot reach an agreement for the case to be reassigned or if the party or potential party disagrees with the determination made by the manager of the affected branch office, the CSP Director shall decide which office has the responsibility for providing services for that particular case.

Stat. Auth.: Sec. 2, Ch. 73 OL 2003
Stats. Implemented: ORS 25.080
Hist. SSP 15-2003, f. 6-25-03, cert. ef. 6-30-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-2080; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-2080

137-055-2100
Process Service

(1) The administrator may serve process in the manner provided in ORCP 7, ORS 25.085, and any other provision of law.

(2) "Mail service with delivery confirmation" includes but is not limited to registered mail, certified mail, and priority mail with delivery confirmation.

(3) When the administrator will use priority mail service as the process service method, the party who will receive the documents must verify the address to which the documents are to be mailed. Verification by the party must occur no more than 60 calendar days prior to mailing.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 25.085, 25.245, 25.670, 416.415, 416.429
Hist.: DOJ 13-2011, f. 12-30-11, cert. ef. 1-3-12

137-055-2120
Rules for Contested Case Hearings in the Child Support Program

Contested case hearings for the Child Support Program are conducted in accordance with the Attorney General's Model Rules at OAR 137-003-0501 through 137-003-0700 and with 137-055-2120 through 137-055-2180. The hearings are not open to the public and are closed to non-participants, except the administrative law judge may permit non-participants to attend subject to the parties' consent.

Stat. Auth.: Sec. 2, Ch. 73 OL 2003
Stats. Implemented: Sec. 2, Ch. 73 OL 2003
Hist.: AFS 5-1995, f. & ef. 2-6-95; AFS 21-2000, f. & cert. ef. 8-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0800; AFS 4-2001, f. 3-28-01, cert. ef. 4-1-01; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-2120; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-2120

137-055-2140
Delegations to Administrative Law Judge

Administrative law judges of the Office of Administrative Hearings are authorized to do the following:

(1) Issue final orders without first issuing proposed orders.

(2) Issue final orders by default in cases described in OAR 137-003-0670 or 137-003-0672, except in a case authorized by ORS 416.415 or as authorized in section (3). An administrative law judge is authorized to issue a final order by default in a case authorized by ORS 416.425(5) but not in any other case authorized by ORS 416.425, unless section (4) of this rule applies.

(3) Issue final orders by default when the nonrequesting party(ies) fails to appear for a hearing conducted under ORS 25.020(13), or issue a dismissal with prejudice when the requesting party fails to appear for a hearing conducted under ORS 25.020(13).

(4) Issue an order dismissing a temporary modification, as defined in OAR 137-055-3430, if the party seeking a temporary modification fails to appear for a scheduled hearing, without further action by the administrator.

(5) Correct mistakes in hearing orders issued by OAH pursuant to ORS 180.345, including scrivener errors and substantive errors, at any time within 30 days of the issuance of the order.

(a) Orders in which scrivener errors have been corrected must be marked "Corrected Order".

(b) Orders in which substantive errors have been amended must be marked "Amended Order".

(c) Corrected and amended orders must contain notice to the parties of appeal rights as provided in ORS 416.427 and must be mailed to the parties by regular mail at the parties' contact addresses.

(d) Notwithstanding section (c) of this rule, the Administrator may receive such orders electronically.

(6) Determine whether a reschedule request should be granted pursuant to OAR 137-003-0670(2), based on whether the requester=s failure to appear for a scheduled hearing was beyond the reasonable control of the party.

(7) Issue final orders granting or denying late hearing requests pursuant to OAR 137-003-0528.

(8) Provide to each party the information required to be given under ORS 183.413(2) or OAR 137-003-0510(1).

(9) Order and control discovery.

Stat. Auth.: ORS 25.020 & 180.345

Stats. Implemented: ORS, 25.020, 180.345, 416.415 & 416.425

Hist.: AFS 21-2000, f. & cert. ef. 8-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0801; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-2140; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-2140; DOJ 7-2004, f. 3-30-04, cert. ef. 4-1-04; DOJ 16-2004, f. 12-30-04, cert. ef. 1-3-05; DOJ 5-2005, f. & cert. ef. 7-15-05; DOJ 1-2006, f & cert. ef. 1-3-06; DOJ 4-2009(Temp), f. 5-6-09, cert. ef. 5-7-09 thru 11-1-09; DOJ 13-2009, f. & cert. ef. 10-30-09; DOJ 5-2013, f. & cert. ef. 7-8-13

137-055-2160
Requests for Hearing

(1) A request for hearing must be in writing and signed by the party, the party's authorized representative, or the administrator. The signature may be handwritten, typed or electronic.

(2) A request for hearing may be made on a form provided by the Child Support Program (CSP).

(3) A request for hearing must be received by the CSP office which issued the action within the time provided by law or notice in order to be considered timely.

(4) A new or amended request for hearing is not required from the requesting party to obtain a hearing if the administrator amends the order being appealed, unless the administrator notifies the requesting party that an additional request is required.

(5) Notwithstanding OAR 137-003-0530, 137-003-0672(3), and section 4 of this rule, if OAH dismisses a hearing because the requesting party failed to appear, the CSP may issue an amended notice instead of issuing a final order by default. The amended order will be referred to OAH only if a party submits a new request for a hearing.

(6) When a party requests a hearing after the time specified by the administrator, the administrator will handle the request pursuant to OAR 137-003-0528, except that the administrator may accept the late request only if:

(a) The request is received before or within 60 days after entry of a final order by default;

(b) There is no appeal of the final order pending with the circuit court, and

(c) The cause for failure to timely request the hearing was beyond the reasonable control of the party, unless other applicable statutes or Oregon Child Support Program administrative rules provide a different time frame or standard.

(7) Notwithstanding the provisions of section (6) of this rule, a request for hearing is not considered a late hearing request when:

(a) Parentage testing has been conducted pursuant to ORS 109.252 and 416.430 which includes the man as the biological father of the child, and a request for hearing has been received from a party 30 days from the date of service of the Notice of Intent to Enter Order/Judgment establishing paternity and the notice of parentage testing results; or

(b) A party has denied paternity and failed to appear for parentage tests, an order establishing paternity has been entered, and a request for hearing has been received from a party within 30 days from the date the order establishing paternity was mailed to the parties.

(8) For the purpose of computing any period of time under this rule, except as otherwise provided, any response period begins to run on the following date:

(a) If service is by certified mail, on the date the party signs a receipt for the mailing;

(b) If service is by regular mail:

(A) Three days after the mailing date if mailed to an address in Oregon;

(B) Seven days after the mailing date if mailed to an address outside Oregon; or

(c) The date evidence shows the party received the mailing.

(9) Except as provided in subsection (10)(b) the dates in section (8) are computed based on calendar days, not business days.

(10)(a) In computing any period of time under this rule, do not count the date of mailing as the first day; and

(b) If the last day falls on a Saturday, Sunday or legal holiday, do not count that day as a calendar day.

(11) The provisions of sections (8) through (10) do not apply to service on a party by regular mail to complete substitute service. For substitute service, the service date is the date the document is mailed.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 183.415

Hist.: AFS 5-1995, f. & ef. 2-6-95; AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 21-2000, f. & cert. ef. 8-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0830; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-2160; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-2160; DOJ 2-2006(Temp), f. & cert. ef. 1-3-06 thru 6-30-06; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; DOJ 6-2006, f. & cert. ef. 10-2-06; DOJ 10-2008, f. & cert. ef. 7-1-08; DOJ 2-2010(Temp), f. & cert. ef. 1-4-10 thru 7-1-10; DOJ 11-2010, f. & cert. ef. 7-1-10; DOJ 13-2011, f. 12-30-11, cert. ef. 1-3-12; DOJ 5-2013, f. & cert. ef. 7-8-13; DOJ 13-2014(Temp), f. & cert. ef. 10-1-14 thru 3-30-15; DOJ 6-2015, f. & cert. ef. 3-30-15

137-055-2165
Requests to Reschedule Hearing

(1) When a party fails to appear for a hearing, the party may request that the hearing be rescheduled. A request to reschedule a hearing must be submitted in writing to the Child Support Program (CSP).

(2) When the CSP receives a written request to reschedule a hearing, the CSP will review its record to determine:

(a) Whether a final order has been entered in the circuit court; or

(b) If more than 60 days have passed since the notice of hearing cancellation was issued.

(3) After this review, the CSP will:

(a) Deny the request to reschedule if:

(A) A final order has been entered in the circuit court; or

(B) More than 60 days have passed since the notice of hearing cancellation was issued; or

(b) Forward the request to the Office of Administrative Hearings (OAH).

(4) When OAH receives the written request to reschedule, OAH will notify the parties that the request has been received and allow the parties 10 days to submit written testimony on whether or why the reschedule request should be accepted.

(5) Parties who submit written testimony to OAH must provide copies of the testimony to the other parties.

(6) After the time for response has expired, and after reviewing the request and any additional testimony received, OAH will make a determination whether the reschedule request should be allowed or denied.

(a) If the request is allowed, OAH will issue a final order allowing the request and scheduling the case for hearing; or

(b) If the request is denied, OAH will issue a final order denying the request.

(7) When the CSP receives an order from OAH which denies a reschedule request, the CSP may issue a final order by default on the underlying support issue.

(8) OAH will include notice of the process set out in this rule in its order dismissing a hearing when a party fails to appear.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 180.345
Hist.: DOJ 16-2004, f. 12-30-04, cert. ef. 1-3-05; DOJ 6-2006, f. & cert. ef. 10-2-06; DOJ 4-2009(Temp), f. 5-6-09, cert. ef. 5-7-09 thru 11-1-09; DOJ 13-2009, f. & cert. ef. 10-30-09

137-055-2170
Use of Lay Representatives at Administrative Hearings

(1) As used in this rule "lay representative" means a representative of the Child Support Program (CSP) who is not employed as an attorney.

(2) Subject to the approval of the Attorney General, lay representatives of the Child Support Program are authorized to appear on behalf of the CSP in the following types of administrative hearings conducted by the Office of Administrative Hearings:

(a) Administrative child support adjudications pursuant to ORS 25.287, 416.415, 416.416, 416.417, 416.425, and 416.427;

(b) Hearings regarding state income tax intercepts pursuant to ORS 25.610 and 293.250;

(c) Hearings regarding the suspension of occupational and driver licenses, certificates, permits and registrations pursuant to ORS 25.765;

(d) Hearings regarding credit for direct payments pursuant to ORS 25.020;

(e) Hearings regarding overpayments pursuant to ORS 25.125.

(f) Hearings regarding the state's satisfaction of a support award pursuant to OAR 137-055-5220;

(g) Hearings regarding suspension of support pursuant to ORS 25.245;

(h) Hearings regarding the establishment of arrears pursuant to ORS 416.429;

(i) Hearings regarding physical custody determinations for purposes of joining a party pursuant to ORS 416.407 and OAR 137-055-3500;

(j) Hearings regarding credit for lump sum Social Security/Veterans payments pursuant to ORS 25.275 and OAR 137-055-5520.

(k) Hearings regarding the amount of assigned arrears pursuant to OAR 137-055-6040.

(3) The lay representative may not make legal argument on behalf of the CSP.

(a) "Legal argument" includes arguments on:

(A) The jurisdiction of the CSP to hear the contested case;

(B) The constitutionality of a statute or rule or the application of a constitutional requirement to the CSP; and

(C) The application of court precedent to the facts of the particular contested case proceeding.

(b) As used in this rule, "legal argument" does not include presentation of motions, evidence, examination and cross-examination of witnesses or presentation of factual arguments or arguments on:

(A) The application of the statutes or rules to the facts in the contested case;

(B) Comparison of prior actions of the CSP in handling similar situations;

(C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case;

(D) The admissibility of evidence;

(E) The correctness of procedures being followed in the contested case.

(4) Lay representatives must read and be familiar with the Code of Conduct for Non-Attorney Representatives at Administrative Hearings, which is maintained by the Oregon Department of Justice and available on its website at: http://www.doj.state.or.us.

Stat. Auth.: ORS 180.345 & 416.455
Stats. Implemented: ORS 25.080 & 183.452
Hist.: JD 6-1987, f. & ef. 10-16-87; JD 4-1995, f. 2-27-95, cert. ef. 3-1-95; Renumbered from 137-055-0300, DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03; DOJ 1-2014(Temp), f. & cert. ef. 1-13-14 thru 7-12-14; DOJ 9-2014, f. & cert. ef. 5-22-14

137-055-2180
Reconsideration and Rehearing

A petition for reconsideration or rehearing authorized by OAR 137-003-0675 must be filed with the administrative law judge who signed the final order. An administrative law judge will rule on the petition and take appropriate action if the petition is allowed.

Stat. Auth.: Sec. 2, Ch. 73 OL 2003
Stats. Implemented: Sec. 2, Ch. 73 OL 2003
Hist.: AFS 5-1995, f. & ef. 2-6-95; AFS 2-2000, f. 1-28-00, cert. ef. 2-1-00; AFS 21-2000, f. & cert. ef. 8-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0930; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-2180; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-2180

137-055-2320
Requirement for Services — Obligor Bankruptcy Situations

(1) The administrator will have access to an attorney admitted to federal court practice to handle situations of obligor bankruptcy, or contract with suitable counsel so admitted.

(2) For the purposes of this rule, "suitable counsel" means any of the following:

(a) That portion of the Oregon Department of Justice (DOJ) designated to handle bankruptcy situations; or

(b) Any Oregon county district attorney's office with staff admitted to federal court practice to handle situations of obligor bankruptcy; or

(c) Private counsel so admitted, provided that such private counsel complies with the administrative rules and procedures of the Child Support Program that apply to situations of obligor bankruptcy, and with applicable DOJ policies regarding representation.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 25.080
Hist.: AFS 14-1994, f. 7-25-94, cert. ef. 8-1-94; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0282; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-2320; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-2320; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07

137-055-2340
Obligor Bankruptcy Situations in General

(1) Upon being notified of obligors bankruptcy, the administrator will:

(a) Enter the appropriate codes for bankruptcy on the case record, and

(b) Narrate the case record with the bankruptcy information to alert other program participants of the bankruptcy situation.

(2) Upon receiving a discharge or dismissal notice and verifying that the bankruptcy was closed, the administrator will:

(a) Remove the codes for bankruptcy on the case record, and

(b) Narrate the bankruptcy information on the case record.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 25.080
Hist.: AFS 2-1995, f. 1-10-95, cert. ef. 1-11-95; AFS 13-1999, f. 10-29-99, cert. ef. 11-1-99; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0284; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-2340; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-2340; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07

137-055-2360
Obligor Chapter 7 and Chapter 11 Bankruptcy Situations

This rule details the Child Support Program's responsibilities in situations of obligor bankruptcy and applies to Chapter 7 and Chapter 11 bankruptcies filed on or after October 17, 2005. For bankruptcies filed prior to October 17, 2005, the Bankruptcy Code in effect at the time the bankruptcy was filed applies, as does the prior

version of OAR 137-055-2360 in effect at the time the bankruptcy was filed.

(1) Upon receiving notification of bankruptcy, the administrator will:

(a) Stop any legal action that is pending, except:

(A) Initiating or proceeding with the establishment of paternity;

(B) Initiating or proceeding with the establishment or modification of a child support order; or

(C) Changing the support award based on a change in the child's physical custody as authorized by ORS Ch 416 (2009 HB 2277).

(b) Not file any document in circuit court in a county in which the debtor owns real property which creates a lien by its terms or by operation of law without first obtaining relief from the automatic stay.

(c) Leave any existing income, unemployment, or workers' compensation withholding orders in place, if the order is not in violation of the stay. In a Chapter 7 bankruptcy, withholding may continue against post-petition earnings for both current support and for both pre-petition and post-petition arrears. In a Chapter 11 bankruptcy, collections may continue for current support and post-petition arrears, unless otherwise provided in the debtor's plan. If no withholding order is in place, the administrator will obtain a withholding order, as appropriate, upon receipt of obligor's employment information.

(d) Determine if there are any other enforcement actions in process which may need to be stopped due to the stay or which may involve property of the bankruptcy estate, such as a writ of garnishment or contempt of court action; and

(e) Terminate any action that involves property of the bankruptcy estate and is not excepted from the automatic stay and send any such property of the estate that has not been distributed to the bankruptcy trustee.

(2) The administrator will not file a Proof of Claim if no assets are involved in a Chapter 7 bankruptcy.

(3) If there are assets available for distribution to creditors in a Chapter 7 bankruptcy, the administrator will file a Proof of Claim, if applicable, even if the time period for filing a Proof of Claim has passed.

(4) In a Chapter 11 bankruptcy, the administrator will file a Proof of Claim for current support and arrears owed at the time the petition was filed, if any.

(5) The administrator will respond to any objections filed to the Proof of Claim.

(6) If the automatic stay prevents a support enforcement action that is otherwise appropriate under applicable bankruptcy and nonbankruptcy law, unless there is evidence that the bankruptcy will close or the Plan will be confirmed before the relief from stay can be granted, the administrator will petition the bankruptcy court for a Relief from Stay.

(7) If in a Chapter 11 bankruptcy, the debtor proposes a bankruptcy Plan that does not provide for the payment of current or past child support, the administrator may request the bankruptcy court reject the Plan.

(8) The administrator will continue to certify a case for federal and state tax refund intercept unless otherwise provided by the bankruptcy Plan. However, if it is determined that an intercepted tax refund is the property of the estate and the bankruptcy trustee requests the money, the administrator will forward the money to the bankruptcy trustee and notify the parties.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.080

Hist.: AFS 2-1995, f. 1-10-95, cert. ef. 1-11-95; AFS 15-1995, f. 7-7-95, cert. ef. 7-10-95; AFS 13-1999, f. 10-29-99, cert. ef. 11-1-99; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0286; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-2360; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-2360; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 1-2010, f. & cert. ef. 1-4-10

137-055-2380

Obligor Chapter 12 and Chapter 13 Bankruptcy Situations

This rule details the Child Support Program's responsibilities in situations of obligor bankruptcy and applies to Chapter 12 and Chapter 13 bankruptcies filed on or after October 17, 2005. For bankruptcies filed prior to October 17, 2005, the Bankruptcy Code in effect at the time the bankruptcy was filed applies, as does the prior version of OAR 137-055-2380 in effect at the time the bankruptcy was filed.

(1) Upon receiving notification of bankruptcy, the administrator will:

(a) Stop any legal action that is pending, except:

(A) Initiating or proceeding with the establishment of paternity;

(B) Initiating or proceeding with the establishment or modification of a child support order; or

(C) Changing the support award based on a change in the child's physical custody as authorized by ORS 416 (2009 HB 2277).

(b) Not file any document in circuit court in a county in which the debtor owns real property that creates a lien by its terms or by operation of law without first obtaining relief from the automatic stay.

(c) Leave any existing income, unemployment, or workers' compensation withholding orders for current support only in place. If there is an ongoing support obligation and income withholding is in place that includes arrears, the administrator will send an amended withholding order for current support only. When the bankruptcy plan is confirmed, the administrator may issue a withholding order for current support and arrears to the extent authorized in the bankruptcy plan.

(d) Determine if there are any other enforcement actions in process that may need to be stopped due to the stay or which may involve property of the bankruptcy estate, such as a writ of garnishment or contempt of court action; and

(e) Terminate any action that involves property of the bankruptcy estate and is not excepted from the automatic stay and send any such property of the estate that has not been distributed to the bankruptcy trustee.

(2) The administrator will file a Proof of Claim for current support and arrears owed at the time the petition was filed, in any, if the time period for filing a Proof of Claim has not passed. However, if it will not be feasible for the debtor to pay the entire support obligation during the duration of the bankruptcy plan, the administrator may negotiate with the debtor a stipulation in the bankruptcy plan to collect a lesser amount of support through the plan. Any such stipulation will specify that the remaining debt will be paid outside the plan and the support is nondischargeable.

(3) The administrator will respond to any objections filed to the Proof of Claim.

(4) The administrator will review the Summary of Plan or proposed Plan and the Debtor's Schedule J, if available, for the repayment of arrears and for payment of ongoing support; and

(a) If the time period for filing objections has not passed, the administrator may file an objection to a Plan if the Plan is not feasible.

(b) If the Plan does not provide for pre-petition arrears, the administrator may file an objection to have the pre-petition arrears included in the plan if the time period for filing an objection has not passed.

(5) After confirmation, if the property of the estate has revested in the debtor, the administrator will resume collection on current support and post-petition arrears. If the Plan provides for the pre-petition arrears, collection of the pre-petition arrears will be governed by the terms of the Plan.

(6) If the debtor fails to make timely support payments after filing the bankruptcy petition, the administrator may petition the bankruptcy court for relief from the automatic stay or move for dismissal of the bankruptcy.

(7) The administrator will continue to certify a case for federal and state tax refund intercept unless otherwise provided by the bankruptcy plan. However, if it is determined that an intercepted tax refund is the property of the estate and the bankruptcy trustee requests the money, the administrator will forward the money to the bankruptcy trustee and notify the parties.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.080

Hist.: AFS 2-1995, f. 1-10-95, cert. ef. 1-11-95; AFS 13-1999, f. 10-29-99, cert. ef. 11-1-99; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0288; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-2380; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-2380; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 1-2010, f. & cert. ef. 1-4-10

137-055-3020
Paternity Establishment Procedures

(1) When a case involves a child who is not yet born, the administrator will take no action to establish paternity or to provide locate services until such time as the child is born.

(2)(a) When initiating legal proceedings to establish paternity for a child conceived in Oregon, the administrator will use ORS chapter 109 or ORS chapter 416.

(b) Except for proceedings filed under ORS Chapter 109, past support will be established as provided by ORS Chapter 416 and OAR 137-055-3220.

(3) When the administrator initiates legal proceedings to establish paternity, if the child was born in this state, the administrator will file the Notification of Filing of Petition in Filiation Proceedings with the Center for Health Statistics.

(4) The administrator will seek to establish paternity against the man named by the mother to be the most likely alleged father except as provided in sections (5) and (6).

(5) If the husband and mother are still married and the husband is on the child's birth record:

(a) If only one party disputes paternity, the administrator will give notice to the parties that:

(A) The parties have the right to challenge paternity under ORS 109.070 by filing a petition in the circuit court;

(B) The administrator will delay any initiated support action for 30 days;

(C) If a party provides proof within 30 days that he or she filed a petition, the administrator will suspend the support action pending the outcome of the court's decision.

(D) If no proof is received within 30 days that a party has filed a petition, the administrator will proceed with the legal action to establish support.

(b) If both the husband and mother dispute the child's paternity, the administrator will order the husband, mother and child to appear for parentage testing.

(6) If the husband and mother are still married, no father is listed on the birth record, and the mother names another man as the father of the child, the administrator will provide notice and an opportunity to object to the husband.

(a) If a written objection is received from the husband within 30 days of the date of the notice, an action to establish paternity will be initiated against the husband.

(b) If no written objection is received from the husband within 30 days of the date of the notice, an action to establish paternity will be initiated against the most likely alleged father named in the mother's paternity affidavit.

(7) In all cases in which the mother states that more than one man could be the biological father of the child and parentage tests have excluded a man as the father of the child, the following provisions apply:

(a) If there is only one remaining untested possible biological father, that man is constructively included as the father by virtue of the other man's exclusion as the father.

(b) If there are more than one remaining untested possible biological fathers, the administrator will initiate action against each man, either simultaneously or one at a time, to attempt to obtain parentage tests which either exclude or include the man.

(8) In all cases in which the mother states that more than one man could be the biological father of the child and parentage tests have included a man as the father of the child at a cumulative paternity index of at least 99, any other untested possible father(s) will be considered to be constructively excluded by virtue of the first man's inclusion.

(9)(a) The Child Support Program may initially pay the costs of parentage tests, and may seek reimbursement of or waive the costs.

(b) If an alleged father fails to appear as ordered for parentage tests, but the child has appeared, reimbursement will be sought from the alleged father for the costs incurred.

(c) The maximum amount allowed to be entered as a parentage test judgment against a party is the amount the Child Support Program agrees to pay a parentage testing laboratory used to perform the tests.

(d) A judgment for parentage test costs reimbursement will not be sought:

(A) Against a person who has been excluded as a possible father of a subject child;

(B) If the mother stated that more than one man could be the father of the child, and has been unable to name a most likely alleged father, and the man tested has not objected to the entry of an order establishing paternity;

(C) If, after receipt of parentage test results which indicate the alleged father is the biological father of the child, but prior to the administrator or court signing a final order establishing paternity, the party who sought the parentage test consents to the entry of an order establishing paternity or signs a voluntary acknowledgment;

(D) If the alleged father has applied for services under ORS 25.080 and requested paternity establishment in accordance with OAR 137-055-3080; or

(E) Except as provided in section (11) of this rule, against any individual who is a recipient of Temporary Assistance to Needy Families (TANF) benefits or Medicaid assistance.

(10) A judgment for parentage test costs reimbursement will not be sought against any person found to be the legal father for costs attributable to testing other alleged fathers in any case in which the mother stated that more than one man could be the father of the child.

(11) When a party requests additional parentage testing as provided in ORS 109.252(2), the following provisions apply:

(a) The laboratory selected for additional testing must be a laboratory approved by accreditation bodies designated by the Oregon Health Authority; and

(b) The party making the request must advance the costs of the additional tests to the accredited laboratory.

(12) Upon receipt of a party's request for additional parentage testing and proof that payment has been advanced to an accredited laboratory, the administrator or the court will order additional testing.

(13) If a non-requesting party fails to appear for the additional parentage testing, the administrator will take appropriate steps to compel obedience to the order for additional testing.

(14) If a requesting party fails to appear for the additional parentage testing, the administrator may enter an order in accordance with OAR 137-055-3100.

(15) The administrator may dismiss or terminate a proceeding to establish paternity after sending written notice to the parties that the case is being considered for dismissal or termination and that any comments or objections must be made within 10 days.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 109.070 & 416.430
Hist.: AFS 7-1998, f. 3-30-98, cert. ef. 4-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1020; SSP 15-2003, f. 6-25-03, cert. ef. 6-30-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3020; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3020; DOJ 2-2006(Temp), f. & cert. ef. 1-3-06 thru 6-30-06; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; DOJ 1-2008(Temp), f. & cert. ef. 1-2-08 thru 3-31-08; DOJ 6-2008, f. & cert. ef. 4-1-08; DOJ 3-2009, f. & cert. ef. 4-1-09; DOJ 1-2010, f. & cert. ef. 1-4-10; DOJ 16-2010, f. & cert. ef. 10-1-10

137-055-3040
Temporary Order for Support

(1) When a party to an order to establish paternity objects to the entry of such order and provided the parentage test results in a cumulative paternity index of 99 percent or greater, the administrator shall request the court to issue a temporary support order.

(2) A party other than the state may request an order establishing temporary support.

(3) If, in response to the initial parentage test results, a party requests additional parentage tests, such request shall be considered an objection to the entry of the order establishing paternity and the administrator shall order the additional parentage tests.

(4) When the administrator requests the court to issue a temporary support order, the administrator shall certify the case to court for:

(a) The establishment of prospective support;

(b) A parentage determination;

(c) A final order for parentage, support and past support.

(5) The temporary order entered by the court shall have the same force and effect as any other order entered by the administrator, court or other tribunal.

(6) If the court makes a determination of non-parentage, the obligor may request that the court order the return of any monies collected as a result of the temporary order.

Stat. Auth.: Sec. 2, Ch. 73 OL 2003

Stats. Implemented: ORS 416.430

Hist.: AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1005; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3040; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3040

137-055-3060
Establishing Paternity in Multiple Alleged Father Cases

(1) In any action to establish paternity initiated under ORS 416.400 to 416.470, when the mother of the child for whom paternity is being established states that the father of the child could be more than one man, the administrator may initiate action against those men who are named by the mother as possible fathers as provided in this rule.

(2)(a) If mother is able to name one of the possible fathers as the most likely father based upon the date of conception, the physical characteristics the child shares with that man, or other factors, the administrator may initiate action against that man only.

(b) If the administrator is unable to locate the man identified by mother as the most likely father, the administrator will not proceed with establishment of paternity until the man is located.

(3) If mother cannot identify one of the men who may be the father as the most likely father, the administrator may gather additional information, including information from the mother and from any physician or other licensed health care provider of obstetrical care to mother, which may assist the mother in identifying the most likely father.

(4) If mother remains unable to identify one of the possible fathers as the most likely father, the administrator may initiate legal action against any one or more possible fathers, as named by the mother, upon whom the administrator can apparently effect personal service based on the information it has available.

(5) The administrator will provide notice to any possible father described in this rule and served in an action to establish paternity that the mother of the child for whom the administrator seeks to establish paternity has named another man or men as a possible father unless that other man (or men) has been excluded by parentage tests.

(6) The administrator will enter no order establishing paternity with respect to a man who has not been named by mother as the most likely father unless the provisions of either subsection (a) or (b) of this section apply.

(a) The man has been subjected to parentage tests which have not excluded him as a possible father of the child in question; or,

(b) All other men named by mother as possible fathers have been excluded as possible fathers by parentage tests.

(7) Notwithstanding any other provision of this rule, its requirements do not apply when one of the possible fathers is entitled to reasonable notice under ORS 109.096.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 416.400 – ORS 416.470

Hist.: AFS 7-1998, f. 3-30-98, cert. ef. 4-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1040; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3060; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3060; DOJ 12-2004, f. & cert. ef. 10-1-04; DOJ 2-2006(Temp), f. & cert. ef. 1-3-06 thru 6-30-06; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; DOJ 1-2008(Temp), f. & cert. ef. 1-2-08 thru 3-31-08; DOJ 6-2008, f. & cert. ef. 4-1-08

137-055-3080
Responsibility of Administrator to Establish Paternity at Request of Self-Alleged Father

(1) For purposes of this rule, self-alleged father means a man who both:

(a) Claims that he is, or possibly is, the biological father of a child born out of wedlock as defined in ORS 109.124; and

(b) Wishes to have paternity legally established for the child, establishing himself as the legal father.

(2) The administrator is responsible for pursuing establishment of paternity at the request of a self-alleged father, subject to all of the following:

(a) The self-alleged father must either:

(A) Be eligible for services under ORS 25.080, because he is receiving TANF cash assistance or Medicaid assistance for the child born out of wedlock; or

(B) Complete an application for services as provided under ORS 25.080.

(b) Unless otherwise prohibited under this rule, the administrator will:

(A) Take all appropriate steps to determine if the self-alleged father is the biological father; and

(B) Pursue appropriate action to legally establish paternity unless evidence indicates that he is not the biological father.

(c) The administrator will not pursue action to establish paternity under this section in any case where:

(A) Adoption of the child is final;

(B) Paternity has already been established for the child, or;

(C) Paternity is presumed under ORS 109.070, the husband and wife are cohabiting and they do not consent to the challenge.

(d) The administrator will not pursue action to establish paternity under this rule if the Child Support Program (CSP) Director has determined that such action would not be in the best interests of the child, in accordance with section (5) of this rule.

(3) For purposes of this rule, legal proceedings for adoption of the child are pending if either of the following provisions is true:

(a) The mother or legal guardian of the child has released or surrendered the child to the adoptive parent(s) for adoption, and such release or surrender has become irrevocable because the child has been placed in the physical custody of the adoptive parent(s) and the other conditions of ORS 109.312 have been met;

(b) The mother or legal guardian of the child has released or surrendered the child to the Department of Human Services (DHS) or an incorporated child-caring agency for adoption, and such release or surrender has become irrevocable because the child has been placed by the agency in the physical custody of a person or persons for the purpose of adoption, in accordance with ORS 418.270(4).

(4)(a) When a self-alleged father requests the administrator establish his legal paternity for a child, the administrator will send written notification by first class mail to the last-known address of the mother and (if a separate party) legal guardian of the child. Further, if the administrator knows or is informed that legal proceedings for adoption of the child are pending, the administrator will also send written notification to the licensed private agency handling the adoption, or if none exists, to DHS;

(b) If the mother and (if a separate party) legal guardian cannot readily be found, the enforcing agency administrator will make a diligent attempt to locate the party. A diligent attempt includes but is not limited to submitting the case to the Division of Child Support for state parent locator services. If unable to locate the mother and legal guardian within 30 days, the administrator will proceed to process the case as described in section (8) of this rule without the notice described in this section;

(c) The written notification must state the following:

(A) That the self-alleged father has asked the administrator for establishment of paternity services;

(B) That if legal proceedings for adoption of the child are pending, or if the child's mother (or legal guardian if a separate party) alleges that the child was conceived due to rape or incest, the CSP

Director will determine whether establishing paternity is in the best interests of the child, on the basis of the responses the CSP Director receives to the written notification;

(C) That a copy of any response to the notification the CSP Director receives will be sent to the self-alleged father, and that the self-alleged father will then have an opportunity to respond to the allegations. The administrator will ensure that the address of the mother and/or guardian is deleted from any written material it sends to the self-alleged father;

(D) The factors the CSP Director will consider, set out in section (5) of this rule, in determining whether establishing paternity would be in the best interest of the child;

(E) That the mother, legal guardian, and adoption agency or DHS child welfare program if appropriate under this rule, has 15 days to respond in writing to the written notification;

(F) That the self-alleged father has 15 days to respond to an allegation or response received by the CSP Director;

(G) That if any of the parties listed in paragraph (E) or (F) of this subsection does not respond to the written notice or allegation within 15 days, the CSP Director will make a determination based on the responses received;

(H) That if the CSP Director determines that establishing paternity would not be in the best interests of the child, this decision:

(i) Means only that the administrator will not pursue action to establish paternity; and

(ii) Does not preclude the self-alleged father from pursuing establishment of paternity on his own, without the assistance of the administrator.

(5) In any case where legal proceedings for adoption of the child are pending, or where the child was conceived due to alleged rape or incest, the CSP Director is responsible for determining whether action to establish paternity would be in the best interests of the child.

(a) If the CSP Director determines that action to establish paternity would not be in the best interests of the child, the administrator will take no further action to establish paternity for the self-alleged father;

(b) A signed written statement from the mother or legal guardian of the child, stating that the child was conceived as a result of rape or incest, is sufficient reason for the CSP Director to determine that establishing paternity would not be in the best interests of the child, unless such statement is disputed or denied by the self-alleged father, subject to the following:

(A) If the self-alleged father does not respond to the copy of the allegation or response the CSP Director receives as provided in subsections (4)(a) through (4)(c) of this rule, the CSP Director will make a determination by default based on the mother's or legal guardian's statement;

(B) If the self-alleged father does respond and acknowledges that the child was conceived by rape or incest, the CSP Director must determine that establishing paternity would not be in the best interests of the child;

(C) If the self-alleged father does respond and denies that the child was conceived by rape or incest, the CSP Director will decide whether to pursue action to establish paternity. The CSP Director will consider factors including, but not limited to:

(i) Whether a police report was filed;

(ii) Whether the self-alleged father was convicted or acquitted of rape or incest charges;

(iii) Whether other persons have information that the child was conceived due to rape or incest;

(iv) Any other factors known or provided to the CSP Director that would support or refute the veracity of the rape or incest allegation;

(v) Whether establishing paternity would be in the best interest of the child, considering the factors listed in subsection (c) of this section;

(vi) The CSP Director's decision in this matter is limited to only whether the administrator will pursue action to establish paternity, and is in no way to be construed or intended as a determination or accusation of whether the self-alleged father is in fact guilty or not guilty of rape or incest;

(c) When the CSP Director finds that legal proceedings for adoption of the child are pending, the CSP Director will consider the following factors in determining whether establishing paternity would be in the best interests of the child:

(A) The nature of the relationship or contacts between the child and the self-alleged father. This determination may consider whether the child has lived with the self-alleged father or has had frequent visitation with the self-alleged father, thereby establishing a substantial parent-child relationship;

(B) The degree of parental commitment by the self-alleged father to the child. This determination may consider whether the self-alleged father has attempted to stay in contact with the child, and if such attempts would continue or increase in the future;

(C) The degree to which the self-alleged father has contributed or attempted to contribute, consistent with his ability, to the support of the child. This determination may consider the nature and extent of such support, and if such support would continue or increase in the future;

(D) If there is a legal relationship between the child and the self-alleged father, or if there has been an attempt to establish such a legal relationship through filiation proceedings, custody actions, voluntary acknowledgment of paternity, or similar actions. This determination may consider whether the self-alleged father has had an opportunity to establish a legal relationship prior to the initiation of adoption proceedings;

(E) Whether good reasons exist that would excuse the self-alleged father's failure to establish a relationship, or stay in contact with the child, or contribute to the support of the child, or attempt to establish a legal relationship with the child. Such reasons may include, but are not limited to, the self-alleged father's late awareness of the mother's pregnancy or of the child's birth.

(6) Absent judicial review, the decision of the CSP Director is final with regard to any responsibility of the administrator to pursue establishment of paternity.

(7) No provision of this rule prohibits the self-alleged father from pursuing establishing paternity on his own, without the assistance of the administrator.

(8) If the CSP Director determines (when a determination by the CSP Director is necessary under this rule) that the administrator may pursue action to establish paternity at the request of a self-alleged father, or if the administrator does not receive a written assertion requiring such a determination by the CSP Director under this rule, the administrator will proceed on the case as follows:

(a) The administrator will make diligent efforts to provide the mother of the child, unless she is deceased, with actual notice of the action to establish paternity. Notice must be by personal service upon the mother. Diligent efforts include mailing of the notice or petition and summons by first class mail to all reasonably known recent addresses with a request that the mother acknowledge service on the form provided and also mailing the same notice to one or more of the maternal grandparents, if known, addressed to them individually and requesting that they forward the notice and acknowledgment form to the mother;

(b) Notwithstanding the requirement of subsection (a) of this section, no action to establish paternity under this section may be delayed more than 60 days from the self-alleged father's initial request because of the enforcing agency's inability to provide actual notice to the mother of the child or children;

(c) If the mother of the child or children cannot be served with notice of the action or if the mother is deceased, the enforcing agency will not take an order establishing paternity unless parentage tests have been completed which fail to exclude the self-alleged father, and have a cumulative paternity index of at least 99;

(d) In any action to establish paternity in which the administrator cannot serve the child's mother, or when the mother is deceased, the administrator will request that the court appoint a willing, qualified and suitable person to be a guardian ad litem for the child. If no relative or other person agrees to such appointment, the administrator will request that an attorney be appointed for this purpose;

(e) When an order establishing paternity has been taken in accordance with this section without service of the notice or petition and summons on the mother, the administrator will mail a copy of the final order to the mother by first class mail to the most recent contact addresses in the case record, DHS' TANF files and Oregon Driver and Motor Vehicle files marked please forward, address correction requested. In addition to such mailing, the administrator will, for a period of six months from the date of the final order, continue attempts to locate the mother and personally serve her with a copy of the final order establishing paternity.

(9) All other provisions of this rule notwithstanding, the administrator cannot require the child's mother (or other custodial adult) to cooperate with efforts to establish paternity, and the administrator will not assess a penalty for not cooperating, in any case where a finding that the child's mother (or other custodial adult) is exempt from cooperating due to good cause, pursuant to federal law at 42 U.S.C. 654(a)(29) and 42 U.S.C. 666(a)(5)(B)(i), is either currently in effect or is pending. In any such case, the administrator need not proceed further on behalf of the self-alleged father if it determines that there is no further effective action the administrator can take on behalf of the self-alleged father.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.080

Hist.: AFS 23-1993, f. & cert. ef. 10-19-93; AFS 3-1994, f. & cert. ef. 2-1-94; AFS 12-1996, f. & cert. ef. 4-1-96; AFS 9-1998, f. 5-29-98, cert. ef. 6-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0068; AFS 4-2001, f. 3-28-01, cert. ef. 4-1-01; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3080; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3080; DOJ 1-2008(Temp), f. & cert. ef. 1-2-08 thru 3-31-08; DOJ 6-2008, f. & cert. ef. 4-1-08; DOJ 3-2009, f. & cert. ef. 4-1-09; DOJ 1-2010, f. & cert. ef. 1-4-10

137-055-3100
Order Establishing Paternity for Failure to Comply with an Order for Parentage Testing

(1) In an action to establish paternity initiated pursuant to ORS 416.415, the administrator may serve simultaneously the Notice and Finding of Financial Responsibility and an administrative order for parentage tests.

(2) An administrative order for parentage tests may require either the mother of the child(ren) in question or a person who is a possible father of the child(ren) to file a denial of paternity in order to receive a parentage test, or it may allow testing prior to a party filing a responsive answer to the allegation of paternity.

(3) The administrator will enter an order establishing paternity based upon a party's failure to appear for parentage testing, provided that all parties have been served with a Notice and Finding of Financial Responsibility and with an order requiring parentage tests if:

(a) The mother of the subject child(ren) has named the male party who failed to appear for parentage tests in a sworn statement as a possible father of the child(ren) in question, and there is not a presumed father under ORS 109.070; or

(b) A male party has claimed in a sworn statement to be the father of the child(ren) in question and the mother and her child(ren) have failed to appear for such tests, and there is not a presumed father under ORS 109.070.

(4) An order establishing paternity based on a failure to submit to parentage tests may be entered:

(a) Whether or not a responsive answer has been filed; and

(b) Whether or not corroboration exists to support a sworn statement of a party naming a male party as a father or possible father of the child(ren) in question, provided that the male party has either:

(A) Been named in a sworn statement by the mother as a possible father of the child; or

(B) Has named himself in a sworn statement as the father of the child.

(5) The provisions of this rule do not apply to the additional parentage tests described in OAR 137-055-3020(11) through 137-055-3020(14), unless the party requesting the tests fails to comply with the order for parentage testing.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 109.070, 109.252 & 416.430

Hist.: AFS 7-1998, f. 3-30-98, cert. ef. 4-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1030; SSP 15-2003, f. 6-25-03, cert. ef. 6-30-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3100; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3100; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; DOJ 1-2008(Temp), f. & cert. ef. 1-2-08 thru 3-31-08; DOJ 6-2008, f. & cert. ef. 4-1-08; DOJ 3-2009, f. & cert. ef. 4-1-09

137-055-3120
Changing Child's Surname on Birth Certificate When Paternity Established

(1) In any action or proceeding by the administrator to establish paternity of a child who was born in Oregon, if either parent wishes to have the child's surname changed on the birth certificate of the child and the other parent agrees, the administrator shall so order and notify the Center for Health Statistics of the Department of Human Services.

(2) If the parents do not agree to change the child's name on the birth certificate and either parent requests that the matter be adjudicated, the administrator shall certify the matter to the appropriate Oregon circuit court pursuant to ORS 416.430(6)(b). If neither parent requests that the matter be adjudicated, the administrator will take no action to change the surname on the birth certificate of the child.

Stat. Auth.: Sec. 2, Ch. 73 OL 2003

Stats. Implemented: ORS 25.080

Hist.: AFS 2-2000, f. 1-28-00, cert. ef. 2-1-008; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1045; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3120; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3120

137-055-3140
Reopening of Paternity Cases

(1) When a party claims that a man established as the father of a child in fact is not the biological father of the child, the administrator will open or reopen the issue of paternity when all of the provisions of subsections (a) through (e) apply:

(a) The administrator initiated the action administratively which established paternity or paternity was established by a signed voluntary acknowledgment in Oregon;

(b) Parentage tests have not been conducted;

(c) The order was entered with the circuit court one year ago or less, or the voluntary acknowledgment as described in ORS 432.287 was filed with the Center for Health Statistics one year ago or less;

(d) The party applying has completed and returned to the administrator a request for reopening and, if required, a signed application for services, prior to expiration of the one year period;

(e) The administrator has jurisdiction over the parties.

(2) If at any point during the process, the administrator obtains information and verifies that the criteria in subsections (1)(a), (b), (d) or (e) are no longer met, the administrator will make a determination and will send the affected parties written notification within 10 days of verifying the information.

(3) The party who requested parentage tests must reimburse the administrator for the costs incurred by the Child Support Program for such tests, unless the male party in question is excluded.

(4) An order establishing paternity will not be vacated, dismissed or set aside under this rule unless parentage tests exclude the male party in question as the father of the child, or a party fails to comply and the issue of paternity is resolved against that party. The administrator will not submit for the court's approval, any order granting relief which requires repayment to the debtor of money paid by that debtor under the order.

(5) If a reopening initiated by the administrator results in an order of nonpaternity, the administrator will satisfy any state debt owing on the case and file credit arrears owed to any other party.

(6) Any judgment of nonpaternity under this rule will be by circuit court order.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 416.443, Or Laws 2007, ch 454

Hist.: AFS 29-1995, f. 11-6-95, cert. ef. 11-15-95; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1000; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3140; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3140; DOJ 2-2006(Temp), f. & cert. ef. 1-3-06 thru 6-30-06; DOJ 5-2006, f. 6-29-06, cert. ef.

7-3-06; DOJ 1-2008(Temp), f. & cert. ef. 1-2-08 thru 3-31-08; DOJ 6-2008, f. & cert. ef. 4-1-08

137-055-3200
Pending Judicial Proceedings and Existing Support Orders

(1) Whenever the administrator seeks to establish or modify a support order, the administrator will first check the Oregon Judicial Information Network (OJIN) and the Child Support case records to determine if:

(a) There is any support proceeding involving the child pending in this state or any other jurisdiction; or

(b) There is a support order involving the child in this state or any other jurisdiction, other than the support obligation the administrator seeks to modify.

(2) If a judicial proceeding involving the support of the child is pending in this state, the administrator may proceed to establish or modify the support order if:

(a) It appears likely that a final judgment will not be entered without substantial delay; or

(b) The states financial interests cannot be adequately protected without proceeding with the administrative action.

(3) If the administrator proceeds to establish or modify a support order, the administrator must file a notice in the pending judicial proceeding which includes the date of initiation of the administrative action, the action being pursued, and the amount of any current or past support sought.

(4) If the administrator does not proceed to establish or modify a support order, the administrator must send notice to the requesting party and may file an affidavit of appearance in the pending proceeding.

(5) If a support proceeding is discovered after commencing an administrative action but prior to finalizing the administrative order, the administrator may:

(a) Certify all matters under the notice to the court for consolidation in the court proceeding;

(b) Finalize any portion of the order and file it in the county where the proceeding is pending; or

(c) Withdraw the administrative proceeding.

(6) If a child support judgment is discovered after commencing an administrative action but prior to finalizing the administrative order, the administrator may:

(a) Seek to set aside the provisions of the child support judgment and ask the court to enter a new order if:

(A) It was issued without prior notice to the issuing court, administrative law judge or administrator that another support proceeding involving the child was pending or another support judgment involving the child already existed; or

(B) It was issued without service on the administrator as required in ORS 107.087, 107.135, 107.431, 108.110, 109.103 and 109.125, when support rights are assigned to the state and the states interests were not adequately protected.

(b) Proceed to establish an order for past support only for periods of time not addressed by the child support judgment; or

(c) Withdraw the administrative proceeding.

Stat. Auth.: ORS 25.287 & 416.422

Stats. Implemented: ORS 25.287, 108.110, 109.100, 109.103, 416.415, 416.422, 416.425, 416.440, 416.470, 419B.400 & 419C.590

Hist.: DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 12-2004, f. & cert. ef. 10-1-04; DOJ 7-2011, f. & cert. ef. 10-3-11

137-055-3220
Establishment of Past Support Orders

(1) For purposes of this rule the following definitions apply:

(a) "Past support" means the amount of child support that could have been ordered based on the Oregon Child Support Guidelines and accumulated as arrears against a parent for the benefit of a child for any period of time during which the child was not supported by the parent and for which period no support order was in effect.

(b) "Supported by the parent" in subsection (1)(a) means payments in cash or in kind in amounts or in-kind value equal to the amount that would have accrued under the Oregon Child Support Guidelines from the obligor to the obligee for purposes of support of the child.

(c) The Oregon Child Support Guidelines means the formula for calculating child support specified in ORS 25.275.

(2) The administrator may establish "past support" when establishing a child support order under ORS 416.400 through 416.470.

(3) When an obligor has made payments in cash or in kind an obligee for the support of the child during the period for which a judgment for past support is sought, and providing that those payments were in amounts equal to or exceeding the amount of support that would have been presumed correct under the Oregon Child Support Guidelines, no past support will be ordered.

(4) When such payments as described in section (3) were made in amounts less than the amount of support presumed correct under the Oregon Child Support Guidelines, the amount of the past support judgment will be the correct amount presumed under the Oregon Child Support Guidelines minus any amounts of support paid.

(5) The obligor must provide evidence of such payments as described in sections (3) and (4) by furnishing copies of:

(a) Canceled checks;

(b) Cash or money order receipts;

(c) Any other type of funds transfer records;

(d) Merchandise receipts;

(e) Verification of payments from the obligee;

(f) Any other record of payment deemed acceptable by the administrator.

(6) The administrator may decide whether to accept evidence of such cash or in-kind support payments for purposes of giving credit for them. If any party disagrees, the past support calculation may be appealed to an administrative law judge as provided in ORS 416.427.

(7) Past support may not be ordered for any period of time prior to the later of:

(a) October 1, 1995;

(b) The date of the initiation of IV-D services from any jurisdiction by application for services; or

(c) In case of a mandatory referral based on the receipt of TANF cash assistance, Medicaid, foster care or Oregon Youth Authority services, the date of the referral to the Child Support Program (CSP).

(8) If the support case was initiated from another jurisdiction, the date of application for services will be considered to be either:

(a) The date the initiating jurisdiction requests past support to begin but not before October 1, 1995; or

(b) If the initiating jurisdiction requests that past support be established for multiple periods of time, the beginning date of the most recent period but not before October 1, 1995; or

(c) If the initiating jurisdiction does not specify a beginning date for past support, the date of the initiating petition but not before October 1, 1995.

(9) The administrator will not establish past support prior to the date of the most recent initiation of CSP services if a case was closed after a previous referral. If an initiating jurisdiction requests that past support be established for two or more periods of time, past support will be established only for the most recent period.

(10) If there is or was a child support judgment in existence in any jurisdiction for the obligor to pay support to the obligee for the same child, or if a child support judgment is in the process of being litigated, no order for past support will be entered for a period of time before entry of the child support judgment already or previously existing except as provided in OAR 137-055-3200.

(11) If the parties are filing for annulment, dissolution or separation under ORS 107.105 and a judgment will be entered for months when the proceeding was pending, any order for past support may only include amounts owed for a time period prior to the filing of the judicial action.

(12) If the order to be entered does not include current support and the past support would be owed only to the State of Oregon or another jurisdiction, the administrator will not enter an order for past support that covers a period of less than four months.

(13) Past support will be calculated under the Oregon Child Support Guidelines and will use current income for the parties in calculating past support monthly amounts. Parties may rebut use of

current income by presenting evidence of income in differing amounts for the months for which past support is being ordered.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 416.422
Hist.: AFS 28-1995, f. 11-2-95, cert. ef. 11-3-95; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1010; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3220; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3220; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 1-2006, f & cert. ef. 1-3-06; DOJ 1-2010, f. & cert. ef. 1-4-10; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11; DOJ 13-2011, f. 12-30-11, cert. ef. 1-3-12

137-055-3240
Establishment of Arrears

(1) The administrator will establish arrears on support cases when the following conditions have been met:

(a) Services are being provided under ORS 25.080;

(b) There is an Oregon support order or an order from another jurisdiction has been registered in Oregon;

(c) The administrator has determined that there is a need to establish the arrears balance on the case because:

(A) The administrator has no record or an incomplete accounting case record;

(B) An establishment of income withholding has been requested by an obligor or obligee pursuant to ORS 25.381; or

(C) There is a reason which necessitates that the arrears on the case record be reestablished; and

(D) There has been a request for arrears establishment by a party.

(2) A party requesting establishment or reestablishment of arrears must furnish an accounting that shows the payment history in as much detail as is necessary to demonstrate the periods and amounts of any arrears.

(3) Where arrears had earlier been established, through a process which afforded notice and an opportunity to contest to the parties, the arrears from that period will not be reestablished except that if interest had not been included in the establishment, interest may be added for that period.

(4) The administrator may establish or reestablish arrears by either:

(a) Use of the judicial process authorized under ORS 25.167; or

(b) Use of the administrative process authorized under ORS 416.429.

(5) Upon completion of the arrears establishment process in subsection (4)(a) or subsection (4)(b) of this rule, the case record will be adjusted to reflect the new arrears amount.

(6) Notwithstanding any other provision of this rule, when applicable, arrears will be established pursuant to ORS 25.015.

(7) Arrears for a child attending school as defined in OAR 137-055-5110, will be as set forth in 137-055-5120.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 25.015, 25.167, 25.381, 416.429
Hist.: AFS 5-1996, f. 2-21-96, cert. ef. 3-1-96; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0047; AFS 2-2001, f. 1-31-01, cert. ef. 2-1-01; AFS 15-2002, f. 10-30-02, ef. 11-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3240; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3240; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f & cert. ef. 1-3-06; DOJ 5-2007, f. & cert. ef. 7-2-07; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11

137-055-3260
Correction of Mistakes in Orders

(1) Clerical mistakes in final orders issued by the administrator pursuant to ORS 416.400 to 416.470 and errors therein arising from oversight or omission may be corrected by the administrator at any time within 60 days of the issuance of the order. The corrected order must be clearly marked "Corrected Order" and must contain notice to the parties of appeal rights as provided by ORS 416.427.

(2) The corrected order must be served on the parties by regular mail at the parties' contact addresses.

Stat. Auth.: ORS 416.455 & 180.345
Stats. Implemented: ORS 416.400 - 416.470
Hist.: AFS 7-1998, f. 3-30-98, cert. ef. 4-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1050; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3260; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3260; DOJ 1-2010, f. & cert. ef. 1-4-10

137-055-3280
Administrative Law Judge Order Regarding Arrears

(1) If a party objects to the enforcement of an order under ORS 416.429 on the basis that the amount of the arrears are incorrect, an administrative law judge may determine the correct amount of the arrears, if any, and issue an order enforcing both the newly determined arrears and the current support obligation.

(2) The amount of arrears as stated on the Notice of Intent to Enforce an Order issued under ORS 416.429 will be presumed to accurately state the arrears. The presumption may be rebutted by evidence of errors in calculation, by a showing that payments were made for which credits were not appropriately recorded, or any other evidence which demonstrates that the arrears amount sought is incorrect.

(3) An administrative law judge may enter an order providing for the enforcement of current support only, pending further proceedings to determine the correct amount of arrears.

Stat. Auth.: ORS 416.455 & Sec. 2, Ch. 73 OL 2003
Stats. Implemented: ORS 416.429
Hist.: AFS 7-1998, f. 3-30-98, cert. ef. 4-1-988; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1060; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3280; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3280; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-3290
Entry of Contingency Orders When Child Out of Care

Whenever a notice and finding of financial responsibility is issued pursuant to ORS 416.415 for a child in the care and custody of the Department of Human Services, or a youth offender or other offender in the legal or physical custody of the Oregon Youth Authority, and the child leaves care or custody prior to entry of a final order, the administrator or an administrative law judge shall:

(1) Enter a final order, in accordance with ORS 416.417, which is contingent upon the child, youth offender or other offender residing in a state financed or supported residence, shelter or other facility or institution; and

(a) If the administrator is entering the final order, sign a certificate establishing the period of non-residency and satisfying the order for the period of non-residency; or

(b) If an administrative law judge is entering the final order, advise the administrator that the child is no longer in care or custody of the Department of Human Services or Oregon Youth Authority.

(2) Upon receipt of information from an administrative law judge that a child is no longer in care or custody of the Department of Human Services or Oregon Youth Authority, if appropriate, the administrator shall sign a certificate establishing the period of non-residency and satisfy the order for the period of non-residency.

Stat. Auth.: Sec. 2, Ch. 73 OL 2003
Stats. Implemented: ORS 416.417
Hist.: SSP 15-2003, f. 6-25-03, cert. ef. 6-30-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3290; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3290

137-055-3300
Incarcerated Obligors

(1) For purposes of establishing or modifying a support order, the following definitions apply:

(a) "Correctional facility" means any place used for the confinement of persons charged with or convicted of a crime or otherwise confined under a court order, and includes but is not limited to a youth correction facility.

(A) "Correctional facility" applies to a state hospital only as to persons detained therein charged with or convicted of a crime, or detained therein after acquittal of a crime by reason of mental defect;

(B) "Correctional facility" includes alternative forms of confinement, such as house arrest or confinement, where an obligor is not permitted to seek or hold regular employment.

(b) "Incarcerated obligor" means a person who:

(A) Is or may become subject to an order establishing or modifying child support; and

(B) Is, or is expected to be, confined in a correctional facility for at least six consecutive months from the date of initiation of action to establish a support order, or from the date of a request to modify an existing order pursuant to this rule.

(2) For purposes of computing a monthly support obligation for an incarcerated obligor, all provisions of the Oregon child support guidelines, as set forth in OAR 137-050-0700 through 137-050-0765, will apply except as otherwise specified in this rule.

(3) The incarcerated obligor's income and assets are presumed available to the obligor, unless such income or assets are specifically restricted, assigned, or otherwise inaccessible pursuant to state or federal laws or rules regarding the income and assets of incarcerated obligors.

(4) If the incarcerated obligor has gross income less than $200 per month, the administrator shall presume that the obligor has zero ability to pay support.

(5) If the provisions of section (4) of this rule apply, the administrator will not initiate an action to establish a support obligation if the obligor is an incarcerated obligor, as defined in subsection (1)(b) of this rule, until 61 days after the obligor's release from incarceration.

(6) The administrator will not initiate an action to modify a support obligation because of incarceration unless the obligor is an incarcerated obligor, as defined in subsection (1)(b) of this rule, and a party to the current order has requested a modification.

(7) An order entered pursuant to ORS 416.425 and this rule, that modifies a support order because of the incarceration of the obligor, is effective only during the period of the obligor's incarceration and for 60 days after the obligor's release from incarceration. The previous support order is reinstated by operation of law on the 61st day after the obligor's release from incarceration.

(a) An order that modifies a support order because of the obligor's incarceration must contain a notice that the previous order will be reinstated on the 61st day after the obligor's release from incarceration;

(b) Nothing in this rule precludes an obligor from requesting a modification based on a periodic review, pursuant to OAR 137-055-3420, or a change of circumstances, pursuant to OAR 137-055-3430.

(8) The provisions of this rule do not apply to an obligor who is incarcerated because of nonpayment of support.

Stat. Auth.: ORS 180.345 & 416.455
Stats. Implemented: ORS 416.425
Hist.: AFS 21-2000, f. & cert. ef. 8-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0078; AFS 4-2001, f. 3-28-01, cert. ef. 4-1-01; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3300; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03; DOJ 7-2004, f. 3-30-04, cert. ef. 4-1-04; DOJ 12-2004, f. & cert. ef. 10-1-04; DOJ 1-2010, f. & cert. ef. 1-4-10; DOJ 6-2012(Temp), f. & cert. ef. 5-24-12 thru 11-20-12; DOJ 15-2012, f. 9-27-12, cert. ef. 10-1-12; DOJ 7-2014, f. & cert. ef. 4-1-14

137-055-3360
Entering of Administrative Orders in the Register of the Circuit Court

An administrative order under ORS 416.400 to 416.470 must be entered in accordance with the requirements of this rule:

(1) If the administrative order establishes support or paternity and the child is not residing in a state financed or supported residence, shelter or other facility or institution (see ORS 416.417), the order must be entered in the circuit court in the county in which the child, or either parent of the child, resides.

(2) If the administrative order establishes support or paternity and the child is residing in a state financed or supported residence, shelter or other facility or institution (see ORS 416.417) or resides out of state, the order must be entered in the circuit court in the county in which the obligor resides.

(3) Except as provided in section (4), if the administrative order is one that modifies an underlying support order, the order must be entered in the circuit court in the same county as the underlying support order.

(4) If there is a judicial proceeding pending at the time of finalizing an administrative order establishing support or paternity, the administrative order must be entered in the circuit court in the same county as the pending judicial proceeding.

(5) Nothing in this rule precludes filing liens in other Oregon counties pursuant to ORS 18.152 or transferring judgments pursuant to ORS 25.100 or 107.449.

Stat. Auth.: ORS 180.345 & 416.455
Stats. Implemented: ORS 416.440
Hist.: AFS 21-2000, f. & cert. ef. 8-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1091; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3360; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3360; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 12-2004, f. & cert. ef. 10-1-04; DOJ 7-2011, f. & cert. ef. 10-3-11; DOJ 7-2014, f. & cert. ef. 4-1-14

137-055-3400
District Attorney Case Assignment for Modification or Suspension of Support

(1)(a) The purpose of this rule is to provide criteria for determining which Oregon District Attorney will have responsibility for initiating action to review and modify an Oregon judgment, or administrative order that requires payment of child support. This rule applies only when both of the following conditions exist:

(A) An Oregon District Attorney has responsibility for providing support enforcement services under ORS 25.080; and

(B) Either of the following is true:

(i) A party to the case has requested a review and modification, as provided in OAR 137-055-3420, for purposes of changing the amount of the monthly support obligation; or

(ii) The obligor is presumed entitled to a suspension of the support obligation as a recipient of certain cash assistance, as provided in ORS 25.245.

(b) This rule does not apply to a Division of Child Support (DCS) office that is performing district attorney functions.

(2) For purposes of this rule, the following definitions apply:

(a) "Requesting party" means the party requesting the district attorney to review and modify the support obligation;

(A) The requesting party may be the obligor, the obligee, or the child attending school;

(B) An obligor deemed presumptively eligible for a suspension under ORS 25.245 will be considered the "requesting party";

(b) "Non-requesting party" means any party that is not the party as defined in subsection (2)(a), above.

(3) In any case where there are arrears, the district attorney responsible under OAR 137-055-2020 for enforcing the case will, if the support order is in another Oregon county, transfer in the order for review and modification under ORS 25.100.

(4) In any case where there are no arrears:

(a) If all the parties reside in the same Oregon county, but the support order is in another county:

(A) The district attorney for the county of residence of the parties will be responsible for review and modification action;

(B) The district attorney for the county of residence may transfer in the support order for review and modification under ORS 25.100, as the county of residence for the non-requesting party.

(b) If any of the parties reside in the same Oregon county that is the county of the support order, the district attorney for that county will be responsible for review and modification action;

(c) If the support order, the requesting party, and the non-requesting party(ies) are all in different counties:

(A) If the district attorney for the county of the requesting party has previously transferred the support order to the requesting party's county for enforcement, the district attorney for the enforcing county will be responsible for review and modification action;

(B) If the case is not currently open as an enforcement case under ORS 25.080, or if the district attorney for the requesting party's county has never transferred the support order for enforcement:

(i) That district attorney will refer the requesting party to the district attorney for the county of the support order;

(ii) The district attorney for the county of the support order will then be responsible for review and modification action;

(C) If the case is currently open as an enforcement case under ORS 25.080:

(i) The district attorney for the enforcing county will transfer the enforcement case to the district attorney for the county of the support order;

(ii) The district attorney for the county of the support order will then be responsible for review and modification action;

(iii) Once the review and modification is completed, the district attorney for the county of the support order will transfer the enforcement case back to the proper enforcement county under OAR 137-055-2040.

(5) If the requesting party does not reside in Oregon, and regardless of whether the case has arrears or not:

(a) If the requesting party's case is already being enforced, the administrator will advise the requesting party to direct the request to the child support program in that other jurisdiction. The other child support program may then ask the administrator to pursue action under appropriate state and federal statutes;

(b) If the requesting party's support case is not being enforced under the child support program in another jurisdiction, the administrator will handle the request under sections (3) and (4) of this rule.

(6) If the non-requesting party(ies) does not reside in Oregon, the district attorney will handle the request under sections (3) and (4) of this rule.

(7) The matrix set out in **Table 1**, is included in this rule as an aid, and incorporates preceding sections of this rule: [Table not included. See Ed. Note.]

(8) Notwithstanding subsection (1)(b), all functions and responsibilities assigned to Oregon District Attorneys under this rule will also be considered assigned to DCS, for those counties where DCS has assumed responsibility from the district attorney for providing support enforcement services.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.080 & 25.287

Hist.: AFS 33-1992, f. 11-17-92, cert. ef. 12-1-92; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0074; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3400; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3400; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 5-2005, f. & cert. ef. 7-15-05; DOJ 1-2006, f & cert. ef. 1-3-06; DOJ 1-2010, f. & cert. ef. 1-4-10; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11

137-055-3410

Modification or Notice and Finding of Financial Responsibility

(1) When the administrator is providing services pursuant to ORS 25.080, the provisions of this rule apply in any case involving the same parties where an existing order:

(a) Is silent regarding support or establishes paternity only and is not for a subsequent child of the parties;

(b) Finds that the support obligation is zero;

(c) Finds that support should be determined at a later date;

(d) Finds that support should not be ordered;

(e) Orders medical only, or establishes paternity only and is for a subsequent child of the parties; or

(f) Terminates support.

(2) If the provisions of subsection (1)(a) apply, the administrator will issue a notice and finding of financial responsibility which includes past support.

(3) Except as provided in section (4), if the provisions of subsections (1)(b), (c), (d) or (e) apply, the administrator will issue a modification pursuant to ORS 107.135 or 416.425.

(4) If the provisions of subsections 1(b), (c), or (d) apply, and the child(ren) is in the care and custody of the Department of Human Services, or is a youth offender or other offender in the legal or physical custody of the Oregon Youth Authority, the administrator may issue a notice and finding of financial responsibility which is contingent upon the child(ren), youth offender or other offender residing in a state financed or supported residence, shelter or other facility or institution;

(a) If the child(ren) is over age 18, the provisions of OAR 137-055-3485 will apply.

(b) If the child(ren) goes out of state care before the order is finalized, the provisions of OAR 137-055-3290 will apply.

(5) If the provisions of subsection (1)(f) apply, the administrator will issue a notice and finding of financial responsibility which includes past support. The administrator may consider the circumstances underlying the termination of support or establishment of paternity only in setting the amount of past support.

(6) Notwithstanding the provisions of this rule, when adding a subsequent child of the same parties to an existing order, the administrator will issue a modification pursuant to ORS 107.135 or 416.425.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.080, 107.135, 416.415, 416.417, 416.422 & 416.425

Hist.: DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03; DOJ 12-2004, f. & cert. ef. 10-1-04; DOJ 9-2005, f. & cert. ef. 10-3-05; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07

137-055-3420

Periodic Review and Modification of Child Support Order Amounts

(1) "Periodic Review" means a proceeding initiated under ORS 25.287(1) to modify an existing order to comply with the child support guidelines.

(2) The administrator will initiate a periodic review if a written request is received from any party or the family is currently receiving TANF, and 35 months have passed since the date:

(a) The most recent support order took effect, or

(b) The most recent order determining that the support order should not be adjusted was signed. For purposes of calculating the 35-month time period, a suspension and temporary modification order entered pursuant to ORS 416.425(13) will not be considered.

(3) For purposes of a periodic review, a child support order is not in substantial compliance with the guidelines if it has been more than 35 months since the order took effect.

(4) The administrator must complete the modification of the existing order within 180 days of receiving a written request for a periodic review, initiating the mandatory review, or locating the non-requesting party(ies), whichever occurs later.

(5) The administrator is responsible for conducting a periodic review in this state or for requesting that another jurisdiction conduct a review pursuant to OAR 137-055-7190. As provided in ORS 110.429 and 110.432, the law of the jurisdiction reviewing the order applies in determining if a basis for modification exists.

(6) On receipt of a written request for a periodic review or when a mandatory periodic review is required, the administrator will notify the parties of the review in writing, allowing the parties 30 days to provide information that may affect the support calculation.

(7) If there is an adult child on the case, the proposed modification will be a tiered order as defined in OAR 137-055-1020.

(8) For all child support cases receiving support enforcement services under ORS 25.080, the Child Support Program (CSP) will annually notify the parties:

(a) Of their right to request a periodic review of the amount of support ordered; and

(b) That the CSP will perform a mandatory periodic review and adjustment if the family is currently receiving TANF.

Stat. Auth.: ORS 180.345 & 416.455

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

Hist.: AFS 65-1989, f. 10-31-89, cert. ef. 11-1-89; AFS 11-1992(Temp), f. & cert. ef. 4-30-92; AFS 26-1992, f. & cert. ef. 9-30-92; AFS 20-1993, f. 10-11-93, cert. ef. 10-13-93; AFS 21-1994, f. 9-13-94, cert. ef. 12-1-94; AFS 17-1997(Temp), f. & cert. ef. 9-16-97; AFS 17-1997(Temp) Repealed by AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 75-1998, f. 9-11-98, cert. ef. 9-15-98; AFS 13-1999, f. 10-29-99, cert. ef. 11-1-99; AFS 9-2000, f. 3-13-00, cert. ef. 4-1-00; AFS 21-2000, f. & cert. ef. 8-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0072; AFS 23-2001, f. 10-2-01, cert. ef. 10-6-01; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; SSP 4-2003, f. 2-25-03, cert. ef. 3-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3420; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3420; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 10-2004, f. & cert. ef. 7-1-04; DOJ 4-2005, f. & cert. ef. 4-1-05; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f & cert. ef. 1-3-06; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 11-2008(Temp), f. & cert. ef. 7-15-08 thru 9-30-08; DOJ 12-2008(Temp), f. & cert. ef. 10-1-08 thru 3-29-09; DOJ 14-2008(Temp), f. & cert. ef. 10-7-08 thru

3-29-09; DOJ 1-2009, f. & cert. ef. 1-2-09; DOJ 4-2009(Temp), f. 5-6-09, cert. ef. 5-7-09 thru 11-1-09; DOJ 13-2009, f. & cert. ef. 10-30-09; DOJ 1-2010, f. & cert. ef. 1-4-10; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11; DOJ 5-2013, f. & cert. ef. 7-8-13; DOJ 1-2014(Temp), f. & cert. ef. 1-13-14 thru 7-12-14; DOJ 9-2014, f. & cert. ef. 5-22-14

137-055-3430
Substantial Change in Circumstance Modification of Child Support Order Amounts

(1) For purposes of this rule: "Substantial compliance" means that the difference between the existing support order and the amount calculated using current guidelines is not greater than $50 or 15% of the current guideline amount, whichever is less.

(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 on a request for a change of circumstance modification when:

(a) Oregon has jurisdiction to modify; and

(b) The administrator:

(A) Receives a request for modification based on a change of circumstance and at least 60 days have passed from the date the existing support order was entered. For those cases where a review is requested pursuant to paragraphs (3)(c)(H) or (I), there is no need for 60 days to have passed; or

(B) Determines that a modification should be initiated based on the administrator's 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 who is 18 years of age or older and under 21 years of age 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 will 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) Makes a written or verbal request for modification based on 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.

(4) Upon receipt of a request for modification, or on the administrator's initiative, the administrator will notify the parties of the review in writing, allowing the parties 30 days to provide information that may affect the support calculation.

(5) A request for modification will be granted:

(a) If the order is not in substantial compliance with the guidelines and the request was due to one of the criteria in paragraphs (3)(c)(A) through (3)(c)(G).

(b) Whether or not the order is in substantial compliance with the guidelines, so long as:

(A) The request was due to one of the criteria in paragraphs (3)(c)(H) through (3)(c)(K), or

(B) The new calculation:

(i) Includes consent by the parties as provided in OAR 137-050-0765;

(ii) Includes compelling factors as provided in OAR 137-050-0750;

(iii) Includes application of rebuttals, as provided in OAR 137-050-0760; or

(iv) Is for a modification to consider receipt of Social Security or Veterans benefits as provided in paragraphs (3)(c)(C) or (D).

(6) If the request for modification is granted, the administrator will advise the parties of the guideline child support obligation. 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.

(7) If a request under this rule is denied, the administrator will notify the requesting party in writing within 30 days of the denial and inform the party of their right to file a motion for modification as provided in ORS 416.425. The administrator will provide the party with information on how to obtain the Oregon Judicial Department packet that has been developed for this purpose.

(8) No provision of this rule prevents the parties from obtaining the services of private legal counsel at any time to pursue modification of the support order.

(9) 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 & 416.455
Stats. Implemented: ORS 25.080, 25.287, 25.321–25.343, 107.108, 107.135 & 416.425
Hist.: DOJ 10-2004, f. & cert. ef. 7-1-04; DOJ 16-2004, f. 12-30-04, cert. ef. 1-3-05; DOJ 4-2005, f. & cert. ef. 4-1-05; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f & cert. ef. 1-3-06; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 4-2009(Temp), f. 5-6-09, cert. ef. 5-7-09 thru 11-1-09; DOJ 6-2009(Temp), f. & cert. ef. 5-14-09 thru 11-1-09; DOJ 13-2009, f. & cert. ef. 10-30-09; DOJ 13-2010(Temp), f. & cert. ef. 7-1-10 thru 12-27-10; DOJ 19-2010, f. 12-20-10, cert. ef. 12-27-10; DOJ 13-2011, f. 12-30-11, cert. ef. 1-3-12; DOJ 6-2012(Temp), f. & cert. ef. 5-24-12 thru 11-20-12; DOJ 15-2012, f. 9-27-12, cert. ef. 10-1-12; DOJ 5-2013, f. & cert. ef. 7-8-13

137-055-3435
Physical Custody Changes: Adjusting Orders

(1) This rule applies when physical custody of a child changes as described in ORS 416.416. For purposes of this rule, "non-custodial" party means the party without physical custody of the minor child.

(2) The provisions of this rule apply only when all of the children in the support order change physical custody from one parent to another, and the change is not for the purpose of exercising parenting time or visitation.

(3) Specifically excluded from adjustments for physical custody are an adult child as defined in OAR 137-055-5110 and a child attending school, as defined in 137-055-5110, because neither are considered to be in the physical custody of anyone.

(4) When a support order has language sufficient to change the support award when a change in physical custody occurs, a party may submit a sworn affidavit or court order to the administrator which includes the date the party obtained physical custody. The administrator will notify the parties that support will be changed 14 days from the date of mailing to the parties' last known addresses. The notice must include:

(a) A copy of the affidavit or court order;

(b) The amount of support the non-custodial party will be ordered to pay, as previously determined in the support order;

(c) A statement that a hearing may be requested under ORS 416.427; and

(d) A statement that the only issues to be considered in a hearing are whether there has been a change in physical custody and the date on which it took place.

(5) If an objection is received, the administrator will forward it, along with the requesting party's affidavit, to the Office of Administrative Hearings for a final determination about physical custody.

(6) If no objection is received, the administrator will file a money award to provide notice of the ending of the obligation of the former non-custodial parent, and of beginning the obligation of the new non-custodial parent.

(7) Nothing in this rule prohibits a party from requesting a review and adjustment of a support order under OAR 137-055-3420, or a change of circumstances modification under 137-055-3430.

Stat. Auth: ORS 180.345
Stats. Implemented: ORS 416 (2009 OL Ch 353)
Hist.: DOJ 1-2010, f. & cert. ef. 1-4-10; DOJ 7-2014, f. & cert. ef. 4-1-14

137-055-3440
Effective Date of Modification Under ORS 416.425

(1) In any proceeding to modify a support order under ORS 416.425, the modification may be effective on or at any time after the last nonrequesting party is served with a motion to set aside, alter or modify the judgment.

(2) If a motion to set aside, alter or modify a judgment is served on more than one nonrequesting party, the modification may be effective on or at any time after the last nonrequesting party is served.

(3)(a) For purposes of this rule a nonrequesting party is an individual obligee, a child attending school under ORS 107.108 and OAR 137-055-5110, or an obligor under the child support order.

(b) An adult child, as defined in OAR 137-055-5110, who has sent a written request to the administrator to be a party to the modification is not a nonrequesting party for purposes of determining the effective date of a modification.

(4) If an amended motion is initiated and served on the parties, the effective date may be the date the original motion was served on the last nonrequesting party.

(5) This rule applies to any modification finalized after January 5, 2004.

Stat. Auth.: ORS 107.135, 180.345 & 416.455
Stats. Implemented: ORS 416.425
Hist.: AFS 7-1998, f. 3-30-98, cert. ef. 4-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1080; AFS 15-2002, f. 10-30-02, ef. 11-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3440; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3440; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 12-2004, f. & cert. ef. 10-1-04; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-3460
Processing Modifications When Unable to Find a Party

(1) On any Oregon child support case, whenever Oregon law or administrative rule requires the administrator to process a modification of a support order to zero, and a State of Oregon court or the administrator has jurisdiction to modify the support order, the administrator shall proceed even in the event that the administrator cannot locate the obligee.

(2) For purposes of this rule, before the administrator can determine that the obligee cannot be found, the administrator must first submit a request to the State Parent Locator Service of the Division of Child Support and must allow the State Parent Locator Service at least 90 days to verify an address or employer for the party being sought.

(3) When the motion to modify the support order is for a modification to zero because the obligated parent is either receiving certain cash assistance as provided in ORS 25.245, or is incarcerated, or now has physical custody of the child(ren) named in the support order, and the administrator cannot locate the obligee, the administrator may serve by other methods as allowed in 25.020(9)(a) or ORCP 7.D(6).

(4) Provisions in this rule regarding a motion to modify a support order to zero are also applicable to a motion to terminate support or, if the obligor is receiving certain cash assistance as provided in ORS 25.245, to a notice suspending support.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 25.020(9), 25.085, 25.245 & ORCP 7.D
Hist.: AFS 20-1998, f. & cert. ef. 10-5-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1085; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3460; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3460; DOJ 3-2009, f. & cert. ef. 4-1-09

137-055-3480
Modification of a Support Order to Zero

(1) The administrator may, upon its own initiative, or upon the request of a party, initiate the necessary action to modify a child support obligation to zero when one of the conditions listed in subsections (a), (b), (c), and (d) of this section apply;

(a) The child or children for whose benefit the support was ordered no longer are in the physical custody of the obligee. This subsection does not apply when the child is a child attending school or an adult child under ORS 107.108 and OAR 137-055-5110.

(b) The family is reconciled (that is, the obligor, obligee and child or children live together as an intact family).

(c) The obligee or beneficiary of the obligee is not receiving TANF cash assistance, foster care or Oregon Youth Authority services and has requested that the administrator modify the support obligation to zero.

(d) The child for whom support is ordered will be added to an existing order for a different child of the same parties.

(2) No order modifying a support obligation to zero shall be taken ex parte.

(3) Nothing in this rule prohibits the suspension of support accrual under any order for the reason that the obligor receives certain cash assistance as provided in ORS 25.245.

Stat. Auth.: ORS 180.345 & 416.455
Stats. Implemented: ORS 25.287 & 416.425
Hist.: AFS 7-1998, f. 3-30-98, cert. ef. 4-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1070; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3480; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3480; DOJ 7-2004, f. 3-30-04, cert. ef. 4-1-04; DOJ 9-2005, f. & cert. ef. 10-3-05; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-3485
Establishment or Modification When Child Approaching or Past 18th Birthday

(1) Notwithstanding the provisions of OAR 137-055-3420 and 137-055-3430, the administrator will, upon request of a party, or upon its own initiative, initiate establishment of a support order or a modification of a support order when a child is approaching his/her 18th birthday if it will result in four months or more of child support. For purposes of this rule child support includes past support, current support and/or support for the time a child is expected to be a "child attending school" pursuant to ORS 107.108.

(2) Upon application or referral, the administrator will only initiate establishment of a support order or establishment of paternity before a child's 18th birthday. As long as legal proceedings are initiated before a child's 18th birthday, they may continue after the child's 18th birthday.

(3) Upon application, the administrator will initiate modification of an existing support order while a child is a "child attending school" if it will affect four months or more of child support as described in section (1).

(4) Upon request the administrator will initiate a modification to zero or a termination of support up to one month before a child's 18th birthday or if the child is a "child attending school" up to one month before the child's 21st birthday.

Stat. Auth.: ORS 25.080, 180.345 & 416.430
Stats. Implemented: ORS 25.010, 25.080, 25.287, 107.105, 107.108, 107.135, 109.100, 109.510, 109.704, 110.303, 416.425, 416.455, 418.001, 418.035, 419C.590 & 419B.400
Hist.: DOJ 10-2004, f. & cert. ef. 7-1-04

137-055-3490
Suspension of Enforcement

(1) For purposes of this rule, "credit balance" means that payments received on a support account exceed all amounts owed by the obligor for ongoing and past-due support.

(2) When a motion has been filed to terminate, vacate, or set aside a support order or when a motion has been filed to modify a support order because of a change in physical custody of the child, the administrator may suspend enforcement of the support order if:

(a) Collection of support would result in the support account accruing a credit balance if the motion were granted; and

(b) The obligee and any child attending school under ORS 107.108 and OAR 137-055-5110, do not object to suspending enforcement of the support order.

(3) When enforcement is to be suspended under this section, the administrator will send written notice of the proposed suspension to the obligee and the child attending school, and will send a copy of the notice to the obligor;

(4) The notice will advise the obligee and the child attending school, that the obligee, and the child attending school, have 14 days from the date the notice is sent to object in writing to the proposed suspension of enforcement and to give the reason(s) for the objection.

(a) If the suspension is due to a motion to terminate, vacate or set aside a support order, the obligee and the child attending school, may object only on the basis that a credit balance would not result if the motion were granted.

(b) If the suspension is due to a motion to modify the support order because of a change in physical custody, the obligee or child attending school, may object only on the basis that:

(A) The child(ren) is/are not in the physical custody of the obligor;

(B) The child(ren) is/are in the custody of the obligor without the consent of the obligee or without a court order for legal custody; or

(C) A credit balance would not result if the motion were granted.

(D) When an obligee or child attending school, files a written objection under this subsection, the administrator will not suspend enforcement. However, if the obligee or child attending school's written objection results in the obligor accruing a credit balance, the provisions of OAR 137-055-6260 will apply. In addition, the obligee or child attending school, may incur an overpayment under OAR 137-055-6220;

(5) The obligee or child attending school may appeal the administrator's decision to suspend enforcement of the support order under ORS 183.484.

Stat. Auth.: ORS 25.125 & 180.345
Stats. Implemented: ORS 25.125
Hist.: AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0069; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3490; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3490; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-3495
Redirection of Support

(1) "Redirect" or "redirection of support" means:

(a) The process of distributing support that would otherwise be paid to the judgment creditor to a person who has physical custody of one or more minor children covered by a child support order; or

(b) The process of distributing to the obligee any support that would otherwise be paid to a child attending school pursuant to OAR 137-055-5110(5)(b).

(2) The administrator will redirect support to a person with physical custody of one or more minor children covered by a child support order under the following circumstances:

(a) The judgment creditor submits a notarized authorization for support to be redirected to a person with physical custody of one or more minor children covered by a child support order; or

(b) The administrator has joined a person with physical custody of one or more minor children to a child support order pursuant to OAR 137-055-3500 and the order is not being modified.

(3) If the order is a class order as defined in OAR 137-055-1020(7) and current support is redirected under this rule for less than all of the children for whom support is ordered, the administrator will determine the amount of support to attribute to each child by dividing the monthly support amount by the number of children for whom support is ordered,

(4) If the order is a class order as defined in OAR 137-055-1020(7) and arrears are redirected under this rule for less than all of the children, collections for arrears will be split equally between the judgment creditor and the person to whom support is redirected.

Stat. Auth.: ORS 180.345 and 416.455
Stats. Implemented: ORS 416.407
Hist.: ; DOJ 6-2015, f. & cert. ef. 3-30-15

137-055-3500
Joinder of a New Party to a Child Support Proceeding

(1) In any proceeding under ORS 416.400 to 416.465 to modify a child support obligation or to redirect support, any party may join any other person who has physical custody of a child in the proceeding.

(2) Before a person may be joined as a party, the administrator shall determine who has physical custody of the child. The determination of who has physical custody of a child is not affected by who may have legal custody of the child. A person has physical custody when that person is responsible for the care, control and supervision of the child. The administrator shall make this determination upon reliable objective information including one or more of, but not limited to, the following:

(a) Written agreement of all parties to the proceeding and of the person having physical custody of the child;

(b) Current school or day care records of the child, indicating the child's name, address and primary caretaker;

(c) Notarized statements by persons who are knowledgeable about the child's primary place of residence and primary physical custodian;

(d) Letters of guardianship or other court records;

(e) Current state or federal agency records.

(3) The administrator shall send written notification of the determination of physical custody and joinder to all parties and the person proposed to be joined as a party. The notice shall inform the parties and the person proposed to be joined that:

(a) A determination of physical custody will result in joining the person with physical custody as a party to the action;

(b) A person who is joined as a party has the rights of a party, including the right to receive current child support;

(c) An objection to the determination of who has physical custody must be made to the administrator in writing within 30 days of the date that the determination was served.

(4) The notice described in section (3) may be served on the parties and the person proposed to be a party as part of an action to modify a support order or to redirect support in the same manner that service is required in ORS 416.425. If the proposed modification or redirection of support has already been served, the action may be amended to include the notice of determination of physical custody and joinder and shall be served on the parties and the person proposed to be added or removed as a party in the same manner that service is required in ORS 416.425. If no objection is received within the time allotted in section (3) the person determined to have physical custody of the child shall be joined as a party to the action.

(5) If a written objection is filed pursuant to section (3) of this rule, the matter shall proceed as follows:

(a) The administrator shall attempt to resolve the dispute with the persons involved and, if the dispute is resolved, issue an order reflecting how the matter is resolved;

(b) If the dispute cannot be resolved, the written objection shall be considered a request for a hearing and the issues of physical custody and joinder shall then be heard and determined by an administrative law judge, pursuant to procedures established under ORS 416.400 to ORS 416.465. The issues of physical custody and join-

der may be determined at the hearing to establish or modify a support obligation. The administrative law judge=s determination of physical custody and joinder shall be included in the order to modify support and may be appealed pursuant to ORS 416.427;

(c) If the issues of physical custody and joinder are raised for the first time during a hearing to modify or establish support, the administrative law judge has authority to postpone the hearing and to order the administrator to serve a person alleged or claiming to have physical custody of the child. After service is accomplished, the administrative law judge may proceed with the hearing and has authority to make a determination of physical custody in accordance with section (2) of this rule. The administrative law judge's determination of physical custody and joinder shall be included in the order to modify or establish support and may be appealed pursuant to ORS 416.427.

(6) Any person who has been previously joined as a party, pursuant to this rule, shall be removed as a party after the administrator has determined that the child is no longer in the custody of that person. In making this determination, the administrator may use the criteria specified in subsections (2)(a) through (2)(e) of this rule.

Stat. Auth.: ORS 180.345, 416.455
Stats. Implemented: ORS 416.407
Hist.: AFS 13-1999, f. 10-29-99, cert. ef. 11-1-99; AFS 2-2000, f. 1-28-00, cert. ef. 2-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1065; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3500; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3500; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; Administrative correction 3-20-06; DOJ 6-2015, f. & cert. ef. 3-30-15

137-055-3620
Administrative Subpoena

(1) The administrator and child support programs of other states that provide services pursuant to Title IV-D of the Social Security Act may issue administrative subpoenas pursuant to ORS 25.082.

(2) Subpoenas issued by the administrator and child support programs of other states shall be in the form adopted by the United States Department of Health and Human Services for that purpose.

(3) Administrative subpoenas issued under this rule may compel the release of financial records and other information needed to establish paternity or to establish, modify or enforce a support order.

(4) Administrative subpoenas issued under this rule may be served on an individual or on a public or private entity.

(a) A public entity means an agency or office of any federal, state or local government.

(b) A private entity means any business entity or organization however organized, including all profit and non-profit entities.

(5) Subpoenas issued by the administrator pursuant to this rule may specify a time for compliance of not less than ten working days.

(6) Subpoenas issued pursuant to this rule may be served by certified mail or personal service.

(7) An administrative subpoena issued by the administrator or a child support program of another state may be enforced by an Oregon court or the administrator.

(8) The administrator may enforce a subpoena by:

(a) Imposition of a civil penalty not to exceed $250 imposed in the manner provided in ORS 183.745;

(b) Application to a court to compel compliance with the administrative subpoena; or

(c) Suspension of a license pursuant to OAR 137-055-3640 if the individual served with the subpoena is a party to a child support or paternity case.

Stat. Auth.: ORS 25.082 & 180.345
Stats. Implemented: ORS 25.082
Hist.: AFS 13-1996, f. 4-15-96, cert. ef. 5-1-96; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 13-1999, f. 10-29-99, cert. ef. 11-1-99; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0076; AFS 2-2001, f. 1-31-01, cert. ef. 2-1-01; SSP 4-2003, f. 2-25-03, cert. ef. 3-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3620; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3620

137-055-3640
Enforcement of a Subpoena by License Suspension

(1) For the purposes of this rule the following definitions apply:

(a) "License" means any of the licenses, certificates, permits or registrations that a person is required by state law to possess in order to engage in an occupation or profession, all annual licenses issued to individuals by the Oregon Liquor Control Commission, all driving privileges granted by the Department of Transportation under ORS chapter 807 which includes all driving licenses and permits, and all hunting and fishing licenses and tags issued by the Oregon Department of Fish and Wildlife;

(b) "Administrative review" means a review of the obligor's objection to proposed action under this rule performed by the administrator to determine that:

(A) There is not a mistake in identity of the party;

(B) The party has not complied with the subpoena; or

(C) The subpoena was properly served upon the party.

(2) At the discretion of the administrator, the administrator may use the remedy set out in this rule or any other remedy allowable under Oregon law to enforce compliance with a subpoena issued pursuant to OAR 137-055-3620.

(3) When a party to a child support or paternity case has been served with a subpoena pursuant to OAR 137-055-3620 the time for compliance set out on the subpoena has expired and the subpoenaed party has not complied with the subpoena, the administrator may serve notice to the party that a license or licenses issued to that party will be suspended.

(4) The notice of license suspension will contain:

(a) The license(s) subject to suspension;

(b) The name of the person whose license is subject to suspension, the child support case number, the social security number, if available, and date of birth, if known;

(c) The date the original subpoena had been served, the deadline the subpoena set for compliance and the documents or information that had been subpoenaed;

(d) The procedure for contesting license suspension and the bases for contesting the suspension. The only bases for contesting the suspension are:

(A) There is a mistake in identity of the party;

(B) The party has complied with the subpoena; or

(C) The subpoena was not properly served upon the party pursuant to OAR 137-055-3620.

(e) A statement that the party has 30 days to contest suspension in writing by requesting an administrative review on a form provided by the administrator;

(f) A statement that if the party provides the information or documents that were originally specified in the subpoena within 30 days of the date of the notice, the license(s) will not be suspended; and

(g) A statement that failure to contact the administrator within 30 days of the date of the notice to either request an administrative review to contest the suspension or to provide the originally subpoenaed information or documents will result in suspension of the license(s).

(5) If the party contests the suspension of the license(s), the administrator will conduct an administrative review to determine if the suspension should occur:

(6) If the administrator determines that the suspension of the license should occur, all parties will receive written notice of such determination. The notice will include the following:

(a) The basis for the determination;

(b) The right to appeal the determination and a form on which to make the appeal;

(c) The time limit for making an appeal is 30 days from the date of the notice;

(d) That if no appeal of the suspension is received within 30 days, the licensing agency will be notified to suspend the license immediately.

(7) An appeal of the determination in subsection (5) of this rule will be to an administrative law judge and the suspension of the license is stayed pending the decision of the administrative law judge. The only bases for the appeal are:

(a) There is a mistake in identity of the party;

(b) The party has complied with the subpoena; or

(c) The subpoena was not properly served upon the party pursuant to OAR 137-055-3620.

(8) If the party fails to provide the subpoenaed information or documents or fails to appeal the determination within the time period allowed, or if the administrative law judge affirms the administrative determination, the administrator will send a notice to the issuing agency to suspend the license. A copy of this order will be sent to all parties by regular mail.

(9) The notice to the issuing agency to suspend the license will contain the following:

(a) A statement that a child support or paternity case record is being maintained by the Child Support Program and that the license holder is a party in that case; and

(b) A statement that the holder of the license has failed to comply with a subpoena pursuant to OAR 137-055-3620.

(10) At any time after suspension of the license, the party may request that the administrator conduct a review to determine if the basis for the license suspension continues to exist. The administrator will review the suspension and notify the issuing agency to reinstate the license, when any of the following conditions are met:

(a) The party has furnished the originally subpoenaed information or documents;

(b) The legal action, enforcement action or other case action has been completed and there is no longer a need for the originally subpoenaed information or documents; or

(c) There is no longer a Child Support Program case.

Stat. Auth.: ORS 25.082, 25.750, and 180.345
Stats. Implemented: ORS 25.082 and 25.750
Hist.: AFS 13-1999, f. 10-29-99, cert. ef. 11-1-99; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0077; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3640; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3640; DOJ 1-2006, f & cert. ef. 1-3-06; DOJ 13-2011, f. 12-30-11, cert. ef. 1-3-12

137-055-3660
Multiple Child Support Judgments

(1) When the administrator finds that two or more child support judgments exist involving the same obligor and child for the same time period and each judgment was issued in this state, the administrator may:

(a) Issue a proposed governing child support order, as provided in ORS 416.448;

(b) Petition the court in the county where a child who is subject to the judgment resides for a governing child support judgment; or

(c) Move to set aside any one of the support judgments if the judgment was entered in error.

(2) For purposes of a governing child support proceeding, there is a presumption that the terms of the last-issued child support judgment are the controlling terms and supersede contrary terms of each earlier-issued child support judgment, except that:

(a) When the last-issued child support judgment is silent about non-medical child support, the non-medical child support terms of an earlier-issued child support judgment continue; and

(b) When the last-issued child support judgment is silent about medical support, the medical support terms of an earlier-issued child support judgment continue.

(3) The presumption may be rebutted if the last issued child support judgment:

(a) Was issued without prior notice to the issuing court, administrative law judge or administrator that another support proceeding involving the child was pending or another support judgment involving the child already existed;

(b) Was issued after an earlier child support judgment and did not enforce, modify or set aside the earlier child support judgment;

(c) Should be set aside under ORS 25.089(3)(a) and ORCP 71 because it was issued without service on the administrator as required in ORS 107.087, 107.135, 107.431, 108.110, 109.103 and 109.125, when support rights are assigned to the state and the states interests were not adequately protected; or

(d) Should otherwise be set aside under ORS 25.089(3)(a) and ORCP 71.

(4) The administrator may issue a proposed governing child support order as provided in subsection (1)(a), only if the presumption in section (2) is applied.

(5) When determining which support judgment was the Alast-issued@ for purposes of determining a governing child support judgment, the issue date for any support judgment will be:

(a) The date the support judgment was entered into the circuit court register; or

(b) If the support judgment is an administrative modification of a court judgment the date the order approving the modification was entered into the circuit court register.

(6) When the court issues a governing child support judgment or when an administrative governing child support order is approved by the court, the non-controlling terms of each earlier child support judgment regarding non-medical child support or medical support are terminated. However, the issuance of the governing child support judgment does not affect any support payment arrearage or any liability related to medical support that has accrued under a child support judgment before the governing child support judgment is issued.

(7) The administrator's proposed governing child support order or petition for governing child support judgment will include:

(a) A reconciliation of any child support arrears or credits for overpayments under all of the child support judgments; or

(b) An order or motion to reconcile any child support arrears or credits for overpayments under all of the child support judgments in a separate proceeding under ORS 25.167 or 416.429.

(8) When reconciling any child support arrears or credits for overpayments under all of the child support judgments included in the governing child support proceeding for time periods prior to entry of a governing child support judgment:

(a) The obligor is expected to pay the total amount of current support due under the highest judgment; and

(b) Payment made toward any one of the judgments must be credited against the obligation owed under the others.

(9) This rule does not apply if the later-issued child support judgment was entered in circuit court before January 1, 2004, the administrator was providing services under ORS 25.080, and the administrator treated a later-in-time court judgment as superseding an earlier entered administrative order.

(10) For purposes of this rule, a Support Judgment means an administrative order for child support that has been entered into the circuit court register under ORS 416.440 or a judgment of the court for child support.

Stat. Auth.: ORS 180.345, 416.448
Stats. Implemented: ORS 25.089, 25.091, 25.167, 416.429 and 416.448
Hist.: DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 1-2006, f & cert. ef. 1-3-06; DOJ 1-2010, f. & cert. ef. 1-4-10; DOJ 7-2014, f. & cert. ef. 4-1-14

137-055-3665
Multiple Child Support Judgments — Multiple Obligees

(1) For the purposes of this rule, the provisions of OAR 137-055-3660 will apply to cases with multiple child support judgments, with the following exceptions:

(a) When the administrator finds that two or more child support judgments exist involving the same obligor, same child(ren) and multiple obligees for the same time period, the administrator may initiate a governing child support order, and reconcile arrears.

(b) When the administrator finds that two or more child support judgments exist involving the same obligor, and multiple obligees for the same time period but do not include all of the children, the administrator may initiate a governing child support order, and reconcile arrears to the extent possible.

(2) The obligee having physical custody of the child(ren) during the month in which arrears accrued will be allocated that month's arrears.

(3) The allocation in section (2) may be done on a pro rata basis, using the monthly support amount for each child, if there are multiple obligees for different children.

Stat. Auth.: ORS 416.448
Stats. Implemented: ORS 25.164, 25.167 & 416.422
Hist.: DOJ 12-2004, f. & cert. ef. 10-1-04

137-055-4040
New Hire Reporting Requirements

(1) Employers with employees who work only in this state or who have designated Oregon as their reporting state with the United States Secretary of Health and Human Services must transmit information regarding the hiring or rehiring of any employee by:

(a) Mailing or faxing to the Division of Child Support (DCS) a copy of the IRS W-4 Form completed by the newly hired employee; or

(b) Mailing or faxing to DCS a completed form adopted by DCS; or

(c) Sending to DCS a magnetic tape or diskette, as specified by DCS; or

(d) Any other method approved by DCS.

(2) Reports made under this section must contain the employer's name, address and federal tax identification number and the employee's name, address and social security number.

(3) Reports made by copy of W-4 form or by the form adopted by DCS must be sent to DCS not later than 20 days after the employer hires or rehires the employee. Employers who transmit the reporting data magnetically or electronically must transmit the data within 12 to 16 days of hiring or rehiring the employee.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 25.790
Hist.: AFS 16-1998, f. 9-16-98, cert. ef. 10-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0236; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4040; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4040; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11

137-055-4060
Income Withholding — General Provisions, Requirements and Definitions

(1) OARs 137-055-4060 through 137-055-4080 provide for collection of support by means of income withholding, in accordance with ORS 25.372 through 25.427 and all other applicable Oregon law, on all support cases being enforced by the administrator.

(2) For purposes of OARs 137-055-4060 through 137-055-4080 and as used in ORS 25.372 through 25.427, the following definitions apply:

(a) "Alternative payment method" means the methods of paying support described in OAR 137-055-4080;

(b) "Best interests of the child" means the method of payment likely to produce consistent support that will reach the child(ren) in the most expedited manner.

(c) "Disposable income" means the part of an individual's income that remains after the deduction of any amounts required to be withheld by law, except as provided in paragraphs (B) or (C) of this subsection.

(A) Amounts required to be withheld by law include, but are not limited to, required withholding for taxes and social security;

(B) Any amounts withheld for the following will not be deducted from the obligor's income when computing disposable income, even if such withholding is required by law or by judicial or administrative order:

(i) Health insurance premiums;

(ii) Spousal or child support.

(C) An obligor may claim offsets against gross receipts for ordinary and necessary business expenses and taxes directly related to the income withheld. The obligor has the burden of proving such claims and must therefore furnish verifiable business records or documents to support any offsets claimed. The obligor also has the burden of furnishing such records or documents in a timely manner, and the Division of Child Support (DCS) will not refund to the obligor, on the basis of such claims, any amounts withheld that DCS has already disbursed to the obligee or to any child attending school under ORS 107.108 and OAR 137-055-5110;

(d) "Electronic Funds Transfer" (EFT) has the definition given in OAR 137-055-5035, and includes but is not limited to payment by Electronic Payment Withdrawal (EPW) and by debit or credit system or card.

(e) "Electronic Payment Withdrawal" (EPW) means an automatic withdrawal of support from the person's bank account.

(f) "Good cause" for not withholding means a situation that exists when:

(A) A court or the administrator makes a written determination that, and a written explanation in the official record of why, immediate income withholding would not be in the best interests of the child; and

(B) If the case involves the modification of an existing support order, there is proof of timely payment of previously-ordered support and there are no arrears. Timely payment is indicated when the obligor has not previously become subject to initiated income withholding under the existing order.

(g) "Periodic recurring income" as used in calculating withholding from a lump sum payment or benefit pursuant to ORS 25.414(4), means income that is intended as a monthly or more frequent payment that includes, but is not limited to, a teacher's lump sum payment for summer months.

(3) All support orders issued or modified by the administrator will include a provision requiring the parties to keep the administrator informed of:

(a) The name and address of the party's current employer;

(b) Whether or not the party has access to appropriate health care coverage, and if so, the health care coverage policy information.

Stat. Auth.: ORS 25.396; 25.427, 180.345
Stats. Implemented: ORS 25.372, 25.427, 656.234, 657.780 & 657.855
Hist.: AFS 4-1990, f. 1-18-90, cert. ef. 2-1-90; AFS 14-1990, f. & cert. ef. 6-7-90; AFS 29-1992, f. 10-8-92, cert. ef. 11-1-92; AFS 7-1994, f. & cert. ef. 4-1-94; AFS 12-1994, f. 6-28-94, cert. ef. 7-1-94; AFS 20-1995, f. 8-30-95, cert. ef. 9-9-95; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0175; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4060; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4060;DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 1-2006, f & cert. ef. 1-3-06; DOJ 6-2006, f. & cert. ef. 10-2-06; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 4-2011, f. & cert. ef. 7-1-11

137-055-4080
Exceptions to Income Withholding

(1) An exception to income withholding may be granted in any case as set out in ORS 25.396.

(2) The administrator may allow payment by EFT as an exception to income withholding if:

(a) The obligee consents to payment by EFT; or

(b) The only payee on the case is a child attending school (CAS) under ORS 107.108 and OAR 137-055-5110, and the CAS consents to payment by EFT;

(c) The obligor submits a completed request for payment by EFT on a form provided by the Division of Child Support (DCS); and

(d) The obligor continues to pay the amount due for current support each month until DCS activates the EFT.

(3) If payment by EFT is allowed as provided in section (2) of this rule, payment by EPW may be allowed only if:

(a) The obligor's financial institution is a participant in the National Automated Clearinghouse Association;

(b) The request for EPW:

(A) Is signed by all signatories to the obligor's account at the financial institution; and

(B) Establishes a monthly withdrawal date, no later than the monthly support due date, and the amount to be paid on each withdrawal date.

(4) Payment by EPW will not be allowed if the order is a contingency order as provided in ORS 416.417, unless the child is in the care of the Oregon Youth Authority.

(5) If the EFT request is approved, DCS will notify the parties by mail, including the initial withdrawal date.

(6) An obligor may make additional payments by EFT even if the obligor does not qualify for an exception to withholding, as long as the obligor designates a withdrawal date.

(7) The administrator will not process a request to obtain consent to payment by EFT if the obligee or child attending school has failed to consent at any time within the previous six months.

(8) The administrator will terminate income withholding when:

(a) There is no longer a current order for support and all arrears have been paid or satisfied; or

(b) The court or administrator allows an exception to withholding pursuant to ORS 25.396 and this rule.

(9) The administrator will reinstate income withholding and cancel payment by EFT if:

(a) At least one month of arrears accrues;

(b) The obligor cancels the request to pay by EFT; or

(c) The obligee, or if appropriate, CAS, withdraws consent to the EFT and the administrator agrees EFT should be canceled.

Stat. Auth.: ORS 25.396; 25.427, 180.345
Stats. Implemented: ORS 25.378 & 25.396
Hist.: AFS 7-1994, f. & cert. ef. 4-1-94; AFS 3-1995, f. 1-27-95, cer. ef. 2-1-95; AFS 20-1995, f. 8-30-95, cert. ef. 9-9-95; AFS 3-1995, f. 1-27-95, cert. ef. 2-1-95; AFS 34-1995, f. 11-27-95, cert. ef. 12-1-95; AFS 39-1995, f. & cert. ef. 12-15-95; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0176; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4080; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4080; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 1-2006, f & cert. ef. 1-3-06; DOJ 6-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; DOJ 7-2011, f. & cert. ef. 10-3-11

137-055-4130
Reduced Income Withholding

(1) The administrator will set an amount less than the amount prescribed by ORS 25.414 to be withheld if withholding is only for arrears and the obligor demonstrates the withholding is prejudicial to the obligor's ability to provide for:

(a) A child the obligor has a duty to support; or

(b) The obligor's basic needs.

(2) For the purposes of sections (3) and (4) of this rule, "the obligor's household" means the obligor's personal residence.

(3) In determining the obligor's basic needs and the number and basic needs of other persons living in the obligor's household, in addition to the factors outlined in ORS 25.414(5), the administrator will consider:

(a) The obligor's relationship to the person, including but not limited to whether the person is a relative or part of a domestic partnership with the obligor, as defined in ORS 106.310;

(b) Whether there is a duty for the obligor to support the person under ORS 108.040, 108.045 or 109.010; and

(c) Whether the person has available resources.

(4) In considering the basic needs of the obligor and other persons living in the obligor's household as outlined in ORS 25.414(5), the administrator may require the obligor to provide documentation, including but not limited to doctor's statements, pay stubs, tax return information, a uniform income statement form or other asset information. The administrator also may require the obligor to provide documentation showing that a person resides in the obligor's household.

(5) An agreement for a reduced amount of withholding may terminate and income withholding for the full amount allowable by law may be reinstated, unless the obligor otherwise qualifies for an exception pursuant to OAR 137-055-4080, when:

(a) According to the case record, the obligor is out of compliance with the agreement; or

(b) The time period covered by the agreement has expired.

Stat. Auth.: ORS 25.414, 180.345
Stats. Implemented: ORS 25.414
Hist.: DOJ 14-2001, f. 12-28-01, cert. ef. 1-2-02, DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 137-050-0605; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 16-2004, f. 12-30-04, cert. ef. 1-3-05; DOJ 5-2005, f. & cert. ef. 7-15-05; DOJ 1-2006, f & cert. ef. 1-3-06; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 13-2011, f. 12-30-11, cert. ef. 1-3-12

137-055-4160
Contested Income Withholding

(1) The only basis for contesting an order to withhold is a mistake of fact. A mistake of fact means either:

(a) An error in the amount due for current support or for arrears;

(b) An error in the identity of the obligor; or

(c) The order was entered prior to October 1, 1989, and does not include the immediate income withholding language.

(2) Payment of all arrears will not, by itself, be a basis for not implementing withholding.

(3) If the obligor is contesting the withholding on the basis of an error in the amount due for current support or arrears pursuant to subsection (1)(a) of this rule, the obligor's contest must be in writing. The process for contesting a withholding will be as described in ORS 25.405.

(4) The administrator will notify all parties of the administrator's determination and of the right to appeal the determination.

(5) If an obligor contests an order to withhold issued by the administrator the Division of Child Support (DCS) will hold any funds collected pursuant to the withholding order, and will not distribute such funds to the obligee, or other payee, subject to the following:

(a) If the obligor contests the withholding on the basis of an error in the identity of the obligor, DCS will hold all payments collected pursuant to the withholding order until the administrator has made its determination;

(b) If the obligor contests the withholding on the basis of an error in the amount due for current and/or past-due support, DCS will hold all payments collected for past-due support pursuant to the withholding order, except for those amounts the obligor does not contest are owed, until the administrator has made its determination;

(c) Once the administrator has made its determination, and regardless of whether or not the determination is appealed to the court, DCS will:

(A) Refund to the obligor, all amounts so held that are determined to have been collected in error;

(B) Disburse, to the obligee or as otherwise appropriate, all amounts so held that are determined to have been collected correctly.

(6) Neither the initiation of proceedings to contest an order to withhold pursuant to this rule, nor a motion or request to contest an order to withhold, nor an appeal of the decision of the administrator with regard to the obligor's contesting of the order to withhold, will stay, postpone, or defer ongoing withholding unless otherwise ordered by a court.

Stat. Auth.: ORS 25.427 & 180.320 - 360
Stats. Implemented: ORS 25.405
Hist.: AFS 4-1990, f. 1-18-90, cert. ef. 2-1-90; AFS 14-1990, f. & cert. ef. 6-7-90; AFS 7-1994, f. & cert. ef. 4-1-94; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0181; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4160; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4160; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-4210
Withholder Penalties

(1) Notwithstanding the provisions of ORS 25.424, the provisions of this rule apply to a party's request to bring an action to recover amounts pursuant to ORS 25.424, when a withholder has failed to properly withhold or pay.

(2) A party's request may be verbal, but prior to commencing legal action, the party must provide the administrator with documentation of the withholder's failure, which must include at least:

(a) A check stub or other pay document showing the amount not properly withheld or not paid, if the act alleged is improper withholding; or

(b) An affidavit or other sworn or affirmed statement describing the action taken by or omission of the withholder.

(3) Upon receipt of the document required by section (2) of this rule, the administrator may initiate legal action to recover amounts not withheld or paid under ORS 25.424, and, if appropriate, penalties.

(4) The administrator acts only as a facilitator to bring the action, and does not represent the party for whom the action is initiated.

(5) Nothing in this rule precludes a party from seeking damages, penalties and attorney fees as provided in ORS 25.424.

Stat. Auth: ORS 180.345
Stats Implemented: ORS 25.424
Hist.: DOJ 1-2010, f. & cert. ef. 1-4-10

137-055-4300
Support Enforcement by Methods Other than Income Withholding

(1) Income withholding, pursuant to OAR 137-055-4060 through 137-055-4180, will be the preferred method that the administrator will use to collect current and past-due support.

(2) If payment is not received in the amount of current support due for each month plus an amount toward any existing arrears, the administrator will pursue additional enforcement actions as specified under this rule.

(a) For purposes of this section, "additional enforcement actions" means actions in addition to income withholding under any of the following circumstances:

(b) The administrator will pursue additional enforcement actions where any of the following circumstances occurs:

(A) Collection by income withholding cannot be attained under OAR 137-055-4060 through 137-055-4180.

(B) Income withholding is collecting less than the amount of current support due for each month; or

(C) Income withholding is collecting the full amount of current support due for each month, but is collecting nothing toward arrears on the case.

(D) No current support is owed, and income withholding is collecting nothing toward arrears or the obligor is not paying a negotiated or agreed-upon amount toward arrears.

(c) All such enforcement actions will be in compliance with, and as appropriate under, state and federal law. The administrator will not initiate or take any action under this rule that is precluded or prohibited by state or federal law due to the circumstances of the individual case.

(d) The administrator will take such action within 30 calendar days of whichever of the following occurs later:

(A) Arrears have occurred; and

(B) The administrator has located the obligor, the obligor's employer, or other assets or sources of income, provided such information is sufficient to enable the next appropriate action on the case.

(e) If service of process is required before taking an enforcement action:

(A) Service must be completed or unsuccessful diligent attempts to serve process must be documented, and enforcement action must be initiated if process is served, no later than 60 calendar days of initially identifying arrears or of locating the obligor or the obligor's employer, assets, or other sources of income, whichever occurs later.

(B) If a court action is necessary, the requirement to initiate enforcement action within no later than 60 calendar days is met if the administrator has initiated action to enter the case with the court for a court hearing or action.

(f) The administrator is not required to perform those "additional enforcement actions" that the Oregon Child Support Program already provides automatically for every case meeting specified criteria. Further, a case does not necessarily need to meet the criteria for "additional enforcement actions", under section (2) of this rule, in order for the Oregon Child Support Program to automatically provide the enforcement methods under this subsection for every case meeting specified criteria. These enforcement methods include, but are not limited to:

(A) Interception of state and federal tax refunds, under OAR 137-055-4320 through 137-055-4340.

(B) Release of information to consumer credit reporting agencies, under OAR 137-055-4560.

(g) If any enforcement action specified under this rule, whether by itself or in combination with collections attained through income withholding, results in collection of current support each month plus payments toward reducing any arrears that exists on a case, the administrator is not required to pursue further additional enforcement actions on that case. However, the administrator will resume pursuing additional enforcement actions if any of the circumstances under subsection (2)(b) of this rule subsequently occurs.

(3) The administrator will take additional enforcement action, under section (2) of this rule, by attempting to determine if the obligor has any income, property, assets, or resources from which support can be collected.

(a) The administrator will attempt this determination by utilizing any one or more of the following:

(A) Information about the obligor's location, employment, or other income or assets, that the administrator obtains from the obligee or from any other person. The administrator will respond to the obligee, in writing, by telephone, or in person, within 30 days of ascertaining whether or not information submitted by the obligee, on the obligee's own initiative, was accurate or useable.

(B) Information accessible or attainable through the Child Support Enforcement Automated System (CSEAS), or other electronic data sources

(C) Discovery methods, including financial disclosure exams, or written interrogatories, unless any of the following are true:

(i) The administrator has not located the obligor, and is therefore not able to pursue such methods.

(ii) The obligee has not asserted to the administrator, or the administrator has no reason to suspect, that the obligor has specific and verifiable income, property, resources, or assets against which the administrator may take effective action to collect support.

(iii) The administrator has located or verified the obligor's income, property, assets, or resources through other means, or otherwise can do so, and therefore does not need to rely on discovery methods.

(b) The administrator will document the case record with the following:

(A) The administrator's efforts to determine or verify if the obligor has property, assets, or resources, against which the administrator may take action to collect support.

(B) Actions the administrator takes to collect support against such property, assets, or resources.

(4) When the administrator determines that an obligor has income, property, assets, or resources against which enforcement action may be taken, the administrator will, in compliance with and as appropriate under other provisions of this rule and of state and federal law, take one or more of the following specific actions:

(a) Ask the court to require the obligor to post bond or security to ensure payment of support, unless the administrator has determined that:

(A) Based on the experiences of the administrator in its locality, a bond or security is not likely to be commercially available to the obligor for this purpose;

(B) The obligor is legally and financially unable to pay the cost of a bond or security;

(C) Such action cannot reasonably be expected to produce collections sufficient to justify the cost to the administrator;

(D) Any funds the obligor has to purchase a bond would be better applied to requiring the obligor to make payment for current or past-due support. However, on cases where current support is owed to the obligee or to a child attending school under ORS 107.108 and OAR 137-055-5110, and not assigned to the state, the obligee or child attending school must concur with this determination; or

(E) The obligor has taken action to purchase a bond or security without need for court action.

(b) File liens against real property or personal property that the obligor owns in Oregon, to the extent that a lien does not already exist under Oregon law, or take other effective actions to collect support from the value of such property such as by obtaining a writ of garnishment, unless the administrator has determined that:

(A) The obligor owns no property against which such action would be likely to produce a collection; or

(B) Such action cannot reasonably be expected to produce collections sufficient to justify the cost to the administrator.

(c) Garnish or attach other assets, or resources of the obligor, unless the administrator has determined that such action cannot reasonably be expected to produce collections sufficient to justify the cost to the administrator. In cases where such action will result in additional taxes or penalties to the obligor, the administrator may negotiate with the obligor to determine an amount the obligor will need to retain to pay such additional taxes or penalties.

(d) Pursue suspension of any license the obligor may have, to the extent permissible under state law and rules.

(e) Prosecute the obligor for contempt of court, subject to section (5) of this rule.

(f) Prosecute the obligor for criminal non-support, subject to section (5) of this rule.

(g) Refer the obligor for federal criminal prosecution under the Interstate Child Support Recovery Act, subject to section (5) of this rule.

(5) Prosecution for contempt of court or for criminal non-support, or referral of obligors for federal criminal prosecution under the Interstate Child Support Recovery Act, is subject to the prosecutorial discretion of the administrator.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 25.080
Hist.: AFS 27-1994, f. & cert. ef. 11-10-94; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0200; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4300; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4300; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-4320
Collection of Delinquent Support Obligations Through the Oregon Department of Revenue

(1) The administrator may claim Oregon tax refunds otherwise due to be paid to an obligor, to collect:

(a) Support arrears;

(b) Unpaid award amounts from any judgment entered against the obligor for birth expenses or for the cost of parentage tests to establish a child's paternity.

(2) The Division of Child Support (DCS) will file such claims with the Oregon Department of Revenue (DOR) according to rules and procedures established by DOR.

(3) Referral of arrears will be a liquidated claim, debt, or account established by a court or administrative order.

(4) DCS will not refer any case where the case record indicates that one or more of the following is applicable:

(a) The arrears are less than $25;

(b) The obligee has claimed "good cause" for not cooperating with efforts to establish or enforce support.

(5) DCS will distribute and, as appropriate, disburse tax refunds recovered by this process as set out in OARs 137-055-2360, 137-055-2380 and 137-055-6021 through 137-055-6024.

(6) DCS will send an advance written notice to the parties of the intent to claim the tax refund and apply it to the obligor's account. The notice will advise of the obligors right to an administrative review of the proposed action. The only issues that may be considered in the review are:

(a) Whether the obligor is the person who owes the support as indicated by the case record; or

(b) Whether the arrears indicated in the notice are correct.

(7) Upon receipt of the request for review, the administrator will schedule the review and notify the parties of the date, time and place of the review.

(8) At any time any refund is claimed, DOR will send by regular mail written notice to the obligor of the intention to apply the tax refund to the obligor's delinquent account. The notice will advise the obligor of the right to an administrative hearing regarding this action that:

(a) The obligor, within 30 days from the date of this notice, may request an administrative hearing before an administrative law judge;

(b) The request for hearing must be in writing.

(9) No hearing will be held if the obligor, after having been given due notice of rights to a hearing, has failed to exercise such rights in a timely manner as specified in the notice.

(10) No issues may be considered at the administrative hearing that have been litigated previously or where the obligor failed to exercise rights to appear and be heard or to appeal a decision which resulted in the accrual of the arrears.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 25.610 & 293.250
Hist.: AFS 13-1978, f. & ef. 4-4-78; AFS 23-1987(Temp), f. 6-19-87, ef. 7-1-87; AFS 60-1987, f. & ef. 11-4-87; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89, Renumbered from 461-035-0004; AFS 25-1990, f. 11-21-90, cert. ef. 12-1-90; AFS 30-1995, f. 11-6-95, cert. ef. 11-15-95; AFS 7-1997, f. & cert. ef. 6-13-97; AFS 6-2000, f. 2-19-00, cert. ef. 3-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0205; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4320; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4320; DOJ 1-2006, f & cert. ef. 1-3-06; DOJ 1-2007, f. & cert. ef. 1-2-07; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07

137-055-4340
Collection of Delinquent Support Obligations Through the U.S. Secretary of the Treasury

(1) The administrator may claim federal tax refunds and administrative offset of other payments from the federal government through the U.S. Secretary of the Treasury (Secretary) otherwise due to be paid to an obligor to collect support arrears.

(2) The Division of Child Support (DCS) will file such claims with the Secretary according to rules and procedures established by the federal government.

(3) Referral of arrears will be a liquidated claim, debt, or account established by a court or administrative order.

(4) DCS will not refer any case for federal tax refund or administrative offset where the case record indicates that one or more of the following is applicable:

(a) The arrears assigned to the state are less than $150 and the support amount is less than 45 days delinquent;

(b) The arrears are less than $500 on a case where none of the arrears have been assigned to the state; or

(c) The obligee has claimed "good cause" for not cooperating with efforts to establish or enforce support.

(5) DCS will distribute and, as appropriate, disburse tax refunds and other federal administrative offsets recovered by this process as set out in OARs 137-055-2360, 137-055-2380 and 137-055-6021 through 137-055-6024.

(6) A one-time pre-offset notice will be sent to the parties by either the federal government or DCS of the intent to claim the tax refund, or other federal payments through the Secretary, and apply them to the obligor's account. Such notice will advise the parties of the obligors right to an administrative review regarding this action. The only issues that may be considered in the review are:

(a) Whether the obligor is the person who owes the support as indicated by the case record; or

(b) Whether the arrears indicated in the notice are correct.

(7) Upon receipt of the request for review, the administrator will schedule the review and notify the parties of the date, time and place of the review.

Stat. Auth.: ORS 25.625, 180.345
Stats. Implemented: ORS 25.625
Hist.: AFS 7-1997, f. & cert. ef. 6-13-97; AFS 15-1997(Temp), f. & cert. ef. 9-2-97; AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 6-2000, f. 2-19-00, cert. ef. 3-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0210; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4340; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4340; DOJ 4-2005, f. & cert. ef. 4-1-05; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07

137-055-4360
Internal Revenue Service Full Collection Services

(1) For the purpose of this rule, "Regional Representative" means the Region X office of the Department of Health & Human Services, Administration for Children and Families, Child Support Enforcement.

(2) The administrator may request Internal Revenue Service Full Collection Service on behalf of a given case.

(3) For a case to be eligible for Full Collection Service, all of the following conditions must apply:

(a) There must be a court or administrative order for payment of child support;

(b) The amount to be collected under the support order must be at least $750 in arrears;

(c) At least six months must have elapsed since the case was last submitted for Full Collection Service;

(d) The administrator, the obligee, or the obligee's representative must have made reasonable efforts to collect the support by using

the state's standard collection procedures. These actions may include all of the following when deemed reasonable and cost-effective:

(A) Orders to withhold income;

(B) Orders to withhold Unemployment Compensation or Worker's Compensation benefits;

(C) Garnishments against liquid assets such as bank accounts, inheritance assets, lottery winnings, or any other liquid assets that may be garnished under state law;

(D) Interception of federal and state tax refunds;

(E) Credit bureau reporting;

(F) Initiating reciprocal support enforcement action with other states;

(G) Filing liens against real property the obligor may own in order to collect past-due support;

(H) Suspension of occupational license(s) the obligor may have to the extent permissible under state law and rules;

(I) Discovery methods, including financial disclosure exams or written interrogatories;

(J) Prosecution for contempt of court or criminal nonsupport.

(4) All requests must be submitted in the manner and form prescribed by the Regional Representative and must include the following:

(a) Sufficient information to identify the obligor, including the obligor's name and social security number and, the obligor's home address and place of employment, including the source of this information and the date this information was last verified;

(b) A copy of all court or administrative orders for support;

(c) A statement of the amount owed under the support order(s), including a statement of whether the amount is in lieu of, or in addition to, amounts previously referred to the Internal Revenue Service for collection;

(d) A statement that the administrator, the obligee, or the obligee's representative has made reasonable efforts to collect the amount owed using the state's standard collection procedures. The statement must describe the collection actions that have been taken, why they failed, and why further state action would be unproductive;

(e) The dates of any previous requests for referral of the case to the Internal Revenue Service for collection;

(f) A statement that the administrator agrees to reimburse the U.S. Secretary of the Treasury (Secretary) for the established fee for paying the costs of collection;

(g) A statement that the administrator has reason to believe that the obligor has assets that the Secretary might levy to collect the support, including a statement of the nature and location of the assets, if known.

(5) Each request for Full Collection Service will be reviewed by the Regional Representative to determine whether it meets federal requirements. The administrator will cooperate with the Regional Representative in attempting to correct any deficiencies.

(6) The administrator must immediately notify the Regional Representative of the following changes in case status:

(a) The amount due;

(b) The nature or location of the obligor's assets;

(c) The address of the obligor.

(7) The administrator will be responsible for paying the fee established under subsection (4)(f) of this rule.

(8) The administrator will recover the fee amount it has paid on any case under section (7) of this rule, from the amount of any collection subsequently attained by the Internal Revenue Service and forwarded to the Division of Child Support in accordance with OAR 137-055-6021.

Stat. Auth.: ORS 180.345

Statute Implemented: ORS 25.080

Hist.: AFS 31-1989, f. 6-6-89, cert. ef. 6-9-89; AFS 51-1989, f. 8-25-89, cert. ef. 9-1-89; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89, Renumbered from 461-035-0655; AFS 11-1990, f. 3-27-90, cert. ef. 4-1-90; AFS 20-1996, f. 5-24-96, cert. ef. 6-1-96; AFS 6-2000, f. 2-19-00, cert. ef. 3-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0225; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4360; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4360; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07

137-055-4420

License Suspension for Child Support

(1) For the purposes of this rule, "license" means any of the licenses, certificates, permits or registrations that a person is required by state law to possess in order to engage in an occupation or profession, all annual licenses issued to individuals by the Oregon Liquor Control Commission, all driver licenses and permits issued by the Department of Transportation under ORS Chapter 807, and all permanent and fee-based annual hunting and fishing licenses issued by the Oregon Department of Fish and Wildlife.

(2) The administrator may begin the process to suspend an obligor's licenses if:

(a) The obligor has an order or judgment to pay child support, regardless of whether that order or judgment is currently accruing support;

(b) The administrator is providing services on the case pursuant to ORS 25.080;

(c) The obligor owes arrears in an amount equal to the greater of three months of support or $2500;

(d) The obligor and administrator have not entered into an agreement as described in section (10), or there is an agreement but the obligor is not in compliance with the agreement; and

(e) The obligor has not made voluntary payments, or payments by income withholding, in each of the last three months greater than the current support amount, or if there is no longer an order or judgment for current support, equal to the amount of the most recent order for current support. This criterion does not apply to payments resulting from garnishment, tax offset, or any other enforcement action other than income withholding;

(3) The administrator will consider the obligor's employment and payment history, the obligor's current ability to pay, the likely benefit to the child, and any other pertinent factor in determining whether to initiate or continue the license suspension process.

(4) The administrator will begin the license suspension process by giving written notice to the obligor by regular mail. The administrator will notify any other parties that the action has begun. If the issuing agency or agencies have addresses listed for the obligor other than the address in the administrator's records, the administrator will send copies of the notice to the address in the administrator's records and to each address in the records of the agencies holding licenses. The notice to the obligor will specify:

(a) The obligor's name, Social Security number, if available, and date of birth, if known;

(b) The license(s) subject to suspension, and a statement that any license not specified in the notice will also be subject to suspension without a separate notice;

(c) The obligor's child support case number(s);

(d) The basis for the suspension, including amount of the arrears and the amount of the monthly support obligation(s), if any;

(e) The procedure and grounds for contesting the suspension;

(f) A statement that the obligor can prevent suspension of the license(s) by entering into and complying with an agreement with the administrator; and

(g) A statement that unless the obligor contacts the administrator within 30 days of the date of the notice and contests the license suspension or enters into an agreement, the administrator may notify the issuing agency or agencies to suspend the license(s) without further notice.

(5) The obligor may contest the suspension within 30 days of the notice described in section (4) of this rule only on the grounds that:

(a) The obligor owes arrears less than or equal to the greater of three months of support or $2,500; or

(b) There is a mistake in the obligor's identity.

(6) Any of the following events ends the license suspension process. The administrator will stop all license suspension action and notify the issuing agency to release any license already suspended, subject to that agency's requirements, if, on timely receipt of a contest from the obligor under section (5), on the obligor's subsequent request for a review of the case, or at any time upon review of the case, the administrator determines that:

(a) The administrator is no longer providing services under ORS 25.080;

(b) The obligor owes arrears less than or equal to the greater of three months of support or $2,500;

(c) The individual whose license(s) are to be suspended is not the obligor who owes the support arrears that are the basis for the suspension;

(7) If the obligor contests license suspension under section (5), the administrator will make a determination based on the criteria in section (6) and notify the parties in writing of the determination. If the administrator determines that the suspension process will continue, the obligor may object within 30 days of the date of the administrator's determination by requesting an administrative hearing. Upon receipt of the hearing request, the administrator will take no further action to suspend pending receipt of the hearing order.

(8) Not less than thirty days after issuing the notice that the obligor's license is subject to suspension, as described in section (4), the administrator will review the case. If the case continues to qualify for suspension, and no contest has been received from the obligor, the administrator may notify the issuing agency to suspend the obligor's license(s).

(9) If an obligor holds more than one license, any determination regarding suspension of one license is sufficient to suspend any other license.

(10) The administrator may enter into an agreement with the obligor, the obligor's compliance with which will preclude suspension of the obligor's license.

(a) The standard monthly payment amount for a compliance agreement is the amount that could be obtained through income withholding under ORS 25.414. In determining this amount, the obligor's actual earnings will be used, but no less than the equivalent of full-time work at Oregon minimum wage. An agreement under this subsection may be for any period of time agreed to by the administrator and obligor.

(b) If the obligor demonstrates inability to pay the full amount described in subsection (10)(a), the administrator may agree to a temporary hardship exception for a lesser amount, including, where appropriate, no amount. The administrator may condition the hardship exception on receipt of a modification request from the obligor, including any evidence needed to substantiate the request. A hardship exception may also require that the obligor take specific steps to enhance the obligor's ability to pay, such as job search, job training or substance abuse treatment. A hardship exception under this subsection may be for no longer than six months. At the end of the hardship period, the agreement must automatically change to a standard payment amount under subsection (10)(a). However, at the end of the hardship period, the administrator may agree to a subsequent hardship exception under this subsection if the administrator determines such an exception remains appropriate.

(11) Any agreement entered into under section (10) must include:

(a) The amount and due date of the payment. The due date in the payment agreement is solely for the purposes of the license suspension process and does not affect the monthly due date in the support order;

(b) If the agreement is based on a hardship exception under subsection (10)(b), a standard payment amount determined under subsection (10)(a) that will automatically go into effect at the end of the specified hardship exception period;

(c) The duration of the agreement, including the duration of the subsequent payment agreement if the initial agreement is based on a hardship exception under subsection (10)(b) of this rule;

(d) A statement that payments may be made through income withholding;

(e) A statement that failure to comply with the agreement may result in immediate notification to the issuing agency to suspend the license(s) without further notice to the obligor;

(f) A statement that the agreement may be terminated if the support order or judgment is modified;

(g) A statement that the administrator may terminate the agreement and suspend the license at any time if the obligor fails to comply with the agreement, if the obligor's income changes, or if the obligor has under-reported income;

(h) A statement that the obligor's compliance with the agreement does not preclude any enforcement action by the administrator other than license suspension, and that other collection actions will continue to occur;

(i) A statement that the obligor is required to inform the administrator within 10 days of any change in employment;

(j) A statement that information provided by the obligor may be used for other enforcement actions, including contempt actions; and

(k) The signatures of the obligor and the administrator.

(12) When the administrator enters into an agreement with the obligor, the administrator will send courtesy copies of the agreement to the parties on the case.

(13) If the obligor complies with the agreement, the administrator will not notify the issuing agency to suspend the obligor's license(s), or, if the license has already been suspended, the administrator will notify the issuing agency to reinstate the license.

(14) If the obligor fails to comply with an agreement, the administrator may notify the issuing agency to suspend the obligor's license(s). The administrator will notify the parties to the case that the action has been taken. If the obligor has complied with the agreement for at least one year and then stops complying, the administrator will send the obligor written notice 30 days prior to issuing the notice to suspend to provide the opportunity for the obligor to comply.

(15) If an obligor has more than one child support case, the Child Support Program Director or designee will determine and assign a single branch office that will be responsible for services relating to that obligor under this rule. Any enforcement services other than license suspension will be provided by the office(s) otherwise assigned to the obligor's case(s).

Stat. Auth.: ORS 25.750 - 25.785 & 180.345
Stats. Implemented: ORS 25.750 - 25.783
Hist.: AFS 11-1994, f. & cert. ef. 6-3-94; AFS 22-1994, f. 9-27-94, cert. ef. 10-1-94; AFS 26-1995, f. 10-20-95, cert. ef. 10-23-95; AFS 18-1996, f. & cert. ef. 5-10-96: AFS 37-1996, f. & cert. ef. 11-20-96; AFS 21-1997, f. & cert. ef. 11-7-97; AFS 13-1998, f. 8-21-98, cert. ef. 8-24-98; AFS 2-2000, f. 1-28-00, cert. ef. 2-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0233; AFS 2-2001, f. 1-31-01, cert. ef. 2-1-01; AFS 1-2002, f. 1-25-02, cert. ef. 2-1-02; AFS 9-2002, f. 6-26-02, cert. ef. 7-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4420; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4420; DOJ 1-2006, f & cert. ef. 1-3-06; DOJ 1-2010, f. & cert. ef. 1-4-10

137-055-4440
Liens Against Personal and Real Property

(1) A judgment for support constitutes a lien on real and personal property as provided for in Oregon law.

(2) Whenever there is a judgment for unpaid support and the administrator learns that an obligor has assets, then the administrator may cause a lien to be recorded on any real or personal property owned by the obligor unless the property is exempt from lien laws under Oregon law.

(3) An obligee from another state with a judgment for unpaid support may record a lien under the provisions of ORS 18.158, and must use the form provided by the Office of Child Support Enforcement of the United States Department of Health and Human Services.

(4) Pursuant to OAR 137-055-4300(3), the administrator may use the process described in this rule as one of several enforcement options available and may exercise discretion to optimize collection potential in individual cases. The administrator will prioritize this enforcement option in decision making based on availability and application of other enforcement options and available staff resources. Prior to forcing a sale of real or personal property, the administrator must consider the following factors:

(a) The market value of the property after subtracting the value of superior claims of senior lien holders;

(b) The market conditions for achieving maximum return;

(c) The long-term impact on the obligor's ability to comply with an unsatisfied or future support duty;

(d) The storage costs, notice and sale costs;

(e) Exemption claims;

(f) Co-ownership of the property, or impact on any existing trust on the property; and

(g) The availability of other, more effective remedies to satisfy the support debt.

(5) The administrator may not proceed with this enforcement option when a court of appropriate jurisdiction has ordered that the obligor be exempted from referral. The obligor must notify the obligee and the administrator when filing a claim for an exemption with a court.

Stat. Auth.: ORS 180.345 & 18.150
Stats. Implemented: ORS 18.158, 25.670 & 25.690
Hist.: AFS 25-1990, f. 11-21-90, cert. ef. 12-1-90; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0235; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4440; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4440; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 13-2011, f. 12-30-11, cert. ef. 1-3-12

137-055-4450
Expiration and Release of Judgment Liens

(1) When a judgment of the court or administrative order containing a money or support award is filed with the court administrator, it creates a judgment lien on all property owned by the obligor in the county where it is filed.

(a) A money award for past support or any lump sum support award will attach to all real property of the judgment debtor immediately upon entry of the judgment.

(b) A support award will not attach until it becomes an unpaid installment pursuant to section (2) of this rule.

(2) When an installment becomes due under the terms of a support award and is not paid a support arrearage lien attaches:

(a) To all real property of the judgment debtor in the county where the judgment is filed; and

(b) To any property acquired in that county by the judgment debtor after that date.

(3) A support arrearage lien remains attached to real property until:

(a) The judgment lien expires; or

(b) The judgment lien is released for a single piece of real property or all real property of the judgment debtor in that county; or

(c) Satisfaction is made for the unpaid installment(s).

(4) A judgment lien created as a result of a child support or money award for unpaid child support installments expires as provided in ORS 18.180.

(5) A judgment lien created as a result of a support award for spousal support expires as provided in ORS 18.180.

(6) Notwithstanding the provisions of sections (4) and (5), judgment remedies which expired before January 4, 2010, remain expired.

(7) An obligee may authorize the State of Oregon to release a lien against real property of an obligor when the obligee has submitted a signed and notarized lien release form to the administrator.

(8) If a release of lien is filed for all real property of the judgment debtor in a county, a judgment lien may be reinstated as provided in ORS Chapter 18.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 18.005 - 18.845
Hist.: DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 1-2006, f & cert. ef. 1-3-06; DOJ 1-2010, f. & cert. ef. 1-4-10

137-055-4455
Expiration of Support Judgment Remedies

(1) Judgment remedies for the child support award portion of a judgment, and any lump sum money award for unpaid child support installments, expire 35 years after the entry of the judgment that first establishes the support obligation.

(2) Notwithstanding any other provisions of this rule, when the child support judgment being enforced was issued by another jurisdiction, the expiration of judgment under the laws of this state or of the issuing jurisdiction, whichever is longer, applies.

(3) Spousal support judgments entered on or after January 1, 2004: Judgment remedies for any unpaid installment under the spousal support award portion of a judgment, expire the later of:

(a) 25 years after entry of the judgment that first establishes the support obligation; or

(b) 10 years after an installment comes due under the judgment and is not paid.

(4) Spousal support judgments entered prior to January 1, 2004: Judgment remedies for any unpaid installment under the spousal support award portion of a judgment, expire the later of:

(a) 25 years after entry of the judgment that first establishes the support obligation; or

(b) 10 years after an installment comes due under the judgment and is not paid; or

(c) 10 years from the date of a judgment renewal.

(5) The judgment remedies for a money award for child or spousal support expire by operation of law.

(6) The Department of Justice, Division of Child Support (DCS) is responsible for completing expiration of judgment audits on cases receiving support enforcement services under ORS 25.080.

(7) If an audit result is that the expired judgment amount is greater than the current arrears on the case, DCS will reduce the case arrears to zero.

(8) When an expiration of judgment audit is completed, DCS will notify the parties if there is any change to the arrears as a result of the audit. The notice must include:

(a) The current balance or zero, as appropriate, per section (7) of this rule;

(b) Information that a party may make a written request for an administrative review within 30 days of the notice.

(9) If a party requests an administrative review, DCS will:

(a) Conduct the administrative review within 45 days from the date of receiving the objection to verify the case was adjusted correctly and make any necessary corrections or adjustments as determined in the review;

(b) Notify both the obligee and the obligor, in writing, of the results of the review and of the right to appeal pursuant to ORS 183.484.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 18.180 - 18.194
Hist.: AFS 15-2001, f. 7-31-01, cert. ef. 8-1-01; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-6110; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-6110; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; Renumbered from 137-055-6110, DOJ 5-2005, f. & cert. ef. 7-15-05; DOJ 1-2010, f. & cert. ef. 1-4-10; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11

137-055-4460
Posting Security Bond or Other Guarantee of Payment of Overdue Support

(1) Whenever there is a judgment for unpaid support, the administrator may ask the court to require the obligor to post security, bond, or some other guarantee to secure payment of the overdue support if the following criteria also exist:

(a) The obligor has a poor payment history; and

(b) The obligor has assets which exceed the amount of the support arrears and the arrears cannot be reached by any other means.

(2) The administrator shall include in the Motion to Show Cause, a section notifying the obligor of the intent to ask the court for security, bond, or some other guarantee of payment. This statement shall constitute advance notice to the obligor of such intent and shall provide the obligor the opportunity to contest the action.

(3) Notwithstanding the provisions of section (1) of this rule, use of this procedure shall be considered inappropriate if the administrator determines:

(a) It is unlikely that the obligor would be able to secure a bond;

(b) The obligor is unable to pay child support, pursuant to ORS 25.245; or

(c) A court of appropriate jurisdiction has ordered that the obligor be exempted from referral due to hardship circumstances. The obligor must notify the obligee and the administrator when filing a claim for hardship exemption with a court.

Stat. Auth.: Sec. 2, Ch. 73 OL 2003
Stats. Implemented: ORS 25.230 & 25.715
Hist.: AFS 25-1990, f. 11-21-90, cert. ef. 12-1-90; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0237; AFS 5-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 15-2001, f. 7-31-01, cert. ef. 8-1-01; DOJ 6-2003(Temp), f. 6-25-

03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4460; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4460

137-055-4500
Financial Institution Data Match — Reasonable Fee

(1) This rule defines "reasonable fees" which the Child Support Program (CSP) will pay to financial institutions for implementing and conducting computerized data matches under ORS 25.640 through 25.646. Appropriations to implement the computerized data matches included federal matching funds; therefore, the CSP is required to follow the general principles for determining allowable costs as provided in OMB Circular No. A-87.

(2) Reasonable fee means direct costs only as defined in OMB Circular No. A-87 and shall be limited to those expenses. Reasonable fee shall not include any indirect costs.

(3) Direct costs mean those expenses that are of a type that would generally be recognized as ordinary and necessary to establish and conduct a data match, such as:

(a) Compensation of employees time specifically related to the establishing and conducting the data match;

(b) Computer system expenses specifically related to establishing and conducting the data match;

(c) Costs of material acquired, consumed or expended specifically for the purpose of establishing and conducting the data match;

(d) Necessary travel expenses and similar expenses directly associated with establishing and conducting the data match.

Stat. Auth.: Sec. 2, Ch. 73 OL 2003
Stats. Implemented: ORS 25.643
Hist.: AFS 20-1998, f. & cert. ef. 10-5-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1098; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4500; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4500

137-055-4520
Garnishment

(1) The administrator may utilize garnishment proceedings in accordance with ORS Chapter 18 for the purpose of collecting past due support.

(2)(a) When the administrator receives a collection from a garnishment proceeding, the Division of Child Support (DCS) will hold the collection for 40 days if the garnishee is making a payment of other than wages or 120 days if the garnishee is making a payment of wages before disbursing any amounts due a party from the collection.

(b) This requirement is to accommodate the possibility that the administrator may have to return funds from the collection to the garnishee, the obligor, or the court, as a result of the obligor or any person who has an interest in the garnished property having made a challenge to garnishment in accordance with ORS chapter 18.

(c) The administrator will waive this requirement to hold the collection, and will apply the collection to the case for immediate distribution, in any case where the obligor provides the administrator with a signed and notarized statement expressly waiving the right to make a challenge to garnishment and requesting that the administrator apply, distribute and, as appropriate, disburse the payment immediately.

(3) Upon notice of a challenge to garnishment from the clerk of the court, the administrator will file a response to the challenge to garnishment, attaching copies of the writ of garnishment, garnishee response, debt calculation and any supporting documentation necessary or helpful to the court in making a determination of the challenge to garnishment.

(4) When a single writ of garnishment is issued for two or more cases as provided in ORS 18.645, notice of a challenge to garnishment is received and the administrator files the response required by section (3), the administrator will include copies of all judgments for which the writ is issued and a debt calculation for each referenced judgment.

(5) When the contents of a bank account are garnished and the obligor makes a timely challenge to garnishment that claims that all or some portion of the contents of the account came from lump sum payments identified in ORS 18.345, the administrator may return to the obligor the exempt portion of such lump sum payments received from that account, as appropriate.

(6) When the garnishee is a credit union, the credit union may retain the par value of the garnished account, defined as the face value of an individual credit union share necessary to maintain a customer's membership.

Stat. Auth.: ORS 25.020; 180.345
Stats. Implemented: ORS 18.345, 18.645, 25.020 & 25.080
Hist.: AFS 28-1996, f. & cert. ef. 7-1-96; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 2-2000, f. 1-28-00, cert. ef. 2-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0238; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; AFS 15-2002, f. 10-30-02, ef. 11-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4520; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4520; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 1-2006, f & cert. ef. 1-3-06; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 13-2011, f. 12-30-11, cert. ef. 1-3-12

137-055-4540
Passport Denial and Release

(1) When the administrator submits delinquent child support accounts for administrative offset pursuant to OAR 137-055-4340, the federal Office of Child Support Enforcement (OCSE) will select individual obligors with a total delinquency in excess of $2,500 for passport denial.

(2) Passport denial means that pursuant to 42 U.S. Code 652(k), the United States Secretary of State will refuse to issue a passport and may revoke, restrict or limit a passport which was previously issued.

(3) The parties will receive notice of passport denial with the notice of administrative offset specified in OAR 137-055-4340. The notice will advise the parties of the right to an administrative review under OAR 137-055-4340.

(4) An obligor whose passport has been denied may request an administrative review. The administrator will conduct a review and notify the parties of the decision. The only issues that may be considered in the review are whether:

(a) The administrator erroneously submitted the obligor to OCSE for passport denial, such as mistaken identity or an error in recordkeeping or accounting;

(b) The obligor has provided documentation of a life or death situation involving an immediate family member, as defined by OCSE; or

(c) The obligor has paid as ordered, but the arrearage that caused the case to be submitted for passport denial resulted solely from one or more orders for past support or upward modifications filed in court within one year of the administrator's receipt of the request for review.

(5) If at any time the administrator finds that the obligor qualifies for passport release under one or more of the criteria in subsections (4)(a) through (4)(c), the administrator will notify OCSE to release the passport.

(6) Passport denial will continue until the delinquency is paid in full, unless the administrator determines the obligor qualifies for passport release under this rule.

(7) Where a passport has been denied and the obligor has paid the delinquency in full or the administrator determines the obligor qualifies for passport release under this rule, the administrator will notify OCSE to release the passport. Notice will be by the process specified by OCSE.

Stat. Auth.: ORS 25.625 & 180.345
Stats. Implemented: ORS 25.625
Hist.: AFS 23-1997, f. 12-29-97, cert. ef. 1-1-9; AFS 15-2000, f. 5-31-00, cert. ef. 6-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0234; AFS 2-2001, f. 1-31-01, cert. ef. 2-1-01; AFS 15-2001, f. 7-31-01, cert. ef. 8-1-01; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4540; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4540; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f & cert. ef. 1-3-06; DOJ 6-2006, f. & cert. ef. 10-2-06; DOJ 13-2008, f. & cert. ef. 10-1-08; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11

137-055-4560
Consumer Credit Reporting Agencies

(1) The Division of Child Support (DCS) may enter into agreements with consumer reporting agencies to disclose information under section (2) of this rule only to an entity that has furnished evi-

dence satisfactory for DCS to determine that the entity is a consumer reporting agency as defined in ORS 25.650. Under these agreements, DCS will provide such agencies with the names of obligors who owe past due support and will indicate the specific amount each obligor owes. Under these agreements, DCS will provide such information:

(a) Whether or not the agency has requested information on any specific obligor; and

(b) On a recurring or periodic basis.

(2) Before issuing a periodic report to a consumer reporting agency with information on any obligor, the DCS will provide the parties with advance notice of the intent to report the obligor's support balance to the consumer reporting agencies. The notice will be sent to the parties' last known addresses. The notice must:

(a) Indicate the balance to be reported to the consumer reporting agencies;

(b) Advise that the current balance will be reported to the consumer reporting agencies on a recurring basis without sending further notice to the parties;

(c) Advise of the obligor's right to contest the action within 30 calendar days of the date of the notice.

(d) Explain the process for contesting and advise that objections must be in writing on the form provided with the notice;

(e) Advise that the only reasons for contesting credit reporting are:

(A) The obligor is not the person who owes the support balance shown on the case record;

(B) The support balance indicated in the notice is incorrect; or

(C) The arrears are a result of past support created in an order under ORS 416.422 or 109.155(4) or by an upward modification of an order.

(3) If the obligor does not contest the action within the allowed 30-day period, DCS will release the information to the consumer reporting agencies.

(4) If the obligor contests the balance indicated in the notice the administrator will conduct an administrative review on the case and mail the results of the review to the parties.

(5) Once the administrative review is complete, DCS will release the information to the consumer reporting agencies except as specified in section (12) of this rule.

(6) Parties may contest the administrator's review and determination as provided in ORS 183.484.

(7) If the obligee or child attending school, contests the balance in the notice, the obligee or child attending school, may initiate an arrears establishment request pursuant to OAR 137-055-3240.

(8) If a court or agency of appropriate jurisdiction determines the balance owing is other than previously reported, DCS will update the consumer reporting agencies with the court's or agency's findings within 10 days after receiving a copy of the final order.

(9) If at any time an obligor contacts DCS in writing to state that the information that has been reported to the consumer reporting agency is incorrect, the administrator must, within 30 days of receiving notification of the dispute:

(a) Provide notice to the consumer reporting agency and the parties that the information is being disputed;

(b) Conduct an administrative review of the case; and

(c) Provide the results of the review to the parties and the consumer reporting agency.

(10) Notwithstanding section (9), the administrator will not conduct an administrative review of the reported information more than once in any calendar year, unless an obligor presents new supporting documentation, to the administrator, that information reported to the consumer reporting agency is incorrect.

(11) When consumer reporting agencies ask DCS for information regarding the balance an obligor owes on a support case, DCS may provide available information after complying with the requirements of sections (1) through (8) of this rule. DCS will not charge the requesting agency a fee for this information.

(12) DCS may refer to the consumer reporting agencies, the name and support balance of all obligors who meet the criteria of sections (1) or (11) of this rule unless:

(a) The obligor pays the support balance in full;

(b) The obligor is found to not be the person who owes the child support balance indicated by the case record; or

(c) The administrator determines that the obligor is not delinquent in the payment of support.

(13) When DCS has made a report to a consumer reporting agency under section (1) of this rule, DCS will promptly notify the consumer reporting agency when the case record shows that the obligor no longer owes past due support.

(14) If paternity has been established and a consumer report is needed for the purpose of establishing, modifying or enforcing a child support order, the administrator may request that a consumer reporting agency provide a report. At least 10 days prior to making a request for such report, the administrator must notify, by certified mail, the obligor or obligee whose report is requested that the report will be requested.

Stat. Auth.: ORS 180.345
Other Auth.: 15 USC § 1681b
Stats. Implemented: ORS 25.650
Hist.: AFS 79-1985(Temp), f. & ef. 12-26-85; AFS 22-1986, f. & ef. 3-4-86; AFS 12-1989, f. 3-27-89, cert. ef. 4-1-89, Renumbered from 461-035-0051; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89, Renumbered from 461-035-0670; AFS 11-1990, f. 3-27-90, cert. ef. 4-1-90; AFS 25-1990, f. 11-21-90, cert. ef. 12-1-90; AFS 7-1996, f. 2-22-96, cert. ef. 4-1-96; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 18-2000, f. & cert. ef. 7-12-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0230; AFS 15-2002, f. 10-30-02, ef. 11-1-02; SSP 15-2003, f. 6-25-03, cert. ef. 6-30-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4560; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4560; DOJ 12-2004, f. & cert. ef. 10-1-04; DOJ 9-2005, f. & cert. ef. 10-3-05; DOJ 1-2006, f & cert. ef. 1-3-06; DOJ 6-2008, f. & cert. ef. 4-1-08

137-055-4620
Enforcing Health Care Coverage and Cash Medical Support

(1) If services are being provided pursuant to ORS 25.080 and private health care coverage is ordered the administrator will issue a medical support notice to enforce orders for health care coverage within two business days of receiving information that an employer has hired or rehired a providing party, as defined in 25.321, or at any time when the administrator determines it is necessary; and

(a) An obligor or obligee is ordered to provide appropriate health care coverage for a child as required by ORS 25.321, OAR 137-050-0750;

(b) The providing party has failed to provide appropriate health care coverage, either personally or through a spouse's or domestic partner's coverage; and

(c) The employer offers or may offer a health benefit plan to its employees.

(2) Notwithstanding the provisions of section (1), if the party ordered to provide appropriate health care coverage is an active duty or retired member of the military, the administrator will not issue a medical support notice to the military.

(3) If the conditions in section (2) apply:

(a) The administrator will inform the obligee, if the obligee is not the providing party, of the process to initiate military health care coverage enrollment for the dependent child; and

(b) If the medical child support rights for the dependent child are currently assigned to the state, the administrator will require either party to make all reasonable efforts to enroll the child in military health care coverage.

(4) When a medical support notice has been served and the providing party is not enrolled in a health benefit plan or is not enrolled in a plan that offers dependent coverage that is available pursuant to ORS 25.323, and if more than one plan is offered, the administrator will select a plan in accordance with OAR 137-055-4640.

(5) A party can contest the medical support notice as set out in ORS 25.333.

(6) When the administrator is notified that the amount to be withheld for premiums is greater than is permissible under ORS 25.331 the administrator will review the circumstances and, if appropriate, activate contingent medical support provisions, or move to modify the order to comply with the child support guidelines.

(7) When an employer notifies the administrator that the amount to be withheld for the health care coverage premium is greater than permissible under ORS 25.331:

(a) An obligee who is a recipient of TANF cash assistance may not elect to receive health care coverage over monetary child support. In these cases, the administrator will select monetary child support over health care coverage unless health care coverage would be in the best interests of the child.

(b)(A) Except as provided in section (7)(b)(B), an obligee, who is not a recipient of TANF cash assistance and who selects health care coverage over monetary child support, may change the selection:

(i) No more than once per year;

(ii) In conjunction with a medical support notice being issued to a new employer; or

(iii) When a child becomes seriously ill and health care coverage is needed.

(B) An obligee who is not a recipient of TANF cash assistance may not select health care coverage over monetary child support if such a selection conflicts with the requirements of any bankruptcy plan.

(8) A request to select health care coverage over monetary child support may be made verbally or in writing.

(9) When multiple cases for an obligor are being enforced and the employer receives notice that one or more cases have selected health care coverage over monetary child support, the employer must withhold in the following manner:

(a) First withhold the full amount listed on withholdings issued on the cases that have not selected health care coverage over monetary child support;

(b) Withhold the premium for health care coverage, up to the maximum allowed by law;

(c) If the maximum is not reached, withhold support for the case(s) requesting health care coverage, up to the full amount of the withholding order or the maximum allowed by law, whichever is less;

(d) Identify which payment goes with which case and submit the monetary support payments to the Division of Child Support as directed in the withholding orders.

(10) A providing party may select a different health benefit plan during any applicable open enrollment period, providing the health benefit plan provides appropriate health care coverage, or other coverage if the order so requires.

(11) If the providing party changes to a health benefit plan that does not meet the criteria in section (10) of this rule, the administrator will issue a medical support notice as provided in section (1) of this rule and may pursue modification of the support order for an amount towards cash medical support pursuant to OAR 137-050-0750, or activate contingent provisions, if any, as provided in section 12 of this rule.

(12) When an order provides for an obligor to pay cash medical support if the obligor is not providing private health care coverage, the following provisions apply:

(a) When the obligor stops providing private health care coverage, the administrator will notify the parties that coverage has stopped and that cash medical support provisions in the order, if any, will begin the month following the month in which the coverage stopped.

(b) When the obligor begins providing health care coverage, after notice from a party or other source, the administrator will notify the parties that coverage is now provided and that cash medical support will stop effective the month after the child is enrolled or the administrator receives notice, whichever is later.

(c) At the obligor's option, the obligor may exceed the "reasonable in cost" cap in order to provide health insurance that is otherwise appropriate. If obligor does so, cash medical support will stop.

Stat. Auth.: ORS 25.080, 25.321, 25.325, 25.342 & 180.345

Stats. Implemented: ORS 25.080 & 25.321 – 25.341

Hist.: AFS 10-1990, f. 3-14-90, cert. ef. 4-1-90; AFS 25-1995, f. 10-12-95, cert. ef. 10-15-95; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0060; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4620; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4620; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 7-2007(Temp), f. 9-28-07, cert. ef. 10-1-07 thru 1-2-08; DOJ 2-2008, f. & cert. ef. 1-2-08; DOJ 1-2010, f. & cert. ef. 1-4-10; DOJ 4-2013, f. 5-15-13, cert. ef. 7-1-13

137-055-4640

Medical Support Notice — Plan Selection

For the purposes of this rule, the definitions found in ORS 25.321 and OAR 137-050-0750 apply.

(1) When a medical support notice has been served and the providing party as defined in ORS 25.321, is not enrolled in a health benefit plan or is not enrolled in a plan that offers and available dependent coverage as defined in ORS 25.323, and if more than one plan with appropriate dependent coverage is offered, the plan administrator will notify the enforcing agency and the enforcing agency will forward the health benefit plan information to the obligee, if the obligee is not the providing party.

(2) The notice sent by the enforcing agency with the health benefit plan descriptions and documents will advise the obligee that:

(a) If the obligee identifies a plan and contacts the enforcing agency within 10 calendar days of the date the plan information was mailed, except as provided in section (4) of this rule, the enforcing agency will notify the plan administrator of the selection made.

(b) If the obligee fails to notify the enforcing agency of a plan selection within 10 calendar days of the date the plan information was mailed, except as provided in section (4) of this rule, the enforcing agency will select the default plan if the plan administrator has indicated there is such a plan or, if there is not a default plan indicated by the plan administrator, the least costly plan available that provides appropriate health care coverage.

(3) Notwithstanding any other provisions of this rule, and except as provided in section (4) of this rule, if the providing party has more than one case with an order to provide appropriate health care coverage, the enforcing agency will select a plan using the following criteria:

(a) If there is only one health benefit plan that provides appropriate health care coverage on all cases, that plan will be selected;

(b) If there is more than one health benefit plan that provides appropriate health care coverage on all cases, the least costly plan will be selected;

(c) If there is a health benefit plan that provides appropriate health care coverage for some but not all of the children on the cases, then:

(A) If the medical support notices were issued on all cases on or about the same date, such as would occur when the providing party has a new employer, the least costly plan that is appropriate to the child(ren) on at least one of the cases will be selected; or

(B) If the medical support notices were issued at different times, such as would occur when there is an existing order with a provision for appropriate health care coverage on one case and a new order with a provision for appropriate health care coverage is established on a second case, the existing plan or the least costly plan that is appropriate to the child(ren) on the case in which the first medical support notice was issued will be selected.

(4) If a providing party's current family is covered by a health benefit plan, the enforcing agency may not select a plan that eliminates the current family's coverage.

(5) The enforcing agency will notify the plan administrator of the selection within 20 business days of the date the plan administrator forwarded the health plan descriptions and documents to the enforcing agency.

Stat. Auth.: ORS 25.080 & 180.345

Stats. Implemented: ORS 25.325, 25.327, 25.329, 25.331, 25.333, 25.337, 25.341

Hist.: AFS 38-1995, f. 12-4-95, cert. ef. 12-15-95; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0063; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4640; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4640; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 1-2010, f. & cert. ef. 1-4-10

137-055-5025

Payment of Child Support to an Escrow Agent

(1) If current or past support is not assigned to the State of Oregon or another state, the parties may elect for support payments to be made to an escrow agent licensed under ORS 696.511 to accept and disburse support payments by electronic fund transfer.

(2) The election must be in writing and filed with the court that entered the support order and include:

(a) The signatures of the parties;

(b) The amount of the support payment and date the payment is due;

(c) The court case number; and

(d) The name of the escrow agent and account number into which the payments are to be electronically transferred.

(3) If IV-D services are being provided and the order is not otherwise subject to ORS 25.020, upon receipt of a court order or election of the parties to make payments to an escrow agent, the administrator will close its case and discontinue services:

(a) After expiration of the 60-day case closure notice as provided in OAR 137-055-1120; or

(b) Immediately upon the signed written request of the parties waiving the 60-day notice.

(4) An election will terminate if:

(a) An application for services is received by the Child Support Program subsequent to an election; or

(b) Support is assigned to the State of Oregon or another state.

(5) When the administrator establishes arrears pursuant to OAR 137-055-3240 and the parties previously made payments through an escrow agent as provided in section (1), the administrator may use the payment history of the escrow agent to establish arrears for any time period escrow services were provided.

Stat. Auth.: ORS 25.030
Stats. Implemented: ORS 25.030 & 25.130
Hist.: DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-5030
Receipting of Support Payments

(1) For purposes of this rule, "receipt" means to officially acknowledge and credit a payment to an account.

(2) For purposes of this rule, "authorized representative" means an employee of the Division of Child Support, employees of a District Attorney Child Support office, and Assistant Attorneys General and Deputy District Attorneys representing the Child Support Program.

(3) When support payments are made to the Department of Justice in accordance with ORS 25.020, the State Disbursement Unit (SDU) is the official receipting unit of the Child Support Program. All payments will be disbursed after receipt by the SDU pursuant to 45 CFR 302.32.

(4) Support payments will only be receipted by the SDU.

(5) Physical access to all areas where support payments are stored or processed will be limited to employees assigned to handle, accept or receipt support payments.

(6) Support payments received by the receipting unit must be physically secured. At least two employees must be present when support payments are not secured in a locked area or in a safe.

(7) Support payments will be properly recorded and tracked in accordance with 45 CFR Ch. III.

(8) Support payments which have been receipted by the SDU will be reconciled daily.

(9) Support payments will be receipted and deposited within 48 hours.

(10) Pursuant to ORS 73.0114, if there are contradictory terms on a negotiable instrument, the amount receipted will be the amount written in words.

(11) Pursuant to ORS 73.0401, if a negotiable instrument is not signed, the person is not liable for the instrument.

(12) Under limited circumstances, offices of the Oregon Child Support Program, other than the facility which houses the SDU, may accept child support payments in person or by mail and authorized representatives may accept payments in court. If a payment is made in person, in court, or by mail the employee or authorized representative shall provide written acknowledgment to the payor that the payment has been accepted.

(13) Payments for support may be accepted by an employee of an office of the Oregon Child Support Program or by an authorized representative of the Child Support Program when:

(a) The payment is received in court as a result of a court hearing for nonpayment of support; or

(b) The payment is received in an office that employs strict internal currency handling standards;

(c) The office has the payment deposited to an approved bank account; and

(d) The office ensures the payment and remittance details are transmitted to the SDU immediately for receipting and disbursement.

(A) The office or authorized representative may transmit the payment to the SDU by an electronic fund transfer (EFT) through an approved bank account; or

(B) The office may mail a check to the SDU for the total amount of the payment(s).

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 25.020, 73.0114 & 73.0401
Hist.: DOJ 10-2004, f. & cert. ef. 7-1-04; DOJ 13-2014(Temp), f. & cert. ef. 10-1-14 thru 3-30-15; DOJ 6-2015, f. & cert. ef. 3-30-15

137-055-5035
Payment by Electronic Funds Transfer

(1) As used in this rule, the following definitions apply:

(a) "Electronic Funds Transfer" (EFT) means the movement of funds by nonpaper means, usually through a payment system including, but not limited to, an automated clearinghouse or the Federal Reserve's Fedwire system;

(b) "Employer" means any entity or individual who:

(A) Does business in Oregon or has a registered agent in Oregon; and

(B) Engages an individual to perform work or services for which compensation is given in periodic payments or otherwise.

(c) "Income withholding order" means an order to withhold income issued under ORS 25.372 to 25.424.

(2) Except as provided in section (3), an employer must remit all support payments to the Department of Justice (DOJ) by EFT in the following circumstances:

(a) An employer with five or more employees has received at least one income withholding order for an employee;

(b) An employer with less than five employees has received an income withholding order for more than one employee; or

(c) An employer is required by Treasury regulations to make federal corporation estimated tax payments or federal payroll tax payments by means of EFT.

(3) DOJ may grant an exemption from the requirement in section (2) to pay by EFT if the employer demonstrates that its payroll or accounting system will not support EFT. The exemption will be granted on a case by case basis. DOJ's decision is final with regard to the exemption, but may be appealed as an other than contested case order under ORS 183.484.

(4) Notwithstanding sections (2) and (3), an employer must remit all support payments to DOJ by EFT in the following circumstances:

(a) The employer has received at least one income withholding order for an employee and has failed to withhold or failed to withhold within the time provided by ORS 25.411 at least twice;

(b) The employer has submitted at least one dishonored check; or

(c) The employer continues to incorrectly identify withholdings or makes other errors that affect proper distribution of the support, despite contact and information from DOJ on how to correct the error.

(5) All EFT payments must identify the employee for whom the payment is made, the amount of the payment, and the child support case number to which the payment is to be applied.

Stat. Auth: ORS 180.345, 293.525
Stats. Implemented: ORS 25.372 - 25.424, 293.525
Hist.: DOJ 2-2007, f. & cert. ef. 4-2-07

137-055-5040
Accrual and Due Dates

(1) As used in this rule, "payment due date" means the due date or beginning pay date of an installment of support or, if no such date is listed, the date the administrative order or judgment document states it is effective.

(2) For any judgment document or administrative order requiring the payment in installments of child support or child and spousal support through the Division of Child Support (DCS), in accordance

with ORS 25.020, this rule delineates the manner in which DCS will determine billing and accrual cycles.

(3)(a) When a support award does not specify the payment due date DCS will consider the payment due date to be the date listed in the administrative order or judgment document;

(b) When a support award or administrative order or judgment document specifies payments are to be made more frequently than monthly, DCS will consider the last payment due date listed in the month to be the payment due date.

(4) When neither the support award nor the administrative order or judgment document contains the payment due date:

(a) If the administrative order or judgment document is a modification of a support order, DCS will consider the payment due date to be same as the existing support order;

(b) If the administrative order or judgment document is not a modification of a support order, DCS will consider the payment due date to be the last day of the month in which the administrative order or judgment document was signed.

(5) If an administrative order or judgment document is a modification of a support order:

(a) The support obligation will not be pro-rated for the month in which the payment due date falls, unless the administrative order or judgment document provides otherwise;

(b) If the modification payment due date is on or before the payment due date of the existing support order, the installment due for that month will be changed to the new amount;

(c) If the modification payment due date is after the payment due date of the existing order:

(A) If the order or judgment is signed prior to the payment due date of the existing support order, the installment due for that month will be changed to the new amount;

(B) If the order or judgment is signed after the payment due date of the existing support order, the installment due will be changed to the new amount effective the following month.

(6) When the support obligation terminates during any month, the support obligation will not be pro-rated for the month, unless the order for support provides otherwise. In any month:

(a) If the support obligation terminates on or before the payment due date for the month, no installment will be due for that month.

(b) If the support obligation terminates after the payment due date for the month, the entire monthly installment will be due for that month.

(c) If the support award specifies that payments are due on a basis other than monthly, such as weekly, bi-weekly, or semi-monthly, the provisions of subsections (a) and (b) will apply to the specified payment period rather than monthly.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 25.020 & 25.080
Hist.: AFS 77-1982, f. 8-5-82, ef. 9-1-82; AFS 93-1982, f. & ef. 10-18-82; AFS 15-1988, f. & cert. ef. 2-24-88; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89, Renumbered from 461-035-0040; AFS 31-1992, f. 10-29-92, cert. ef. 11-1-92; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0080; SSP 4-2003, f. 2-25-03, cert. ef. 3-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-5040; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-5040; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 10-2004, f. & cert. ef. 7-1-04

137-055-5045
Inconsistent Provisions: Body of Order and Support or Money Award

(1) If the administrator discovers that the support provisions in the body of an administrative order or judgment document are inconsistent with the support or money award (hereinafter award), the administrator will:

(a) On a case in which the Division of Child Support (DCS) is providing distribution and, as appropriate, disbursement only services, send a courtesy notice regarding the inconsistency to all parties;

(b) On a case in which services are being provided under ORS 25.080 but the award was not entered by the administrator, send a written notice to all parties to request correction of the error. The notice will advise the parties that until DCS is provided with a copy of the court corrected judgment and award, their support case will be enforced:

(A) As recorded on the judgment register Oregon Judicial Information Network (OJIN), or

(B) If OJIN does not reflect information necessary to proceed, as recorded on the money award;

(c) On a case in which services are being provided under ORS 25.080 and the award was entered by the administrator, file a motion to correct the error. Until the error is corrected, the support case will be enforced

(A) As recorded on the judgment register OJIN, or

(B) If OJIN does not reflect information necessary to proceed, as recorded on the money award.

(2) Notwithstanding subsection (1)(b) of this rule, the administrator may instead file a motion to correct the error if the child support rights, as defined in ORS 25.010, have been assigned to the state.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 25.020 & 25.080
Hist.: DOJ 10-2004, f. & cert. ef. 7-1-04; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07

137-055-5060
Billings for Support Payments

(1) Except as provided in subsections (3)(a) and (b) of this rule, when a case with a support order is activated on the Child Support Enforcement Automated System, the Division of Child Support (DCS) will send notice to the parties of the requirement to pay through DCS.

(2) DCS will begin billing in the first full calendar month following 30 days from the receipt of the order or notice that the order should be activated.

(3)(a) When support is paid for a period of six months by income withholding pursuant to ORS 25.378 or by electronic payment withdrawal pursuant to OAR 137-055-4080 DCS may discontinue monthly billings unless:

(A) The obligor requests otherwise; or

(B) The administrator determines that monthly billings should continue.

(b) When the total amount due is less than five dollars, DCS will discontinue monthly billings.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 25.020
Hist.: AFS 21-1978, f. & ef. 5-30-78; AFS 88-1980, f. & ef. 12-10-80; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89, Renumbered from 461-035-0001; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0105; SSP 4-2003, f. 2-25-03, cert. ef. 3-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-5060; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-5060; DOJ 9-2005, f. & cert. ef. 10-3-05; DOJ 4-2011, f. & cert. ef. 7-1-11

137-055-5080
Adding Interest Calculations to Individual Support Cases

(1) For a support case with an Oregon support order as the controlling order, the administrator will add interest calculations to the case by using the establishment of arrears process set out in OAR 137-055-3240 under the following conditions:

(a) The party makes a written request that the interest be added to the case;

(b) The requesting party provides a month by month calculation showing support accrual, principal due and interest accrual for each month with total principal and interest due as separate totals at the end of the calculations; and

(c) The interest is calculated per ORS 82.010 from the date of entry of a judgment in Oregon.

(2) The administrator may limit adding interest to the case under section (1) of this rule to one time every 24 months.

(3) For a case with a controlling support order from another jurisdiction, the law of the jurisdiction which issued the controlling order governs the computation and accrual of interest under the support order. Interest accrued under the laws of the jurisdiction which issued the controlling order may be added to the Oregon case by administratively reconciling the case record when interest amounts are provided by the other jurisdiction. The administrator will send an informational notice to the parties when the case is adjusted.

Stat. Auth.: Sec. 2, Ch. 73 OL 2003
Stats. Implemented: ORS 25.167, 82.010 & 416.429
Hist.: AFS 6-1996, f. 2-21-96, cert. ef. 3-1-96; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0048; AFS 15-2001, f. 7-31-01, cert. ef. 8-1-01; AFS 15-2002, f. 10-30-02, ef. 11-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-5080; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-5080; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11

137-055-5110
Child Attending School

The purpose of this rule is to provide additional information as to how the Child Support Program (CSP) will apply the provisions of ORS 107.108 when the order or modification provides for support until the child is age 21, so long as the child is a child attending school in accordance with ORS 107.108.

(1) In addition to the definitions found in ORS 107.108, as used in OAR chapter 137, division 55, the following terms have the meanings given below:

(a) "Active member of the military" means:

(A) A member of the Army, Navy, Air Force, Marine Corps, or Coast Guard (collectively known as the "armed forces"), who is serving on active duty; or

(B) A member of the National Guard who is serving full-time National Guard state or federal active duty; or

(C) A cadet at a federal service academy.

(b) "Adult child" means a child over the age of 18 and under the age of 21, who is not married or otherwise emancipated, and is not currently a child attending school.

(c) "Child attending school" has the meaning given in ORS 107.108, except a child attending school does not include an active member of the military.

(d) "Satisfactory academic progress" means:

(A) For a child attending high school who is over age 18 but under age 21, enrollment in school and meeting attendance requirements or as defined by the school; or

(B) For a child attending post high school classes, as defined by the higher educational institution.

(2) If the obligor has not provided the child attending school with mailing address for the documents required by ORS 107.108, the administrator, pursuant to OAR 137-055-1140(8), may release the contact address of the obligor to the child attending school. If the obligor does not provide an address to the CSP or to the child, the obligor's failure to receive required documents is not a basis for objecting that a child does not qualify as a child attending school.

(3) If there has been a finding and order of nondisclosure on behalf of the child attending school pursuant to ORS 25.020, the child may send the obligor's copy of any documents required by ORS 107.108 to the administrator for the administrator to forward to the obligor. The child must submit a copy of the documents to the administrator within the time periods set out in ORS 107.108. The administrator will redact the following information prior to sending a copy of the documents otherwise required to be provided to the obligor:

(a) Residence, mailing or contact address including the school name and address;

(b) Social security number;

(c) Telephone number including the school telephone number;

(d) Driver's license number;

(e) Employer's name, address and telephone number; and

(f) Name of registrar or school official.

(4) If a child attending school is in the care of the Oregon Youth Authority (OYA), any and all reporting duties of the child attending school will be the duty of OYA.

(5) The Department of Justice will distribute and disburse support directly to the child attending school, unless good cause is found to distribute and disburse support in some other manner. For purposes of this section "good cause" may include:

(a) The child is in the care of OYA;

(b) The child provides written notarized authorization for distribution and disbursement to the obligee;

(c) The court, administrative law judge or administrator orders otherwise; or

(d) The administrator is enforcing the Oregon order at the request of another state and that state has indicated they are unable to distribute and disburse support directly to the child.

(6)(a) If the administrator makes a finding that the support payment should be distributed and disbursed to the obligee under subsection (5)(b), the administrator will send a notice of redirection of support to the parties.

(b) A party may contest the administrator's finding as provided in ORS 183.484.

(7) An objection based on the requirements of ORS 107.108 may be made by any party to the support order.

(a) Unless new supporting documentation can be provided, an objection can only be made once per semester or term as defined by the school, or three months from the date of a previous objection if the school does not have semesters or terms.

(b) A party may contest the administrator's finding from the objection as provided in ORS 183.484.

(8) When support has been suspended under 107.108, if the case has been closed pursuant to OAR 137-055-1120 and the adult child subsequently complies with the requirements for reinstatement, the adult child must submit the written confirmation of compliance, proof of written consent and an application for services as described in 137-055-1060. The written confirmation and application for services may be combined as one document.

(9) When the administrator has suspended or reinstated a support obligation pursuant to ORS 107.108, a party may request an administrative review of the action within 30 days after the date of the notice of suspension or reinstatement.

(a) The only issues which may be considered in the review are whether:

(A) The child meets the requirements of a child attending school;

(B) The written notice of the child's intent to attend or continue to attend school was sent to the parent ordered to pay support;

(C) The written consent was sent or proof of written consent was received.

(b) The burden of proof for the administrative review is on the requesting party to provide documentation supporting the allegation(s).

(10) When support has been suspended under ORS 107.108, the adult child may request to receive notice of future modifications and may request to be a party to the modification as outlined in ORS 107.108 and OAR 137-055-3430. The adult child does not have any party status on the case until the request has been received by the administrator.

(11) In addition to the rights afforded under ORS 107.108, if the obligee claims good cause under OAR 137-055-1090, the child attending school may apply for services to enforce the existing support obligation on behalf of the child attending school only.

(a) The application will be handled in the same manner as outlined in OAR 137-055-1090(10)(a)–(c).

(b) If the child attending school applies for services, and services are provided under ORS 25.080, all arrears for that child will accrue to the child attending school as provided for in OAR 137-055-6021, until the child's 21st birthday or is otherwise emancipated and then will be file credited off the case.

(12) If a court orders payment from a higher education savings plan in lieu of support under ORS 107.108;

(a) The administrator will cease collection and billing actions on behalf of that child at age 18. If the support order is for a single or last remaining child the department will close the case unless there are arrears on the case.

(b) If payments are ordered from a higher education savings plan and the court has not provided for a modification of the support amount for any remaining children of the order, this is a substantial change of circumstances for purposes of modifying the support order.

(c) If payment from a higher education savings plan has been ordered, the administrator will not take action to subsequently mod-

ify the support order to include child attending school support provisions for that child.

(13) Except for support orders originally issued by a state other than Oregon and being enforced under the provisions of ORS 110.303 to 110.452, if the most recent order or modification for support cites 107.108 or otherwise provides for support of a "child attending school," the administrator will follow the provisions of 107.108 and this rule, regardless of other child attending school provisions that may be in the support order.

Stat. Auth.: ORS 25.020, 107.108 & 180.345
Stats. Implemented: ORS 25.020, 25.080, 107.108 & 416.407
Hist.: AFS 23-2001, f. 10-2-01, cert. 10-6-01; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-5110; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-5110; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 10-2004, f. & cert. ef. 7-1-04; DOJ 5-2005, f. & cert. ef. 7-15-05; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f & cert. ef. 1-3-06; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; DOJ 6-2006, f. & cert. ef. 10-2-06; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 10-2008, f. & cert. ef. 7-1-08; DOJ 1-2010, f. & cert. ef. 1-4-10; DOJ 13-2014(Temp), f. & cert. ef. 10-1-14 thru 3-30-15; DOJ 6-2015, f. & cert. ef. 3-30-15

137-055-5120
Child Attending School — Arrears

(1) For purposes of this rule "arrears" means past due support which has accrued but does not include support for the current month even if the due date for that month has passed.

(2) Unless otherwise provided by a support judgment, a child attending school is not a judgment creditor to the support order and the provisions of this rule apply.

(3)(a) Notwithstanding section (2), support for a child attending school that is not paid when due will accrue to a child attending school account and any arrears payment received prior to the child turning age 21 or otherwise emancipated, will be distributed to the child attending school or adult child as outlined in OAR 137-055-6021.

(b) When the child attending school turns age 21 or is otherwise emancipated, any arrears in the child attending school account will be transferred to the obligee as the judgment creditor.

(4)(a) When an obligee requests establishment of arrears for any time period during which a child was a child attending school and services were being provided under ORS 25.080, the arrears will be established to the child's account.

(b)(A) If the child attending school is the only or last remaining child on the case, the administrator will not establish arrears for any time period when services were not being provided and support is only being paid for the child attending school. Arrears may only accrue to the child attending school account from the date the administrator begins providing child support services.

(B) Notwithstanding subsection (b)(A), the administrator may establish arrears for any time period when services were not being provided if the judicial order found that the child qualified as a child attending school during the time period for which arrears are being established.

(5) A child attending school may not satisfy arrears but may agree to a credit for direct payment, pursuant to OAR 137-055-5240, against arrears which have accrued to the child attending school account only.

Stat. Auth.: ORS 25.020 & 180.345
Stats. Implemented: ORS 107.108
Hist.: AFS 21-1991, f. 10-23-91, cert. ef. 11-1-91; AFS 26-1991, f. 12-31-91, cert. ef. 1-1-92; AFS 9-1992, f. & cert. ef. 4-1-92; AFS 31-1992, f. 10-29-92, cert. ef. 11-1-92; AFS 18-1997(Temp), f. 9-23-97, cert. ef. 10-4-97; AFS 18-1997(Temp) Repealed by AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 2-2000, f. 1-28-00, cert. ef. 2-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0136; AFS 23-2001, f. 10-2-01, cert. ef. 10-6-01; AFS 17-2002(Temp), f. 10-30-02, cert. ef. 11-1-02 thru 4-29-03; SSP 4-2003, f. 2-25-03, cert. ef. 3-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-5120; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-5120; DOJ 12-2004, f. & cert. ef. 10-1-04; DOJ 4-2005, f. & cert. ef. 4-1-05; DOJ 5-2005, f. & cert. ef. 7-15-05; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f & cert. ef. 1-3-06; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06

137-055-5220
Satisfaction of Support Awards

The purpose of this rule is to define how the Division of Child Support (DCS) will credit "satisfactions of support award" in certain circumstances. This rule must not be construed as limiting the authority of DCS to approve or credit a satisfaction of support award in other lawful circumstances not specified in this rule.

(1) When support payment records are kept by the Department of Justice, an obligee may satisfy amounts indicated on the case records as past due by filing a properly-completed "satisfaction of support award" form with the administrator, subject to approval by DCS under the provisions of this rule; or in accordance with OAR 137-055-5240.

(2) When current support or arrears are assigned to the State of Oregon or to another jurisdiction, and the obligor is seeking credit for support payments not made through DCS:

(a) DCS and its attorneys have authority to approve and sign satisfactions.

(b) This authority may be exercised only when the obligee has signed a satisfaction of support award form which acknowledges that the support payment was received.

(3) DCS and its attorneys have authority to sign and approve satisfactions of support award for money paid through DCS as payment of assigned support.

(4) DCS will record, on the case record, all properly-completed satisfactions of support award not assigned, and all satisfactions ordered by a court or a hearing order, and all satisfactions for assigned support that are approved in accordance with this rule. DCS will also promptly forward the satisfaction form to the appropriate court administrator, together with a certificate stating the amount of support satisfaction entered on the case record.

(5) Except when satisfied and approved by DCS and its attorneys or by a court or hearing order, DCS will not enter a satisfaction on a case record for support that has been assigned to the State of Oregon or another jurisdiction.

(6) When DCS rejects a satisfaction in part or in full as provided in section (5) above, DCS will send written notice to the obligor and obligee, by regular mail to the most recent address of record. Such notice will indicate the reason for the rejection.

(7) All satisfactions must contain the following:

(a) The full names of both the obligor and the obligee;

(b) The name of the Oregon county where the support award was entered;

(c) The Oregon Child Support Program support case number, or the circuit court case number;

(d) Either:

(A) The total dollar amount to be satisfied; or

(B) The period of time for which past due support is satisfied;

(e) A statement that the satisfaction is only for child support or spousal support;

(f) The signature of the obligee, except for those satisfactions approved under sections

(2) and (3) of this rule, where the obligee's signature is not required; and

(g) The date the form is signed.

(8) All signatures on "satisfactions of support award" must be notarized, except on court orders.

(9) Notwithstanding any other provision of this rule, DCS has the authority to file and execute a satisfaction, without the need to notarize such satisfaction, when all of the following are true:

(a) The obligor provides a sworn affidavit that the support award has been paid in full, and

(b) DCS certifies that it has a complete payment record for the support award and that the payment records shows no arrears. DCS will be considered to have a complete pay record if DCS has kept the pay record for the support judgment from the date of the first support payment required under the award, or if the obligee or the administrator established arrears for the time period when DCS did not keep the pay record on the case.

(10) When DCS receives a sworn affidavit under the provisions of subsection (9)(a) of this rule, DCS will examine its support records

and determine if it has the authority under section (9) of this rule to execute and file a satisfaction of support award. DCS will promptly notify the obligor if DCS determines that it does not have authority to execute and file a satisfaction of support award. DCS will also determine if any amounts due for support were not assigned to the state. If DCS determines that any amounts were not assigned to the state, DCS will give notice to the obligee in the manner provided by ORS 25.085. The notice must inform the obligee that DCS will execute and file the satisfaction of support award unless DCS receives an objection and request for hearing within 30 days after the date of mailing the notice.

(11) If the obligee requests a hearing under section (10) of this rule, a contested case hearing will be conducted under ORS 183.310 to 183.502 before an administrative law judge.

(12) If support is owed to a child attending school the obligee may only satisfy arrears as defined in OAR 137-055-5120.

Stat. Auth.: ORS 18.225 & 180.345
Stats. Implemented: ORS 18.225 - 238 & 25.020
Hist.: AFS 21-1978, f. & ef. 5-30-78; AFS 26-1979(Temp), f. & ef. 8-16-79; AFS 22-1980, f. & ef. 4-3-80; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89, Renumbered from 461-035-0005; AFS 17-1991, f. & cert. ef. 8-29-91; AFS 9-1992, f. & cert. ef. 4-1-92; AFS 19-1995, f. 8-30-95, cert. ef. 9-9-95; AFS 14-1996, f. 4-24-96, cert. ef. 5-1-96; AFS 28-1996, f. & cert. ef. 7-1-96; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0155; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-5220; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-5220; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 12-2004, f. & cert. ef. 10-1-04; DOJ 9-2005, f. & cert. ef. 10-3-05; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; DOJ 1-2010, f. & cert. ef. 1-4-10; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11

137-055-5240
Credit for Support Payments not made to the Division of Child Support

(1) In accordance with ORS 25.020, on any support case where the obligor is required to pay support through the Division of Child Support (DCS), DCS will not credit the obligor's support account for any payment not made through DCS, except as provided in ORS 25.020 and this rule.

(2) The other provisions of this rule notwithstanding, on any case where an order of another jurisdiction is registered in Oregon under ORS Chapter 110 for enforcement only, and either the issuing jurisdiction or the jurisdiction in which the obligee resides has an active child support accounting case open, DCS does not have authority to give credit for payments not paid through Oregon DCS. In any such case, the obligor seeking credit must request credit from the jurisdiction with the active child support accounting case. DCS will adjust its records to reflect credit for such payments only upon receiving notification from the other jurisdiction, in writing, by electronic transmission, by telephone, or by court order, that specified payments will be credited.

(3) DCS will give credit for payments not made to DCS when:

(a) Payments are not assigned to the State of Oregon or to another jurisdiction, and

(A) The obligor, obligee and the party who received the payment agree in writing that specific payments were made and should be credited; or

(B) The obligor and the child attending school, as defined in ORS 107.108 and OAR 137-055-5110, agree in writing that specific payments were made and should be credited for amounts that accrued during the time the child was a child attending school.

(b) Payments are assigned to the State of Oregon, and all of the following additional conditions are true:

(A) The parties make sworn written statements that specific payments were made;

(B) The parties present canceled checks, or other substantial evidence, to corroborate that the payments were made; and

(C) The administrator has given written notice to the obligee or the child attending school, prior to the obligee or the child attending school making a sworn written statement under subsection (b), of any potential criminal or civil liability that may attach to an admission of receiving the assigned support. Potential criminal or civil liability may include, but is not limited to:

(i) Prosecution for unlawfully receiving public assistance benefits.

(ii) Liability for repayment of any public assistance overpayments for which the obligee or child attending school may be liable.

(iii) Temporary or permanent disqualification from receiving public assistance, food stamp, or medical assistance benefits due to an intentional program violation being established against the obligee or child attending school for failure to report, to the administrator, having received payments directly from the obligor.

(c) The administrator is enforcing the case at the request of another jurisdiction, regardless of whether or not support is assigned, and that jurisdiction verifies that payments not paid to DCS were received by the other jurisdiction or by the obligee directly. Such verification may be in writing, by electronic transmission, by telephone, or by court order.

(d) An order of an administrative law judge, or an order from a court of appropriate jurisdiction, so specifies.

(4) To receive credit for payments not made to DCS, the obligor may apply directly to the administrator for credit, by providing the documents and evidence specified in section (3) of this rule.

(5) Except as provided in section (2) of this rule if the obligee, a child attending school, or other jurisdiction does not agree that payments were made, pursuant to subsection (3)(a) or (3)(c) of this rule, or does not make a sworn written statement under subsection (3)(b), the obligor may make a written request to the administrator for a hearing.

(a) Prior notice of the hearing and of the right to object will be served upon the obligee in accordance with ORS 25.085 and the child attending school.

(b) Prior notice of the hearing and of the right to object may be served upon the obligor by regular mail to the address provided by the obligor when applying for credit.

(c) A hearing conducted under this rule is a contested case hearing in accordance with ORS 183.413 through 183.470. Any party may also seek a hearing de novo in the Oregon circuit court.

(d) After the hearing, an administrative law judge may order DCS to credit the obligor's support account for a specified dollar amount of payments not made through DCS, or for all payments owed through a specified date.

(e) The other provisions of this section notwithstanding, an administrative law judge does not have jurisdiction under this section in cases where the administrator is enforcing another jurisdiction's order.

(6) Nothing in this rule precludes DCS from giving credit for payments not made through DCS when a judicial determination has been made giving credit or satisfaction, or when the person to whom the support is owed has completed and signed a "satisfaction of support judgment" form adopted by DCS in accordance with OAR 137-055-5220.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 25.020 & 25.085
Hist.: AFS 42-1995, f. 1-28-95, cert. ef. 1-1-96; AFS 8-1996, f. 2-23-96, cert. ef. 3-1-96; AFS 7-1998, f. 3-30-98, cert. ef. 4-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0157; AFS 15-2002, f. 10-30-02, ef. 11-1-02; SSP 15-2003, f. 6-25-03, cert. ef. 6-30-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-5240; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-5240; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f & cert. ef. 1-3-06; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11

137-055-5400
Obligor Receiving Cash Assistance, Presumed Unable to Pay Child Support

(1) Cases for obligors receiving cash assistance as specified in ORS 25.245 from Oregon will be identified and processed as set forth in 25.245. Obligors receiving cash assistance as specified in 25.245 from another state or tribe must provide to the administrator written proof of receipt of such cash assistance. The written proof must:

(a) Be provided by the obligor to the administrator to initiate suspension and every three months thereafter;

(b) Include the date the cash assistance payment was first made, the amount of the cash assistance for each and every month in which cash assistance was received, and the ending date, if known, of the cash assistance;

(c) Be official documentation, recognized by the issuing agency, that covers each and every month that cash assistance was received, including but not limited to a benefits award letter, deposit record or receipt.

(2)(a) When an obligor has provided written proof of receipt of cash assistance pursuant to section (1) of this rule, the administrator will, subject to section (3) of this rule, credit the case for arrears accrued from the date the obligor submitted written proof of receipt of cash assistance back to the date the cash assistance was first made, but not earlier than October 6, 2001;

(b) When an obligor notifies the administrator that the obligor is no longer receiving cash assistance, the administrator will begin accrual and billing pursuant to the support order currently in effect with the next support payment due following the end of the last month that the obligor received public assistance;

(c) If the obligor fails to provide written proof of receipt of cash assistance pursuant to section (1) of this rule, the administrator will begin accrual and billing pursuant to the support order currently in effect with the next support payment due for the month following the month for which the obligor last provided written proof;

(d) If the obligor provides written proof of receipt of cash assistance pursuant to section (1) of this rule after failing to provide timely written proof of receipt of cash assistance within three months, thereby causing the administrator to begin billing and accrual pursuant to subsection (c) of this section, support accrual may be suspended and arrears may be credited pursuant to subsection (a) of this section.

(3)(a) Upon receipt of information that the obligor is receiving or has received cash assistance as specified in ORS 25.245(1), the administrator will send a notice to all parties to the support order. The notice will contain a statement of the presumption that support accrual ceases and include the following:

(A) A statement of the month in which cash assistance was first made, and the ending date, if known;

(B) A statement that, unless the party objects, child support payments cease accruing beginning with the support payment due on or after the date the obligor began receiving cash assistance, but not earlier than:

(i) January 1, 1994, if the obligor received Oregon Title IV-A cash assistance, Oregon general cash assistance, Oregon Supplemental Income Program cash assistance or Supplemental Security Income Program payments by the Social Security Administration; or

(ii) October 6, 2001, if the obligor received Title IV-A cash assistance or general cash assistance from another state or Tribe;

(C) A statement that the administrator will continue providing enforcement services, including services to collect any arrears;

(D) A statement that if the obligor ceases to receive cash assistance as specified in ORS 25.245(1), accrual and billing will begin with the next support payment due following the end of the last month that the obligor receives cash assistance or for which the obligor provided written proof;

(E) A statement that any party may object to the presumption that the obligor is unable to pay support by sending to the administrator a written objection within 30 days of the date of service;

(F) A statement that the objections must include a written description of the resource or other evidence that might rebut the presumption of inability to pay; and

(G) A statement that the entity responsible for providing enforcement services represents the state and that low cost legal counsel may be available.

(b) Included with each notice under this section will be a separate form for the party to use if they choose to file an objection to the presumption that the obligor is unable to pay support.

(4) No credit will be given for periods for which the court or administrative law judge has previously declined to suspend the obligor's child support obligation in an action under ORS 25.245;

(5) No credit will be given for months when the administrator had suspended accrual or where credit was already received.

Stat. Auth.: ORS 25.245 & 180.345

Stats. Implemented: ORS 25.245

Hist.: AFS 4-1994, f. & cert. ef. 3-4-94; AFS 20-1998, f. & cert. ef. 10-5-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0120; AFS 23-2001, f. 10-2-01, cert. ef. 10-6-01; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-5400; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-5400; DOJ 5-2005, f. & cert. ef. 7-15-05; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f & cert. ef. 1-3-06; DOJ 13-2011, f. 12-30-11, cert. ef. 1-3-12; DOJ 15-2012, f. 9-27-12, cert. ef. 10-1-12

137-055-5510

Request for Credit Against Child Support Arrears for Physical Custody of Child

The terms used in this rule have the meanings set out in OAR 137-055-6010.

(1) In accordance with ORS 416.425, the administrator may allow a credit against child support arrearages for periods of time during which the obligor has physical custody of the child(ren) when:

(a) Physical custody was pursuant to a court ordered parenting time schedule and the court order specifically states that the obligor is allowed a credit for parenting time that is not already factored into the monthly child support amount;

(b) Physical custody was with the knowledge and consent of the obligee; or

(c) The obligor has custody of the child(ren) pursuant to court order.

(2) A request for credit against child support arrears under this rule must be made in writing:

(a) If the credit is requested for a time period immediately prior to the effective date of the modification; or

(b) Independently of a request for modification, for any time period within two years prior to the date of the request.

(3)(a) Credit for physical custody may only be given if the child(ren) is/are with the obligor for 30 consecutive days or the entire month for which credit is sought. When the obligor is seeking a credit for fewer than all of the children under a child support order, a credit may only be given if the order is not a class order as defined in OAR 137-055-1020.

(b) Credit for physical custody may not be given against any arrears which have accrued to a child attending school account under ORS 107.108 and OAR 137-055-5110.

(4) Notwithstanding subsections (3)(a) and (b), the credit may only be allowed to the extent it will not result in a credit balance, as defined in OAR 137-055-3490(1).

(5) The administrator will send to the parties by regular mail, or by service, as part of the modification action, notice and proposed order of the intended action, including the amount to be credited. Such notice will inform the parties that:

(a) Within 30 days from the date of this notice, a party may request an administrative hearing;

(b) The request for hearing must be in writing;

(c) The only basis upon which a party may object is that:

(A) The obligor did not have physical custody of all the child(ren) under the support order for the time periods requested;

(B) The obligor had physical custody of the child(ren), but the custody was not with the knowledge and consent of the obligee and the obligor does not have legal custody of the child(ren);

(C) The obligor had physical custody of the child(ren) pursuant to a court order for parenting time and the order does not allow the obligor a credit for periods of parenting time.

(6) Credit for physical custody will not be allowed for any child who is a child attending school or an adult child as defined in ORS 107.108 and OAR 137-055-5110.

(7) If a credit is allowed pursuant to this rule, the credit will be applied as follows:

(a) If none of the arrears are assigned to the state, the credit will be applied to the family's unassigned arrears;

(b) If there are arrears assigned to the state and the child was receiving assistance during any time period for which the obligor had

physical custody of the child(ren), the credit will be applied in the following sequence:

(A) State's permanently assigned arrears, not to exceed the amount of unreimbursed assistance;

(B) State's temporarily assigned arrears, not to exceed the amount of unreimbursed assistance;

(C) Family's unassigned arrears;

(D) Family's conditionally assigned arrears.

(c) If there are arrears assigned to the state and the child was not receiving assistance during any time period for which the obligor had physical custody of the child(ren), the credit will be applied in the following sequence:

(A) Family's unassigned arrears;

(B) Family's conditionally assigned arrears;

(C) State's permanently assigned arrears, not to exceed the amount of unreimbursed assistance;

(D) State's temporarily assigned arrears, not to exceed the amount of unreimbursed assistance.

(8) Any appeal of the decision made by an administrative law judge must be to the circuit court for a hearing de novo pursuant to ORS 416.427.

Stat. Auth.: ORS 180.345 & 416.455
Stats. Implemented: ORS 416.425
Hist.: DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 10-2004, f. & cert. ef. 7-1-04; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f & cert. ef. 1-3-06; DOJ 1-2007, f. & cert. ef. 1-2-07; DOJ 7-2014, f. & cert. ef. 4-1-14

137-055-5520
Request for Credit Against Child Support Arrears for Social Security or Veterans' Benefits Paid Retroactively on Behalf of a Child

(1) In accordance with ORS 107.135 and 416.425, the purpose of this rule is to define the process for allowing a credit against child support arrears for Social Security or Veterans' benefits paid retroactively to the child, or to a representative payee administering the funds for the child's use and benefit.

(2) A request for credit against arrears under this rule may be for:

(a) A lump sum; or

(b) Monthly amounts which, when added together, equal a lump sum.

(3) As used in this rule, Social Security benefits are as defined in OAR 137-050-0740.

(4) As used in this rule, Veterans' benefits include both apportioned Veterans' benefits and Survivors and Dependents Educational Assistance, as defined in OAR 137-050-0740.

(5) The request for credit against arrears will be considered if submitted in writing and credit has not already been given for the same payments.

(6) A request for credit against a child support arrears for Social Security or Veterans' benefits paid retroactively on behalf of the child may be made either:

(a) With a request for a periodic review and modification or a substantial change in circumstance modification if there is a current support obligation for that child. The modification must have an effective date on or after October 23, 1999; or

(b) Independently of a request for a modification if the order has already been modified to reflect that the obligor receives Social Security or Veterans' benefits or there is no longer a current support obligation for the child.

(7) A party must provide documentation of the Social Security Administration (SSA) or Department of Veterans' Affairs (DVA) retroactive payment paid on behalf of the child.

(8)(a) The credit for Survivors and Dependents Educational Assistance will be a dollar for dollar credit against the child support arrears; and

(b) The credit for Social Security and apportioned Veterans' benefits may be a dollar for dollar credit against the child support arrears.

(9) Notwithstanding subsections (8)(a) and (b), the maximum credit allowed will be limited to the amount of the child support arrears. In no circumstances will the credit exceed the amount of the retroactive SSA or DVA payment made on behalf of the child.

(10) The administrator will send to the parties by regular mail notice and proposed order of the intended action, including the amount to be credited and how the amount was calculated. Such notice will advise the parties of the right to an administrative hearing regarding this action:

(a) Within 30 days from the date of this notice, a party may request an administrative hearing as specified in the notice;

(b) The request for hearing must be in writing;

(c) The only basis upon which a party may object is that:

(A) The lump sum payment was not received;

(B) The lump sum payment amount used in the calculation is not correct; or

(C) The amount of the credit is not correct because credit has already been given for all or part of the lump sum payment.

(d) Any appeal of the decision made by an administrative law judge will be to the circuit court for a hearing de novo.

(11) If no timely written request for hearing is received, the order will be filed in circuit court.

(12) If the credit determined in subsections (8)(a) and (b), is less than the amount of arrears owed per section (9), the file credit will be applied as follows:

(a) If none of the arrears are assigned to the state, the credit will be applied to the family's unassigned arrears;

(b) If there are arrears assigned to the state and the child was receiving assistance during any time period covered by the retroactive payment per the SSA or DVA determination letter, the credit will be applied in the following sequence:

(A) State's permanently assigned arrears, not to exceed the amount of unreimbursed assistance;

(B) State's temporarily assigned arrears, not to exceed the amount of unreimbursed assistance;

(C) Family's unassigned arrears;

(D) Family's conditionally assigned arrears.

(c) If there are arrears assigned to the state and the child was not receiving assistance during any time period covered by of the retroactive payment per the SSA or DVA determination letter, the credit will be applied in the following sequence:

(A) Family's unassigned arrears;

(B) Family's conditionally assigned arrears;

(C) State's permanently assigned arrears, not to exceed the amount of unreimbursed assistance;

(D) State's temporarily assigned arrears, not to exceed the amount of unreimbursed assistance.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 25.020, 107.135 & 416.425
Hist.: AFS 13-1999, f. 10-29-99, cert. ef. 11-1-99; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0159; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-5520; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-5520; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f & cert. ef. 1-3-06; DOJ 6-2006, f. & cert. ef. 10-2-06; DOJ 9-2009, f. & cert. ef. 7-1-09

137-055-6010
Definitions for Distribution and Disbursement

For purposes of OAR 137-055-6020 through 137-055-6024, the following definitions apply:

(1) "Assistance" means cash assistance under Temporary Assistance for Needy Families (TANF) program, or foster care maintenance payments provided by the Department of Human Services (DHS), or cost of care provided by the Oregon Youth Authority (OYA).

(2) "Current support" means the monthly support amount ordered by a court or administrative process for the benefit of a child and/or a former spouse.

(3) "Electronic funds transfer (EFT)" and "Electronic data interchange (EDI)" means the movement of funds and information by nonpaper means, usually through a payment system including, but not limited to, an automated clearing house (ACH), the Federal Reserve's Fedwire system, magnetic tape, direct deposit or stored value card.

(4) "Family's conditionally-assigned arrears" means past-due support that accrues during non-assistance periods, and was not permanently assigned under pre-October 1997 assignments, which revert back to the family on either October 1, 2000, if the family terminates assistance prior to October 1, 2000, or on the date the family leaves the assistance program if on or after October 1, 2000. Beginning October 1, 2009, for TANF assignments, the family's conditionally-assigned arrears are no longer temporarily-assigned to the state during assistance periods. They remain conditionally-assigned to the family. For foster care and OYA assignments, family's conditionally-assigned arrears revert to state's temporarily-assigned arrears during periods that the child or children are in the state's care.

(5) "Family's unassigned arrears" means past-due support which accrues after the family's most recent period of assistance, or at any time in the case where a family has never received assistance.

(6) "Family's unassigned arrears during assistance period" means past-due support which accumulates while a family receives assistance and exceeds the total amount of unreimbursed assistance paid to the family.

(7) "Future support" means an amount received which represents payment on current support or arrears for future months.

(8) Pass-through means current support for a child or children, which is assigned for TANF but is disbursed to the obligee before any remaining amount of current support is retained by the state.

(9) "State's permanently-assigned arrears" means:

(a) Past-due support which accrues during the period the family receives assistance and past-due support which accrued before the family applied for assistance in pre-October 1997 assignments only; or

(b) Advance payments owed to the State of Oregon under OAR 137-055-6210.

(10) "State's temporarily-assigned arrears" means past-due support assigned to the state during assistance periods, but which accrued during non-assistance periods, and were not permanently assigned under pre-October 1997 assignments. Beginning October 1, 2009, for TANF assignments, state's temporarily-assigned arrears permanently revert to family's conditionally-assigned arrears when the family is no longer receiving assistance, and unassigned family arrears which accrue during non-assistance periods will no longer be temporarily-assigned to the state during assistance periods. For foster care and OYA assignments, state's temporarily-assigned arrears revert to family's conditionally-assigned arrears during periods that the child or children are not in the state's care.

(11) "Unreimbursed assistance" means the cumulative amount of assistance paid to a family or on behalf of a child(ren) for all months which has not been recovered by assigned support collections. The total amount of unreimbursed assistance that may be recovered is limited by the total amount of the assigned support obligation. [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 25.020 & 180.345

Stats. Implemented: ORS 25.020; 412.024 & 418.032

Hist.: DOJ 1-2007, f. & cert. ef. 1-2-07; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 13-2008, f. & cert. ef. 10-1-08; DOJ 12-2009, f. & cert. ef. 10-1-09

137-055-6020
Disbursement by Electronic Funds Transfer/Electronic Data Interchange

(1) In addition to the definitions found in OAR 137-055-5110 and 137-055-6010, the following terms have the meanings given below:

(a) "Individual" includes but is not limited to: a judgment creditor, obligee, caretaker, child attending school, or adult child.

(b) "Other entities" includes but is not limited to: private collection agencies and other state IV-D agencies.

(2) The Department of Justice (DOJ), Division of Child Support's (DCS) primary payment method, to any individual entitled to receive support payments, is electronic funds transfer (EFT) which may be by:

(a) Direct deposit to a checking or savings account that is located in a financial institution in the United States; or

(b) Stored value card (including but not limited to ReliaCard).

(3) Notwithstanding section (2), DCS will disburse support payments to individuals by check when specific exceptions apply:

(a) The individual does not have a social security number; or

(b) The individual's special circumstances, which DOJ will review on a case by case basis based on the criteria of whether the issuance of a paper check would be in the best interests of the child(ren).

(4) A request for exception must be made in writing.

(5) DCS will review the request for exception, determine whether to allow or deny the exception, and notify the requesting party of its decision within 30 days of receipt of the request.

(6) DCS's decision is final with regard to the request for exception, but the decision may be appealed as an other than contested case under ORS 183.484.

(7) DCS may disburse payments to other entities by EFT, electronic data interchange (EDI) or by paper check.

(8) Support payments for individuals who have contracted with a private collection agency will be handled pursuant to OAR 137-055-6025.

Stat. Auth.: ORS 25.020; 180.345; 293.525

Stats. Implemented: ORS 293.525

Hist.: PWC 851(Temp), f. & ef. 8-11-77; Renumbered from 461-004-0518 to 461-035-0003 by AFS 3-1978, f. & ef. 1-6-78; AFS 88-1980, f. & ef. 12-10-80; AFS 23-1987(Temp), f. 6-19-87, ef. 7-1-87; AFS 60-1987, f. & ef. 11-4-87; AFS 31-1989, f. 6-6-89, cert. ef. 6-9-89, Renumbered from 461-035-0003; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89, Renumbered from 461-035-0410; AFS 6-2000, f. 2-19-00, cert. ef. 3-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0248; AFS 23-2001, f. 10-2-01, cert. ef. 10-6-01; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; AFS 15-2002, f. 10-30-02, ef. 11-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-6020; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-6020; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 10-2004, f. & cert. ef. 7-1-04; DOJ 12-2004, f. & cert. ef. 10-1-04; DOJ 5-2005, f. & cert. ef. 7-15-05; DOJ 9-2005, f. & cert. ef. 10-3-05; DOJ 1-2007, f. & cert. ef. 1-2-07

137-055-6021
Distribution and Disbursement: General Provisions

The terms used in this rule have the meanings set out in OAR 137-055-1020 and 137-055-6010.

(1) The Department of Justice (DOJ) will disburse support payments within two business days after receipt if sufficient information identifying the payee is provided, except:

(a) Support payments received as a result of tax refund intercepts will be distributed and, as appropriate, disbursed within thirty calendar days of receipt or, if applicable, within fifteen calendar days of an administrative review or hearing. If the state is notified by the Secretary of the U.S. Treasury (the Secretary) or the Oregon Department of Revenue (DOR) that an offset on a non-assistance case is from a refund based on a joint return, distribution may be delayed, up to a maximum of six months, until notified by the Secretary or DOR that the obligor's spouse has been paid their share of the refund;

(b) Support payments received from a garnishment will be disbursed as provided in OAR 137-055-4520;

(c) Support payments for future support will be distributed and, as appropriate, disbursed as provided in section (13) of this rule;

(d) Support payments for less than five dollars;

(A) May be delayed until a future payment is received which increases the payment amount due the family to at least five dollars; or

(B) Will be retained by DOJ if case circumstances are such that there is no possibility of a future payment, unless the obligee:

(i) Has direct deposit;

(ii) Receives ReliaCard payments; or

(iii) Requests issuance of a check, if the obligee does not have direct deposit or has an exemption from receiving ReliaCard payments.

(e) When an obligor contests an order to withhold, funds will be disbursed pursuant to OAR 137-055-4160(5).

(2) DOJ will distribute support payments received on behalf of a family who has never received assistance to the family, first toward current support, then toward support arrears, not to exceed the amount of arrears.

(3)(a) DOJ may send support payments designated for the obligee to another person or entity caring for the child(ren) if physical custody has changed from the obligee to the other person or entity; however, prior to doing so, DOJ will require a notarized statement of authorization from the obligee or a court order requiring such disbursement.

(b) DOJ will change the payee to a private collection agent that the obligee has retained for support enforcement services only in accordance with OAR 137-055-6025.

(c) DOJ will redirect payments for the child who qualifies as a child attending school under ORS 107.108 and OAR 137-055-5110 only in accordance with 137-055-5110.

(4) Child support and spousal support have equal priority in the distribution of payments.

(5) Current child support and cash medical support will be distributed and disbursed on a prorated basis. To calculate the prorated distribution for each case, the administrator will determine the amount designated as child support and the amount designated as cash medical support, and divide each by the total support obligation. For example: the total support obligation is $400, of which $300 is child support and $100 is cash medical support; a payment of $300 is received. In this example, the child support is 75 percent of the total support obligation so $225 would be distributed and disbursed to child support; cash medical support is 25 percent of the total support obligation so $75 would be distributed and disbursed to cash medical support.

(6)(a) For Oregon support orders or modifications, a prorated share (unless otherwise ordered) of current support payments received within the month due will be disbursed directly to the child who qualifies as a child attending school under ORS 107.108 and OAR 137-055-5110.

(b) Any arrears resulting from unpaid current support to the child attending school will accrue to the child until the child reaches the age of 21 or is otherwise emancipated, at which time arrears will revert to, and be owed to, the obligee.

(c) Any payment received on arrears will be disbursed in equal shares to the obligee and to the child if the arrears accrued while the child was a child attending school, until the child reaches the age of 21 or is otherwise emancipated.

(7) If the obligor has a current support obligation for multiple children on a single case, those children have different assistance statuses and the order does not indicate a specified amount per child, current support payments will be prorated based upon the number of children and their assistance status. Support payments in excess of current support for these cases will be distributed and, as appropriate, disbursed as provided in OAR 137-055-6022.

(8) DOJ will retain the fee charged by the Secretary for cases referred for Full Collection Services per OAR 137-055-4360 from any amount subsequently collected by the Secretary under this program. DOJ will credit the obligor's case for the full amount of collection and distribute and, as appropriate, disburse the balance as provided in OAR 137-055-6022.

(9) Unless a federal tax refund intercept collection is disbursed to assigned support, DOJ will retain the fee charged by the Secretary. Despite the fee, DOJ will credit the obligor's case for the full amount of the collection. If the collection is disbursed to assigned support, DOJ will pay the fee.

(10) Unless a state tax refund intercept collection is disbursed to assigned support, DOJ will retain the fee charged by the Department of Revenue. Despite the fee, DOJ will credit the obligor's case for the full amount of the collection. If the collection is disbursed to assigned support, DOJ will pay the fee.

(11) Within each arrears type in the sequence of payment distribution and disbursement in OAR 137-055-6022, 137-055-6023 or 137-055-6024, DOJ will apply the support payment to the oldest debt in each arrears type.

(12) Any excess funds remaining after arrears are paid in full will be processed as provided in OAR 137-055-6260 unless the obligor has elected in writing to apply the credit balance toward future support as provided in section (13) of this rule.

(13) DOJ will distribute and, as appropriate, disburse support payments representing future support on a monthly basis when each such payment actually becomes due. No amounts may be applied to future months unless current support and all arrears have been paid in full.

Stat. Auth.: ORS 25.020, 25.610 & 180.345
Stats. Implemented: ORS 18.645, 25.020 & 25.610
Hist.: DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f & cert. ef. 1-3-06; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; DOJ 1-2007, f. & cert. ef. 1-2-07; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 13-2011, f. 12-30-11, cert. ef. 1-3-12

137-055-6022
Distribution and Disbursement When Support Assigned

The terms used in this rule have the meanings set out in OAR 137-055-1020 and 137-055-6010.

(1) Except as provided in OAR 137-055-6021, 137-055-6023, 137-055-6024 and section (4) of this rule, the Department of Justice (DOJ) will distribute and, as appropriate, disburse support payments received on behalf of a family receiving Temporary Assistance for Needy Families (TANF) cash payments in the following sequence:

(a) Current support to the state, not to exceed the amount of unreimbursed assistance;

(b) State's permanently-assigned arrears, excluding advance payment (AVP) amounts owed to the state under OAR 137-055-6210, not to exceed the amount of unreimbursed assistance;

(c) State's temporarily-assigned arrears, not to exceed the amount of unreimbursed assistance;

(d) AVP amounts;

(e) Family's unassigned arrears during assistance period;

(f) Family's unassigned arrears;

(g) Family's conditionally-assigned arrears;

(h) If the total amount received is sufficient to pay the arrears in full, any remaining funds may be disbursed to a parentage testing fee if the support payment is from a state tax refund intercept, or if the payment meets the provisions in OAR 137-055-6023(1) & (2).

(2) Except as provided in OAR 137-055-6021, 137-055-6023, 137-055-6024 and section (4) of this rule, the Department of Justice (DOJ) will distribute and, as appropriate, disburse support payments received on behalf of a family with a child(ren) in foster care or in Oregon Youth Authority (OYA) custody in the following sequence:

(a) Current support to the state;

(b) State's permanently-assigned arrears, excluding AVP amounts;

(c) State's temporarily-assigned arrears;

(d) AVP amounts;

(e) Family's unassigned arrears during assistance period;

(f) If the total amount received is sufficient to pay the arrears in full, any remaining funds may be disbursed to a parentage testing fee if the support payment is from a state tax refund intercept, or if the payment meets the provisions in OAR 137-055-6023(1) & (2).

(g) If the state is making foster care maintenance payments on behalf of the child(ren), support payments in excess of the maintenance payments, up to the total support obligation owed, will be reported as excess and be paid to Department of Human Services (DHS) to be used in the manner it determines will serve the best interests of the child(ren).

(h) If the child is in OYA custody, support payments in excess of unreimbursed assistance, up to the total support obligation owed, will be reported as excess and be paid to OYA.

(3) Except as provided in section (4) of this rule, DOJ will distribute and, as appropriate, disburse support payments received on behalf of a family who formerly received assistance in the following sequence:

(a) Current support to the family;

(b) Family's unassigned arrears;

(c) Family's conditionally-assigned arrears;

(d) State's permanently-assigned arrears, not to exceed the amount of unreimbursed assistance;

(e) Family's unassigned arrears during assistance period.

(f) If the total amount received is sufficient to pay the arrears in full, any remaining funds may be disbursed to a parentage testing

fee if the support payment is from a state tax refund intercept, or if the payment meets the provisions in OAR 137-055-6023(1) & (2).

(4) DOJ will distribute and, as appropriate, disburse support payments received from federal tax refund intercepts in the following sequence:

(a) State's permanently-assigned arrears, excluding AVP amounts, not to exceed the amount of unreimbursed assistance;

(b) State's temporarily-assigned arrears, not to exceed the amount of unreimbursed assistance;

(c) Family's conditionally-assigned arrears not to exceed the amount of unreimbursed assistance;

(d) AVP amounts;

(e) Family's unassigned arrears.

(5) Whenever support payments are assigned to the state, the state share of the payments will be either:

(a) Disbursed to DHS if funds were expended to provide foster care assistance to the family;

(b) Disbursed to OYA if funds were expended by OYA to provide assistance to a member of the family; or

(c) Retained by DOJ if funds were expended to provide TANF cash assistance to the family, except:

(A) As payments are received each month, DOJ will pass through to the obligee no more than $50 for each dependent child, up to a maximum of $200 per month, not to exceed the current support due that month.

(B) Current support collected from each obligor may only be passed through for the child(ren) of that obligor, even if the maximum pass-through has not been met.

(6) Whenever support payments are assigned to a Tribe, the Tribe's share of the payments will be disbursed to the Tribe as provided in 42 USC 657.

Stat. Auth.: ORS 25.020 & 180.345
Stats. Implemented: ORS 25.020 & 25.150
Hist.: DOJ 9-2005, f. & cert. ef. 10-3-05; DOJ 1-2007, f. & cert. ef. 1-2-07; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 13-2008, f. & cert. ef. 10-1-08; DOJ 1-2010, f. & cert. ef. 1-4-10

137-055-6023
Exceptions to Distribution and Disbursement

(1) Notwithstanding the provisions of OAR 137-055-6021 to 137-055-6024, support payments received as a result of a personal or real property judgment lien may be distributed and disbursed to pay a parentage test judgment.

(2) Notwithstanding OAR 137-055-6024, DOJ may distribute and, as appropriate, disburse support payments to multiple cases as directed when the obligor or a responding jurisdiction designates in writing the amounts to be distributed and, as appropriate, disbursed to each case, if the designation is made at the time of payment.

(3) Notwithstanding OAR 137-055-6024, DOJ will distribute and, as appropriate, disburse support payments to one case, rather than proportionately, when:

(a) The obligor designates in writing a specific case for which payment is to be applied;

(b) The support payment resulted from a garnishment, issued pursuant to ORS Chapter 18, on a particular case;

(c) The support payment resulted from the sale or disposition of a specific piece of property against which a court awarded a specific obligee a judgment lien for child support;

(d) The support payment resulted from a contempt order in a particular case; or

(e) Any other judicial order requires distribution and, as appropriate, disbursement to a particular case.

Stat. Auth.: ORS 25.020 & 180.345
Stats. Implemented: ORS 25.020
Hist.: DOJ 9-2005, f. & cert. ef. 10-3-05; DOJ 6-2006, f. & cert. ef. 10-2-06; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 4-2011, f. & cert. ef. 7-1-11

137-055-6024
Distribution and Disbursement on Multiple Cases

The terms used in this rule have the meanings set out in OAR 137-055-1020 and 137-055-6010.

(1) When an obligor has multiple support cases, the distribution and, as appropriate, disbursement sequence for each case will be as provided in OAR 137-055-6022, but the Department of Justice (DOJ) will distribute and, as appropriate, disburse support payments to each of the multiple cases as follows:

(2) When withholder remits a single payment that is a combined payment intended to comply with more than one income withholding order against the obligor, and the obligor's income is sufficient for the withholder to fully comply with each order to withhold income issued pursuant to ORS chapter 25, DOJ will ensure that the amount distributed and, as appropriate, disbursed to each case is consistent with the withholding order's limitations. However, when the obligor is paid more than once a month, for those months in which there is an extra pay period due to the manner in which pay periods fall during the year, the payment may be distributed and, as appropriate, disbursed to each case when it is received, even if the monthly withholding limitation has already been reached.

(3) When withholder remits a single payment that is a combined payment intended to comply with more than one income withholding order against the obligor, but the obligor's income is not sufficient for the withholder to fully comply with each order to withhold income issued pursuant to ORS Chapter 25, DOJ will distribute and, as appropriate, disburse the amount received as follows:

(a) If the amount is not sufficient to pay the current support due on all of the obligor's support cases for which an order to withhold is in effect, each withholding case will receive a share of the total amount withheld determined by dividing the amount of current support remaining due on the case by the total combined amount of current support remaining due on all of the obligor's support cases to which the proceeds of the order to withhold will be applied, and then multiplying the resulting percentage by the total amount withheld.

(b) If the amount withheld from the obligor's income is sufficient to pay the remaining current support due on all cases, but is not enough to fully comply with the order to withhold on all cases where arrears are owed, the amount received will be distributed and, as appropriate, disbursed as follows:

(A) Current support to each withholding case;

(B) Equally to each withholding case where arrears are owed. However, no case may receive more than the maximum allowable withholding amount for that case pursuant to ORS 25.414 or, as appropriate, under an expanded income withholding pursuant to 25.387. Any remaining funds will be equally distributed and, as appropriate, disbursed to the obligor's other cases. No case may receive more than the total amount of current support and arrears owed on that case at the time this distribution and disbursement is made.

(4) When support payments are received from federal tax refund intercepts the payment will first be processed under OAR 137-055-6021(9). If the payment is not sufficient to pay the full arrears amount on each case certified for federal offset, DOJ will distribute and, as appropriate, disburse the amount received as follows:

(a) If the total amount received is not sufficient to pay the state's permanently-assigned arrears on all of the obligor's certified cases, each certified case with permanently-assigned arrears will receive an equal share. However, no case may receive more than the state's permanently-assigned arrears on that case.

(b) If the total amount is sufficient to pay the state's permanently-assigned arrears on all certified cases, but is not enough to pay in full all the state's temporarily-assigned or the family's conditionally-assigned arrears on all of the obligor's certified cases, the amount received will be distributed and, as appropriate, disbursed as follows:

(A) State's permanently-assigned arrears to each certified case;

(B) An equal share of the remaining funds for each certified case with state's temporarily-assigned or family's conditionally-assigned arrears. However, no case may receive more than the state's temporarily-assigned or the family's conditionally-assigned arrears on that case.

(c) If the total amount is sufficient to pay the state's permanently assigned arrears and the state's temporarily-assigned or the family's conditionally-assigned arrears on all certified cases, but is not enough to pay in full the family's unassigned arrears on all of the obligor's

certified cases, the amount received will be distributed and, as appropriate, disbursed as follows:

(A) State's permanently-assigned arrears to each certified case;

(B) State's temporarily-assigned or the family's conditionally-assigned arrears to each certified case;

(C) An equal share of the remaining funds for each certified case with family's unassigned arrears. However, no case may receive more than the total amount of arrears owed on that case at the time this distribution or disbursement is made.

(5) When a single writ of garnishment is issued for two or more cases as provided in ORS 18.645, DOJ will distribute and, as appropriate, disburse support payments only among the cases listed in the writ of garnishment and in the manner provided in section (6) of this rule.

(6) Except as provided in OAR 137-055-6023, DOJ will distribute and, as appropriate, disburse all other support payments received, including support payments received from state tax refund intercepts, as follows:

(a) When support payments are received from state tax refund intercepts, the payment will first be processed under OAR 137-055-6021(10).

(b) If the total amount is not sufficient to pay the current support due on all of the obligor's support cases, each case will receive a share of the total amount received determined by dividing the amount of current support remaining due on the case by the total combined amount of current support remaining due on all of the obligor's support cases, and then multiplying the resulting percentage by the total amount received.

(c) If the amount received is sufficient to pay the remaining current support due on all cases, but is not enough to pay in full all cases where arrears are owed, the amount received will be distributed and, as appropriate, disbursed as follows:

(A) Current support to each case;

(B) Equally to each case where arrears are owed. However, no case may receive more than the total amount of current support and arrears owed on that case at the time this distribution and disbursement is made. Any remaining funds will be equally distributed and disbursed to the obligor's other cases.

(d) If the total amount received is sufficient to pay the arrears in full on all cases, any remaining funds may be distributed to parentage testing fees if the support payment is from a state tax refund intercept, or if the payment meets the provisions in OAR 137-055-6023(1) & (2).

Stat. Auth.: ORS 25.020 & 180.345
Stats. Implemented: ORS 18.645, 25.020, 25.387, 25.414 & 25.610
Hist.: DOJ 9-2005, f. & cert. ef. 10-3-05; DOJ 1-2007, f. & cert. ef. 1-2-07; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 1-2010, f. & cert. ef. 1-4-10; DOJ 9-2014, f. & cert. ef. 5-22-14

137-055-6025
Distribution of Support Payments to Private Collection Agencies

(1) For purposes of this rule, the following definitions apply:

(a) "Collection agency" means a collection agency as defined by ORS 697.005;

(b) "Enforcement action" means any action taken by a collection agency to ensure payment of support by an obligor, including but not limited to contact for the purposes of discussing payments by the collection agency in person or through mail, e-mail or telephone with the obligor, members of the obligor's household or the obligor's employer. "Enforcement action" does not mean investigative and locate services provided by a collection agency.

(c) "Legally entitled to" means support payments which the Division of Child Support (DCS) is required to disburse to the obligee pursuant to OAR 137-055-6010, but does not include support payments that DCS is required to disburse to the child attending school pursuant to ORS 107.108 and OAR 137-055-5110.

(2) When the Oregon Child Support Program (CSP) is notified by a collection agency or an obligee that the obligee has entered into an agreement with a collection agency, the administrator will send to the obligee an authorization form developed pursuant to section (7) of this rule.

(3) Before DCS may adjust the payment records and begin forwarding support payments to the collection agency pursuant to section (4) of this rule, the obligee must submit a signed and notarized authorization form to the CSP with the following information:

(a) The child support case number;

(b) The obligee's and obligor's full names;

(c) The names of the children on the child support case for whom the obligee is entitled to receive support; and

(d) The name and address of the collection agency to which payments should be sent.

(4) Upon receipt of a completed authorization form DCS will:

(a) Adjust the child support case record for disbursement of support payments to the collection agency. If support payments are currently being disbursed to a different collection agency, DCS will adjust the child support case record for disbursement of support payments to the collection agency for which the obligee has most recently provided authorization;

(b) Send the notice developed pursuant to subsection (7)(b) of this rule to the other parties;

(c) Credit the obligor's account for the full amount of each support payment received by DCS; and

(d) Disburse support payments received, to which the obligee is legally entitled, to the collection agency.

(5)(a) DCS may stop disbursing support payments to a collection agency and reinstate disbursements to the obligee if:

(A) The obligee notifies the CSP that the agreement with the collection agency has been terminated;

(B) The obligee requests that the CSP stop disbursing support payments to the collection agency;

(C) The administrator is made aware that the collection agency is not in compliance with the provisions of section (8) of this rule; or

(D) The Department of Consumer and Business Services (DCBS) notifies the Department of Justice that the collection agency is in violation of its rules.

(b) DCS will stop disbursing child support payments to the collection agency only after the child support case record has been adjusted following the date that notification from the obligee was received or the date the administrator is otherwise made aware that the collection agency is not in compliance with section (8) of this rule or rules adopted by DCBS. DCS will, at no time, be responsible for returning support payments to the obligee that were disbursed to the collection agency prior to the child support case record having been adjusted following the date that notification from the obligee was received.

(6) The administrator may use information disclosed by the collection agency to provide support enforcement services under ORS 25.080.

(7) The CSP will develop:

(a) An authorization form to be sent to an obligee when the obligee or the collection agency notifies CSP that the obligee has entered into an agreement with a collection agency. The form will include a notice to the obligee printed in type size equal to at least 12-point type that the obligee may be eligible for support enforcement services from the CSP without paying the interest or fee that is typically charged by a collection agency; and

(b) A form to be sent to the other parties to the case when DCS has been given authorization by the obligee to disburse support payments to a collection agency.

(8) A collection agency to which the obligee has provided authorization for DCS to disburse support payments:

(a) May only provide investigative and locate services to the obligee unless written authorization is received from the administrator as provided in section (9) of this rule;

(b) May disclose relevant information from services provided under subsection (a) of this section to the administrator for purposes of providing support enforcement services under ORS 25.080;

(c) May not charge interest or a fee for services exceeding 29 percent of each support payment received by the collection agency to which the obligee is legally entitled unless the collection agency, if allowed by the terms of the agreement between the collection agen-

cy and the obligee, hires an attorney to perform legal services on behalf of the obligee;

(d) Will include in the agreement with the obligee a notice that provides information on the fees, penalties, termination and duration of the agreement; and

(e) Will report in writing to DCS the full amount of any payment collected as a result of an enforcement action taken within ten days of disbursing the payment to the obligee.

(9) Upon request, the administrator may provide written authorization to the collection agency to initiate enforcement action to collect the support award. The authorization may:

(a) Authorize a specific enforcement action only; or

(b) Authorize any enforcement action until further notice from the administrator.

(10) A power of attorney given to a collection agency by an obligee does not change the rights and responsibilities of the parties or a collection agency as described in ORS 25.020 or this rule.

(11) The administrator will not disclose any information from a child support record to a collection agency except as permitted in OAR 137-055-1140.

Stat. Auth.: ORS 25.020; 180.345
Stats. Implemented: ORS 25.020
Hist.: AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-6025; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-6025; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 1-2006, f & cert. ef. 1-3-06; DOJ 1-2007, f. & cert. ef. 1-2-07; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07

137-055-6040
Right to Hearing to Contest Amount of Assigned Support

(1) A party who wants to contest the amount of support that the Division of Child Support (DCS) claims is assigned to the state on the party's child support case may do so by filing a written objection with DCS.

(2) Upon receiving a written objection, DCS will conduct an administrative review of the case to verify the correct amount of support claimed as assigned and will make any necessary corrections or adjustments to this amount as determined in the review.

(a) DCS will complete its review and make a determination within 45 days from the date of receiving the written objection.

(b) DCS will notify the parties, in writing, of this determination and of the right to contest the determination before an administrative law judge. The party must request such hearing in writing within 30 days of the date that DCS sends the written notice of its determination.

(3) Prior to any such hearing:

(a) DCS may contact or meet with the party to explain how DCS has computed the amount of support assigned to the state on the party's case.

(b) The party may withdraw their request for a hearing by notifying DCS in writing.

(4) Once a determination has been made, DCS will not conduct further review of the amount of arrears that DCS reports as assigned to the state unless:

(a) DCS has made an accounting adjustment to the amount that DCS reports as assigned to the state, and a party then files a written objection to this adjusted amount; or

(b) The assistance status of the family has changed since the date of the last administrative review conducted under this rule, and a party then files a written objection.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 25.020
Hist.: AFS 27-2000, f. & cert. ef. 11-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0250; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-6040; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-6040; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-6120
Satisfaction of Arrears for Less Than Full Payment

The Division of Child Support (DCS) may satisfy all or any portion of child support arrears that are assigned to the State of Oregon or to any other jurisdiction, subject to the following:

(1) DCS may satisfy all or any portion of assigned arrears only if one or more of the following circumstances apply:

(a) The arrears are a substantial hardship to the paying parent or that parent's household; or

(b) A compromise of amounts owing will result in greater collection on the case, considering the maximum amount that DCS could reasonably expect to collect from the obligor if no compromise was made and the probable costs of collecting that maximum amount; or

(c) The obligor has entered into an agreement with DCS to take steps to:

(A) Enhance the obligor's ability to pay child support; or

(B) Enhance the obligor's relationship with the child or children for whom the obligor owes the arrears.

(d) An error or legal defect has occurred that indicates a reduction may be appropriate.

(2) If all or any portion of the assigned arrears are the states temporarily-assigned arrears as defined in OAR 137-055-6010, DCS may satisfy the amount only if the obligee consents and signs the appropriate "satisfaction of support judgment" form.

(3) If all or any portion of the assigned arrears are assigned to another jurisdiction, DCS may satisfy that assigned amount only with the approval of that jurisdiction.

(4) DCS will not sign any satisfaction for less than full payment of arrears until:

(a) The obligor has paid the full amount agreed to as appropriate consideration, and the obligor's payment instrument has cleared the appropriate financial institutions; or

(b) DCS has determined that the obligor has satisfactorily met, or is complying with, any agreement made with DCS pursuant to this rule.

(5) DCS will record a summary of each agreement to satisfy arrears for less than full payment on the appropriate electronic file on the case.

(6) Any satisfaction executed under this rule will be made pursuant to, and in full compliance with, ORS 18.228.

(7) The provisions of this rule notwithstanding, the obligee may satisfy all or any portion of unassigned arrears due the obligee, pursuant to OAR 137-055-5220.

(8) Nothing in this rule precludes the administrator from negotiating a satisfaction of arrears due or potentially due the obligee for less than full payment by the obligor, but such satisfaction will take effect only when the obligee consents and signs a "satisfaction of support judgment" pursuant to OAR 137-055-5220.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 18.400, 25.020 & 25.080
Hist.: AFS 77-1982, f. 8-5-82, ef. 9-1-82; AFS 93-1982, f. & ef. 10-18-82; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89, Renumbered from 461-035-0025; AFS 11-2000, f. 4-28-00, cert. ef. 5-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0150; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-6120; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-6120; DOJ 9-2005, f. & cert. ef. 10-3-05; DOJ 1-2007, f. & cert. ef. 1-2-07; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11; DOJ 7-2014, f. & cert. ef. 4-1-14

137-055-6200
Adjusting Case Arrears When an Error is Identified

The purpose of this rule is to set out what the administrator will do when an error is identified which requires adjusting the arrears of a case.

(1) "Complete payment record" means that the Division of Child Support (DCS) has kept the payment record for the support judgment from the date of the first support payment required under the judgment, or the obligee or the administrator established arrears for the time period when DCS did not keep the payment record on the case.

(2) A notice will only be sent as provided for in this rule when the amount of arrears to be adjusted is at least $5.

(3) If the error occurred within the current billing cycle, the administrator will adjust the arrears on the case record.

(4) If DCS has a complete payment record for the support payment judgment and the error occurred prior to the current billing

cycle, the administrator will adjust the arrears on the case record and send a notice to the parties advising of:

(a) The change in the case arrears; and

(b) The right to, within 30 days of the date of the notice from DCS, submit a written request for an administrative review to determine if DCS's record-keeping and accounting related to the adjustment of arrears is correct.

(5) DCS will conduct the administrative review within 30 days of receiving the party's written request, and will send written notification to the parties of the results of the review. The notice will include a citation of the parties' rights to appeal the decision under ORS 183.484.

(6) If DCS does not have a complete payment record for the support payment judgment and the error occurred prior to the current billing cycle, but within the previous 180 days, the administrator will:

(a) Send a notice to the parties that the administrator will adjust the arrears on the case record as indicated in the notice if none of the parties object within a 30-day period following the date of the notice;

(b) If none of the parties object within 30 days of the notice, the administrator will adjust the arrears on the case record as indicated in the notice;

(c) If any party objects within 30 days of the notice, the administrator will establish the arrears under the process found in ORS 25.167 or 416.429.

(7) If DCS does not have a complete payment record for the support payment judgment and the error occurred over 180 days ago, the administrator will establish the arrears under the process found in ORS 25.167 or 416.429.

(8) Notwithstanding any other provision of this rule, if under a contingency order the error is due to a failure to accurately reflect on the case record the periods of residence of the child in state care, the administrator will adjust the arrears on the case record and notify the obligor unless the Department of Human Services or Oregon Youth Authority directs otherwise.

(9) On a closed case:

(a) If all the arrears to be added to the case are assigned to the state, the administrator will not open the case if it is for a period of less than four months of accrual or less than $500;

(b) If all the arrears to be added to the case are assigned to the state and the arrears are for a period of a least four months or $500, the administrator will open the case and establish the arrears under the process found in ORS 25.167 or 416.429;

(c) If any of the arrears to be added to the case are owed to the obligee, the administrator will send a notice to the obligee and, if the arrears are for at least $25, ask if the obligee wants enforcement of the arrears. If the obligee requests enforcement, the administrator will open the case and establish the arrears under the process found in ORS 25.167 or 416.429;

(d) If any of the arrears to be added to the case are owed to an adult child as defined in OAR 137-055-5110, the administrator will send a notice to the adult child but will not open the case for the adult child until the adult child qualifies as a child attending school under ORS 107.108 and OAR 137-055-5110;

(e) Except as otherwise provided in OAR 137-055-4455 or 137-055-6220, if the error was due to an accounting error of the administrator and the adjustment to arrears will cause a credit balance, the administrator will return the excess amount to the obligor if the amount is at least $5 and the payment was applied to a state account; or

(f) If the error was not due to an accounting error of the administrator and the adjustment to arrears will cause a credit balance, the administrator will send an informational notice to the parties.

(10) Notwithstanding section (6) or section (9), on any case in which the applicant for services has requested non-enforcement and the error only affects the amount of arrears owed to the obligee, the administrator will update the case record appropriately.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.020

Hist.: DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f & cert. ef. 1-3-06; DOJ 6-2006, f. & cert. ef. 10-2-06; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 12-2009, f. & cert. ef. 10-1-09; DOJ 13-2011, f. 12-30-11, cert. ef. 1-3-12

137-055-6210
Advance Payments of Child Support

(1) "Advance payment" means:

(a) The Department of Justice (DOJ) has transmitted money to an obligee or to a person or entity authorized to receive support payments;

(b) The amount does not exceed the total arrears available for assignment to the state;

(c)(A) DOJ has applied the money incorrectly through no fault or error of the payee; or

(B) The amount transmitted by DOJ is attributable in whole or in part to a tax refund offset collection, all or part of which has been reclaimed by the Internal Revenue Service or the Oregon Department of Revenue; and

(d) The payment is not the result of a dishonored check.

(2) If the obligor is deceased and without assets or an estate, the provisions of this rule do not apply, but the provisions of OAR 137-055-6220 apply.

(3) The person who receives an advance payment owes the amount of the advance payment to DOJ.

(4) Instead of directly collecting the amount of the advance payment from the person who received it, the amount will be removed from the arrears owed to the payee, temporarily-assigned arrears or conditionally-assigned arrears and will be assigned to the state as permanently-assigned arrears under OAR 137-055-6010. DOJ will notify the payee in writing of the:

(a) Amount to be collected as permanently-assigned arrears;

(b) Right to object and request an administrative review.

(5) When an objection is received, DOJ will conduct an administrative review and notify the payee in writing of the:

(a) Determination resulting from the review; and

(b) Right to challenge the determination by judicial review under ORS 183.484.

(6) Notwithstanding the provisions of section (4) of this rule, designation of permanently-assigned arrears to recover advance payments does not affect whether a case is assigned to DOJ as provided in OAR 137-055-2020 or a district attorney office as provided in 137-055-2040.

(7) For the purposes of this rule, a "dishonored check" is not one which has been paid or made negotiable.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.020

Hist.: DOJ 10-2004, f. & cert. ef. 7-1-04; DOJ 16-2004, f. 12-30-04, cert. ef. 1-3-05; DOJ 9-2005, f. & cert. ef. 10-3-05; DOJ 1-2006, f & cert. ef. 1-3-06; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; DOJ 1-2007, f. & cert. ef. 1-2-07; DOJ 14-2008(Temp), f. & cert. ef. 10-7-08 thru 3-29-09; DOJ 1-2009, f. & cert. ef. 1-2-09

137-055-6220
Recovery of Overpayments on Support Accounts

(1) A child support overpayment in favor of the State of Oregon is created when:

(a) The Department of Justice (DOJ) has transmitted money to an obligee, to a person or entity authorized to receive support payments or to an obligor, and that amount:

(A) Was transmitted in error or is attributable in whole or in part to a tax refund offset collection, all or part of which has been reclaimed by the Internal Revenue Service or the Oregon Department of Revenue; and

(B) Does not qualify as an advance payment under OAR 137-055-6210 or as payment for future support under 137-055-6021(13); or

(b) DOJ receives a check from an obligor, other payor on behalf of the obligor, or withholder, transmits the appropriate amount from that check to the payee, and that check is dishonored.

(2) For overpayments described in subsection (1)(a), sections (3) through (8) of this rule apply. For overpayments described in subsection (1)(b), sections (9) through (12) of this rule apply.

(3) DOJ will determine a threshold amount for which attempts to recover the overpayment will occur. In determining the threshold, DOJ will consider the cost of:

(a) Staff time in processing the overpayment collection request; and

(b) An administrative hearing and the average number of cases requesting a hearing.

(4) When a notice is issued under ORS 25.125 to a person or entity described in subsection (1)(a), DOJ will include a statement that the person or entity:

(a) Must respond within 30 days from the date of the notice to object and request an administrative review; and

(b) If appropriate, may voluntarily assign any future support to repay the overpayment.

(5) If the person or entity described in subsection (1)(a) requests an administrative review, DOJ will conduct the administrative review within 30 days after receiving the request and notify the person or entity of the results of the review.

(6) Notice of the results of the administrative review will include a statement that the person or entity described in subsection (1)(a) must respond within 30 days from the date of the notice to object and request an administrative hearing.

(7) If the person or entity described in subsection (1)(a) files a written objection or request for hearing within 30 days, an administrative law judge shall then hear the objection.

(a) An order by an administrative law judge is final.

(b) The person or entity described in subsection (1)(a) may appeal the decision of an administrative law judge to the circuit court for a hearing de novo. The appeal shall be by a petition for review, filed within 60 days after the date that the final hearing order has been mailed.

(8) If a person or entity described in subsection (1)(a) fails to file a written request for administrative review, objection or request for hearing, fails to voluntarily assign future support, or if an order setting the overpayment amount is received from an administrative law judge, DOJ may refer the overpayment for collection as provided in ORS 293.231.

(9) When a notice is issued to an obligor or withholder under ORS 25.125(5), DOJ will include a statement that the obligor or withholder must respond within 30 days of the date of the notice and request an administrative review.

(10) If the obligor or withholder requests an administrative review, DOJ will conduct the administrative review within 30 days after receiving the request and notify the obligor or withholder of the results of the review.

(11) The obligor or withholder may appeal the result of the administrative review as provided in ORS 183.484.

(12) If the obligor or withholder fails to request an administrative review or if the result of an administrative review is that an overpayment occurred, DOJ may refer the overpayment for collection from the obligor or withholder as provided in ORS 293.231.

Stat. Auth.: ORS 25.125, 180.345 & 293
Stats. Implemented: ORS 25.020 & 25.125
Hist.: AFS 23-1983(Temp), f. & ef. 5-18-83; AFS 53-1983, f. 10-28-83, ef. 11-1-83; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89, Renumbered from 461-035-0045; AFS 3-1992, f. 1-31-92, cert. ef. 2-1-92; AFS 16-1997, f. 9-2-97, cert. ef. 10-1-97; AFS 13-1999, f. 10-29-99, cert. ef. 11-1-99; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0265; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-6220; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-6220; DOJ 10-2004, f. & cert. ef. 7-1-04; DOJ 16-2004, f. 12-30-04, cert. ef. 1-3-05; DOJ 9-2005, f. & cert. ef. 10-3-05; DOJ 1-2006, f & cert. ef. 1-3-06; DOJ 6-2006, f. & cert. ef. 10-2-06; DOJ 13-2011, f. 12-30-11, cert. ef. 1-3-12

137-055-6240
Dishonored Payments on Support Accounts

When the Department of Justice (DOJ) receives a check from an obligor, withholder, or other payor on behalf of the obligor and that check is then dishonored, DOJ will:

(1) Remove credit for the dishonored amount from the obligor's case record;

(2) Hold all future payments by check from that payor for 18 working days, or until the check clears the payor's financial institution, before forwarding payment to the obligee. DOJ may waive this requirement after a one-year period if no further payments from that payor have been dishonored, or if the dishonored payment was dishonored for reasons that DOJ has determined were beyond the payor's control, such as an error on the part of the financial institution or on the part of DOJ.

(3) DOJ may assess a fee not to exceed $35 against the payor of the check.

Stat. Auth.: ORS 25.125 & 180.345
Stats. Implemented: ORS 25.020; 25.125 & 30.701
Hist.: AFS 53-1983, f. 10-28-83, ef. 11-1-83; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89, Renumbered from 461-035-0046; AFS 16-1997, f. 9-2-97, cert. ef. 10-1-97; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0270; AFS 4-2001, f. 3-28-01, cert. ef. 4-1-01; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-6240; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-6240; DOJ 16-2004, f. 12-30-04, cert. ef. 1-3-05; DOJ 13-2011, f. 12-30-11, cert. ef. 1-3-12

137-055-6260
Return of Overcollected Support Amounts

(1) When the Division of Child Support (DCS) receives a support payment on an account for which no current order exists for ongoing support, DCS will apply the payment to any arrears the obligor may owe on the account. If any excess funds remain from the payment after any arrears are paid in full, and DCS has not forwarded the excess amount to the payee, DCS will return the excess amount to the obligor within 30 days of discovering the overcollection.

(2) On any account for which an ongoing support obligation exists, and DCS receives a payment that exceeds the total amount due for current support and arrears and has not forwarded the excess amount to the payee, DCS will return the excess amount to the obligor under the following circumstances:

(a) When an income withholding order exists and the withholder does not receive or implement a notice from the administrator to reduce withholding to the amount of the current ongoing support obligation in a timely manner, such as may occur after all arrears are collected or after the ongoing support obligation is modified downward;

(b) When a state or federal tax refund is intercepted in an amount exceeding the amount owed for arrears; or

(c) When TANF cash assistance is being granted to the obligee or children on the support case, unless the obligor and the administrator agree otherwise.

(3) Notwithstanding section (1), on any account for which no current order exists for ongoing support, when a withholder sends a payment that exceeds the total amount that should have been withheld under ORS 25.414(1)(d), there is no order for expanded withholding under 25.387, and DCS has not forwarded the excess amount to the obligee, DCS will return the excess amount to the obligor.

(4) When DCS receives a payment that exceeds the total amount due for current support and arrears and has forwarded the excess amount to the payee, DCS will notify the parties in writing within 30 days of discovering the overcollection that:

(a) A credit balance in the obligor's favor has resulted from the overcollection; and

(b) The obligee or child attending school under ORS 107.108 and OAR 137-055-5110 may, within 30 days of the date of the notice from DCS, submit a written request to DCS for an administrative review to determine if DCS's record-keeping and accounting related to calculation of the credit balance is correct.

(5) DCS will conduct the administrative review within 30 days of receiving the party's written request, and will send written notification to the parties of the results of the review.

(6) In any case where DCS is required to return overcollected funds to an obligor under section (2) of this rule, the obligor may elect to forego the return of some or all of the overcollected funds and to instead use any credit balance amount thus established under this rule to offset the obligor's future ongoing support obligation, genetic test fees or arrears. An obligor wishing to elect this option must notify DCS before DCS has returned such funds to the obligor.

Stat. Auth.: ORS 25.020, 25.125 & 180.345
Stats. Implemented: ORS 25.020 & 25.125

Hist.: AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0272; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-6260; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-6260; DOJ 1-2006, f & cert. ef. 1-3-06; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; DOJ 6-2006, f. & cert. ef. 10-2-06; DOJ 1-2010, f. & cert. ef. 1-4-10; DOJ 13-2011, f. 12-30-11, cert. ef. 1-3-12

137-055-6280
Refund of Improper Tax Refund Collection

(1) Whenever a federal or Oregon tax refund owed to a support obligor has been withheld to pay support arrears and that withholding was made in error or overcollects the amount owed, the Division of Child Support (DCS) shall refund the amount withheld in error or overcollected.

(2) DCS may authorize the amount withheld, or any part thereof, to be refunded to the obligor by means of an advance payment from its administrative account. Such advance payment shall be made:

(a) Immediately when the amount withheld by the taxing agency was improperly withheld as a result of an error by the administrator, and the obligor provides a copy of the notice that the tax refund was being withheld; or

(b) The child support arrears certified for purposes of tax refund intercept no longer exist or are less than the amount withheld from the tax refund; and

(c) Thirty (30) days have elapsed since the date of the notice to the obligor that the tax refund was being withheld and DCS has not received the obligor's tax refund from the taxing agency; and

(d) The obligor provides a copy of that notice to the administrator.

(3) When DCS has made an advance payment of a refund to the obligor it will, upon receipt of the tax refund from the taxing agency, retain that refund up to the amount refunded to the obligor to reimburse its administrative account.

(4) If the DCS has already forwarded to the payee, part or all of the amount withheld, DCS may establish an overpayment against the payee for that amount, not to exceed the amount refunded to the obligor, pursuant to OAR 137-055-6220.

Stat. Auth.: ORS 25.020, 25.610, 25.625, 180.345
Stats. Implemented: ORS 25.020, 25.610, 25.620 & 25.625
Hist.: AFS 35-1982(Temp), f. & ef. 4-27-82; AFS 77-1982, f. 8-5-82, ef. 9-1-82; AFS 93-1982, f. & ef. 10-18-82; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89, Renumbered from 461-035-0030; AFS 26-1994, f. & cert. ef. 11-3-94; AFS 7-1997, f. & cert. ef. 6-13-97; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0220; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-6280; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-6280; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-7020
Intergovernmental Cases

OAR 137-055-7020 through 137-055-7180 constitute the guidelines for processing intergovernmental child support cases receiving support enforcement services under ORS 25.080.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 25.729, 110.303 – 110.452
Hist.: AFS 24-1994, f. 10-26-94, cert. ef. 12-1-94; AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-2300; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-7020; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-7020; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11

137-055-7040
Central Registry

(1) The central registry required by 45 CFR 303.7 is established within the Department of Justice, Division of Child Support. It is responsible for receiving, distributing and responding to inquiries on all incoming intergovernmental requests.

(2) Within ten working days of receipt of a request from an initiating agency or other petitioner, the central registry will:

(a) Review the documentation submitted with the request to determine completeness;

(b) Forward the request for necessary action either to the State Parent Locator Service for location services or to the administrator for processing;

(c) Acknowledge receipt of the request and ask the initiating agency or other petitioner to provide any missing documentation; and

(d) Inform the initiating agency or other petitioner where the request has been sent for action.

(3) If the documentation received with a request is inadequate, the central registry will forward the request to the appropriate branch or DA office to take appropriate action pending receipt of additional documentation.

(4) The central registry must respond to inquiries about case status within five working days from receipt of the request.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 25.729, 110.303 – 110.452
Hist.: AFS 24-1994, f. 10-26-94, cert. ef. 12-1-94; AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-2310; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-7040; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-7040; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11

137-055-7060
Initiating Jurisdiction Responsibilities – General Provisions

(1) The administrator will use a one-state process, when appropriate, to establish, enforce, or modify a support order, or to determine parentage.

(2) The administrator will determine:

(a) Whether one order exists or multiple orders exist for the same child and obligor;

(b) If there are multiple orders, which jurisdiction should complete a controlling order determination; and

(c) Whether a one-state process is appropriate.

(3) Within 20 calendar days of completing the actions in section (1) and after receipt of any documentation necessary to process a case, the administrator will:

(a) Refer a request for a controlling order determination and reconciliation of arrears, if needed, to the appropriate jurisdiction;

(b) If a one-state process is not appropriate, use federally prescribed forms and procedures to refer the case to the appropriate central registry, tribal IV-D program or central authority of a country for appropriate action.

(4) The administrator will send any requested additional information within 30 calendar days of receipt of the request or notify the responding jurisdiction when the information will be provided.

(5) The administrator will notify the responding jurisdiction within ten working days of receipt of new case information.

(6) The administrator will notify the responding jurisdiction at least annually, and upon request, of interest charges, if any, owed on a support order issued by this state.

Stat. Auth.: ORS 25.729, 180.345
Stats. Implemented: ORS 25.729, 110.303 – 110.452
Hist.: AFS 24-1994, f. 10-26-94, cert. ef. 12-1-94; AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-2320; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-7060; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-7060; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11

137-055-7100
Direct Income Withholding

(1) The administrator may send direct income withholding to an employer located in another jurisdiction when:

(a) The employer is located in a jurisdiction which has adopted the direct withholding provisions of UIFSA; and

(b) Any intergovernmental request about the same obligor and child is withdrawn and the responding agency is instructed to close their case; and

(c) If required under OAR 137-055-7180, a controlling order has been determined.

(2) The administrator must ensure that the obligor is given the notice required by ORS 25.399.

(3) If the obligor files a written contest to the income withholding order in the employer's state, the administrator may dismiss the direct income withholding order and initiate an intergovernmental request for registration and enforcement.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 25.729 & 110.394

Hist.: AFS 24-1994, f. 10-26-94, cert. ef. 12-1-94; AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-2340; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-7100; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-7100; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11

137-055-7120
Responding Jurisdiction Responsibilities – General Provisions

(1) Within 75 calendar days of receipt of an Intergovernmental Child Support Enforcement Transmittal Form, a UIFSA Action Request Form or other form and documentation from the Oregon central registry, the administrator will:

(a) Provide location services in accordance with 45 CFR 303.3 if appropriate;

(b) If unable to proceed with the case because of inadequate documentation, request any necessary additions or corrections;

(c) If the documentation received with a case is inadequate, process the case to the extent possible pending response from the initiating agency.

(2) Within ten working days of locating the obligor in a different locale within the state, if appropriate, the administrator will forward the form and documentation to the appropriate office and notify the initiating agency.

(3) Within ten working days of locating the obligor outside of Oregon, the administrator will:

(a) Return the form and documentation, including the new location, to the initiating agency, or if directed by that agency, forward the form and documentation to the central registry where the obligor has been located; and

(b) Document the Oregon case record.

(4) Within 30 days of receiving a request, the administrator must provide any order and payment record information requested by another state's child support program for a controlling order determination, or advise the requesting state when the information will be provided.

(5) The administrator must provide to the initiating agency timely advance notice of any formal hearings which may result in establishment or modification of an order.

(6) The administrator must notify the initiating agency within ten working days of receipt of new information on a case.

(7) The administrator must cooperate with requests for the following limited services:

(a) Quick locate;

(b) Service of process;

(c) Assistance with discovery;

(d) Assistance with genetic testing;

(e) Teleconferenced hearings;

(f) Administrative reviews;

(g) High-volume automated administrative enforcement in interstate cases under 42 USC 666(a)(14); and

(h) Copies of court orders and pay records; and may cooperate with other requests for limited services.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 25.729, 110.303 – 110.452
Hist.: AFS 24-1994, f. 10-26-94, cert. ef. 12-1-94; AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-2350; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-7120; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-7120; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11

137-055-7140
Oregon as Responding Jurisdiction – Establishing, Enforcing and Modifying Support and Medical Insurance Orders

(1) The registering tribunal under UIFSA is the circuit court of Oregon. This designation does not preclude action by other tribunals.

(2) Administrative contested case hearings will be conducted by an administrative law judge pursuant to the provisions of ORS 416.427.

(3) Whenever allowed under the law, the administrator will use the provisions of ORS 416.400 to 416.470 in conjunction with the provisions of ORS chapter 110 to establish, enforce and modify support orders.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 25.729, 110.303 – 110.452
Hist.: AFS 24-1994, f. 10-26-94, cert. ef. 12-1-94; AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-2360; SSP 4-2003, f. 2-25-03, cert. ef. 3-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-7140; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-7140; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11

137-055-7160
Oregon as Responding Jurisdiction – Establishing Paternity

(1) When a request to establish paternity is received from another jurisdiction, the administrator must receive an affidavit of a parent naming the alleged father prior to initiating legal action.

(2) The administrator will use the provisions of ORS Chapter 25, 109, 110 and 416 to establish paternity and support.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 25.729, 110.303 – 110.452
Hist.: AFS 24-1994, f. 10-26-94, cert. ef. 12-1-94; AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-2370; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-7160; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-7160; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11

137-055-7180
Determining Controlling Order

(1) The administrator will determine a single controlling order when:

(a) Services are being provided under ORS 25.080 and two or more child support orders have been issued regarding the same obligor, child and obligee; or

(b) A party or other jurisdiction requests a determination.

(2) For purposes of this rule, any order modified or issued after October 20, 1994 (the effective date of the Full Faith and Credit for Child Support Orders Act, 28 USC 1738B), will be interpreted as a modification of all orders issued prior to October 20, 1994, unless:

(a) The tribunal entering the order did not have jurisdiction to do so; or

(b) A party alleges the tribunal lacked personal or subject matter jurisdiction.

(3) When a request for a controlling order determination is received from another jurisdiction:

(a) The request is not complete until documents necessary to perform the determination are received; and

(b) The request is considered "filed with the appropriate tribunal" as required by 45 CFR 303.7(d)(5) when the administrator receives the complete request.

(4) The administrator will determine the controlling order and issue an order setting out the determination. The order is an order in an other than contested case proceeding under ORS chapter 183. The order will be served upon the parties by certified mail, return receipt requested, at the last known address of the parties. The order must include:

(a) The basis for personal jurisdiction over the parties;

(b) The names of the parties and the child for whom support was ordered;

(c) A statement of each child support order which was considered, the jurisdiction which issued the order and the date of the order;

(d) A statement identifying the order the administrator determines is the controlling order and why;

(e) A statement that the controlling order determination is effective the date the order is issued by the administrator;

(f) A reference to ORS 110.333;

(g) A notice that a party may submit further information and petition the administrator for reconsideration of the order within 60 days of the date of the order;

(h) A notice that OAR 137-004-0080 applies to any petition for reconsideration; and

(i) A notice that a party may appeal the order as provided by ORS 183.484.

(5) If the administrator determines that no tribunal has continuing, exclusive jurisdiction under ORS chapter 110, the administrator will notify the parties and establish a new child support order.

(6) For the purposes of determining the Oregon county in which the administrator may enter the order determining the controlling order, the following provisions apply:

(a) If one or more Oregon court files exist for the same obligor and child, the order will be entered in each existing court file;

(b) If an Oregon court file does not exist, the administrator will enter the documents required by ORS 416.440 in the circuit court in the county where the party who lives in Oregon resides.

(7) Within 30 days after the determination of controlling order is issued, the administrator will certify copies of the order determining the controlling order and file one with each tribunal that issued or registered an earlier order of child support.

(8) Upon written receipt of an order determining the controlling order that a tribunal of this or another jurisdiction properly issued, the administrator will:

(a) Adjust the Oregon case record to cease prospective accrual on any non-controlling order and initiate accrual on any controlling order which was issued or registered by an Oregon tribunal on the date specified in the order determining controlling order or, when not specified, in accordance with OAR 137-055-5040; and

(b) When one of the non-controlling orders was issued by an Oregon tribunal, ensure that the order determining the controlling order is entered in the Oregon circuit court for the county which issued or entered the prior order.

Stat. Auth.: ORS 25.729 & 180.345
Stats. Implemented: ORS 110.327 & 110.333
Hist.: AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-2385; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-7180; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-7180; DOJ 10-2004, f. & cert. ef. 7-1-04; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11; DOJ 7-2014, f. & cert. ef. 4-1-14

137-055-7190
Review and Modification In Intergovernmental Cases

(1) Within 15 days of a party's request for a periodic review or a request for a modification based upon a change of circumstances, the administrator will determine in which jurisdiction the review will be sought. The administrator will follow the Uniform Interstate Family Support Act (UIFSA) provisions in ORS 110.303 through 110.452 in making this decision, including:

(a) If the controlling order is an Oregon support order and the obligor, obligee and child reside in this state, Oregon will do the review.

(b) If the controlling order is an Oregon support order and one of the parties or the child resides in this state, Oregon will do the review, presuming personal jurisdiction can be asserted for the remaining party.

(c) If Oregon does not have the controlling order but all the parties have filed in the jurisdiction which has the controlling order a written consent for Oregon to modify the order, Oregon will do the review.

(d) If an order has been registered for enforcement in Oregon and none of the parties or the child resides in the jurisdiction which issued the order, the jurisdiction where the non-requesting party resides will do the review.

(2) If the administrator determines that Oregon is not the appropriate reviewer, the administrator will:

(a) Determine and obtain the information needed;

(b) Complete any required forms; and

(c) Send all required documents to the reviewer within 20 calendar days of receipt;

(3)(a) If the reviewer is currently providing services for Oregon on the case, the documents will be transmitted to the appropriate office or agency working the case;

(b) If the request is the first contact with the reviewer for the case, the request must be sent to the reviewer's central registry.

Stat. Auth.: ORS 25.080, 25.287, 180.345
Stats. Implemented: ORS 25.080, 25.287, 110.318, 110.327, 110.330 & 110.436
Hist.: DOJ 10-2004, f. & cert. ef. 7-1-04; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11

DIVISION 60

NOTICE OF GARNISHMENT MODEL FORMS

[ED. NOTE: Notice of Garnishment Model Forms are not printed in the OAR Compilation. Forms referenced are available from the agency.]

137-060-0100
Notice of Garnishment — County Tax

The garnishment forms set forth in OAR 137-060-0110 to 137-060-0160 are provided for use by county tax collectors issuing a notice of garnishment pursuant to ORS 18.854.

Stat. Auth.: ORS 18.854(8)
Stats. Implemented: ORS 18.375, 18.385, 18.600–18.850, 18.854, 18.857, OL 2007 Ch. 71, 496
Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 3-2008, f. 1-17-08, cert. ef. 1-18-08

137-060-0110
County Tax — Notice of Garnishment Form

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 18.854(8)
Stats. Implemented: ORS 18.375, 18.385, 18.600 - 18.850, 18.854 & 18.857
Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 3-2008, f. 1-17-08, cert. ef. 1-18-08; DOJ 7-2010, f. & cert. ef. 3-12-10

137-060-0120
County Tax — Garnishee Response Form

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 18.854(8)
Stats. Implemented: ORS 18.375, 18.385, 18.600 – 18.850, 18.854 & 18.857
Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 7-2010, f. & cert. ef. 3-12-10

137-060-0130
County Tax — Instructions to Garnishee Form

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 18.854(8)
Stats. Implemented: ORS 18.375, 18.385, 18.600 - 18.850, 18.854 & 18.857
Hist.: DOJ 6-2002, f. & cert. ef. 9-24-02; DOJ 3-2008, f. 1-17-08, cert. ef. 1-18-08; DOJ 7-2010, f. & cert. ef. 3-12-10; DOJ 3-2012, f. & cert. ef. 2-2-12

137-060-0140
County Tax — Challenge to Garnishment Form

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 18.854(8)
Stats. Implemented: ORS 18.375, 18.385, 18.600–18.850, 18.854, 18.857
Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 3-2008, f. 1-17-08, cert. ef. 1-18-08

137-060-0150
County Tax — Notice of Exempt Property Form

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 18.854(8)
Stats. Implemented: ORS 18.375, 18.385, 18.600 - 18.850, 18.85 & 18.857
Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 3-2008, f. 1-17-08, cert. ef. 1-18-08; DOJ 9-2008, f. 4-30-08, cert. ef. 7-24-08; DOJ 7-2009, f. 6-30-09, cert. ef. 7-24-09; DOJ 7-2010, f. & cert. ef. 3-12-10; DOJ 3-2012, f. & cert. ef. 2-2-12

137-060-0160
County Tax — Wage Exemption Calculation Form

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 18.854(8)
Stats. Implemented: ORS 18.375, 18.385, 18.600 - 18.850, 18.854 & 18.857
Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 3-2008, f. 1-17-08, cert. ef. 1-18-08; DOJ 9-2008, f. 4-30-08, cert. ef. 7-24-08; DOJ 7-2009, f. 6-30-09, cert. ef. 7-24-09; DOJ 3-2012, f. & cert. ef. 2-2-12

137-060-0200
Notice of Garnishment — State Tax

The garnishment forms set forth in OAR 137-060-0210 to 137-060-0260 are provided for use by state agencies issuing a notice of garnishment pursuant to ORS 18.854 for the collection of a state tax.

Stat. Auth.: ORS 18.854(8)
Stats. Implemented: ORS 18.375, 18.385, 18.600 – 18.855, OL 2007 Ch. 71, 496
Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 3-2008, f. 1-17-08, cert. ef. 1-18-08

137-060-0210
State Tax — Notice of Garnishment Form
[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 18.854(8)
Stats. Implemented: ORS 18.375, 18.385 & 18.600 - 18.855
Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 3-2008, f. 1-17-08, cert. ef. 1-18-08; DOJ 7-2010, f. & cert. ef. 3-12-10

137-060-0220
State Tax — Garnishee Response Form
[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 18.854(8)
Stats. Implemented: ORS 18.375, 18.385 & 18.600 - 18.855
Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 7-2010, f. & cert. ef. 3-12-10

137-060-0230
State Tax — Instructions to Garnishee Form
[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 18.854(8)
Stats. Implemented: ORS 18.375, 18.385 & 18.600 - 18.855
Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 3-2008, f. 1-17-08, cert. ef. 1-18-08; DOJ 7-2010, f. & cert. ef. 3-12-10; DOJ 3-2012, f. & cert. ef. 2-2-12

137-060-0240
State Tax — Challenge to Garnishment Form
[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 18.854(8)
Stats. Implemented: ORS 18.375, 18.385, 18.600–18.855
Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 3-2008, f. 1-17-08, cert. ef. 1-18-08

137-060-0250
State Tax — Notice of Exempt Property Form
[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 18.854(8)
Stats. Implemented: ORS 18.375, 18.385 & 18.600 - 18.855
Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 3-2008, f. 1-17-08, cert. ef. 1-18-08; DOJ 7-2010, f. & cert. ef. 3-12-10; DOJ 3-2012, f. & cert. ef. 2-2-12

137-060-0260
State Tax — Wage Exemption Calculation Form
[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 18.854(8)
Stats. Implemented: ORS 18.375, 18.385, 18.600–18.850, 18.854, 18.857, OL 2003, Ch. 496
Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 3-2008, f. 1-17-08, cert. ef. 1-18-08

137-060-0300
Notice of Garnishment — Debts Other than State Tax
The garnishment forms set forth in OAR 137-060-0310 to 137-060-0360 are provided for use by state agencies issuing a notice of garnishment pursuant to ORS 18.854 for collection of debts other than state tax.
Stat. Auth.: ORS 18.854(8)
Stats. Implemented: ORS 18.375, 18.385, 18.600–18.855, OL 2007 Ch. 71, 496
Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 3-2008, f. 1-17-08, cert. ef. 1-18-08

137-060-0310
Debts other than State Tax — Notice of Garnishment Form
[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 18.854(8)
Stats. Implemented: ORS 18.375, 18.385 & 18.600 - 18.855
Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 3-2008, f. 1-17-08, cert. ef. 1-18-08; DOJ 7-2010, f. & cert. ef. 3-12-10

137-060-0320
Debts other than State Tax — Garnishee Response Form
Stats. Implemented: ORS 18.375, 18.385, 18.600 – 18.855
[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 18.900(8)
Stats. Implemented: ORS 18.375, 18.385 & 18.600 - 18.855
Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 7-2010, f. & cert. ef. 3-12-10

137-060-0330
Debts other than State Tax — Instructions to Garnishee Form
[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 18.854(8)
Stats. Implemented: ORS 18.375, 18.385 & 18.600 - 18.855
Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 3-2008, f. 1-17-08, cert. ef. 1-18-08; DOJ 7-2010, f. & cert. ef. 3-12-10; DOJ 3-2012, f. & cert. ef. 2-2-12

137-060-0340
Debts other than State Tax — Challenge to Garnishment Form
[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 18.854(8)
Stats. Implemented: ORS 18.375, 18.385, 18.600–18.855
Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 3-2008, f. 1-17-08, cert. ef. 1-18-08

137-060-0350
Debts other than State Tax — Notice of Exempt of Property Form
[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 18.854(8)
Stats. Implemented: ORS 18.375, 18.385 & 18.600 - 18.855
Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 3-2008, f. 1-17-08, cert. ef. 1-18-08; DOJ 9-2008, f. 4-30-08, cert. ef. 7-24-08; DOJ 7-2009, f. 6-30-09, cert. ef. 7-24-09; DOJ 7-2010, f. & cert. ef. 3-12-10; DOJ 3-2012, f. & cert. ef. 2-2-12

137-060-0360
Debts other than State Tax — Wage Exemption Calculation Form
[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 18.854(8)
Stats. Implemented: ORS 18.375, 18.385 & 18.600-18.855
Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 3-2008, f. 1-17-08, cert. ef. 1-18-08; DOJ 9-2008, f. 4-30-08, cert. ef. 7-24-08; DOJ 7-2009, f. 6-30-09, cert. ef. 7-24-09; DOJ 3-2012, f. & cert. ef. 2-2-12

137-060-0400
Notice of Garnishment — Special Notice
The garnishment forms set forth in OAR 137-060-0450 to 137-060-0450 are provided for use by state agencies issuing a special notice of garnishment pursuant to ORS 18.854 and as provided by ORS 18.855(6).
Stat. Auth.: ORS 18.854(8)
Stats. Implemented: ORS 18.375, 18.385, 18.600–18.855, OL 2007 Ch. 71, 496
Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 3-2008, f. 1-17-08, cert. ef. 1-18-08

137-060-0410
Special Notice of Garnishment — Notice of Garnishment Form
[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 18.854(8)
Stats. Implemented: ORS 18.375, 18.385 & 18.600 - 18.855
Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 3-2008, f. 1-17-08, cert. ef. 1-18-08; DOJ 7-2010, f. & cert. ef. 3-12-10

137-060-0420
Special Notice of Garnishment — Garnishee Response Form
[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 18.854(8)
Stats. Implemented: ORS 18.375, 18.385 & 18.600 - 18.855
Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 7-2010, f. & cert. ef. 3-12-10

137-060-0430
Special Notice of Garnishment — Instructions to Garnishee Form
[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 18.854(8)
Stats. Implemented: ORS 18.375, 18.385 & 18.600 - 18.855
Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 3-2008, f. 1-17-08, cert. ef. 1-18-08; DOJ 7-2010, f. & cert. ef. 3-12-10; DOJ 3-2012, f. & cert. ef. 2-2-12

137-060-0440
Special Notice of Garnishment — Challenge to Garnishment Form
[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 18.854(8)
Stats. Implemented: ORS 18.375, 18.385, 18.600–18.855
Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 3-2008, f. 1-17-08, cert. ef. 1-18-08

137-060-0450
Special Notice of Garnishment — Notice of Exempt Property Form
[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 18.854(8)

Stats. Implemented: ORS 18.375, 18.385 & 18.600 - 18.855
Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 3-2008, f. 1-17-08, cert. ef. 1-18-08; DOJ 7-2010, f. & cert. ef. 3-12-10; DOJ 3-2012, f. & cert. ef. 2-2-12

DIVISION 76

CRIME VICTIMS' COMPENSATION

137-076-0000
Authority for Rules

These rules are adopted under the Department of Justice's authority contained in ORS 147.205(3).

Stat. Auth.: ORS 147.205(3)
Stats. Implemented:
Hist.: JD 4-1983, f. & ef. 9-1-83; JD 2-1992, f. & cert. ef. 3-2-92

137-076-0005
Scope of Rules

These rules implement ORS 147.005 through 147.365 related to the compensation of crime victims.

Stat. Auth.: ORS 147.205(3)
Stats. Implemented:
Hist.: JD 4-1983, f. & ef. 9-1-83; JD 2-1992, f. & cert. ef. 3-2-92

137-076-0010
Definitions

As used in ORS 147.005 through 147.375, unless the context requires otherwise:

(1) "Program" means the Crime Victims' Compensation Program.

(2) "Administrator" or "Program Director" means the Administrator or Program Director of the Crime Victims' Compensation Program as designated by the Attorney General of the State of Oregon.

(3) "Failure to Cooperate" means any act or omission by a victim that prejudices a law enforcement agency in the timely investigation of a crime or which causes the agency to abandon its investigation, or which prejudices a prosecuting official in a timely prosecution of the crime or causes or contributes to a decision by the official to abandon prosecution.

(4) "Good Cause for Failure to Cooperate" exists when the victim receives express or implied threats that cooperation will result in death or serious physical injury to the victim or another person and that these expressed or implied threats can be documented by the Program.

(5) "Good Cause for Failure to Notify the Appropriate Law Enforcement Officials within 72 Hours from the Perpetration of the Crime" means physical or mental trauma causing an inability to report the crime within 72 hours as required by statute.

(6) "Substantially Attributable to the Victim's Wrongful Act" means directly or indirectly attributable to a wrongful act from which there can be a reasonable inference that, had the act not been committed, the crime complained of likely would not have occurred.

(7) "Wrongful Act" means any intentional, reckless, negligent or careless act that is unlawful or meets the elements of a crime, violation or infraction. "Wrongful Act" could include but is not limited to a felony, misdemeanor, violation, traffic crime, traffic violation, parole or probation violation, custody release agreements or participating, either directly or indirectly, in the cultivation, purchase, sale, manufacture or possession of a controlled substance as defined by ORS 475.991 to 475.995 and 167.225.

(8) "Substantial Provocation" means a voluntary act by the victim which caused or provoked another to take action as the result of anger, resentment or deep feelings, which would have been foreseeable by a reasonable and prudent person, and from which there can be a reasonable inference that, had the act not occurred, the crime likely would not have occurred.

(9) "Contribution" means a voluntary action by the victim, which, directly or indirectly, produced the victim's injury. In determining whether contribution exists, the Department may consider all relevant circumstances of the behavior of the victim that may have contributed to the victim's injury or death, including but not limited to gestures, words, prior conduct and the use of alcohol or controlled substances.

(10) "Reject With Prejudice" means denial of the applicant's claim with conclusive and final effect.

(11) "Medical Fee Schedule" means the Oregon Workers' Compensation Medical Fee and Relative Value Schedule in regards to processing medical bills for reimbursement. Dental and mental health bills are processed using other fee schedules adopted by the program.

(12) "Financial Obligation" means a financial debt ordered or imposed by a court, within or outside of the State of Oregon, as a result of a previous criminal conviction.

(13) "Mental or Nervous Shock" means the psychological injury and emotional distress or mental harm directly incurred and experienced as a result of a person crime as defined in ORS Chapter 163.

(14) "Family" means related by blood, marriage or adoption, or any person who had the same primary residence as the victim at the time of the compensable crime.

(15) "Immediate Family" means father, mother, child, sibling, parent, spouse, grandparent, stepparent and stepchild and any other relative of the victim or victim's spouse, or any other person who had the same primary residence as the victim at the time of the compensable crime.

(16) "Friend" means someone that had a friendship or friendly relations with the victim.

(17) "Acquaintance" means someone that had been introduced to, or who knew the victim, but who may not have been a particularly close friend.

(18) "Law Enforcement Official" as defined in ORS 147.005(10) also includes Judges and protective services personnel from the Department of Human Services.

(19) "Good Cause for Failure to Satisfy a Financial Obligation" means a physical or mental injury that can be documented by a medical doctor that is causing an inability to satisfy a financial obligation within one-year of notification of the financial obligation.

Stat. Auth.: ORS 147.205(3)
Stats. Implemented: ORS 147.015(2), 147.015(3), 147.015(5) & 147.125(1)(c)
Hist.: JD 4-1983, f. & ef. 9-1-83; JD 1-1987(Temp), f. & ef. 1-8-87; JD 2-1992, f. & cert. ef. 3-2-92; JD 18-1992, f. 10-30-92, cert. ef. 11-2-92; DOJ 4-2001, f. & cert. ef. 6-1-01; DOJ 14-2004, f. & cert. ef. 11-22-04

137-076-0015
Authority of Administrator and Program Director

Any orders issued by the Administrator, Assistant Administrator or Program Director in carrying out the Department of Justice's authority to administer ORS Chapter 147 and the rules adopted pursuant thereto are considered orders of the Department of Justice and Attorney General of the State of Oregon.

Stat. Auth.: ORS 147.205(3)
Stats. Implemented: ORS 147.205 - 147.227
Hist.: JD 4-1983, f. & ef. 9-1-83; JD 2-1992, f. & cert. ef. 3-2-92; DOJ 4-2001, f. & cert. ef. 6-1-01

137-076-0016
Eligibility Criteria

For the purpose of ORS 147.005 through 147.365 and unless otherwise specified by statute, when a victim files a claim for crime victim compensation benefits, the Department must use those statutory eligibility criteria in effect at the date of the victim's crime in order to evaluate the claim for eligibility, even if that eligibility criteria is currently not in use by the Department.

Stat. Auth.: ORS 147.205(3)
Stats. Implemented:
Hist.: DOJ 14-2004, f. & cert. ef. 11-22-04

137-076-0018
Award Limits

(1) For the purposes of ORS 147.035(1)(a)(A)(i) in the case of injury, an award to a victim for medical and hospital expenses, including psychiatric, psychological or counseling expenses shall have a maximum amount of up to $20,000 per claim. This same award, in the case of child sex abuse, rape of a child and exploitation described in 419B.005(1)(a)(C), (D) or (E), may be used to pay for the counseling expenses of the victim's family. In no instance

does there ever exist a separate individual award of $20,000 specifically for family counseling in child sex abuse cases. However, once a child sex abuse victim described above reaches the age of 18, family counseling benefits will cease to exist.

(2) For the purposes of ORS 147.035(1)(a)(A)(ii) in the case of children who witness domestic violence, an individual award of up to a maximum amount of $10,000 can be awarded for counseling expenses to each individual child associated with the claim who witnessed the domestic violence as documented by law enforcement.

(3) For the purposes of ORS 147.035(1)(a)(A)(iii) in the case of a victim of international terrorism, an individual award of up to a maximum amount of $1,000 can be awarded for counseling expenses to each relative of the victim in association to trauma suffered as a result of the victim's crime.

(4) For the purposes of ORS 147.025 and 147.035, and unless otherwise specified in statute, when a victim files a claim for crime victim compensation benefits, only those awards and limits in effect at the date of the victim's crime can be used to compute the type and amount of award(s) granted by the Department.

Stat. Auth.: ORS 147.205(3)
Stats. Implemented:
Hist.: DOJ 14-2004, f. & cert. ef. 11-22-04

137-076-0020
Definition of Reasonable Expenses

(1) As used in this rule, "necessary services" are those services necessary for the treatment of physical and/or psychological injury suffered by the victim as a direct result of a crime.

(2) For purposes of ORS 147.035, reasonable hospital expenses shall be limited to expenses for necessary services provided by licensed hospitals and by other health care facilities licensed to provide services that may otherwise be supplied by hospitals.

(3) For purposes of ORS 147.035, reasonable medical expenses shall be limited to ambulance expenses and expenses for necessary services provided by medical practitioners licensed under ORS Chapters 677 through 679. Medical treatment provided by any other medical provider may be reimbursable if at the time treatment began it was approved by and provided under the supervision of a medical practitioner licensed under ORS Chapters 677 through 679. Medical treatment provided by any other medical provider without a referral from a medical practitioner, licensed under ORS Chapters 677 through 679, may be compensated for a period of 90-days from the date of the first crime-related visit by the victim, or up to 5 visits, whichever occurs first, so long as the medical provider is licensed under the provisions governing that provider's profession.

(4) For purposes of ORS 147.025 and 147.035, reasonable psychiatric, psychological or counseling expenses are limited to expenses for necessary services provided by psychiatrists or physicians licensed under ORS Chapter 677, or psychiatric mental health nurse practitioners licensed under ORS Chapter 678, or licensed psychologists, licensed clinical social workers, licensed professional counselors, licensed psychologist associates or licensed marriage and family therapists licensed under ORS Chapter 675, or qualified mental health professionals as defined in OAR 309-039-0510(12). The Administrator or Program Director shall have the authority to grant an exception to the above requirements when justification is provided that none of the above referenced mental health treatment providers is a reasonable option for addressing the crime-related needs of a specific victim.

(5) For purposes of ORS 147.035, compensable rehabilitation expenses shall be limited to expenses for necessary services to provide physical rehabilitation, vocational training, or to assist with adaptations necessary to allow a victim to conduct daily living tasks.

(6) For purposes of this rule, "medical practitioner" means a medical provider who is licensed under ORS Chapters 677 through 679 and who is able to prescribe controlled substances in the course of professional practice and includes:

(a) Doctor of Medicine;
(b) Doctor of Osteopathy;
(c) Podiatric Physician or Surgeon;
(d) Dentist;
(e) Nurse Practitioner, and;
(f) Physicians Assistant with drug dispensing authority from the Board of Medical Examiners for the State of Oregon.

Stat. Auth.: ORS 147.205(3)
Stats. Implemented: ORS 147.025 & 147.035
Hist.: JD 4-1983, f. & ef. 9-1-83; JD 2-1992, f. & cert. ef. 3-2-92; JD 18-1992, f. 10-30-92, cert. ef. 11-2-92; DOJ 3-2001(T), f. & cert. ef. 4-5-01 thru 5-31-01; DOJ 4-2001, f. & cert. ef. 6-1-01; DOJ 14-2004, f. & cert. ef. 11-22-04

137-076-0025
Lost Earnings Compensation

(1) Net lost earnings shall be computed on the basis of the victim's actual documented net earnings determined as of the date of the compensable injury. Net loss of support benefits shall be computed on the basis of the deceased victim's documented net earnings at the time of death. If the Department is unable to document net earnings but can document gross earnings, the Department can use 70% of the victim's documented gross earnings to compute net lost earnings benefits or, net loss of support benefits. Possible future earnings shall not be considered as a basis for lost earnings compensation. Benefits can also be paid for subsequent periods of disability, such as surgeries. The rate of the loss should be recalculated to reflect the victim's present net earnings and should be paid at the higher rate if different. No earnings may exceed the $400 per week maximum.

(2) Lost earnings compensation shall accrue only during the period of medical disability as confirmed by a medical practitioner licensed under ORS Chapters 677 and 679.

(3) Where a replacement person is hired to fulfill the duties of an injured victim and the cost of this replacement person is a direct financial cost to the victim, such documented replacement cost shall be used as the basis for lost earnings compensation, but in no instance shall the compensation exceed the maximum weekly amount of $400 or an aggregate of $20,000. If a victim was not working at the time of the criminal incident but has a history of annual earnings, such as seasonal work, contracting, or temporary assignments, he/she may still be eligible for lost wages/support if the program receives proper documentation to support the net earnings. For this purpose the program must have either W-2's or an income tax return that reflects earnings for the preceding twelve month period. This figure will then be used to reflect annual income/support and provide a basis for calculating the disability period.

(4) Loss of support compensation shall be based on the victim's documented net earnings at the time of death. The net amount shall be divided by the number of dependents, including the victim. The result shall be based on the number of surviving dependents at the time of death, not to exceed the maximum weekly amount of $400.

(5) Loss of support compensation shall include the documented loss of child support. Loss of child support shall be based on the amount of child support received by the child at the time of the victim's death.

(6) Loss of support benefits shall be paid to dependent children under 18, or until 21 if the dependent child is a full-time college student, dependent spouse of a deceased victim until remarriage, and any relative who was a financial dependent of the deceased victim at the time of the death of the victim.

(7) Where a deceased victim and surviving spouse both have income at the time of the criminal occurrence resulting in the death of the victim, the independent income of the deceased victim shall be used to determine loss of support benefits for his or her surviving dependents, including the surviving spouse, regardless of the surviving spouse's income.

Stat. Auth.: ORS 147.205(3)
Stats. Implemented: ORS 147.035
Hist.: JD 4-1983, f. & ef. 9-1-83; JD 2-1992, f. & cert. ef. 3-2-92; JD 2-1997, f. & cert. ef. 7-9-97; DOJ 4-2001, f. & cert. ef. 6-1-01; DOJ 14-2004, f. & cert. ef. 11-22-04

137-076-0030
Time Within Which an Application for Compensation Must Be Filed or Good Cause Shown for an Extension of the Time Within Which an Application for Compensation Must Be Filed

(1) An application for compensation shall be filed in the office of the Program, Oregon Department of Justice, either in person or by mail, and shall be deemed filed when received by the Department.

(2) "Good cause for failure to file an application for compensation within six months of the date of the crime" shall include lack of knowledge of the Program, failure of an investigating officer to provide information as provided for in ORS 147.365, or mental or physical trauma sustained by the victim rendering the victim incapable of filing the application for compensation in a timely fashion.

Stat. Auth.: ORS 147.205(3)
Stats. Implemented: ORS 147.015
Hist.: JD 4-1983, f. & ef. 9-1-83; JD 2-1992, f. & cert. ef. 3-2-92; JD 2-1997, f. & cert. ef. 7-9-97

137-076-0032
Abandonment of Application for Compensation

If, following the acceptance of a claim application and granting of an award, the Program requires additional information from the victim/applicant in order to further process compensation payments, a request for this additional information will be mailed to the victim/applicant. If the victim/applicant fails to respond within 30 days to inquiries and communications by the Program, the Program shall send a second notice by certified mail, return receipt requested, to the applicant's last known address informing the applicant that the application for compensation will be closed as abandoned. If the applicant does not respond within 30 days of the mailing of the certified letter, the application for compensation shall be closed. Upon an applicant's request, the application for compensation may be reopened for good cause within one year from the date the application for compensation is closed.

Stat. Auth.: ORS 147.205(3)
Stats. Implemented: ORS 147.105
Hist.: JD 2-1992, f. & cert. ef. 3-2-92; JD 2-1997, f. & cert. ef. 7-9-97; DOJ 4-2001, f. & cert. ef. 6-1-01

137-076-0034
Closure of Application for Compensation

An applicant may request that the application for compensation be withdrawn or closed without a decision. This request must be in writing. The application cannot thereafter be reopened.

Stat. Auth.: ORS 147.205(3)
Stats. Implemented: ORS 147.015 & 147.135
Hist.: JD 2-1992, f. & cert. ef. 3-2-92; JD 2-1997, f. & cert. ef. 7-9-97

137-076-0037
Payment of Catastrophic Injury Claims

(1) For the purpose of ORS 147.035, a catastrophically injured crime victim is a person:

(a) Eligible for an award of compensation under ORS 135.905 and 147.005 to 147.365; and

(b) As a direct result of the compensable crime, has sustained a severe long term or life long personal injury as established by criteria set forth in OAR 137-076-0037(4).

(2) If the department determines the victim's injuries to be catastrophic in nature and that determination does not change upon any reevaluation pursuant to OAR 137-076-0037(5) or 137-076-0037(6), then the benefits and payments under this rule will continue indefinitely or until those benefits and payments reach the financial award limits established by ORS 147.035.

(3) The burden of proof is upon the victim and/or applicant to establish eligibility as a catastrophically injured crime victim for the continuation of benefits and payments under this rule. Speculation and conjecture as to the following are not sufficient to meet the burden of proof:

(a) A potential increase in disability;

(b) Mere loss of earnings;

(c) Cumulative injuries that are minor in nature; or

(d) Subjective statements of the victim without substantiation of catastrophic injury by an objective medical examination and report from a licensed medical physician.

(4) In determining whether the victim has met the burden of proof that the personal injury is catastrophic, the department must take into consideration all of the following factors:

(a) Whether the victim has suffered significant and sustained reduction of the victim's previous functioning of mental or physical abilities or both, and that reduction significantly alters the victim's ability to interact with others or to carry on the normal functions of life or both;

(b) Whether there has been a material reduction in the victim's previous ability to work;

(c) Whether there has been a physical or neurophysical impairment where no fundamental or marked improvement in the victim's crime-related condition reasonably can be expected;

(d) The severity and debilitating nature of the personal injury including, but not limited to, conditions such a quadriplegia, paraplegia, loss of sight in both eyes, loss of hearing in both ears or amputation of a major portion of any extremity;

(e) Whether the injury is permanent or long term;

(f) Whether a victim is receiving benefits as a result of being determined permanently disabled pursuant to the provisions of 42 U.S.C. 1381, et seq. A victim receiving benefits pursuant to 42 U.S.C. 1381, et seq. must meet the burden of proof that the injury is catastrophic through providing all of the following:

(A) A copy of the Social Security Administration's determination of permanent disability;

(B) Documentation of the crime underlying the injury;

(C) Medical documentation by a licensed physician addressing the criteria set forth in OAR 137-076-0037(4);

(D) At the department's discretion, the department may request an examination and report from an impartial licensed medical examiner addressing the criteria set forth in OAR 137-076-0037(4). If requested by the department, the department will reimburse the costs of the impartial medical examination and report.

(5) At the department's discretion, the department may periodically order a medical examination and report concerning an injured victim, to be performed by an impartial licensed medical physician. The purpose of this discretionary medical examination is to reaffirm or verify the victim's continued eligibility for benefits and payments under this rule:

(a) The impartial medical examination and report must address the victim's current medical status, and include information about the criteria set forth in OAR 137-076-0037(4);

(b) The department must reimburse the costs of any impartial medical examination and report ordered by the department.

(6) At its discretion, the department may request periodic information regarding the claim award concerning continuing eligibility under this section:

(a) From the victim; and

(b) The department's request may include a request for a medical evaluation report from the victim's personal medical physician. The report must address the victim's current condition concerning the criteria set forth in OAR 137-076-0037(4). The department must reimburse the costs of the physician's report.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 147.035(5) & 147.205
Stats. Implemented: ORS 147.035(5)
Hist.: DOJ 4-2002, f. 5-30-02, cert. ef. 6-1-02

137-076-0040
Payment of Benefits

(1) Lost earnings and loss of support compensation benefits shall be computed as a daily amount and paid monthly based on a five-day week, Monday through Friday.

(2) In no instance shall lump sum compensation awards be made unless the total of the lump sum award has already been accrued.

Stat. Auth.: ORS 147.205(3)
Stats. Implemented: ORS 147.035(1)(a)(B) & 147.035(1)(b)(C)
Hist.: JD 4-1983, f. & ef. 9-1-83; JD 2-1992, f. & cert. ef. 3-2-92; DOJ 4-2001, f. & cert. ef. 6-1-01

137-076-0043
Submission of Bills

(1) For purposes of ORS 147.035, all requests for payment of expenses connected to a compensation file for crime related injuries must be received by the Crime Victims' Assistance Section within sixty days after the date of claim expiration. These expenses should be in the form of an itemized billing statement.

(2) If a provider is unable to submit actual billings within the sixty-day period, the provider must submit to the program within the sixty-day period a written notice of intent to submit billings along with documentation of the reason for the late submission. The department will determine if good cause exists to extend the sixty-day period.

(3) No payment will be authorized for any treatment provided to the victim/applicant after the date of claim expiration, except in a situation where completion of a specific medical or dental procedure will extend beyond the three year period. The cost of these procedures and the duration of the treatment must be submitted to the department and be approved prior to the date of claim expiration before payment can be authorized. No payment will be authorized for additional expense beyond the approved amount unless such additional expenses occur prior to the date of file closure.

(4) All bills submitted to the department for payment consideration must be submitted timely and no later than one year from the date of service. Failure to submit bills to the department within a year from the date of service may result in denial of payment.

Stat. Auth.: ORS 147.205(3)
Stats. Implemented: ORS 147.035
Hist.: JD 2-1997, f. & cert. ef. 7-9-97; DOJ 4-2001, f. & cert. ef. 6-1-01

137-076-0045
Emergency Award

In the event an emergency award or overpayment is made and it is later determined that the application for compensation is not compensable or that there has been an overpayment, the Department of Justice shall have a right to commence a civil action for the recovery of such monies.

Stat. Auth.: ORS 147.205(3)
Stats. Implemented: ORS 147.055
Hist.: JD 4-1983, f. & ef. 9-1-83; JD 2-1992, f. & cert. ef. 3-2-92; JD 2-1997, f. & cert. ef. 7-9-97

137-076-0050
Payment of Dependency Awards for Minors

In the event that a loss of support compensation award is allowed to a minor child that is residing with a natural parent who is also the spouse of the deceased victim and entitled to a loss of suppport award, the award for the minor child shall be paid directly to the surviving spouse.

Stat. Auth.: ORS 147.205(3)
Stats. Implemented: ORS 147.165
Hist.: JD 4-1983, f. & ef. 9-1-83; JD 2-1992, f. & cert. ef. 3-2-92; DOJ 4-2001, f. & cert. ef 6-1-01

137-076-0055
Fraudulent Information

Any claimant who intentionally misrepresents information upon which the Program materially relies to determine or pay benefits shall forfeit the right to compensation and the application for compensation shall be denied with prejudice.

Stat. Auth.: ORS 147.205(3)
Stats. Implemented: ORS 147.255
Hist.: JD 4-1983, f. & ef. 9-1-83; JD 2-1992, f. & cert. ef. 3-2-92; JD 2-1997, f. & cert. ef. 7-9-97

137-076-0056
Reconsideration Requests

(1) For the purposes of ORS 147.145, adult applicants shall have a 90-day period after an initial determination order is entered to request reconsideration by the department. The request shall be in writing and sent to the Program Administrator. The department may consider whether "good cause" for an exception exists if the department receives a request for review after the 90-day period. No exceptions will be made when three years have elapsed from the date of the initial order. The following events may constitute "good cause" for failure to submit reconsideration requests within the 90-day period:

(a) The applicant can document that after the 90-day limitation period, law enforcement investigation has discovered new and convincing evidence about the criminal incident;

(b) That physical or mental trauma has caused an inability on the applicant's part to submit a request for reconsideration within the 90-day period;

(c) The applicant can document that he/she did not receive the departments original denial/reduction order.

(2) In cases of applicants under the age of 21, the 90-day requirement for reconsideration does not apply. The department will consider all requests for reconsideration that are received within three years of the initial denial/reduction order, or when the child victim attains the age of 21, which ever occurs later.

(3) For the purposes of ORS 147.145, the department's requirement to notify the applicant of its decision on review within 30-days of the department's receipt of the request for review can be extended with verbal or written permission from the applicant.

Stat. Auth.: ORS 147.205(3) & 147.231
Stats. Implemented: ORS 147.145 & 147.035
Hist.: DOJ 4-2001, f. & cert. ef. 6-1-01

137-076-0060
Third Party Claims

If the Program, after investigation and payment of benefits, determines that another party, other than the assailant, may have legal responsibility for the injuries sustained by the victim, the Program may, in its discretion, bring an action against said party for the recovery of the amount of monies that the Program has expended on behalf of the victim. In the event such an action is brought, the victim shall be joined as a complaining party and any recovery made that is in excess of the amount of benefits that the Program has awarded to the victim shall accrue to the victim.

Stat. Auth.: ORS 147.205(3)
Stats. Implemented: ORS 147.345
Hist.: JD 4-1983, f. & ef. 9-1-83; JD 2-1992, f. & cert. ef. 3-2-92

137-076-0065
Negotiated Settlements

If the victim is successful in a claim or legal action against the assailant or another party and is able to recover monetary damages, the Program shall be subrogated for the full amount of payments made by the Program. However, the Program may, at its sole discretion, waive all or part of its recovery, if it is determined to be in the best interests of the Program and the victim.

Stat. Auth.: ORS 147.205(3)
Stats. Implemented: ORS 147.345
Hist.: JD 4-1983, f. & ef. 9-1-83; JD 2-1992, f. & cert. ef. 3-2-92

137-076-0070
Payment of Grants Under ORS 147.231

(1) As used in ORS 147.231:

(a) "Eligible public or private non-profit agency" means any public, state or local governmental entity or program or private non-profit agency that provides services to victims of crimes.

(b) "Victim of violent crime" is a person who has suffered injury as defined in ORS 147.005 as a result of the commission of a crime.

(c) "The Department" means, for the purposes of this rule, the Oregon Department of Justice.

(d) "Services" includes but is not limited to, those services listed in ORS 147.231(3) and :

(A) Training that enhances a programs' ability to serve victims of violent crime;

(B) Development of statewide procedures or services to enhance the ability to respond to victims of violent crimes;

(C) Community crisis response services;

(D) Crime scene clean-up of residences;

(E) Crime-related health and mental health services; and

(F) Costs necessary and essential to providing direct services to victims.

(e) "Victims of Crime Act Advisory Committee" refers to an administrative body appointed by the Attorney General pursuant to ORS 147.227.

(2) Department Responsibilities:

(a) The Department shall use the funds described in ORS 147.231 to support programs serving victims of violent crimes and the necessary administrative costs associated with providing services

to such victims. In administering this grant program, the department may use any state approved and legally binding disbursement method that meets the purpose of ORS 147.231 and follows the process described in section (a).

(b) The Department shall consult with the Attorney General's Victims of Crime Act (VOCA) Advisory Committee in the administration of these dollars. All grants must be recommended by the VOCA Advisory Committee and approved by the Attorney General.

Stat. Auth.: ORS 147.231
Stats. Implemented: ORS 147.231 & 147.227
Hist.: DOJ 3-2000, f. & cert. ef. 3-31-00; DOJ 3-2001(T), f. & cert. ef. 4-5-01 thru 5-31-01; DOJ 4-2001, f. & cert. ef. 6-1-01

DIVISION 78

CRIME VICTIMS' ASSISTANCE

137-078-0000
Purpose

ORS 147.227 et seq ("the Act") provides that the Attorney General or the designee shall disburse a portion of the moneys that the Criminal Injuries Compensation Account receives from the Criminal Fine Account ("CFA") to counties and cities where prosecuting attorneys maintain victims' assistance programs approved by the Attorney General. The Act also requires the Attorney General to adopt administrative rules establishing criteria for the equitable distribution of moneys disbursed under the Act. OAR 137-078-0000 through 137-078-0050 (the "Rules") establish the criteria for the equitable distribution of moneys disbursed under the Act, and the establishment of an advisory committee to provide consultation on the distribution of the moneys.

Stat. Auth.: ORS 147
Stats. Implemented: ORS 147.227
Hist.: JD 5-1983(Temp), f. & ef. 9-9-83; JD 1-1984, f. & ef. 3-5-84; DOJ 14-2010(Temp), f. 7-27-10, cert. ef. 8-2-10 thru 1-28-11; DOJ 17-2010, f. 11-29-10, cert. ef. 12-1-10; DOJ 12-2015, f. & cert. ef. 10-8-15

137-078-0005
Designee

The designee of the Attorney General under the Act is the Administrator of the Oregon Department of Justice ("DOJ") Crime Victims' Services Division ("CVSD"), ("Administrator").

Stat. Auth.: ORS 147
Stats. Implemented: ORS 147.227
Hist.: JD 5-1983(Temp), f. & ef. 9-9-83; JD 1-1984, f. & ef. 3-5-84; DOJ 14-2010(Temp), f. 7-27-10, cert. ef. 8-2-10 thru 1-28-11; DOJ 17-2010, f. 11-29-10, cert. ef. 12-1-10

137-078-0010
Approval of Funding and Duration of Funding

(1) To be eligible and approved for distribution of moneys under the Act ("Fund" or "Funding"), a city or county victims' assistance program ("Program") must be operational at the time an application for Funding is made. A Program is operational for the purposes of this rule if at the time of application for Funding, it is providing the core services set forth in 137-078-0030.

(2) Programs which are determined to be eligible under the Act and these rules and are approved for Funding will continue to be approved for Funding indefinitely subject to the availability of Criminal Fine Account revenues, OAR 137-078-0050 and the following:

(a) The Program shall complete an application for Funding, thereby indicating that the approved Program will continue in operation for the duration of the grant period. In the event the application indicates that the Program will not continue beyond the duration of the grant period, Funding for the Program will expire at the end of the grant period, or on the date the Program indicates it will no longer be operational, whichever is earlier. Any subsequent reactivation of a Program or initiation of a new Program will require a new application for Funding.

(b) If a Program discontinues a core services as described in OAR 137-078-0030, the Administrator may require a new approval of Funding, based upon a new Program application, in order to continue Funding of the Program. The addition of services to an approved Program does not require a new approval or new Program application for continued Funding.

(3) Program Funding will be made to approved Programs according to the criteria for equitable distribution of moneys set forth in the Act and these Rules. Program Funding will commence at the beginning of the fiscal year in which application for Funding is made, and will continue for a one or two year period immediately following execution of the Grant agreement for Funding by the Administrator. Funds will be distributed on a quarterly basis or as determined by the Administrator.

Stat. Auth.: ORS 147
Stats. Implemented: ORS 147.227
Hist.: JD 5-1983(Temp), f. & ef. 9-9-83; JD 1-1984, f. & ef. 3-5-84; DOJ 14-2010(Temp), f. 7-27-10, cert. ef. 8-2-10 thru 1-28-11; DOJ 17-2010, f. 11-29-10, cert. ef. 12-1-10; DOJ 12-2015, f. & cert. ef. 10-8-15

137-078-0015
Distribution of Funds

(1) The Administrator, or designee during periods of absence or unavailability, is authorized to interpret and apply the criteria for the equitable distribution of moneys disbursed under the Act and these rules. The Administrator, after consultation with the advisory committee established under these Rules (the "Committee"), shall make decisions concerning eligibility of Programs for Funding. The Administrator is also authorized, after consultation with the Committee, to make all other decisions concerning distribution of moneys to counties and cities, including but not limited to, denial of Funding, conditional allocation of Funding when necessary to establish eligibility for Funding, notices and time limits for applications, acceptance of Funding terms, conditions and reports, method of review and role of the Committee, and reallocation of moneys not applied for or disbursed by Programs.

(2) The criteria for the equitable distribution of moneys disbursed under the Act and these Rules to Programs (the "Formula") is based on the following criteria:

(a) The amount of Funding shall reflect consideration of county per capita population, county crime rates and other similar criteria.

(b) The Formula established for counties will be applied to cities, and be adjusted as necessary to reflect the current percentage of the total of Program Funding the counties have received under the current allocation per 137-078-0010(2)(a). City Programs will only be approved for Funding after consultation with the Committee and after a memorandum of understanding (MOU) between the County and City programs has been executed. The financial impact and Funding considerations associated with adding a new city Program will be considered in the context of ORS 147.227(2)(c) which requires service priority to victims of serious crimes against persons.

(3) The Formula may be revised periodically by the Administrator, following consultation with the Committee to reflect statistical updates relating to the criteria reflected in the formula, and the amount of Criminal Fine Account revenues provided to CVSD's Criminal Injuries Compensation Account.

(4) Distribution of moneys to Programs and the conditions relating thereto, including availability of monies available for Funding, shall be described in a grant agreement established by the Administrator ("Grant"). The Grant shall incorporate by reference the requirements of the Act and these Rules, and such other terms and conditions which apply. If a Program elects to accept Funding based on the terms and conditions set forth in the Grant, an authorized representative of the Program shall sign the Grant in the manner provided therein, and submit a signed Grant to the Administrator within the timeframe established in the Grant. Upon submission of the signed Grant, the Administrator shall distribute funds to the county or city upon the terms contained in the Grant.

(5) In the event the Administrator, after review of a Program, or otherwise, discovers non-compliance by a city or county with the terms of the Grant, Funds which were allocated to a non-compliant city or county may be reallocated to eligible cities or counties. This will occur by applying the Formula which is applicable to the city or county, to the monies which were originally allocated to the non-

compliant Program. A reallocation of Funding shall thereafter be made to Programs which are in compliance with their respective Grants or held in reserve by the Administrator for future Grant allocations. The reallocation of funds derived from the non-compliant Program shall be made in the form of an Amended Award of Funding in the same manner as an initial award of Funding pursuant to a Grant.

(6) In the event Funds have already been disbursed to a Program which is or has been in non-compliance with the terms of the Grant, the Administrator, may adjust or reduce a Program's allocation in future fiscal years to take into account the Program non-compliance.

(7) If a Program does not expend all of its allocated Funds for the period of time described in the Grant, the Administrator may permit a Program to retain some or all the funds for use in a subsequent Grant. The Program will be required to demonstrate how those monies will be incorporated into the next year's Program.

(8) Any Program which has unexpended monies pursuant to a fully executed Grant (including an Amended Award of Funding), and which elects to file an objection to a notice of its alleged non-compliance under these rules, shall retain said monies until such time as the filed objection is resolved by the Administrator in favor of the Program. In the event the objection is not resolved in favor of the Program, the Program shall immediately return the monies to CVSD.

Stat. Auth.: ORS 147
Stats. Implemented: ORS 147.227
Hist.: JD 5-1983(Temp), f. & ef. 9-9-83; JD 1-1984, f. & ef. 3-5-84; DOJ 14-2010(Temp), f. 7-27-10, cert. ef. 8-2-10 thru 1-28-11; DOJ 17-2010, f. 11-29-10, cert. ef. 12-1-10; DOJ 12-2015, f. & cert. ef. 10-8-15

137-078-0020
Conditional Approvals

(1) "Conditional Approval" means Grant approval under circumstances in which the application establishes to the satisfaction of the Administrator that it would not be practicable at time of application for the Program to initiate or maintain a Program which provides all of the core services described in the Act and these rules.

(2) Applications for Conditional Approval shall set forth a time table for implementation of all core services required under the Act and these rules that cannot be provided at the beginning of the funding period.

(3) Conditional Approvals shall include the condition that continued approval is contingent upon complete implementation of additional services within an agreed to timetable, and that temporary approval for subsequent years will be contingent upon the addition of services and approval of the Administrator.

Stat. Auth.: ORS 147
Stats. Implemented: ORS 147.227
Hist.: JD 5-1983(Temp), f. & ef. 9-9-83; JD 1-1984, f. & ef. 3-5-84; DOJ 14-2010(Temp), f. 7-27-10, cert. ef. 8-2-10 thru 1-28-11; DOJ 17-2010, f. 11-29-10, cert. ef. 12-1-10

137-078-0025
Application Process

The application for Program approval shall be made upon documents or a web-based grant application system supplied by CVSD.

Stat. Auth.: ORS 147
Stats. Implemented: ORS 147.227
Hist.: JD 5-1983(Temp), f. & ef. 9-9-83; JD 1-1984, f. & ef. 3-5-84; DOJ 14-2010(Temp), f. 7-27-10, cert. ef. 8-2-10 thru 1-28-11; DOJ 17-2010, f. 11-29-10, cert. ef. 12-1-10

137-078-0030
Program Content: Core Services

The Program shall provide core services to victims of all types of crime, with particular emphasis on serious crimes against persons. The core services shall be coordinated with available community and government based programs that serve crime victims within the jurisdiction of the City of County Program, in order to maximize benefits to crime victims. The core service categories are as follows:

(1) Service Category: Victims' Rights Notification: "Inform victims, as soon as practicable, of the rights granted to victims under Oregon law;"

(a) Service Definition: Establish a written procedure for notification to crime victims of their rights in Oregon.

(b) Specific Service: Provide notice to victims of crime about their rights as a crime victim as soon as practicable including providing information about specific rights which must be requested to become rights, and provide access to information about how to remedy situations where crime victim notification rights are not honored.

(2) Service Category: "Ensure that victims are informed, upon request, of the status of the criminal case involving the victim;"

(a) Service Definition: Establish a written procedure for notification to crime victims of any critical stages* of the criminal case as defined in ORS 147.500(5).

(b) Specific Services: Upon crime victim request inform crime victims in advance of any critical stage of the proceeding.

(3) Service Category: Advocate for victims of serious person crimes as they move through the criminal justice system and advocate, when requested, for all other victims of crime ":

(a) Service Definition: Establish written procedures on providing "advocacy" which is defined as the act of assisting crime victims and family members through the aftermath of a crime, ensuring their rights are honored within the criminal justice system.

(b) Specific Services: Advocacy for the purposes of these rules includes advocacy of the core services outlined in the approved Program application as well as acting as a liaison in locating and utilizing resources to improve the crime victims' emotional and mental health.

(4) Service Category: "Assist victims in preparing restitution documentation for purposes of obtaining a restitution order":

(a) Service Definition: Establish a written procedure for assistance to crime victims in obtaining restitution or compensation for medical or other expenses incurred as a result of the criminal act;

(b) Specific Service:

(A) Identify and contact crime victims who have sustained monetary losses and obtain verification of those losses (estimates of damage, salary verification, etc.);

(B) Make available to the Prosecuting Attorney and courts documentation of losses incurred by the crime victims;

(C) Assist crime victims when it is necessary for them to attend a restitution hearing;

(D) Assist crime victims who inform the Program of non-receipt of restitution payments by providing referral to persons who may assist the crime victim in obtaining a remedy for a violation of crime victims' right;

(5) Service Category: "Prepare victims for court hearings by informing them of procedures involved":

(a) Service Definition: Establish a written procedure to prepare crime victims for the various court stages through which a case progresses;

(b) Specific Service: Prepare crime victims, when practicable, either by written or oral communication, of the various court procedures through which a case progresses (grand jury, arraignment, plea trial, etc.).

(6) Service Category: "Accompany victims to court hearings when practicable and requested":

(a) Service Definition: Establish a written procedure to describe the circumstances under which crime victims may be accompanied to court hearings by Program personnel, consistent with the purpose of providing support and information when deemed necessary or upon request. The procedure shall define when this service is not practicable.

(b) Specific Service:

(A) Upon request or when deemed necessary by the Program staff, arrange for advocate(s) to accompany crime victims to court;

(B) When possible, advocates who accompany crime victims to court will remain with crime victims throughout their court appearances.

(7) Service Category: "Involve victims when practicable or legally required in the decision-making process in the criminal justice system":

(a) Service Definition: Establish a written procedure for crime victims' input into the decision-making process, both at the prosecutorial and the judicial level;

(b) Specific Service:

(A) Involve the crime victims in the sentencing process, including appearances at sentencing hearings, making the court aware of the victim's presence, and facilitating the crime victim's involvement in the preparation of pre-sentence reports and the "Victim Impact Statement";

(B) Upon the crime victims' request, and to the extent practicable, insure consultation with crime victims of violent felonies regarding the plea discussions before final plea agreements are made.

(8) Service Category: "Inform victims of the processes necessary to request the return of property held as evidence":

(a) Service Definition: Establish a written procedure to inform crime victims and all family members of deceased crime victims of the process for the return of property held as evidence;

(b) Specific Service:

(A) Refer crime victims to those criminal justice authorities responsible for the return of property held as evidence;

(B) Intercede on behalf of crime victims with those criminal justice authorities responsible for the return of property in order to obtain the early release of victims' property when necessary;

(9) Service Category: "Assisting victims with the logistics related to court appearances when practicable and requested":

(a) Service Definition: Establish a written procedure to assist victims facing logistical barriers to appearing in court;

(b) Specific Service:

(A) Assist crime victims in arranging for the provision of temporary child care when appropriate;

(B) Upon request, arrange for transportation of crime victims when deemed necessary for their participation in the criminal justice proceedings;

(C) Upon request, intercede with an employer on the crime victims' behalf where the need for court appearance has caused, or will cause, an employed person to lose time from work and possibly jeopardize his/her employment in compliance with ORS 659A.272.

(10) Service Category: "Assist victims of crimes in the preparing and submitting Crime Victims' Compensation Program ("CVCP") claims to DOJ under the Act":

(a) Service Definition: Establish a written procedure for notification to crime victims and relatives of deceased victims of compensable crimes under the Act of the existence of the CVCP. When requested, or determined to be necessary by CVSD, assist crime victims in collecting required documentation, completing and submitting CVCP applications.

(b) Specific Service:

(A) Notify crime victims of the existence of the CVCP and provide an explanation of available benefits by providing crime victims and relatives with an informational brochure and an application form;

(B) When requested, assist crime victims and relatives, who are not able to do so independently, in gathering information and completing their applications in order to submit a claim for compensation under ORS 147.005 to 147.365.

(C) Upon request, inquire as to the claim status and payments with the CVCP.

(11) Service Category: "Encourage and facilitate victims' testimony":

(a) Service Definitions: To develop practices to address the interests, needs, and safety of crime victims in order to encourage and facilitate crime victims' testimony;

(b) Specific Service:

(A) Orient personnel of the criminal justice system, who will or may have contact with crime victims, to the needs of crime victims in general and in special circumstances, to the needs of particular crime victims;

(B) Provide a safe waiting area separated from the defendant, defendant's family and friends;

(C) Notify the appropriate law enforcement agency if protection of the crime victim is requested or deemed necessary by staff;

(D) When deemed necessary, advise the proper authorities of the need to include no contact provision with the crime victim as a condition of a release agreement and order and sentencing judgment;

(E) In those cases where tampering with or harassment of a crime victim occurs, encourage prosecutors to file proper charges and to give the charges priority in prosecutorial charging decisions;

(F) When hearings are cancelled, insure that a procedure exists to notify crime victims who have been requested or subpoenaed to appear, that the hearing has been cancelled, and that the victims' appearance has been excused, or continued to a future date, as the case may be;

(G) The services listed above may be provided to a witness to a crime, as deemed necessary or appropriate by CVSD in circumstances where the witness has been traumatized by the crime.

Stat. Auth.: ORS 147
Stats. Implemented: ORS 147.227
Hist.: JD 5-1983(Temp), f. & ef. 9-9-83; JD 1-1984, f. & ef. 3-5-84; DOJ 14-2010(Temp), f. 7-27-10, cert. ef. 8-2-10 thru 1-28-11; DOJ 17-2010, f. 11-29-10, cert. ef. 12-1-10

137-078-0035
Maintenance and Retention of Records

(1) The Program shall maintain accurate, complete, orderly, and separate records. All records and documents must be adequately stored and protected from fire, electronic disclosure, and other damage. All record books, documents, and records related to the program must be accessible to the Administrator or his or her designee for inspection and audit. The accounting system shall insure that CFA funds are not commingled with funds from any other source. Funds specifically budgeted for/or received in connection with one grant may not be used to fund another grant. Revenues and expenditures for each grant shall be separately identified and tracked within the grantee's accounting system or records. In the event a grantee's accounting system cannot comply with this requirement, the grantee shall establish a system to provide adequate fund accountability for each grant awarded. Any carryover of CFA funds shall not revert to or be transferred to the city or county's general fund or other fund. A "carryover" is defined as any unexpended monies remaining in a Program, at the end of the term of the grant for the Program.

(2) All records must be secured and confidential and retained in accordance with the Oregon Department of Justice record retention scheduled as required in OAR 166-300-0015, 0025.

Stat. Auth.: ORS 147
Stats. Implemented: ORS 147.227
Hist.: JD 5-1983(Temp), f. & ef. 9-9-83; JD 1-1984, f. & ef. 3-5-84; DOJ 14-2010(Temp), f. 7-27-10, cert. ef. 8-2-10 thru 1-28-11; DOJ 17-2010, f. 11-29-10, cert. ef. 12-1-10; DOJ 12-2015, f. & cert. ef. 10-8-15

137-078-0040
Fiscal and Contracting Requirements

In addition to Program application documents, subsidiary record documentations, and source documents, e.g., invoices, time and payroll records, and cost computations are the instruments upon which expenditure of grant Funding and Program compliance will be determined. All ledger account entries must be supported by secondary or intermediate records in the original source documentation. Programs shall follow Generally Accepted Accounting Principles (GAAP) standards. Programs that do not follow GAAP standards and practices may be subject to an additional program reviews which may result in non-renewal of program approval.

Stat. Auth.: ORS 147
Stats. Implemented: ORS 147.227
Hist.: JD 5-1983(Temp), f. & ef. 9-9-83; JD 5-1983(Temp), f. & ef. 9-9-83; DOJ 14-2010(Temp), f. 7-27-10, cert. ef. 8-2-10 thru 1-28-11; DOJ 17-2010, f. 11-29-10, cert. ef. 12-1-10

137-078-0041
Allowable and Unallowable Expenses

(1) All reasonable activities and expenses that support or enhance the direct provision of the Program content areas 1–11 outlined in 137-078-0030 are allowable as outlined below:

(a) Salary and personnel expenses (benefits) for staff providing direct service to victims of crime;

(b) Contractual Services or Professional Services;

(c) Training and travel for victim assistance staff;

(d) Office equipment and supplies to support the Program;

(e) Indirect costs based on or a federally-approved Negotiated Indirect Cost Rate or administrative costs not to exceed 10% of the modified total direct costs of the CFA Grant Award to be used for fund and program management;

(f) Emergency Services and assistance;

(g) Travel and lodging expenses for a victim to attend legal proceedings directly related to their victimization;

(h) Operating Costs such as, but not limited to, supplies, printing, copying and postage;

(i) Other activities and expenses necessary to provide victim services as outlined in these Rules and as expressly approved by the CFA Fund Coordinators or Administrator;

(j) Rent;

(k) Furniture and Equipment purchases that provides or enhances services to crime victims;

(l) Outreach activities and coordination of community collaborations.

(2) The expenses and activities listed below are unallowable uses for CFA funds:

(a) Indirect program costs in excess of a federally-approved Negotiated Indirect Cost Rate, or in excess of ten percent (10%) if the Program does not have a federally-approved Negotiated Indirect Cost Rate.

(b) Activities or costs that support prosecution or law enforcement functions.

(c) Crime prevention activities.

(d) Purchase of vehicles or buildings.

(e) Retirement of any debt, or reimbursement of any person or entity for expenditures made or expenses incurred.

(f) Perpetrator/Offender rehabilitation and counseling.

(g) Witness activities (for those who are not crime victims).

(h) Entertainment, honoraria, gifts, gift certificates, and recreational or sport activities.

(i) Fundraising activities.

(j) Conference costs for individual crime victims.

(k) Investment of CFA Grant funds.

(l) Liability insurance for buildings, property.

(m) Mortgage payments.

(n) Any other costs at the discretion of the Administrator.

(3) Programs are required to be prudent in the acquisition of equipment. Careful screening should take place before purchasing equipment to be sure that the property is needed and the need cannot be met with the equipment already in the possession of the Program. Monies expended for the purchase of equipment that is already available for use within the county or city will be considered unnecessary and unallowable Program expenses.

(4)(a) Professional services may be performed under contract with the city or county, by individuals and organizations, when such services are not readily available within the Program and are clearly consistent with the intent and purposes of the Act. Employees on the Program's payroll are not eligible to provide professional services under contract with the Program;

(b) Under the Act, city and district attorneys are required to administer the Program. Administration of the Program shall serve the objective of incorporating these programs as an integral function of the prosecutor's office, to the end that there is an efficient and coordinated merger between the interests of serving the needs of the victim and the prosecution of crime. In light of this objective, no contract may be entered into which will allow the Program to be administered independently of the control and policy direction of the city or district attorney whose Program is the subject of the contracted service. Any allowable contract shall:

(A) Detail those specific services identified in the approved Program that are to be carried out by the contractor;

(B) Provide for coordination of the contractor's functions with those of the prosecutor's city or county office, including as appropriate, the services to be performed, the contractor's access to the prosecutor's records and personnel, and the exchange of such communications between the prosecutor's office and the contractor as are necessary to the ongoing performance of the contract services and the prosecutorial function;

(C) Provide that ultimate program control and policy direction not addressed in the agreement shall be retained as the responsibility of the prosecutor and that he or she shall provide timely consideration and written determination thereof; and

(D) Provide a procedure for routine review by the city or district attorney of the contractor's performance, facilitated by quarterly activity reports to be made by the contractor to the prosecutor outlining the activities and accomplishments during the report period, any problems in operation or implementation of the contracted services, and any critical observations relative to the program's operation.

Stat. Auth.: ORS 147
Stats. Implemented: ORS 147.227
Hist.: DOJ 14-2010(Temp), f. 7-27-10, cert. ef. 8-2-10 thru 1-28-11; DOJ 17-2010, f. 11-29-10, cert. ef. 12-1-10; DOJ 12-2015, f. & cert. ef. 10-8-15

137-078-0045
Annual Report

The Program shall submit reports as required by CVSD for each year of Funding provided by the Grant. Reports shall be submitted within 30 days of receiving instructions from the Administrator. Failure to submit reports by the due date established in the instructions may result in a suspension of funds disbursed to the Program until the reports are submitted and approved. A certification form shall also provide for verification of carryover funds.

Stat. Auth.: ORS 147
Stats. Implemented: ORS 147.227
Hist.: JD 5-1983(Temp), f. & ef. 9-9-83; JD 1-1984, f. & ef. 3-5-84; DOJ 14-2010(Temp), f. 7-27-10, cert. ef. 8-2-10 thru 1-28-11; DOJ 17-2010, f. 11-29-10, cert. ef. 12-1-10; DOJ 12-2015, f. & cert. ef. 10-8-15

137-078-0050
Disapproval of Program for Funding — Discontinuance of Funding

(1) The Administrator may suspend or terminate any Program for Funding that does not comply with the Act or these Rules. The Administrator may also suspend or terminate Funding because of the Program's failure to comply with the approved Program or Grant conditions. Prior to any disapproval or suspension or termination of Funding, the Administrator or his or her designee will contact the district or city attorney to assist in development of an approvable program or in correcting any deviation from applicable standards and requirements. In the case of termination of funding, 30-days advance notice will be provided by the Administrator to the district or city attorney.

(2) A district or city attorney may request reconsideration of any decision resulting in the suspension or termination of Program Funding. The process is as follows:

(a) The district or city attorney shall first request reconsideration in writing to the Administrator, detailing the reasons for disagreement with CVSD's decision. The Administrator will reconsider any decision for which request for reconsideration is received, and will notify the district or city attorney within a reasonable period of time in writing of the reconsideration decision;

(b) Any district or city attorney who requests review by the Administrator and who disagrees with the reconsideration decision may appeal to the Deputy Attorney General. Requests for the Deputy Attorney General's review shall be in writing. The Deputy Attorney General's decision will be in writing and will be final.

Stat. Auth.: ORS 147
Stats. Implemented: ORS 147.227
Hist.: JD 5-1983(Temp), f. & ef. 9-9-83; JD 1-1984, f. & ef. 3-5-84; DOJ 14-2010(Temp), f. 7-27-10, cert. ef. 8-2-10 thru 1-28-11; DOJ 17-2010, f. 11-29-10, cert. ef. 12-1-10

137-078-0051
Advisory Committee

(1) An Advisory Committee, which at the sole discretion of the Administrator may be incorporated within a larger CVSD advisory body, is established to provide consultation on the distribution of CFA monies and Grants, and the provisions of these rules.

(2) The Advisory Committee shall consist of at least the following members:

(a) A representative of the Department of Justice;

(b) A representative of the Oregon District Attorneys Association; and

(c) A representative of a prosecuting attorney's victim assistance program.

Stat. Auth.: ORS 147
Stats. Implemented: ORS 147.227
Hist.: DOJ 14-2010(Temp), f. 7-27-10, cert. ef. 8-2-10 thru 1-28-11; DOJ 17-2010, f. 11-29-10, cert. ef. 12-1-10; DOJ 12-2015, f. & cert. ef. 10-8-15

DIVISION 79

ADDRESS CONFIDENTIALITY PROGRAM

137-079-0110
Authority and Purpose

These rules set out guidelines for the operation of the Address Confidentiality Program set forth in ORS 192.820 through 192.868, including the designation of Application Assistants, the process by which an individual may apply to participate in the Address Confidentiality Program, the certification of a program participant, ongoing participation and termination of participation in the Address Confidentiality Program, the responsibility of public agencies to use the substitute address provided by the Address Confidentiality Program, conditions under which a participant's actual address may be disclosed or participation in the Address Confidentiality Program may be verified, service of process on a participant and other aspects of program operation.

Stat. Auth.: ORS 192.860, 2005 OL, Ch. 821, SB 850
Stats. Implemented: ORS 192.820-192.868, 2005 OL, Ch. 821, SB 850
Hist.: DOJ 4-2007, f. 4-12-07, cert. ef. 4-16-07

137-079-0120
Definitions

(1) "Department" is the Oregon Department of Justice.

(2) "Applicant" is an individual who completes and submits an application to participate in the Address Confidentiality Program.

(3) "Application Assistant" is an individual designated by the Department to assist applicants with the completion and submission of an application to the Address Confidentiality Program, as further defined in ORS 192.820(3).

(4) "Application Assistant Agreement" is the agreement signed by the Department and an Application Assistant, which specifies the responsibilities of the Application Assistant and the Department.

(5) "Mailing Address" is an address to which a program participant requests mail to be sent by the Address Confidentiality Program. A mailing address may be a post office box, if the participant's actual address is a street address in Oregon.

(6) "Program" is the Address Confidentiality Program established in ORS 192.820–192.868.

(7) "Administrative Coordinator" is the person designated by the Department to provide programmatic coordination to the Program.

Stat. Auth.: ORS 192.860, 2005 OL, Ch. 821, SB 850
Stats. Implemented: ORS 192.820-192.868, 2005 OL, Ch. 821, SB 850
Hist.: DOJ 4-2007, f. 4-12-07, cert. ef. 4-16-07

137-079-0130
Application Assistant Certification

(1) Application Assistants shall be designated by the Department upon satisfaction of the requirements included in this section and in compliance with ORS 192.826 and 192.854.

(2) Requirements for designation of an Application Assistant shall include:

(a) Current service in a public or private entity as described in ORS 192.854(1);

(b) At least forty (40) hours of comprehensive training in domestic violence, sexual assault and stalking in-person advocacy, which may include the training required for in-person domestic violence, sexual assault and stalking responders by the Department of Human Services, or comparable training, as determined by the Administrative Coordinator. Topic areas covered by such training shall include comprehensive safety planning and confidentiality;

(c) Completion of training provided by the Department or designee on the Program and the role of the Application Assistant;

(d) Signing an Application Assistant Agreement with the Department, and specifying the agency which the Application Assistant is currently serving; and

(e) Such other requirements as the Department may require in its discretion in order to carry out the activities enumerated in ORS 192.820 through ORS 192.865. When an Application Assistant applies to renew a designation, these requirements may include but are not limited to supplemental or additional training.

(3) Notwithstanding the above requirements, designation and the renewal of designation of an Application Assistant shall be at the discretion of the Department.

(4) The Application Assistant Agreement shall be for a term of two (2) years, and shall be renewable upon request of the Application Assistant and upon a determination by the Department in its discretion that the Application Assistant continues to fulfill the requirements for designation, including to continue to serve the agency specified in the Application Assistant Agreement.

(5) When an Application Assistant who has been designated leaves the agency specified in the Application Assistant Agreement, the Agreement shall terminate and the Application Assistant designation shall be cancelled. The Application Assistant may apply for a new designation and shall be designated according to the provisions of this section and ORS 192.820–192.854.

(6) The Department shall keep a list of agencies at which Application Assistants are currently designated and shall make the information available to the public.

(7) If the Department fails to receive sufficient funding to allow the Program to operate, the Department shall notify each currently designated Application Assistant that the Program is no longer accepting applications from prospective participants and is terminating the Application Assistant Agreement. If, after sending such notice, the Department receives funding to allow the Program to resume, the Department shall notify each Application Assistant whose designation was cancelled due to lack of funding, and shall offer a process for redesignation.

Stat. Auth.: ORS 192.860, 2005 OL, Ch. 821, SB 850
Stats. Implemented: ORS 192.820-192.868, 2005 OL, Ch. 821, SB 850
Hist.: DOJ 4-2007, f. 4-12-07, cert. ef. 4-16-07

137-079-0140
Application Process

(1) The Program shall create an Address Confidentiality Program Application that includes the requirements set forth in ORS 192.826, as well as the address to which the application must be sent. The Program shall make copies of the application available to all currently designated Application Assistants, along with instructions as to how the application must be submitted. The Program shall make copies of the application available to others at the discretion of the Administrative Coordinator and in compliance with the requirements of these rules and 192.826.

(2) In addition to the requirements set forth in ORS 192.826, the Address Confidentiality Program Application and/or accompanying written materials provided to the applicant as part of the application process shall:

(a) Specify the term of certification to the Program as described in section 137-079-0150(3);

(b) Specify any other rights and obligations of a Program participant pursuant to ORS 192.820–192.868; and

(c) Inform the applicant that participation in the Program will cause a delay in the receipt of mail sent to the Program substitute address and forwarded to the Program participant by the Program.

(3) "Other forms of evidence" as described in ORS 192.826(3)(b)(D) include any written or oral evidence from which an Application Assistant can reasonably conclude that the applicant is a victim of domestic violence, stalking or a sexual offense within the meaning of ORS 192.820(8)–(10).

(4) The evidence required to be contained by the application by ORS 192.826(3)(b) shall consist of a statement by the Application Assistant that the Application Assistant has reviewed and considered

evidence that meets the requirements of 192.826 and paragraph 3 of this section.

(5) The Program shall review every application it receives for completeness. If an application is received by the Program that is incomplete and therefore cannot be certified, the Administrative Coordinator shall make reasonable efforts to remedy the incompletion. If the application is unable to be completed within thirty (30) days of receipt by the Program, the Administrative Coordinator shall notify the applicant that the application has been denied, and that the applicant may submit a new, complete application to the Program at any time. The Administrative Coordinator may exercise discretion and extend the thirty (30) day period for a reasonable amount of time if the Administrative Coordinator determines that such extension serves the purpose of the Program.

(6) When an application is denied by the Department for any reason, the Administrative Coordinator shall inform the applicant in writing that the application has been denied and the reason for the denial. The notice shall state that the Program participant has thirty (30) days from the date of the notice in which to submit to the Program an appeal of the denial and shall provide the address to which the appeal must be sent. The notice shall specify:

(a) That the appeal must be in writing, signed by the Program participant, and must include information as to why the application should be approved;

(b) That the appeal will be reviewed by the Attorney General or designee and determined within five (5) business days of receipt by the Program;

(c) That the applicant will be notified in writing of the determination; and

(d) That the decision of the Attorney General or designee is final.

Stat. Auth.: ORS 192.860, 2005 OL, Ch. 821, SB 850
Stats. Implemented: ORS 192.820-192.868, 2005 OL, Ch. 821, SB 850
Hist.: DOJ 4-2007, f. 4-12-07, cert. ef. 4-16-07

137-079-0150
Certification Process for Program Participation

(1) When an application received by the Program is determined to be complete and the information it contains is in compliance with Program requirements and the application is approved by the Attorney General or designee, the Program shall promptly certify the applicant to the Program.

(2) As soon as an applicant is certified as a Program participant, the Program shall assign a substitute address in compliance with ORS 192.822(2) and shall:

(a) Notify the Program participant of that address, as well as the requirements for its use;

(b) Provide the Program participant with the authorization card described in ORS 192.826(5); and

(c) Notify the Program participant of any additional information that will enable the Program participant to fully participate in the Program.

(3) Per ORS 192.826(6), the term of certification of a Program participant to the Program shall be for a period of four (4) years.

(4) A Program participant may renew the certification by filing an application for renewal with the Program at least thirty (30) days prior to the expiration of the current certification. No later than sixty (60) days prior to the expiration of the current certification, the Administrative Coordinator shall send the Program participant the information and materials needed in order to file the application for renewal, as well as the date by which the application must be filed. The application for renewal shall contain all the information required by ORS 192.826. For purposes of a renewal of certification, the evidence required to be included in the application by ORS 192.826(3)(b) may consist of a statement by the Program participant that the information included in the original application remains materially unchanged and therefore the Program participant continues to need the services provided by the Program. The Administrative Coordinator may waive the thirty (30) day requirement described in this paragraph if the Administrative Coordinator determines that the reason for waiving the requirement serves the purpose of the Program.

(5) If the term of certification described in paragraph 3 of this section has ended and the Program participant has not filed an application for renewal of certification, the Program shall cancel the certification.

(6) A Program participant's certification may be cancelled at the request of the participant. The request must be in writing and signed by the participant. The signature shall be notarized by a notary public or witnessed by a currently certified Application Assistant. The cancellation shall be considered effective the next business day after the request is received by the Program. The Program shall immediately confirm this cancellation in writing and shall inform the Program participant that all Program services have been discontinued. The Program will return all mail received, indicating that the addressee is no longer at the Program address.

(7) In addition to the cancellation described in paragraph 5 of this section, a Program participant's certification shall be cancelled by the Program:

(a) When the Program participant has obtained a legal name change;

(b) When the Program participant has violated statutory or Program requirements; or

(c) When mail forwarded to the Program participant is returned to the Program as undeliverable.

(8) When certification is cancelled pursuant to (7)(a) of this section, prior to cancellation, the Administrative Coordinator shall notify the Program participant that the Program participant may apply for certification under the new legal name, as described in section 137-079-0160(1) of these rules.

(9) When certification is cancelled by the Program for any reason, the Administrative Coordinator shall send a written notice of the cancellation to the Program participant. The notice shall specify the reason(s) for cancellation and shall state that the Program participant has thirty (30) days from the date of the notice in which to submit to the Program an appeal of the cancellation. The notice shall specify:

(a) That the appeal must be in writing, signed by the Program participant, and must include information as to why the certification should not be cancelled;

(b) That the appeal will be reviewed by the Attorney General or designee and determined within five (5) business days of receipt by the Program;

(c) That the applicant will be notified in writing of the determination; and

(d) That the decision of the Attorney General or designee is final.

(10) When certification is cancelled by the Program pursuant to paragraph (7)(a) or (7)(b) of this section, the written notice described in paragraph 9 of this section shall state, in addition to the information specified in paragraph (9)(a)–(c), that the Program will continue to forward mail to the Program participant for thirty (30) days after the date of the notice if no appeal is received or, if an appeal is received within thirty (30) days, until the appeal is resolved.

(11) When certification is cancelled by the Program pursuant to paragraph 7(c) of this section, the written notice described in paragraph 9 of this section shall state, in addition to the information specified in paragraph (9)(a)–(c), that all Program services have been discontinued and that the Program will return mail received for the Program participant to the Post Office to return to the sender.

(12) If the Department fails to receive sufficient funding to allow the Program to operate, the Department shall notify each currently certified Program participant that the Program is no longer able to receive and forward the Program participant's mail and is canceling the Program participant's participation in the Program. The notice shall specify a reasonable amount of time, no less than 30 days, during which the Program will continue to receive and forward the Program participant's mail, and in which the Program participant must establish a new address and inform other agencies of change of address. If, after sending such notice, the Department receives funding to allow the Program to resume, the Department shall notify each Program participant whose certification was cancelled due to lack of funding, and shall describe the process for recertification.

(13) When certification is cancelled for any reason, and in addition to information described in paragraphs (2)–(11) of this section, the Program shall send the Program participant information instructing the Program participant:

(a) To return the authorization card to the Program immediately; and

(b) To notify persons and public bodies using the substitute address as the address of the Program participant that the substitute address is no longer valid for the Program participant. The instruction shall include the information that it is the Program participant's responsibility to provide public bodies and others with the Program participant's new address.

Stat. Auth.: ORS 192.860, 2005 OL, Ch. 821, SB 850
Stats. Implemented: ORS 192.820-192.868, 2005 OL, Ch. 821, SB 850
Hist.: DOJ 4-2007, f. 4-12-07, cert. ef. 4-16-07

137-079-0160
Ongoing Program Participation

(1) When a Program participant notifies the Program of a legal name change pursuant to ORS 192.832(1), and requests continued participation in the Program, the Administrative Coordinator shall send the Program participant an application to apply to the Program under the new legal name, as well as the information required in order to complete the new application. The new application shall be received and processed according to the provisions of 137-079-0140.

(2) When a Program participant notifies the Program of a legal name change pursuant to ORS 192.832(1), and does not request to continue participation in the Program, the Administrative Coordinator shall send the Program participant notice as described in section 137-079-0150(9), (10) and (13) of these rules.

(3) When a Program participant notifies the Program of a change of address or telephone number in writing pursuant to ORS 192.832(2), the Administrative Coordinator shall request from the Program participant such information as is necessary to determine whether the Program participant is still eligible to be certified for participation in the Program.

(a) If the Administrative Coordinator determines that the Program participant remains eligible for participation, the Administrative Coordinator will enter the new information in Program records so that mail sent to the Program and required to be forwarded to the Program participant is forwarded to the correct Program participant address.

(b) If the Administrative Coordinator determines that the Program participant is no longer eligible for participation, the Administrative Coordinator shall send the Program participant notice of cancellation as described in section 137-079-0150(7)–(13) of these rules.

(4) The Administrative Coordinator shall establish a procedure in order to assure records are kept with regard to certified and registered mail received for Program participants.

Stat. Auth.: ORS 192.860, 2005 OL, Ch. 821, SB 850
Stats. Implemented: ORS 192.820-192.868, 2005 OL, Ch. 821, SB 850
Hist.: DOJ 4-2007, f. 4-12-07, cert. ef. 4-16-07

137-079-0170
Responsibility of Public Bodies to Use Substitute Address

(1) Upon certification of a Program participant as described in 137-079-0150(1) and (2), the Program shall notify the Program participant in writing of the requirements of public bodies to use the substitute address and the Program participant's responsibility with regard to requesting that public bodies use the address, pursuant to ORS 192.836(1) and (2).

(2) In addition to the information described in paragraph 1 of this section, the Program shall:

(a) Provide the Program participant with specific information, as such information is available, regarding the use of the substitute address with various public bodies, including information, as available, as to how the delays in mail receipt caused by participation in the Program may impact the benefits or services provided by public bodies; and

(b) Notify the Program participant that a public body may request a waiver to not use the substitute address, pursuant to ORS 192.836(3) and (4).

(3) When a Program participant submits a current and valid authorization card to a public body as described in ORS 192.836(2), the public body employee creating a new record may make a file photocopy of the authorization card and immediately return the card to the Program participant.

(4) The Program will accept and retain information from Program participants regarding public bodies that refuse to accept the substitute address for the creation of public records or modification of existing records.

Stat. Auth.: ORS 192.860
Stats. Implemented: ORS 192.860 - 192.868
Hist.: DOJ 4-2007, f. 4-12-07, cert. ef. 4-16-07; DOJ 5-2008, f. 3-28-08, cert. ef. 4-1-08

137-079-0180
Public Body Exemption Waiver

(1) A request for a waiver from the requirements of the Program made by a public body pursuant to ORS 192.836(3) may be for an individual Program participant, for a class of Program participants or for all Program participants. The request must be in writing and must contain:

(a) The information specified in ORS 192.836(3)(a) and (b), including a description of the specific record or records for which the exemption is requested and identifying the individual(s) who will have access to the record; and

(b) A description of the alternatives to the waiver the public body has considered and why those alternatives are not feasible.

(2) When the Program receives a request for a waiver pursuant to ORS 192.836(3), the Administrative Coordinator will determine if the request meets the requirements of 192.836(3). If the request is not in writing, or fails to include the explanation or the affirmation described in 192.836(3)(a) and/or (b), or is otherwise incomplete, the Administrative Coordinator will inform the requestor of the incompletion within five (5) business days of receiving the request, and that no determination will be made until the request is complete.

(3) When the Program receives a request for a waiver that is complete, the Attorney General or designee shall consider whether the public body submitting the request has demonstrated its inability to meet its statutory or administrative obligations by possessing or using the substitute address. The Attorney General or designee's acceptance or denial of the request:

(a) Shall be recorded pursuant to ORS 192.836(4);

(b) Shall specify the duration of the waiver, if approved, which shall be based upon the reason or reasons for which the waiver is approved; and

(c) Shall be sent to the requestor within ten (10) business days of the date on which the complete request was received.

Stat. Auth.: ORS 192.860, 2005 OL, Ch. 821, SB 850
Stats. Implemented: ORS 192.820-192.868, 2005 OL, Ch. 821, SB 850
Hist.: DOJ 4-2007, f. 4-12-07, cert. ef. 4-16-07

137-079-0190
Verification/Proof of Program Participation (192.848(4))

(1) A request for verification of a Program participant's participation in the Program made by a representative of a public body for an official purpose pursuant to ORS 192.848(4) may be made to the Program in writing or verbally. The person requesting verification, the public body they represent, and the purpose for which verification is requested must be provided and will be recorded by the Program.

(2) If the Administrative Coordinator determines that the request for verification is being made by a public body for an official reason, the Administrative Coordinator may verify the Program participant's participation. A signed release from the Program participant for whom the verification is requested may be required by the Department in support of the request.

(3) The verification of participation in the Address Confidentiality Program may be made in writing or verbally at the discretion of the Administrative Coordinator.

(4) A request for verification may include more than one Program participant, if the request satisfies the requirements of ORS 192.848(4) and this section for each Program participant for whom the request is made.

(5) A non-governmental entity or individual may submit a request for verification of a Program participant's participation in the Program. The request:

(a) Must be in writing;

(b) Must include the reason for which the verification is requested; and

(c) Must be supported by a signed release from the Program participant for whom the verification is requested. When such a request and supporting documentation are received, the Administrative Coordinator may, at his or her discretion, verify the Program participant's participation to the requestor.

Stat. Auth.: ORS 192.860, 2005 OL, Ch. 821, SB 850
Stats. Implemented: ORS 192.820-192.868, 2005 OL, Ch. 821, SB 850
Hist.: DOJ 4-2007, f. 4-12-07, cert. ef. 4-16-07

137-079-0200
Disclosure of Information Prohibited – Exceptions

(1) When the Department discloses a Program participant's actual address or telephone number pursuant to a court order issued in accordance with ORS 192.848(1)(a), the disclosure shall include in writing the statutory mandate specified in 192.848(2) against redisclosure of the address or telephone number, except pursuant to a court order. The disclosure may also include any other terms or requirements that will best protect the safety of the Program participant.

(2) The Department shall keep a record of requests for disclosure of a Program participant's actual address or telephone number and of the response to each request.

(3) The Program will accept and retain information from Program participants and from others regarding public bodies that disclose a Program participant's actual address or telephone number in violation of ORS 192.844, 192.848 and these rules.

Stat. Auth.: ORS 192.860
Stats. Implemented: ORS 192.860 - 192.868
Hist.: DOJ 4-2007, f. 4-12-07, cert. ef. 4-16-07; DOJ 5-2008, f. 3-28-08, cert. ef. 4-1-08

137-079-0210
Service of Process

(1) Service of process by mail on a Program participant shall be forwarded in accordance with general Program procedures according to the manner in which it was received.

(2) When personal service on a Program participant is required, it may be delivered to the Department of Justice at 1162 Court Street NE, Salem, Oregon. The recipient of such service shall immediately notify, by telephone, the Administrative Coordinator of such service.

(3) The Program shall forward personally served documents to the Program participant at the participant's actual or mailing address within one (1) business day of the documents being served. When documents that have been personally served are forwarded to the Program participant, the Program shall include a copy of the notice described in section 137-079-0150(2)(c) of these Rules.

Stat. Auth.: ORS 192.860, 2005 OL, Ch. 821, SB 850
Stats. Implemented: ORS 192.820-192.868, 2005 OL, Ch. 821, SB 850
Hist.: DOJ 4-2007, f. 4-12-07, cert. ef. 4-16-07

DIVISION 80

CRIME VICTIMS' COMPENSATION

137-080-0005
Definitions

As used in these rules:

(1) "Administrator" means the administrator of the office of Special Compensation Programs of the Oregon State Department of Justice.

(2) "Contract" means a contract by a person or legal entity with any individual charged with or convicted of committing a compensable crime in the State of Oregon or found guilty except for insanity with regard to such a crime, or with a representative or assignee of that individual, for the payment of money in return for the right to reenact such crime, or to describe the individual's thoughts, opinions or emotions regarding the crime, in a motion picture, book, magazine, article, tape recording, phonograph record, radio or television presentation or live entertainment of any kind.

(3) "Compensable Crime" has the meaning under ORS 147.005.

(4) "Department" means the Department of Justice of the State of Oregon.

(5) "Dependent" has the meaning under ORS 147.005.

(6) "Escrow Account" means an account established by the Department with the State Treasurer dedicated for the purpose of Oregon Laws 1985 Chapter 552, Section 3.

(7) "Judgment" means a money judgment received in a civil action for damages suffered as a result of a compensable crime.

(8) "Victim" has the meaning under ORS 147.005.

Stat. Auth.: ORS 147
Stats. Implemented: ORS 147.275
Hist.: JD 3-1985(Temp), f. & ef. 9-20-85; JD 1-1986, f. & ef. 1-15-86

137-080-0010
Determining Contracts

(1) Upon receipt of information concerning a contract, or a judgment or restitution order which may be subject to the provisions of Section 3, Chapter 552, Oregon Laws 1985 the administrator shall promptly investigate as necessary and determine whether the subject contract, judgment or restitution order falls within the provisions of said statute. Upon completion of such investigation, the administrator shall issue in writing a proposed determination and/or order with regard to the contract or matter in question.

(2) Written notice of the proposed determination and/or order shall be served in the same manner as service of a summons under the Oregon Rules of Civil Procedure (ORCP) on the contracting party or parties, the person charged with, convicted, or found guilty, except for insanity of the crime, and any known victims or dependents of deceased victims of the crime, and by certified mail, return receipt requested on such other persons or legal entities as the administrator may determine have an interest in the contract or subject matter of the proposed determination and/or order. Such notice shall contain the following statement:

"**This proposed determination and/or order will become final within 30 days of the date of service of this notice unless a hearing is requested in writing by an interested party. If you disagree with the proposed determination and/or order, you have the right to a hearing before the Department of Justice prior to a final determination in this matter. A request for a hearing must be made in writing addressed to: Administrator, Special Compensation Programs, Oregon State Department of Justice, 100 Justice Building, Salem, Oregon 97310. The request must state the reason for your disagreement with the proposed determination and/or order, and your interest in this matter.**"

(3) If a hearing is not requested within the time allowed, the proposed determination and/or order shall become the final decision of the Department.

(4) Upon receipt of a request for a hearing, the administrator shall conduct or shall appoint a hearing officer to conduct a hearing on the matter.

(5) The party requesting the hearing and all persons or entities mentioned in section (2) of this rule shall be notified in writing of the time, place and purpose of the hearing and informed of the rights of a party under ORS 183.413. A copy of the request for hearing shall also be provided. The notice shall be mailed certified mail, return receipt requested, not less than ten days before the date of the hearing.

(6) Hearings shall be conducted as a contested case in accordance with ORS Chapter 183 and the Attorney General's Model Rules of Procedure.

(7) Whenever the administrator determines that a substantial danger exists that moneys paid or owing to a person charged with or convicted of a crime pursuant to a contract which may be subject to the provisions of Section 3, Chapter 552, Oregon Laws 1985 Chapter 552, may be concealed, wasted, converted, assigned, encumbered, disposed of, or removed from the state, prior to a final decision of the Department on the applicability of the statute to the contract; or where a necessary party to the determination cannot be served with notice of the Department's proposed determination and order despite diligent efforts to do so; the administrator may issue an emergency

determination on behalf of the Department providing for the turning over of such moneys to the Department, pending the outcome of a hearing where requested and a final decision by the Department.

Stat. Auth.: ORS 147
Stats. Implemented: ORS 147.275
Hist.: JD 3-1985(Temp), f. & ef. 9-20-85; JD 1-1986, f. & ef. 1-15-86

137-080-0015
Notice of Establishment of an Escrow Account

In the case where a victim of crime is deceased, the notice to be published by the Department for five years from the establishment of an escrow account, under Section 3, Chapter 552, Oregon Laws 1985, shall advise dependents of such victims of the escrow moneys' availability to satisfy judgments for damages suffered as a result of the crime.

Stat. Auth.: ORS 147
Stats. Implemented: ORS 147.275
Hist.: JD 3-1985(Temp), f. & ef. 9-20-85; JD 1-1986, f. & ef. 1-15-86

137-080-0020
Disbursement of Moneys in the Escrow Account

(1) Moneys in the escrow account established under Section 3, Chapter 552, Oregon Laws 1985 will be disbursed by the Department to pay:

(a) Restitution orders under ORS 137.103 to 137.109; and

(b) Judgments as defined in section (1) of this rule.

(2) Payments will not be made from the escrow account on the basis of a judgment until either the amounts of all unsatisfied judgments are determined, or it is determined that the payment for an unsatisfied judgment will not diminish the escrow account so that other potential victim claims could not be satisfied. Escrow accounts having insufficient funds to meet all judgments presented by victims or dependents of deceased victims shall be prorated on the basis of the amounts of the unsatisfied judgments or partially satisfied judgments.

Stat. Auth.: ORS 147
Stats. Implemented: ORS 147.275
Hist.: JD 3-1985(Temp), f. & ef. 9-20-85; JD 1-1986, f. & ef. 1-15-86

137-080-0025
Notice of Action for Damages by Beneficiary of an Escrow Account

If any person or the representative of any person who has received an award from the Department under ORS Chapter 147 or any victim or dependent of a deceased victim or their representative who may because of a resulting judgment become the beneficiary of an escrow account established under Section 3, Chapter 552, Oregon Laws 1985 brings an action for damages against the person or persons criminally liable for injury or death giving rise to an award or to the establishment of an escrow account, he or she shall give written notice to the Department of the commencement of such action at the time such action is commenced. Such notice shall be served personally or by certified mail, return receipt requested, upon the administrator of the Department's Office of Special Compensation Programs. Such persons shall keep the administrator timely apprised in writing of any subsequent settlements, judgments, or other disposition of such actions.

Stat. Auth.: ORS 147
Stats. Implemented: ORS 147.275
Hist.: JD 3-1985(Temp), f. & ef. 9-20-85; JD 1-1986, f. & ef. 1-15-86

137-080-0030
Contracts with Convicted Persons to Tell Story of Crime

(1) Contracts described in Section 3(1), Chapter 552, Oregon Laws 1985 include any such contract under which payment is due, on or after September 20, 1985, to an individual charged with or convicted of committing a compensable crime (as defined in ORS 147.005) in this state, or who is found guilty, except for insanity, with regard to such a crime, or who is the representative or assignee of any such individual. A copy of such contracts shall promptly be submitted to the Department by any person or entity contracting with an individual, representative or assignee described above.

(2) Monies payable to the Department pursuant to Section 3(1), Chapter 552, Oregon Laws 1985, for deposit into escrow include any monies which would otherwise, under the terms of a contract described in section (1) of this rule, be paid to the accused or convicted individual, the individual found guilty except for insanity, or the representative or assignee of such individuals, on or after September 20, 1985.

(3) Earnings, payments to and profits of the author and publisher under the contract are not subject to payment to the Department for deposit into escrow unless the author or publisher is also the accused or convicted individual, the individual found guilty but for insanity, or that individual's representative or assignee.

Stat. Auth.: ORS 147
Stats. Implemented: ORS 147.275
Hist.: JD 4-1985, f. & ef. 11-22-85

DIVISION 82

CHILD ABUSE MULTIDISCIPLINARY INTERVENTION ACCOUNT

137-082-0200
Purpose

These rules outline the implementation of the Child Abuse Multidisciplinary Intervention (CAMI) Account, as well as sets forth eligibility criteria for county multidisciplinary child abuse teams, and public and private agencies applying for funding under ORS 418.746 et seq., to qualify for CAMI Account funds.

Stat. Auth.: OL 1993, Ch. 676 & OL 2001, Ch. 624
Stats. Implemented: ORS 418.746 - 418.794
Hist.: DOJ 5-2002, f. 7-31-02, cert. ef. 8-1-02

137-082-0210
Definitions

(1) "Advisory Council on Child Abuse Assessment", referred to hereafter as "the Council", is a legislatively authorized council (ORS 418.784) of at least nine members appointed by the Attorney General or Attorney General's designee to advise the Child Abuse Multidisciplinary Account Administrator. For the purpose of these rules, Child Abuse Advocacy Centers is referred to as "Child Abuse Intervention Centers". The Council collaborates with the Administrator of the CAMI Account on the disbursement of moneys to establish and maintain community or regional child abuse intervention centers and advises the CAMI Administrator on the disbursement of monies to the multidisciplinary teams.

(2) "Advocacy Services" means those services that reduce additional trauma to the child victims and their families in addition to services that reduce the trauma for the child victim and support the identification and development of therapeutic services.

(3) "Applicant," as used in OAR 137-082-0200 et seq., means the county and the public and private agencies recommended by a county's multidisciplinary child abuse team to provide services in accordance with the county's coordinated child abuse multidisciplinary intervention plan.

(4) "Assessment Services" means a medical assessment, intervention service or psycho-social assessment of children suspected of being victims of abuse and neglect.

(5) "Child Abuse Multidisciplinary Intervention Account", referred to hereafter as the "CAMI Account". The CAMI Account holds funds appropriated by the Legislative Assembly to the Oregon Department of Justice. The funds are to be disbursed to counties, for the counties' funding of "multidisciplinary child abuse teams" formed under ORS 418.784, and to public and private agencies recommended by a county's multidisciplinary child abuse team to provide services in accordance with the county's coordinated child abuse multidisciplinary intervention plan.

(6) "Conditional Eligibility" is the conditional approval of the program proposed by the applicant for carrying out the county's coordinated child abuse multidisciplinary intervention plan.

(7) The coordinated child abuse multidisciplinary intervention plan, set forth at ORS 418.746(5) and referred to hereafter as "the Plan", sets forth all sources of funding, other than moneys that may be distributed from the child abuse multidisciplinary intervention account, and including in-kind contributions that are available for the

intervention plan; describes how the Plan provides for comprehensive services to the victims of child abuse, including assessment, advocacy and treatment; and includes the county's written protocol and agreements required by 418.747(2).

(8) "County Multidisciplinary Child Abuse Team", referred to hereafter as the "MDT" or "Team", is a county investigative and assessment team for child abuse. Pursuant to ORS 418.747(1), the Team must include, but is not limited to, law enforcement personnel, child protective services workers, district attorneys, school officials, health department staff and personnel from the courts.

(9) "The Department" is the Oregon Department of Justice.

(10) "Eligible Expenses" means personnel costs for staff, interviewers, interpreters, and expert witnesses; services and supplies, rent, capital purchases, and other operational expenses related to providing assessment, advocacy, or treatment services. The county with whom the Department contracts may request 5% of the county CAMI Account funds for administration. This must have the approval of the county multidisciplinary team and be included in the Plan.

(11) "Grantee" means an Applicant whose grant application has resulted in as received a grant award, which is reflected in a "Grant Agreement".

(12) Ineligibility Determination — is a finding by the Account Administrator that a county is ineligible to receive funding from CAMI.

(13) Intervention Advocacy — activities identified at the local and state level to provide more effective intervention for victims of abuse and neglect.

(14) Intervention Services — services provided by criminal justice or child protective services staff to effectively intervene in cases of suspected child abuse.

(15) Medical Assessment as defined in ORS 418.782(2) — the medical assessment is an assessment by or under the direction of a physician who is licensed to practice medicine in Oregon and trained in the evaluation, diagnosis and treatment of child abuse. The medical assessment must include a thorough medical history, a complete physical examination, an interview for the purpose of making a medical diagnosis, determination of whether or not the child has been abused, and identification of the appropriate treatment or referral for follow-up for the child.

(16) Prevention Advocacy — activities associated with local and state fatality review processes and/or subsequent prevention strategies to reduce abuse, neglect or fatalities.

(17) Professional Training and Education — support for professional training and educational resources such as a clearinghouse, speaker's bureau, or library; ongoing training and education for professionals involved in child abuse and neglect intervention.

(18) Protective Services — activities that are required to protect the child, prevent future abuse, and support the healing process associated with the abuse related trauma.

(19) Psycho-Social Assessment — evaluates the child's and the family's needs for services and the availability of resources to meet those needs.

(20) "Treatment" means those services that provide for the medical and psychological needs of the victim or the victim's family members. For the purposes of this rule, treatment is intended to refer to short-term, crisis-oriented treatment.

(21) "Treatment Services" means information, referral, and therapeutic interventions for child abuse victims and their families.

Stat. Auth.: OL 1993, Ch. 676 & OL 2001, Ch. 624
Stats. Implemented: ORS 418.746 - 418.794
Hist.: DOJ 5-2002, f. 7-31-02, cert. ef. 8-1-02; DOJ 2-2011, f. 3-30-11, cert. ef. 4-1-11

137-082-0220
Eligibility

(1) To be eligible for funds an Applicant, through its multidisciplinary child abuse team, must submit a Plan as described in ORS 418.746(5). The Plan must be submitted with any application for CAMI Account funds and must describe how the county will provide for comprehensive services for victims of child abuse or children suspected of being victims of child abuse. In describing the nature of the comprehensive services that will be available, the Plan must address assessment, advocacy and treatment services as defined by subsection (2)(c) of this rule.

(2) To receive a grant award, an Applicant must:

(a) Meet the requirements of ORS 418.746 and OAR 137-082-0200 through 137-082-0280;

(b) Demonstrate existence of a functioning multidisciplinary team responding to allegations of child abuse pursuant to ORS 418.747;

(c) Submit an application to the Department which includes a Plan that meets all requirements of ORS 418.746(5)(a) and this administrative rule. The application must clearly state protocols as requested in the application, goals, objectives, and desired outcomes that further the purposes of 418.747, 418.780, 418.790 and 418.792. The portion of the Plan that will be supported by the CAMI Account funds must provide for services in one or more of the service categories (A), (B) or (C) listed below, in addition to the fourth category, (D) Eligible Expenses associated with the provision of services. Each application must clearly state the service category, services intended to be provided, the expenses associated with the services, measurable objectives, and desired outcomes.

(A) "Assessment Services" includes the following:

(i) Medical Assessment — The medical assessment must include a thorough medical history, a complete physical examination, an interview for the purpose of making a medical diagnosis, determination of whether or not the child has been abused, and identification of the appropriate treatment or referral for follow-up for the child;

(ii) Psycho-Social Assessment;

(iii) Intervention Services;

(B) "Advocacy Services" includes the following:

(i) Advocacy Services;

(ii) Protective Services;

(iii) Intervention Advocacy;

(iv) Prevention Advocacy;

(v) Professional Training and Education.

(C) "Treatment Services" includes the following:

(i) Providing information regarding available treatment resources;

(ii) Referral for therapeutic services;

(iii) Providing and coordinating therapeutic treatment intervention.

(iv) Provided all requirements specified above have been satisfied, an Applicant must enter into a Grant Agreement in the form approved by the Department.

(D) "Eligible Expenses" includes personnel costs for staff, interviewers, interpreters, and expert witnesses; services and supplies, rent, capital purchases, and other operational expenses related to providing assessment, advocacy, or treatment services. The county with whom the Department contracts may request 5% of the county CAMI Account funds for administration. This must have the approval of the county MDT and be included in the Plan.

(3) Conditional Eligibility

(a) If an applicant submits a program application that fails to meet all of the Plan requirements, the applicant will be asked to submit a revised Plan as requested by the Department that will bring the applicant into compliance with the Plan program requirements. If this Plan is approved by the Department, then the Department may award funds to the applicant. A Plan must be approved by the Department before to an Applicant is eligible to receive funds.

(b) Failure to use the CAMI Account funds in accordance with the Plan approved by the CAMI Account Administrator may result in an applicant being given notice of conditional eligibility or notice of denial for future funding until such time as corrective actions have been taken which have been approved by the Account Administrator.

(4) Ineligibility Determination — An application may be deemed ineligible and funds may be denied if an applicant:

(a) Fails to provide verification of an ongoing, fully functioning county multidisciplinary child abuse team;

(b) Fails to provide verification of an ongoing child fatality review process as described under ORS 418.747(8)–(13);

(c) Fails to submit an approved Plan;

(d) Fails to submit the required program, fiscal or other reports as specified by ORS 418.746(7) and in OAR 137-082-0250 or as requested by the Department;

(e) Fails to provide a corrective action plan if requested to do so by the CAMI Account Administrator;

(f) Fails to expend the CAMI Account funds in accordance with the Plan approved by the CAMI Account Administrator; or

(g) Fails to meet any of the other conditions specified in ORS 418.746, 418.747, or OAR 137-082-0200 through 137-082-0280.

(5) If a county does not expend all of its allocated funds for year one of the grant period, it must explain in the annual report why the funds were not expended and how they will be incorporated into the second year's Plan, in order to maintain the county's eligibility. If in the judgment of the Account Administrator a sufficient explanation has been provided, the carry-over funds may become part of that second year's comprehensive plan.

(6) Pursuant to subsection (5) the Account Administrator may in his or her discretion permit an Applicant to retain unexpended funds provided to grantee under a contractual agreement entered into pursuant to OAR 137-082-0200 et seq. Such retention of funds must be implemented through a subsequent contractual agreement with the grantee.

(7) If a significant carry-over of funds continues for more than one year, the county will be asked to reevaluate its Plan and make necessary adjustments to utilize the funds. If there continues to be significant carry-over of funds without reasonable plans approved by the CAMI Administrator for their use, the county's allocation for future funding may be reduced by the amount of excess funds or carryover may be applied to the county's next year's allocation if approved by the Department.

Stat. Auth.: OL 1993, Ch. 676 & OL 2001, Ch. 624
Stats. Implemented: ORS 418.746 - 418.794
Hist.: DOJ 5-2002, f. 7-31-02, cert. ef. 8-1-02; DOJ 2-2011, f. 3-30-11, cert. ef. 4-1-11

137-082-0230
Notice and Time Limits on Application

(1) The Department will send application materials to a designated representative of the county's MDT on a biennial basis. Applicants with a history of compliance with all eligibility and reporting requirements for a period of at least 4 years, may, at the discretion of the CAMI Account Administrator be provided an abbreviated biannual application that will certify continued compliance with eligibility along with any updated information that is necessary or requested by the CAMI Account Administrator.

(2) Eligibility will be determined biennially based upon review by the Advisory Council on Child Abuse Assessment and the CAMI Account Administrator. A request for application and continued eligibility will be determined by the CAMI Account Administrator through review of the annual report.

(3) If the Advisory Council on Child Abuse Assessment or CAMI Account Administrator finds deficiencies in the application, the applicant will be informed through the Crime Victims' Services Division (CVSD) E-Grant system to make specified modifications. The applicant must submit the requested modifications to its application to correct these deficiencies before a CAMI Grant Agreement will be issued. The CAMI Account Administrator will issue a CAMI Grant Agreement upon approval of the modified application or issue a denial with any additional terms deemed necessary for the modified application to receive approval.

(4) If a requested revised Plan is not submitted within the designated timeframe assigned by DOJ, the applicant will be declared ineligible. The funds designated for that county will be reallocated to other eligible applicants as per OAR 137-082-0280.

Stat. Auth.: OL 1993, Ch. 676 & OL 2001, Ch. 624
Stats. Implemented: ORS 418.746 - 418.794
Hist.: DOJ 5-2002, f. 7-31-02, cert. ef. 8-1-02; DOJ 2-2011, f. 3-30-11, cert. ef. 4-1-11

137-082-0240
Transfer of Funds

(1) Upon approval of the application, and following the grant award, the Department will enter into a Grant Agreement with the county or the public and private agencies, recommended pursuant to ORS 418.746(5) and (6) and approved by the Department, or any of the foregoing. The Department will disburse funds in accordance with the Grant Agreement. The Department will not purchase services directly from a local service provider.

(2) A percentage of the Criminal Fines and Assessment Public Safety Fund CAMI Account appropriation will be reserved for each county based upon a biennial calculation that takes into account numbers relating to population under age 18 and crime rates for the county. Any unclaimed funds will be reallocated in accordance with OAR 137-082-0280.

(3) General Fund allocation — Will be allocated through the same process under OAR 137-082-0240(2).

Stat. Auth.: OL 1993, Ch. 676 & OL 2001, Ch. 624
Stats. Implemented: ORS 418.746 - 418.794
Hist.: DOJ 5-2002, f. 7-31-02, cert. ef. 8-1-02; DOJ 2-2011, f. 3-30-11, cert. ef. 4-1-11

137-082-0250
Report

(1) The County's Semi-annual Statistical and Quarterly Fiscal Reports. The chair of each county's MDT is responsible for the Team's submission of an annual progress report. The county must provide to its' MDT any information requested by the Team if such information is necessary to be in compliance with the CAMI Account reporting requirements set forth in ORS 418.746(7) and OAR 137-082-200 et seq. The reports shall be in the form specified by the Department. The reports must document how the grant funds were utilized and the extent to which the programs were able to meet anticipated outcomes in terms of benefits to children and families. This information will be used to determine eligibility for future funding. To adequately prepare these reports, the county should include, as part of each biennial application, desired program outcomes, a description of the measurable objectives to be achieved in each service category and the data that will be used to measure the progress of the program towards the desired outcomes.

(2) The biannual reports shall address the following areas:

(a) Statements of Purpose, Objectives, Goals of Project or Activity;

(b) Problems or barriers that arose during the reporting year and how these were addressed;

(c) Results, Accomplishments, and Evaluations: This must include the data used to measure success towards outcomes and objectives as stated in the application;

(d) Conclusions and any recommendations; and

(e) Any additional information requested by the Department.

(3) Failure to submit the required reports by the due date will result in the county being placed on conditional eligibility status for any future funds. The county will be given written notice of this action. No further funds will be disbursed until the Department receives the required report.

(4) Submitting false or misleading information will result in denial of further funding until the county demonstrates that problem areas are identified and corrected. The applicant will be given written notice of this action.

(5) The Public or Private Agency's semi-Annual and Quarterly Fiscal Reports. An agency that is awarded money under these rules must submit reports to the county MDT and to the Department. The reports must document how the money was utilized and describe the extent to which the program was able to meet anticipated outcomes in terms of benefits to children and families. County MDTs receiving reports from a public or private agency under these rules must use the report in making future recommendations regarding allocation of moneys. The Department will use the public or private agency's reports to make future eligibility and allocation decisions and to evaluate programs funded under these rules.

(6) The public or private agency's reports shall address the following areas:

(a) Statements of Purpose, Objectives, Goals of Project or Activity;

(b) Problems or barriers that arose during the reporting year and how these were addressed;

(c) Results, Accomplishments, and Evaluations: this must include the data used to measure success towards outcomes and objectives as stated in the application;

(d) Conclusions and any recommendations; and

(e) Any additional information requested by the Department.

(7) Failure to submit the required report by the due date will result in the public or private agency being placed on conditional eligibility status for any future funds. The public or private agency will be given written notice of this action. No further funds will be disbursed until the Department receives the required report.

(8) Submitting false or misleading information will result in denial of further funding until the public or private agency demonstrates that problem areas are identified and corrected to the satisfaction of the Department. The public or private agency will be given written notice of this action.

Stat. Auth.: OL 1993, Ch. 676 & OL 2001, Ch. 624
Stats. Implemented: ORS 418.746 - 418.794
Hist.: DOJ 5-2002, f. 7-31-02, cert. ef. 8-1-02; DOJ 2-2011, f. 3-30-11, cert. ef. 4-1-11

137-082-0260
Method of Review/Role of Advisory Council

(1) Staff from the CVSD will review each county's application and each recommended public or private agency's application. A committee comprised of members of the Advisory Council on Child Abuse Assessment, and other members as may be appointed by the Department, will review and submit to the Department a recommendation regarding approval of each county's Plan the county's application for funding and each county's recommended public or private agency application for funding if any. The committee will determine if the application:

(a) Meets the established eligibility requirements;

(b) Responds to the county's needs as identified in their Plan for comprehensive services to the victims of child abuse;

(c) Substantially furthers the goals and purposes of ORS 418.747, (418.780,) 418.790, and 418.792; and

(d) Documents proper allocation of previous funds and the extent to which anticipated outcomes were achieved for children and families.

(2) The final responsibility for approval, conditional eligibility approval or denial shall rest with the Department.

(3) Formal notification of approval, conditional approval or denial will be given to counties and county recommended public or private agencies in a timely manner.

(4) The Department and Advisory Council may, at any time, conduct a site visit, and may review any records relating to the provision of services and expenditure of funds under this project. All information and records pertaining to individual families and children, reviewed by the Department or a designated body in the exercise of its duties related to the CAMI program, shall be maintained in accordance with the provisions of law, and the terms of applicable Grant Agreements. The information and records will be treated as confidential records by such parties, except to the extent that permission is provided by the affected parties, or as the law may otherwise require.

Stat. Auth.: OL 1993, Ch. 676 & OL 2001, Ch. 624
Stats. Implemented: ORS 418.746 - 418.794
Hist.: DOJ 5-2002, f. 7-31-02, cert. ef. 8-1-02; DOJ 2-2011, f. 3-30-11, cert. ef. 4-1-11

137-082-0270
Grievance Procedures

(1) Applicants have a right to a review of decisions regarding their conditional eligibility or denial of eligibility for CAMI funds.

(2) Each Applicant will be informed of the procedure for review, ("grievance procedure") at the time a decision is made regarding an Applicant's eligibility for CAMI funds.

(3) No Applicant will be subject to reprisal for seeking a review of a decision regarding conditional eligibility or denial of eligibility for CAMI funds.

(4) To invoke this grievance procedure, an Applicant must make a written request to the CAMI Account Administrator within 30 days after receiving notification of the conditional eligibility or denial.

(5) When the Department is notified that an Applicant has timely filed a grievance regarding conditional eligibility or denial of eligibility for CAMI funds, a meeting will be scheduled with the CAMI Account Administrator. This meeting will involve the applicant and other members of the county's MDT as the Applicant deems necessary to present its case. The CAMI Account Administrator and members of the Advisory Council may be present at this meeting. Every effort will be made to have this meeting occur within 2 weeks of receipt of the grievance.

(6) If the matter is not resolved through the grievance procedure, the applicant may request a review of the issue by the Director of the CVSD. The Applicant must make a written request to the Director of the CVSD within 30 days following notification of the results of meeting with the CAMI Account Coordinator.

(7) The Director of the CVSD shall respond in writing to the Applicant's request for review within 30 days. If this response does not resolve the matter the Applicant may request an administrative review by the State Attorney General. Request for such a review shall be made in writing to the State Attorney General and shall include a statement of the problem and the desired resolution. Written notice of intent to pursue administrative review by the Attorney General shall be provided to the Director of the CVSD before or concurrently with the written request that is submitted to the Attorney General. To be eligible for review by the Attorney General, this request must be made within 30 days of receipt of written notification of the decision of the Director of the CVSD. The decision of the State Attorney General is final.

Stat. Auth.: OL 1993, Ch. 676 & OL 2001, Ch. 624
Stats. Implemented: ORS 418.746 - 418.794
Hist.: DOJ 5-2002, f. 7-31-02, cert. ef. 8-1-02; DOJ 2-2011, f. 3-30-11, cert. ef. 4-1-11

137-082-0280
Reallocation of Funds Not Applied for or Used

(1) CAMI funds that were not allocated due to an Applicant's failure to request its CAMI funds, or an Applicant's failure to submit a complete application, or a satisfactory Plan or failure to enter into a Grant Agreement, may be distributed to other eligible counties as a supplemental award. These funds will be offered to eligible counties on a percentage basis according to the allocation formula set forth in OAR 137-082-0240(2). As provided therein and OAR 137-082-0280, CAMI funds may be distributed in a manner that is similar to the disbursement formula used to distribute the Criminal Fines and Assessment Public Safety Fund with regard to prosecutor based victim assistant programs.

(2) If an application is submitted but approval is denied, the funds will be held in the CAMI Account for that county for 12 months from the date of denial, during which time the Applicant may reapply. If the Applicant has not obtained at least conditional eligibility within the 12 month period, the funds will be distributed to other eligible counties. If the grievance procedure is underway during the 12 month period, the Applicant's funds will be held in reserve until the final decision of the Attorney General or 12 months from the date of the notification of the denial of funding, whichever is longer. Any Applicant holding funds which are the subject of an eligibility determination grievance procedure, or notice regarding appropriate use of funds, may not encumber, alienate or expend those funds unless and until the grievance procedure is concluded in favor of the Applicant. Applicants holding funds which are ultimately determined to be ineligible for use under Applicant's Plan must return any and all grant funds to the Department within the timeframe established by the Department.

(3) It is the intention of the Department to have minimal or no unobligated CAMI funds at the end of each biennium. Funds held in the CAMI Account in accordance with the above rules will be con-

sidered obligated funds until all grievances and eligibility issues have been resolved.

Stat. Auth.: OL 1993, Ch. 676 & OL 2001, Ch. 624
Stats. Implemented: ORS 418.746 - 418.794
Hist.: DOJ 5-2002, f. 7-31-02, cert. ef. 8-1-02; DOJ 2-2011, f. 3-30-11, cert. ef. 4-1-11

DIVISION 83

REGIONAL AND COMMUNITY CHILD ABUSE ASSESSMENT CENTERS

137-083-0000
Purpose

These rules establish criteria for awarding grants to establish and maintain Regional Assessment Centers or Community Assessment Centers pursuant to ORS 418.786. These rules also define the services offered by Regional Assessment Centers and Community Assessment Centers, standards relating to complex cases, and grievance procedures regarding the criteria for awarding grants.

Stat. Auth.: ORS 418.782 - 418.793
Stats. Implemented: ORS 418.780 - 418.796
Hist.: DOJ 1-2003, f. 2-28-03, cert. ef. 3-1-03; DOJ 2-2011, f. 3-30-11, cert. ef. 4-1-11

137-083-0010
Definitions

As used in OAR chapter 137, division 083:

(1) "Multidisciplinary Child Abuse Team (MDT)" means the interdisciplinary investigation team established in each county by ORS 418.747.

(2) "Complex Case" means a case in which the local Child Abuse Intervention Center (CAIC) or the local Multidisciplinary Child Abuse Team (MDT) determines the need for assistance from a Regional Service Center or Community Assessment Center, in order to perform or complete a child abuse medical assessment or to evaluate, diagnose or treat a victim of child abuse.

(3) "Consultation" means discussions between or among persons associated with a Regional Service Center or Community Assessment Center and persons associated with county Multidisciplinary Teams to be served by the Center regarding individual cases involving child abuse or possible child abuse, child abuse medical assessments, and related topics.

(4) "Education" means the provision of specialized information to individuals regarding the detection, evaluation, diagnosis and treatment of child abuse or possible child abuse.

(5) "Referral Services" means the recommendation of specialized services related to child abuse medical assessments or to the detection, evaluation, diagnosis or treatment of child abuse. It may include consultation or directing or redirecting a child abuse victim or possible victim to an appropriate specialist for more definitive evaluation, diagnosis or treatment.

(6) "Technical Assistance" means assistance of a practical, specialized or scientific nature, including but not limited to practical advice, specialized advice, advanced laboratory testing or forensic testing.

(7) "Training" means the provision of teaching or instruction to professionals regarding the detection, evaluation, diagnosis or treatment of child abuse or possible child abuse.

(8) "Community Assessment Service" means a neutral, child sensitive community-based center or service provider to which a child from the community may be referred to receive a thorough child abuse medical assessment for the purpose of determining whether the child has been abused or neglected. These services may be provided by assessment, advocacy, or intervention centers.

(9) "Regional Assessment Center" means a community based Child Abuse Intervention Center (CAIC) that is also providing training, education, consultation, referral, technical assistance, and may with the approval of the Department of Justice be providing specialized assessment services for children in multiple counties. For the purposes of these rules the Regional Assessment Center will be referred to as the Regional Service Providers (RSP) and may be referred to as RSP or Regional Service Provider throughout the rest of this document.

Stat. Auth.: ORS 418.782 - 418.793
Stats. Implemented: ORS 418.780 - 418.796
Hist.: DOJ 1-2003, f. 2-28-03, cert. ef. 3-1-03; DOJ 2-2011, f. 3-30-11, cert. ef. 4-1-11

137-083-0020
Application Requirements

(1) Eligible Applicants:

(a) An applicant for the RSP grant must be a public or private non-profit agency that has demonstrated the ability to provide quality child abuse intervention services for a period of at least two years, as determined by the Child Abuse Multidisciplinary Intervention Advisory Council;

(b) An applicant for the RSP grant must be a public or private non-profit agency whose mission includes the provision of services to victims of child abuse or neglect;

(c) An applicant for the RSP grant must have adequately trained staff to perform child abuse medical assessments and interviews including but not limited to a physician who is trained in the evaluation, diagnosis and treatment of child abuse and who is licensed to practice medicine in Oregon by the Oregon Medical Board; and an interviewer who has an advanced academic degree in human services or who has comparable specialized training and experience.

(2) Application Contents. An application for a Regional Service Provider grant must include the information specified in ORS 418.788(3), 418.790 (RSP applicants only) and ORS 418.792 (Child Abuse Intervention Center applicants) as well as the following:

(a) Service Delivery Plan:

(A) An in-depth description of how the Regional Service Provider will assure the provision of neutral, child-centered child abuse medical assessments for the purpose of determining whether a child has been abused or neglected;

(B) Documented support from constituent agencies and the local MDT. The constituent support must address the level of need for the services, and how that service will be accessed by community agencies or individuals;

(C) Goals, objectives and measurable outcomes for the projected funding period. The method by which the quality of services will be evaluated must be included in the service delivery plan;

(D) For RSP applicants, the service delivery plan must include the requirements set forth in ORS 418.790(1).

(b) For RSP applicants, information which demonstrates how and to what extent the applicant proposes to provide consultation, education, training and technical assistance to local MDT's, community assessment centers, and others as may be appropriate. A description of services shall include documentation demonstrating that potential recipients of any of the above services have been provided a reasonable opportunity to provide input into the proposed service delivery plan;

(c) For RSP applicants, a projected budget for the expenses associated with the provision of consultation, education, training, referral and technical assistance or other services as may be approved by the Department of Justice. Expenses may include, but are not limited to personnel, training, equipment, rent, supplies, travel, telephone or other communication charges. The budget for the services provided as a RSP must be clearly differentiated from those of the direct victim services provided as a Child Abuse Intervention Center;

(d) Any additional information requested by the CAMI Account Coordinator.

(3) Referral of Complex Cases. RSP's shall assure that they will provide access for CAICs and MDT's for referral of complex cases. RSP's, CAICs and MDT's shall have an agreement regarding how referrals and services may be made, who can make a referral, and if desired, more specificity regarding the definition of a complex case. The method for contacting the regional centers shall be updated as needed, and distributed by the CAMI Account Coordinator and RSPs, to all CAICs and MDT coordinators.

Stat. Auth.: ORS 418.782 - 418.793
Stats. Implemented: ORS 418.780 - 418.796

Hist.: DOJ 1-2003, f. 2-28-03, cert. ef. 3-1-03; DOJ 2-2011, f. 3-30-11, cert. ef. 4-1-11

137-083-0030
Criteria for Awarding Grants

(1) Criteria for awards include application quality, the documentation of services needed by those to be served, quality of past service provision, cost efficiencies, and geographic area to be served. In addition, the following criteria shall be considered:

(a) Length of time and experience hired staff have in providing comprehensive child abuse medical assessments. Also considered will be the number of full time employees available for the level of anticipated service;

(b) Length of time the applicant has been financially and organizationally stable;

(c) The leadership demonstrated by the applicant in promoting skilled, complete therapeutic medical assessments for any child alleged to be a victim of child abuse;

(d) The geographic area to be served and the accessibility of the center for those to be served;

(e) The availability of state of the art equipment for conducting comprehensive child abuse medical assessments;

(f) The extent to which the applicant meets the application requirements set forth in OAR 137-083-0020;

(g) Allowable expenses eligible for reimbursement through this grant;

(h) Responsiveness of the service delivery plan to a documented need for services; and

(i) Past success in meeting stated objectives and measurable outcomes.

(2) A successful applicant will be required to execute a grant agreement with the Department of Justice before any funds will be disbursed.

Stat. Auth.: ORS 418.782 - 418.793
Stats. Implemented: ORS 418.780 - 418.796
Hist.: DOJ 1-2003, f. 2-28-03, cert. ef. 3-1-03

137-083-0040
Performance of Duties

(1) Regional Service Providers receiving CAMI funds directly from the Department of Justice, shall submit reports that provide both qualitative and quantitative information regarding the delivery of services provided by the RSP as required by the Department.

(2) Failure to meet the conditions of the award including administration, fiscal and programmatic requirements, may result in a reduction or denial of subsequent funds.

Stat. Auth.: ORS 418.782 - 418.793
Stats. Implemented: ORS 418.780 - 418.796
Hist.: DOJ 1-2003, f. 2-28-03, cert. ef. 3-1-03; DOJ 2-2011, f. 3-30-11, cert. ef. 4-1-11

137-083-0050
Grievance Procedures

(1) An applicant has a right to review the award decision concerning eligibility and denial for an award for CAMI funds for the RSP grant. The grievance process is referred to herein as the "review" or "grievance procedure".

(2) Each applicant will be informed of the grievance procedure at the time a decision is made regarding an award decision concerning an applicant's application.

(3) No applicant will be subject to reprisal for seeking a review of an award decision.

(4) To request a review of the award decision the applicant must make a written request to the CAMI Account Coordinator within 30 days after receiving notification of the award decision.

(5) When the Department is notified that an applicant has requested a review of the award decision, a meeting will be scheduled with the CAMI Account Coordinator and members of the Advisory Council that have no conflict of interest with regard to the review at issue. Every effort will be made to have this meeting occur within 30 days of receipt of the grievance.

(6) If the matter is not resolved through the above described grievance procedure, the applicant may request a further review of the issue by the Attorney General or his designee. The applicant must make a written request for such a review, to the Director of the Crime Victims' Services Division within 30 days following notification of the results of meeting with the CAMI Account Coordinator and the Advisory Council.

(7) The decision of the State Attorney General or his designee is final.

Stat. Auth.: ORS 418.782 - 418.793
Stats. Implemented: ORS 418.780 - 418.796
Hist.: DOJ 1-2003, f. 2-28-03, cert. ef. 3-1-03; DOJ 2-2011, f. 3-30-11, cert. ef. 4-1-11

DIVISION 84

SEXUAL ASSAULT VICTIMS' EMERGENCY MEDICAL RESPONSE FUND

137-084-0001
Definitions

(1) "Application Form" means the most current version of the Application for Payment Sexual Assault Victims' Emergency Medical Response Fund form issued by the Department of Justice. (A copy of the Application Form is set out as an Appendix to these administrative rules.)

(2) "Complete Medical Assessment" means use of an Oregon State Police SAFE Kit in conjunction with a medical examination of a victim of sexual assault conducted within the accepted patient standard of care by an eligible medical services provider and the offering and, if requested, provision of prescriptions for emergency contraception and sexually transmitted disease prevention.

(3) "Department" means the Oregon Department of Justice.

(4) "Eligible Medical Services Provider" means a person who has the facilities and supplies necessary to provide the complete medical assessment as provided in these rules and who is currently licensed in Oregon, Washington, Idaho or California in one of the following categories: a SANE certified nurse, a registered nurse acting under the direct supervision of a Doctor of Medicine or a Doctor of Osteopathy, a nurse practitioner, a Doctor of Medicine, or a Doctor of Osteopathy.

(5) "Eligible victim" means a person who has self-identified or been identified by another as a victim of a sexual assault that occurred in Oregon and who receives a medical examination by an eligible medical services provider within the time periods established in OAR 137-084-0010(4) and (5).

(6) "Emergency Contraception" means administering prophylactic drugs to prevent pregnancy, or providing a prescription for such medication to be filled on-site, in conjunction with a complete medical assessment or a partial medical assessment.

(7) "Fund" means the Sexual Assault Victims' Emergency Medical Response Fund.

(8) "Medical Examination" means a medical examination of a victim of sexual assault conducted within the accepted patient standard of care by an eligible medical services provider.

(9) "Oregon State Police SAFE Kit" means the sexual assault forensic evidence collection kit, including protocol guidelines, approved by and distributed by the Oregon Department of State Police.

(10) "Partial Medical Assessment" means a medical examination of a victim of sexual assault conducted within the accepted patient standard of care by an eligible medical services provider and the offering and, if requested, provision of prescriptions for emergency contraception and sexually transmitted disease prevention.

(11) "SANE Certified Sexual Assault Nurse" means a nurse who has received certification as a SANE from the International Association of Forensic Nurses or from the Oregon Attorney General's Sexual Assault Task Force.

(12) "Sexually Transmitted Disease Prophylaxis" means administering prophylactic drugs to prevent sexually transmitted disease, or providing a prescription for such medication to be filled on-site, in conjunction with a complete medical assessment or a partial medial assessment.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: 2003 OL Ch. 789 (SB 752)
Stats. Implemented: 2003 OL Ch. 789 (SB 752)
Hist.: DOJ 3-2004, f. & cert. ef. 1-29-04; DOJ 14-2004, f. & cert. ef. 11-22-04; DOJ 13-2007, f. & cert. ef. 12-11-07

137-084-0005
Contributions to the Fund

(1) The sexual assault victim assistance fund may receive state general fund appropriations, gifts, grants, federal funds, or other public or private funds or donations.

(2) Any contribution to the Fund should be given to the Department accompanied by notice in writing from the contributor stating the intention to have the contribution deposited into the Fund.

(3) Any contributions to the Fund received by the Department shall be deposited in the Fund as soon as practicable.

Stat. Auth.: 2003 OL Ch. 789 (SB 752)
Stats. Implemented: 2003 OL Ch. 789 (SB 752)
Hist.: DOJ 3-2004, f. & cert. ef. 1-29-04; DOJ 13-2007, f. & cert. ef. 12-11-07

137-084-0010
Claims Processing

(1) A victim of a sexual assault who wants the Fund to pay for a medical examination, collection of forensic evidence using the Oregon State Police SAFE Kit, emergency contraception, or sexually transmitted disease prophylaxis must submit a completed Application Form to the victim's medical services provider. (A copy of the Application Form is set out as an Appendix to these administrative rules).

(2) To obtain payment from the Fund, an eligible medical services provider must submit the Application Form to the Department within one year of the date the medical services are provided.

(3) All medical services invoices must be submitted by the eligible medical services provider with the Application Form. Invoices submitted separately will not be processed.

(4) To be paid for by the Fund, a complete medical assessment using the Oregon State Police SAFE Kit must be completed within 84 hours (three and one-half days) of the sexual assault. The Kit must have been released to appropriate law enforcement personnel in a timely manner after its use for collection of information.

(5) To be paid for by the Fund, a partial medical assessment must be completed within 168 hours (seven days) of the sexual assault of the victim.

(6) Completed Application Forms submitted with medical services invoices will be processed for payment by the Fund within 60 days of submission.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: 2003 OL Ch. 789 (SB 752)
Stats. Implemented: 2003 OL Ch. 789 (SB 752)
Hist.: DOJ 3-2004, f. & cert. ef. 1-29-04; DOJ 13-2007, f. & cert. ef. 12-11-07

137-084-0020
Maximum Amounts Paid for Medical Services

(1) The Fund will pay eligible medical services providers the actual costs incurred for providing medical services to sexual assault victims up to the following maximum amounts:

(a) $380 for a medical examination plus collection of forensic evidence using the Oregon State Police SAFE Kit;

(b) $175 for a medical examination without collection of forensic evidence using the Oregon State Police SAFE Kit;

(c) $55 for emergency contraception (including urine pregnancy test);

(d) $100 for sexually transmitted disease prophylaxis.

(2) An additional payment of $75 will be made to eligible medical services providers who document that the medical examination, as part of either a partial or complete medical assessment, was conducted by a SANE certified nurse.

(3) The payment amounts set out in this rule will be reviewed at least every two years by the Attorney General or the Attorney General's designee to determine whether they should be adjusted to meet current circumstances.

(4) An eligible medical services provider (including subcontractor or other designee) who submits a bill to the Fund under these rules may not bill the victim or the victim's insurance carrier for a medical examination, collection of forensic evidence using the Oregon State Police SAFE Kit, emergency contraception, or sexually transmitted disease prophylaxis, except to the extent the Department is unable to pay the bill due to lack of funds or declines to pay the bill for reasons other than untimely or incomplete submission of the bill to the Fund under OAR 137-084-0030(2)(e).

Stat. Auth.: 2003 OL Ch. 789 (SB 752)
Stats. Implemented: 2003 OL Ch. 789 (SB 752)
Hist.: DOJ 3-2004, f. & cert. ef. 1-29-04; DOJ 13-2007, f. & cert. ef. 12-11-07

137-084-0030
Payment Restrictions and Disqualifications

(1) The Fund will not pay for any service not specifically described in 2003 Oregon Laws, Ch. 789 or OAR 137-084-0001 through 137-084-0030. Examples of services not covered by the Fund include, but are not limited to: treatment of injuries; DNA testing; HIV testing; laboratory testing of blood for any purpose; and prescriptions filled off-site of the location of a medical examination. Nothing in this rule is intended to preclude an eligible medical services provider from submitting a claim against the victim, the victim's insurance carrier or any other source for payment for services not specifically described in 2003 Oregon Laws, Ch. 789 or OAR 137-084-0001 through 137-084-0030.

(2) The Fund reserves the right not to pay for medical services described in 2003 Oregon Laws, Ch. 789 or OAR 137-084-0001 through 137-084-0030 for any one of the following reasons:

(a) Services were not provided by an eligible medical services provider.

(b) Services were provided to someone other than an eligible victim.

(c) Services were not provided in accordance with the requirements in 2003 Oregon Laws, Ch. 789 or OAR 137-084-0001 through 137-084-0030, including the timeliness requirements for complete medical assessments (within 84 hours (three and one-half days) of the sexual assault) and partial medical assessments (within 168 hours (seven days) of the sexual assault).

(d) Services provided were duplicate services for the same incident.

(e) Failure of the eligible medical services provider to submit a completed Application Form, submission of incomplete invoice(s) for medical services or submission of the Application Form or invoice(s) for medical services more than one year after date services provided.

(f) Insufficient funds in the Fund to cover the services provided. The Fund will pay in full for services provided and billed to the Fund until the money in the Fund is exhausted.

(3) If the Attorney General or the Attorney General's designee determines that the Fund will not pay for one or more of the services described in 2003 Oregon Laws, Ch. 789 or OAR 137-084-0020(1) and (2) for reasons other than those set out in 137-084-0030(2)(e) above, the Attorney General or the Attorney General's designee will provide notice to the medical services provider(s) affected. After receiving such notice, a medical services provider may bill the victim, the victim's insurance carrier or any other source for those medical services provided but not paid for by the Fund.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: 2003 OL Ch. 789 (SB 752)
Stats. Implemented: 2003 OL Ch. 789 (SB 752)
Hist.: DOJ 3-2004, f. & cert. ef. 1-29-04

137-084-0500
Sexual Assault Examiner (SAE) and Nurse Examiner (SANE) Certification Commission

(1) The Attorney General establishes a Sexual Assault Examiner and Nurse Examiner (SANE) Certification Commission. The Commission is established to help ensure that registered nurses, physicians and physician assistants who provide sexual assault medical forensic examinations in Oregon and receive compensation through the Sexual Assault Victims' Emergency Medical Response Fund established by Oregon Laws 2003 c. 789 have the necessary training and qualifications to do so in accordance with the best standards of care, after consultation with the Attorney General's Sexual Assault Task Force.

(2) Commission members shall be appointed by the Attorney General and shall serve a period of two years from time of appointment. Terms may be renewed upon approval by the Attorney General.

(3) The Commission shall consist of seven (7) members, one each from the following groups:

(a) One (1) Oregon Certified Sexual Assault Examiner or Nurse Examiner;

(b) One (1) Oregon Certified Sexual Assault Nurse Examiner representing the Oregon Nurses Association (ONA);

(c) One (1) Representative from the Oregon State Board of Nursing (OSBN);

(d) One (1) Emergency Room Physician representing the Oregon Chapter of Emergency Physicians (OCEP);

(e) One (1) Physician (at large);

(f) One (1) Advocate;

(g) One (1) At-large position; and

(h) One (1) Member of Law Enforcement or Prosecution.

(4) A majority of a quorum of the Commission may take action and make recommendations to the Attorney General. A quorum shall be established by a simple majority of Commission members.

(5) The Attorney General delegates to the Commission the following powers and duties

(a) Make recommendations to the Attorney General for rules deemed necessary to implement the Sexual Assault Nurse Examiners Program, including standards for certification and renewal of certification by the Commission;

(b) Evaluate and act upon applications for certification; and

(c) Identify, update, and publicize best practices related to sexual assault examinations.

(d) Perform random SAFE/SANE chart reviews of certified SANEs in Oregon to assure standards of practice as defined by the Oregon Sexual Assault Task Force, are being upheld and set forth recommendations to SANEs who demonstrate substandard practices.

(e) In accordance to nursing practice in Oregon if there is found to be any attempt to falsify documentation or demonstration of practicing outside of the scope of practice, a majority quorum of the Commission may take action to suspend or remove SANE certification.

(f) If a SANE/SAE has a suspended or revoked state RN, NP, or PA license to practice, the Commission has the ability to suspend or revoke the SANE/SAE certification.

Stat. Auth.: 2003 OL Ch. 789 (SB 752)
Stats. Implemented: 2003 OL Ch. 789 (SB 752)
Hist.: DOJ 3-2007, f & cert. ef. 3-16-07; DOJ 13-2007, f. & cert. ef. 12-11-07; DOJ 5-2014, f. & cert. ef. 4-1-14

DIVISION 85

ADVOCATE CERTIFICATION

137-085-0060
Purpose

These rules set out the guidelines for minimum training required of persons providing services to victims of domestic violence, sexual assault and stalking in order to be certified advocates for purposes of the evidentiary privilege and confidentiality requirements of HB 3476.

Stat. Auth.: 2015 HB 3476
Stats. Implemented: 2015 HB 3476
Hist.: DOJ 11-2015(Temp), f. & cert. ef. 10-2-15 thru 3-29-16

137-085-0070
Definitions

(1) "Certified advocate" means a person who:

(a) Has completed at least 40 hours of training in advocacy for victims of domestic violence, sexual assault, or stalking that meets the minimum training requirements set out in OAR 137-085-0080; and

(b) Is an employee or a volunteer of a qualified victim services program.

(2) "Qualified victim services program" means:

(a) A nongovernmental, nonprofit, community-based program receiving moneys administered by the state Department of Human Services or the Oregon or United States Department of Justice that offers safety planning, counseling, support or advocacy services to victims of domestic violence, sexual assault or stalking; or

(b) A sexual assault center, victim advocacy office, women's center, student affairs center, health center or other program providing safety planning, counseling, support or advocacy services to victims that is on the campus of or affiliated with a two- or four-year post-secondary institution that enrolls one or more students who receive an Oregon Opportunity Grant.

Stat. Auth.: 2015 HB 3476
Stats. Implemented: 2015 HB 3476
Hist.: DOJ 11-2015(Temp), f. & cert. ef. 10-2-15 thru 3-29-16

137-085-0080
Training Requirements

(1) For purposes of HB 3476, training that is no less than a total of 40 hours and that is substantially similar to subsections (2)–(4) of this rule is approved by the Attorney General.

(2) Training shall be comprised of a minimum of 40 hours.

(3) At least 26 hours of the training shall cover each of the following topics:

(a) Dynamics of domestic violence;

(b) Dynamics of sexual assault;

(c) Dynamics of stalking;

(d) Anti-oppression, anti-racism, cultural competency theory and practice;

(e) Effects of trauma on survivors and family members;

(f) Adults molested as children;

(g) Effects of exposure to violence on children;

(h) Dynamics of domestic violence abusers;

(i) Dynamics of sexual offenders;

(j) Vicarious traumatization and self-care;

(k) Advocacy and crisis response;

(l) Confidentiality and privilege;

(m) Advocacy skills;

(n) Working with system-based partners and other services providers.

(4) Training shall include no less than an additional 12 hours regarding SANE exams, court accompaniment, medical exam accompaniment, working with law enforcement, support group facilitation, shelter intake, working with children, campus response, or other topics as approved by the Crime Victims' Services Division of the Department of Justice.

(5) At least 2 hours of the training shall focus on confidentiality and privilege, the Violence Against Women Act and other funding requirements relating to confidentiality, the provisions set forth in HB 3476, and related matters.

(6) A person employed at or volunteering with a qualified victim services program who completed 40 hours of training before October 1, 2015, that is substantially similar to training requirements described in contracts between such programs and the Department of Justice or Department of Human Services, is a "certified advocate," at such time as the person completed an additional 2 hours of training on confidentiality, advocate privilege, and HB 3476 as described in subsection (5) of this rule.

Stat. Auth.: 2015 HB 3476
Stats. Implemented: 2015 HB 3476
Hist.: DOJ 11-2015(Temp), f. & cert. ef. 10-2-15 thru 3-29-16

137-085-0090
Training Records

Each qualifying victim services program shall maintain a roster of advocates who have completed the minimum training described required by OAR 137-085-0080 and who are thus "certified advocates."

Stat. Auth.: 2015 HB 3476
Stats. Implemented: 2015 HB 3476
Hist.: DOJ 11-2015(Temp), f. & cert. ef. 10-2-15 thru 3-29-16

DIVISION 86

OREGON DOMESTIC AND SEXUAL VIOLENCE SERVICES FUND

137-086-0000
Purpose

These rules set out guidelines for the operation of the Oregon Domestic & Sexual Violence Services Fund ("the Fund") including the review and revision of the allocation plan mandated in ORS 147.456 & 134.459, the functioning of the advisory council established in 147.471, and the administration of the grant program established in 147.465. They also describe the grievance procedure with regard to grant award decisions and other Fund activities described in 147.468.

Stat. Auth.: ORS 147.465(3) & 2001 OL Ch. 870 (HB 2918)
Stats. Implemented: ORS 147.450 - 147.471 & 2001 OL Ch. 870 (HB 2918)
Hist.: DOJ 15-2004, f. & cert. ef. 11-22-04

137-086-0010
Definitions

(1) "Advisory Council" is the Oregon Domestic and Sexual Violence Services Fund Advisory Council, as established in ORS 147.471.

(2) "Allocation Plan" is the plan for distributing money in the Fund that is developed pursuant to ORS 147.456 and 147.459 and periodically reviewed and adjusted according to these rules.

(3) "Applicant" is an agency that is eligible to apply for Oregon Domestic and Sexual Violence Services Fund money through the grantmaking process carried out by the Department pursuant to ORS 147.465.

(4) "The Fund" is the Oregon Domestic & Sexual Violence Services Fund.

(5) "Fund Coordinator" is the person designated by the Department to provide programmatic oversight of Oregon Domestic and Sexual Violence Services Fund.

(6) "Grant term" is the period from the date of an effective award until the end date or the termination of such an award.

(7) "Grantee" is an agency that successfully applies for and receives Oregon Domestic and Sexual Violence Services Fund money through the grantmaking process carried out by the Department pursuant to ORS 147.465.

Stat. Auth.: ORS 147.465(3) & 2001 OL Ch. 870 (HB 2918)
Stats. Implemented: ORS 147.450 - 147.471 & 2001 OL Ch. 870 (HB 2918)
Hist.: DOJ 15-2004, f. & cert. ef. 11-22-04

137-086-0020
Advisory Council

An Advisory Council of no fewer than fifteen and no more than twenty members shall be selected and serve terms in accordance with ORS 147.471 and with the by-laws established by the Advisory Council. Copies of the by-laws and other open records are available by contacting the Department.

Stat. Auth.: ORS 147.465(3) & 2001 OL Ch. 870 (HB 2918)
Stats. Implemented: ORS 147.450 - 147.471 & 2001 OL Ch. 870 (HB 2918)
Hist.: DOJ 15-2004, f. & cert. ef. 11-22-04

137-086-0030
Allocation Plan

(1) Frequency. An allocation plan for distribution of legislatively authorized funds for the upcoming or current biennium will be developed each biennium by the Advisory Council. The final allocation plan must be approved by the Attorney General or designee.

(2) Purpose. The allocation plan shall help to accomplish one or more of the following:

(a) Increase the effective use of Fund dollars;

(b) Support the greater efficiency of the administration and use of grant dollars; and

(c) Further the objectives set forth in ORS 147.453.

(3) Process. The following process shall be followed in making revisions:

(a) The Advisory Council shall review current Oregon Domestic and Sexual Violence Services Fund data, including outcomes, challenges and successes.

(b) The Advisory Council shall gather input from a broad range of stakeholders.

(c) The Advisory Council shall review other relevant information including, but not limited to: the amount of funds available for grant awards; existing funding data from other state-administered funds available to applicants; and current state and national research on program effectiveness and victims' needs.

(d) Based upon information gathered pursuant to paragraphs (a)–(c) of this section, the Advisory Council shall create a list of suggested revisions.

(e) The Advisory Council shall consider the list created according to paragraph d) of this section in order to make recommendations to the Attorney General or his designee as to revisions to the allocation plan. The recommendations shall address the specific categories in which awards will be made, whether each award category shall be competitive or non-competitive, the portion of total funds appropriated that will be available in each award category, and eligibility criteria. The Advisory Council may recommend that a specific portion of the Fund be reserved for a specific sub-group of eligible applicants or that funding prioritize a specific sub-group of eligible applicants.

(f) The final decision as to revisions to the allocation plan shall be made by the Attorney General or his designee.

Stat. Auth.: ORS 147.465(3) & 2001 OL Ch. 870 (HB 2918)
Stats. Implemented: ORS 147.450 - 147.471 & 2001 OL Ch. 870 (HB 2918)
Hist.: DOJ 15-2004, f. & cert. ef. 11-22-04

137-086-0040
Grant Program Application Process

(1) Frequency. An Oregon Domestic and Sexual Violence Services Fund grant application packet shall be issued by the Department and grant awards shall be made at least once in each biennium, so long as sufficient funds are appropriated to the Fund.

(2) Eligibility to Be Awarded Grant Funds. Eligible applicants for grant awards include public and private entities that are recommended by the Advisory Council and approved by the Attorney General or designee as part of the allocation plan. In addition to other criteria established by the Advisory Council, in order to be considered eligible for a grant award an applicant must be current in its financial and other reporting for all previous Oregon Domestic and Sexual Violence Services Fund awards to that applicant. An applicant's ability to successfully manage any previous Fund awards, and a demonstrated history of program stability of two years will be included in the criteria used for making Fund awards. A demonstration of program stability must include:

(a) An applicant's history of providing cost-effective direct services to victims of domestic violence and/or sexual assault;

(b) A clear indication of support for applicant's services from one or more community agencies or organizations familiar with the needs of victims to be served, as well as the caliber of services provided by the applicant; and

(c) Financial support of at least 10% from at least one other revenue source. If an applicant cannot demonstrate stability as required by paragraphs a through c of this section, in order to be eligible for an Oregon Domestic and Sexual Violence Services Fund award, the applicant must demonstrate that at least 25% of its financial support comes from sources other than the Oregon Domestic and Sexual Violence Services Fund.

(3) Content of the Application Packet. Each application packet issued shall describe:

(a) The total grant funds available;

(b) The categories in which awards will be made, and whether each category is competitive or non-competitive;

(c) The total funds available for award in each category;

(d) The amount of individual awards, if such amount is part of the allocation plan;

(e) Instructions specifying the requirements for a successful application in each category;

(f) The last date by which applications must be submitted and/or received by DOJ;

(g) The manner in which the application must be submitted;

(h) All necessary application forms and materials;

(i) All other information required for application preparation and submission;

(j) A description of the application review process, including review criteria;

(k) A description of grant reporting requirements; and

(l) A description of the grievance process for unsuccessful applicants.

(4) Review:

(a) Review Criteria. The Department staff and the Advisory Council shall review applications according to objective criteria described in the application packet. Non-competitive applications may be reviewed solely by Department staff, so long as the review is made according to a methodology recommended by the Advisory Council and approved by the Department. Competitive applications may be reviewed by Department staff with regard to satisfaction of minimum qualifications for eligibility, but shall be reviewed by the Advisory Council with regard to content. While numeric scoring will be used for any competitive award process, the Department reserves the right to award funds to agencies based upon criteria other than highest ranking numerical score.

(b) Award Amounts & Formulae. As part of the application review process, the Advisory Council may consider factors including: total amount of funds available overall, or in a specific category; the number of applications submitted by an applicant; geographic distribution; and feasibility of awarding one or more applicants an amount less than that requested. Such factors may be considered only to the extent that they are in keeping with the allocation plan.

(c) Record of Process. A complete record of the review process, including any numerical scoring, shall be kept during the process and shall be retained by the Department during the term of the grant awards. This information shall be available to grantees, upon request, excluding the identity of individual scorers.

(d) Conflict of Interest. A conflict of interest policy shall be part of the Advisory Council bylaws, and conflicts of interest that arise during the review process shall be declared and become part of the review process record.

(e) Final Decision. The Advisory Council shall make recommendations of grant awards to the Attorney General or his designee, who will have the final decision as to awards.

(5) Transfer of Funds. Upon approval of an application, the Department will enter into a contractual grant agreement with the applicant. The Department will disburse funds in accordance with this agreement.

(6) Completion of Required Grant Award Documents. Funds are not considered obligated and will not be transferred until all required grant award documents have been signed by an applicant and by the Department designee. If grant award documents are not completed by an applicant within three months of the notice to the applicant of the intended award, the Department has the authority to reallocate the funds awarded, pursuant to paragraph 11 of this section on Reallocation of Funds Not Applied For or Used, below.

(7) Conditional Awards:

(a) The Advisory Council may recommend and Attorney General or his designee may approve an award subject to specific conditions if an applicant:

(A) Is not current in reporting for any previous Fund grant award;

(B) Has fewer than two full years of operational history in providing services to victims of domestic violence and sexual assault;

(C) Has not fully demonstrated the ability to successfully manage any previous Fund awards;

(D) Has not demonstrated at least two prior years of program stability as described in section (2), above; or

(E) When other circumstances exist that require a further showing of applicant's ability to successfully manage a Fund award.

(b) The Department shall notify the applicant that a conditional award has been approved, and shall specify the conditions to be satisfied by the applicant and the date by which the conditions must be satisfied. Applicants who do not satisfy conditions of funding by the date specified shall be notified in writing by the Department that the conditions have not been satisfied and the conditional award has been withdrawn. When a conditional award is withdrawn any unexpended dollars already distributed to the applicant are to be returned to the Department and any contractual obligations undertaken by the Department to the applicant are thereupon terminated.

(8) Grievance Procedure:

(a) An applicant has a right to a review of the award decision with regard to its application.

(b) Each applicant will be informed of this review procedure at the time a decision is made regarding its application.

(c) No applicant will be subject to reprisal for seeking a review of an award decision.

(d) An applicant may request a review by making a written request to the Fund Coordinator within 30 days after receiving notification of the award decision.

(e) When the Department is notified that an applicant has requested a review, a meeting will be scheduled for the applicant to meet with the Fund Coordinator and with as many as five members of the Advisory Council. Every effort will be made to have this meeting occur within 30 days of the receipt of the request. The Fund Coordinator will notify applicant of the result of the meeting within 5 days after the meeting has been held.

(f) If the matter is not resolved through the above-described procedure, the applicant can request a review of the issue by the Attorney General or his designee. The applicant should make a written request for such a review to the Director of the Crime Victims' Assistance Section within 30 days following notification of the results of the meeting described in the preceding paragraph.

(g) The decision of the Attorney General is final.

(h) This grievance procedure shall be included in the grant application packet described above.

(9) Grantee Reporting. No less frequently than once during each year of the grant term each grantee shall submit a report to the Department. The form and content report shall be specified by the Department. The report must document how the funds were used and the extent to which the grantee was able to meet anticipated outcomes, as well as such other information with regard to fund requirements as is requested by the Department. This information may be used to determine eligibility for future funding. Failure of a grantee to report the required information in an accurate and timely manner may also be used to determine eligibility for future funding.

(10) Department of Justice Reporting. No less frequently than once during each biennium, the Department shall prepare a report describing the funds awarded for the grant period and summarizing the outcomes and other information reported by grantees.

(11) Reallocation of Funds Not Applied for or Used.

(a) Funds Remaining After Award Process. When a portion of the grant funds available are not initially awarded, either fully or conditionally, the Department, after duly considering the advice of the Advisory Council, may make a subsequent award that is in keeping with the goals of the allocation plan approved for the current biennium.

(b) Funds Awarded but not Expended. Applicants who do not anticipate using the entirety of their awarded funding by the grant term end date shall notify the Department prior to the grant term end date that the funds will not be used. The Department, at its discretion, shall either request that the unused funds be returned in accordance with the contract agreement, or shall execute an amendment to the contractual grant agreement to extend the grant term end date. When unused funds are returned, the Department, after duly considering the advice of the Advisory Council, shall consider using the returned funds to make up any involuntary award reductions resulting from interim reductions to the Fund, described in paragraph 12 of this section, below. If no interim reductions have occurred, the Department shall consider distributing the funds among other applicants, depending upon the amount of the funds returned and the time of their return. When possible, returned funds shall be distributed in the same geographical area in which the original award was made

and within the same service category of the allocation plan under which they were granted.

(c) Funds Conditionally Awarded When Conditions Are Not Satisfied. Any funds remaining after a conditional award has been withdrawn, pursuant to section 7, above, shall be treated in the same manner as funds awarded but not expended, described in paragraph b of this section, above.

(12) Interim Reductions to the Fund. When funds appropriated to the Fund are reduced or otherwise not available for expenditure during a grant award period, so that some or all current awards cannot be fully funded, the Department, after duly considering input from the Advisory Council, shall formulate a plan for how the interim reduction shall affect current awards. In this process every effort will be made to minimize the impact of such reduction on services to victims supported by grant funds. Considerations in the formulation of such a plan will include: the intent of the allocation plan under which the awards were made, requirements of ORS 147.462, progress towards desired outcomes, and other relevant issues of equity, such as geography and populations served.

(13) Issuing Applications Jointly with Other Agencies. The Department may conduct the application process jointly with other agencies of the State of Oregon who also award grants or provide financial assistance to eligible programs of domestic and sexual violence services. The joint application process shall satisfy all the requirements of ORS 147.450 et seq. and this division of administrative rules.

Stat. Auth.: ORS 147.465(3) & 2001 OL Ch. 870 (HB 2918)
Stats. Implemented: ORS 147.450 - 147.471 & 2001 OL Ch. 870 (HB 2918)
Hist.: DOJ 15-2004, f. & cert. ef. 11-22-04

137-086-0050
Other Fund Activities

ORS 147.468 authorizes the Department to pursue a range of activities in support of Fund goals, to the extent that funds are available. In formulating the allocation plan, the Advisory Council shall consider whether funds should be allocated to these purposes. If the Advisory Council recommends that funds should be allocated, with the Attorney General's approval, such funds shall be set aside and shall not be included in the granting program described in 137-086-0040, above. In addition, the Department at its discretion may direct the Fund Coordinator to pursue any of these activities as part of the administrative duties of the Fund Coordinator.

Stat. Auth.: ORS 147.465(3) & 2001 OL Ch. 870 (HB 2918)
Stats. Implemented: ORS 147.450- 147.471 & 2001 OL Ch. 870 (HB 2918)
Hist.: DOJ 15-2004, f. & cert. ef. 11-22-04

DIVISION 87

BATTERER INTERVENTION PROGRAM RULES

137-087-0000
Purpose and Implementation

(1) ORS 180.700 gives the Attorney General authority, in consultation with an advisory committee, to adopt rules that establish standards for batterers' intervention programs (BIP). OAR 137-087-0000 through 137-087-0100 establish those BIP standards (standards) for intervention services provided to male batterers who engage in battering against women. Additional rules shall be developed later to address standards for intervention services for women batterers and battering in same sex relationships. Nothing in these rules should be construed to prevent a BIP from providing appropriate batterer intervention services to batterers who are not within the scope of these rules at this time.

(2) The purposes of the standards are:

(a) To help ensure the safety of women, their children and other victims of battering;

(b) To help ensure that BIPs use appropriate intervention strategies to foster a batterer's stopping his violence, accepting personal accountability for battering and personal responsibility for the decision to stop, or not to stop, battering; and to promote changes in the batterer's existing attitudes and beliefs that support the batterer's coercive behavior;

(c) To help ensure that BIPs address all forms of battering;

(d) To help ensure that BIPs are culturally informed and provide culturally appropriate services to all participants;

(e) To help ensure egalitarian and respectful behavior by BIP staff toward women and men of all races and cultures;

(f) To help ensure that BIPs provide services that are affordable and accessible for participants, including participants with disabilities;

(g) To provide a uniform standard for evaluating a BIP's performance;

(h) To encourage practices, based on consensus of research and proven field experience, that enhance victim safety;

(i) To foster local and statewide communication and interaction between BIPs and victim advocacy programs, and among BIPs; and

(j) To help ensure that BIPs operate as an integrated part of the wider community response to battering.

(3) Implementation and transition provisions:

(a) A BIP may apply these standards only to BIP applicants who request or are referred for admission to the BIP after the effective date of these rules;

(b) BIPs in operation on the effective date of these rules shall make reasonable efforts to conform their policies and practices with these standards as soon as practicable but no later than six months after the effective date of these rules;

(c) BIPs commencing operations after the effective date of these rules shall comply with these standards as soon as practicable but no later than six months after commencing operations.

Stat. Auth.: ORS 180.070 - 180.710
Stats. Implemented: ORS 180.070 - 180.710
Hist.: DOJ 16-2005, f. 11-23-05, cert. ef. 1-1-06; DOJ 13-2012, f. 7-31-12, cert. ef. 8-1-12

137-087-0005
Definitions

For purposes of OAR 137-087-0000 through 137-087-0100, the following terms have the meanings set forth below.

(1) "Batterer" means:

(a) An adult male 18 years of age or older who engages in "battering" against women; or

(b) A male minor criminally convicted as an adult of conduct against women that constitutes "battering" in whole or in part.

(2) "Battering" includes but is not limited to physical violence, sexual violence, threats, isolation, emotional and psychological intimidation, verbal abuse, stalking, economic abuse, or other controlling behaviors against women in, but not limited to, the following relationships:

(a) A current or former spouse of the batterer;

(b) An unmarried parent of a child fathered by the batterer;

(c) A woman who is cohabiting with or has cohabited with the batterer;

(d) A woman who has been involved in a sexually intimate relationship with the batterer within the past two years;

(e) A woman who has a dating relationship with the batterer;

(f) An adult woman related by blood, marriage or adoption to the batterer; or

(g) A woman who relies on the batterer for ongoing personal care assistance.

(3) "Battering" may or may not violate criminal law and in most instances is patterned behavior.

(4) "Batterer intervention program" (BIP) means a program, whether public or private, profit or non-profit, that is conducted to provide intervention and education services to batterers related to ending their battering.

(5) "Demonstration Project" means a BIP, or subprogram within a BIP, that significantly departs from these rules in order to explore an alternative means of addressing battering.

(6) "Facilitator" means anyone who provides BIP intervention services, whether in a group or class setting, or individually.

(7) "Session" means a BIP facilitated group or class with more than one participant, lasting one and one half to two hours.

(8) "Leave of Absence" means a participant missing two or more sessions with advance knowledge and approval of the BIP. See 137-087-0070(7).

(9) "Local Domestic Violence Coordinating Council" (Council) means a council set up by local entities that works to intervene with or prevent domestic violence, and to foster a coordinated community response to reduce domestic violence. A Council shall include representatives of the criminal justice system (such as law enforcement, prosecution, and judiciary) and victims' advocacy programs. A Council may also include medical professionals, mental health professionals, health agencies, substance abuse programs, culturally specific providers, child protective services, child support enforcement, school personnel, senior services, disability services, self-sufficiency services (public assistance) and other applicable programs of the Oregon Department of Human Services (DHS), representatives from faith communities, other community groups, and BIPs.

(10) "Local Supervisory Authority" (LSA) means the state or local corrections agency or official designated in each county by that county's board of county commissioners or county court to operate corrections supervision services, or custodial facilities, or both.

(11) "Mandating Authority" (MA) means the court, DHS Child Welfare, or corrections system authority that has ordered or required the batterer to participate in a BIP.

(12) "Participant" means a batterer who participates in a BIP.

(13) "Partner" means a person in a past or present intimate relationship with a batterer, including persons described in subsection (2) of this section. A partner may be under the age of 18 and may or may not be an identified victim of the participant's battering.

(14) "Protection Order" includes but is not limited to a Family Abuse Prevention Act (FAPA) order, Elderly Persons and Persons with Disabilities Abuse Prevention Act (EPPDAPA) order, a no-contact order, a release order or release agreement, a stalking order or any other type of restraining order.

(15) "Victim" means a female, including a past or present partner, subjected to battering. A victim may be under the age of 18. In no event shall the batterer be considered a victim for purposes of these rules.

(16) "Victim advocacy program" (VP) means a nonprofit organization, agency or program that assists domestic violence or sexual assault victims. VPs include, but are not limited to, battered women's shelters, rape crisis centers, and other sexual assault and domestic violence programs assisting victims of battering.

Stat. Auth.: ORS 180.070 - 180.710
Stats. Implemented: ORS 180.070 - 180.710
Hist.: DOJ 16-2005, f. 11-23-05, cert. ef. 1-1-06; DOJ 13-2012, f. 7-31-12, cert. ef. 8-1-12

137-087-0010
Integration With Total Community Response to Domestic Violence

(1) BIP in Wider Community Response. A BIP shall be part of a wider community response to battering and not a "stand alone" form of response. A BIP shall interface with VPs, the Council, the criminal justice system including the LSA, other BIPs, members of the Council, and entities recommended to be part of the Council in OAR 137-087-0005(5), to achieve the following objectives:

(a) Increase victim safety and batterer accountability and responsibility;

(b) Increase BIP coordination and communication with the criminal justice system, VPs, other BIPs, and all other entities involved in the total community response to domestic violence;

(c) Decrease the likelihood that a lack of communication between BIPs and other representatives in the community response to domestic violence will jeopardize victim safety or be used by the batterer to manipulate the response system;

(d) Increase the likelihood that BIPs are not working at cross-purposes with other agencies serving domestic violence and sexual assault victims and offenders;

(e) Increase the likelihood that BIPs are providing services representing best practices;

(f) Promote community beliefs and attitudes that discourage battering; and

(g) Support other programs that work to reduce or prevent battering.

(2) BIP and Council. A BIP shall participate in and seek to join the Council if a Council exists in the BIP's service area.

Stat. Auth.: ORS 180.070 - 180.710
Stats. Implemented: ORS 180.070 - 180.710
Hist.: DOJ 16-2005, f. 11-23-05, cert. ef. 1-1-06

137-087-0015
Interface Standards — Victims and Current Partners

(1) Victim/Current Partner Notification Policies:

(a) A BIP shall have written policies and procedures that govern BIP contact with identified victims and current partners, and that adequately address the safety of victims, including present and past partners. BIP policies relating to victim or partner contacts shall include a policy as to how to document victim or partner contact information that is consistent with OAR 137-087-0060(4)(b), and shall require the segregation and protection of victim or partner contact records. A BIP shall provide a VP with the opportunity to review and comment on the BIP's proposed victim or partner contact policies, procedures, informational materials as described in subsection (2) of this section, and any amendments to those policies, procedures, and informational materials before a BIP adopts them.

(b) In all BIP contacts with victims or partners, the primary goal is the safety of the victim or partner. Any BIP victim or partner contact procedure shall consider victim or partner safety, including the risk of identifying victim location, and the risk of any other unauthorized BIP disclosure of information from the victim or partner. A BIP must make clear to victims any limitations on the ability of the program to protect victims' information and must include information about those limitations (if any) in written informational materials provided to victims.

(c) A BIP shall not pressure, coerce or require victims or partners to disclose any information, have any future contact with the BIP or participant, or attend any BIP or other program sessions, meetings or education groups as a condition of the participant's involvement with the BIP.

(d) Victim or partner contact initiated by a BIP normally shall be limited to the following circumstances:

(A) Notifying the victim or partner that the participant has been accepted or denied admission to the BIP or if BIP participation is not mandatory, that the batterer has elected not to participate in the BIP;

(B) Notifying the victim or partner of any conditions imposed on the participant's admission to the BIP;

(C) Notifying the victim or partner of the participant's attendance record;

(D) Notifying the victim or partner that the participant has been suspended, discharged or terminated from the BIP; and

(E) Giving the victim or partner general information about the BIP, community resources, and safety planning, consistent with section (2) of this rule.

(e) A BIP may adopt a victim or partner contact policy that provides for victim or partner contact using a VP in any of the circumstances described in section (1)(d) of this rule, or other contacts requested by the BIP. This policy may be established by a formal agreement with the VP.

(2) Informational Materials:

(a) A BIP shall prepare for distribution to victims and partners informational materials written in plain language, tailored to the community and responsive to relevant cultural components. The information shall be made available by the BIP upon request to any victim or partner, provided to the VP and LSA, and made available in a form that may be distributed through community resources.

(b) The materials shall include information about the following:

(A) A brief description of the BIP, including program expectations, content and philosophy;

(B) A clear statement that the victim or partner is not expected in any way to help the participant complete any BIP requirements, and that the participant's eligibility for the BIP's services is not contingent in any way on victim or partner participation or on other victim or partner contact with the BIP;

(C) The limitations of BIPs, including a statement that the batterer's participation in a BIP does not ensure the participant will stop any or all battering behaviors;

(D) The risk that participants may misuse and distort information they hear in their BIP groups or classes against the victim or partner;

(E) The risk of participants re-offending, or changing their control tactics, or both, while in the BIP or after completion of BIP requirements;

(F) The victim's or partner's right, at her discretion, to contact the BIP, or the facilitators of the group or class the participant is attending, signed up for, or sanctioned into, with any questions or concerns, and the right to have communications kept confidential unless confidentiality is waived by the victim or partner, or unless the release of information provided by the victim is required, either pursuant to a court order or pursuant to state or federal law or regulation;

(G) A statement that the victim or partner may report to the BIP, LSA, a VP, or the Council if she has a concern about how the BIP is contacting her;

(H) Contact information related to victim services, such as services offered by VPs in the victim's community, the statewide automated victim notification system (VINE), Oregon crime victims' compensation program, and constitutional and statutory victims' rights;

(I) Information for victims regarding how to make safety plans to protect themselves and their children, including community resources to contact if they believe they are at risk; and

(J) Notification that a VP may be available as a means by which the information set forth in section (1)(d) of this rule may be communicated, thereby allowing the victim to choose to avoid direct contact with the BIP.

(c) Upon request, a BIP shall make a reasonable effort to provide its informational materials in a form suitable for victims or partners with vision impairments or with limited English proficiency.

(3) Imminent Threat to Health or Safety. The BIP shall disclose participant information when, and to the extent, the BIP in good faith believes such disclosure is necessary to prevent or lessen an imminent threat to the health or safety of a person or the public. No authorization to release information is required in such circumstances. The BIP may provide information to a person or persons reasonably able to prevent or lessen the risk of harm, including but not limited to the victim and past or present partners, law enforcement, VP, DHS, the court, and community corrections officials.

(4) Victim-Initiated or Partner-Initiated Contacts. If a victim or partner contacts the BIP, the BIP may provide information and referral as allowed by state and federal confidentiality laws. The BIP shall not inform the batterer about the victim or partner contact. In response to victim-initiated or partner-initiated contacts, any information the BIP wants to request from the victim or partner (e.g., level of concern for her own safety, recent behaviors of her partner) shall only be sought after she has given full consent. The BIP shall make clear that the victim or partner is under no obligation to provide any information, that refusal to do so shall not affect the status of the participant, and that information shared with the BIP may be subject to release if required by federal or state law or regulation or court order. Any information provided to the BIP by the victim or partner shall be kept completely confidential unless the victim or partner expressly authorizes its disclosure, or unless release of information is required by federal or state law or regulation or court order. In considering whether to request such information from the victim or partner, the BIP shall prioritize victim or partner safety over any other concerns.

Stat. Auth.: ORS 180.070 - 180.710
Stats. Implemented: ORS 180.070 - 180.710
Hist.: DOJ 16-2005, f. 11-23-05, cert. ef. 1-1-06; DOJ 13-2012, f. 7-31-12, cert. ef. 8-1-12

137-087-0020
Confidentiality of Victim and Partner Information

(1) Confidentiality. All information about or from a victim or partner shall be confidential to the extent permitted by law.

(2) Treatment of Information. Any information about a victim or partner, including victim or partner contact information, the BIP receives from any source other than the participant shall be kept in a secure location separate from information about any participant.

(3) Restriction of Access to Information. A BIP shall restrict access to and use of victim or partner information to only BIP staff who have a specific need to know the information and who are accountable for their access to and use of that information.

(4) Disclosure of Information. Any disclosure of information about the victim or partner shall be made only with the victim's or partner's authorization, or as otherwise required by federal or state law or regulation, or court order.

(5) Notification of Possible Disclosure of Information. If a BIP is put on notice that federal or state law or regulation or court order may require the disclosure of information provided by a victim or partner, the BIP shall immediately notify the victim or partner and/or the appropriate VP unless such notification would endanger the safety of the victim or partner.

Stat. Auth.: ORS 180.070 - 180.710
Stats. Implemented: ORS 180.070 - 180.710
Hist.: DOJ 16-2005, f. 11-23-05, cert. ef. 1-1-06; DOJ 13-2012, f. 7-31-12, cert. ef. 8-1-12

137-087-0025
Interface Standards — Victim Advocacy Programs

(1) Liaison. A BIP shall designate a program staff member to serve as a liaison to at least one VP and to the Council in the BIP's service area. Through the liaison, the BIP shall:

(a) Work collaboratively with VPs to help ensure that victims are provided informational materials about, or are referred to, a VP or other advocacy, safety planning, or assistance agencies;

(b) Provide BIP policies, procedures and informational materials, and any amendment to such policies, procedures and informational materials, to the VPs and Council for review and comment as to whether the policies, procedures and materials help ensure the safety of victims and follow best practices related to victim notification;

(c) Work cooperatively with VPs to post, in appropriate locations, information about how victims can contact the BIP, LSA or MA for more information about the BIP;

(d) Work cooperatively with VPs to discuss and respond to VP concerns or problems related to BIP interventions with batterers, or the BIP's relationship with the LSA or MA, or both; and

(e) Develop a procedure to notify VPs when the BIP believes in good faith that such notification is necessary to prevent or lessen an imminent threat to the health or safety of the victim or the public.

(2) Imminent Threat to Health or Safety. A BIP shall disclose participant information to a VP when, and to the extent, the BIP in good faith believes such disclosure is necessary to prevent or lessen an imminent threat to the health or safety of a person or the public. No authorization to release information is required in such circumstances.

Stat. Auth.: ORS 180.070 - 180.710
Stats. Implemented: ORS 180.070 - 180.710
Hist.: DOJ 16-2005, f. 11-23-05, cert. ef. 1-1-06; DOJ 13-2012, f. 7-31-12, cert. ef. 8-1-12

137-087-0030
Interface Standards — Criminal Justice System

(1) Participation in Judicial or Corrections Response. A BIP's intervention services may be part of a judicial or corrections response to battering, either as a condition of probation, post-prison supervision or parole, through a domestic violence deferred sentencing agreement, or as otherwise authorized by law. A BIP is encouraged to use the power of the criminal justice system to hold batterers accountable for their battering.

(2) Liaison. A BIP shall designate a program staff person to serve as a liaison to the LSA and the MA. The liaison shall:

(a) Request information such as court orders, protection orders, post-prison supervision or parole orders and police reports;

(b) Work collaboratively with the LSA and MA to facilitate coordination of BIP services with supervision requirements so the

BIP is not working at cross-purposes with criminal justice system requirements applicable to the batterer;

(c) Report to the appropriate LSA or MA, or both, any known violations of the requirements of a court order, any criminal assaults, or threats of harm to the victim. The BIP must make such a report in such a way that does not knowingly jeopardize the safety of the victim;

(d) Report any substantial violations of the programs' rules including but not limited to violations that create a risk of termination to the appropriate LSA or MA, or both;

(e) Submit monthly status reports to the LSA or MA about participant attendance, content of participation, any known violations of court orders, protection orders, post-prison supervision or parole orders, any known changes in risk factors since intake (see section 137-087-0060(2)(c)), and program exit summary;

(f) Report any other information requested by the LSA or MA to the extent permitted by federal or state law, required by court order, or authorized by the participant.

(3) Communications about Participant Release. In communications about participant release for completion of BIP intervention services, a BIP shall note that such release shall not be interpreted as evidence that the participant is presently non-abusive, as descriptive of his present behavior outside the group, or as predictive of his future behavior.

(4) Consistency with Court Orders or DHS Child Welfare Requirements. A BIP shall ensure BIP actions are consistent with all court orders, protection orders, post-prison supervision or parole orders or DHS Child Welfare requirements, including orders affecting batterer contact with the victim(s) or partner(s).

(5) Training. A BIP shall participate in training and cross-training in conjunction with VPs and criminal justice agencies, and shall offer technical assistance to the criminal justice system and VPs relating to batterers and appropriate intervention strategies to eliminate battering of women and abuse of children.

(6) Imminent Threat to Health or Safety. The BIP shall disclose participant information when, and to the extent, the BIP in good faith believes such disclosure is necessary to prevent or lessen an imminent threat to the health or safety of a person or the public. No authorization to release information is required in such circumstances. The BIP may provide information to a person or persons reasonably able to prevent or lessen the risk of harm, including but not limited to the LSA, the MA, and other law enforcement or corrections personnel.

(7) A BIP shall request periodic program review with a LSA or MA, on a biannual basis.

Stat. Auth.: ORS 180.070 - 180.710
Stats. Implemented: ORS 180.070 - 180.710
Hist.: DOJ 16-2005, f. 11-23-05, cert. ef. 1-1-06; DOJ 13-2012, f. 7-31-12, cert. ef. 8-1-12

137-087-0035
Interface Standards — Other BIPs

(1) Purpose. The purpose of sections (2)–(4) of this rule is to promote accountability and completion of BIP program requirements and to deter batterers from changing enrollment from one BIP to another BIP to avoid accountability.

(2) Restrictions on Participant Transfer. A participant may not transfer from one BIP to another BIP without the specific authorization of the LSA or MA, or its agent, with supervisory responsibility for the batterer.

(3) Authorization to Obtain Information. After receiving a referral for a new BIP participant from the LSA or MA, a BIP shall require the participant to authorize any former BIP(s) to send the new BIP information about the participant's attendance, participation and payment record, Accountability Plan, exit summary and transfer plan. The new BIP shall promptly request the authorized information from any former BIP(s).

(4) Credit for Sessions. The new BIP may, but is not required to, extend credit for the number of sessions attended at the former BIP; however, the participant shall be required to complete all of the new BIP's program requirements before program completion.

(5) Participation in BIP Organizations. A BIP shall be active in local and statewide BIP organizations to help:

(a) Provide quality services to enhance the safety of victims;

(b) Participate in peer review that fosters statewide compliance with the standards set out in these rules;

(c) Discourage practices by other BIPs that do not comply with these standards;

(d) Assist in the development of relationships with VPs and others in the coordinated community response to domestic violence;

(e) Share research results and new practices with other BIPs; and

(f) Cooperate, to the extent practicable, in research on domestic violence that is approved by the Council and otherwise consistent with victim or partner safety, and collaborate in the production and dissemination of research findings.

Stat. Auth.: ORS 180.070 - 180.710
Stats. Implemented: ORS 180.070 - 180.710
Hist.: DOJ 16-2005, f. 11-23-05, cert. ef. 1-1-06

137-087-0040
Interface Standards — Social Service Interfaces

BIP Responsibilities. To the extent reasonably practicable, a BIP shall:

(1) Establish a liaison with the DHS office in the BIP's service area(s);

(2) Participate in and seek to join the Council if a Council exists in the BIP's service area(s);

(3) Coordinate with community members to provide community education and public awareness campaigns related to domestic violence;

(4) Assist in training professionals in the community about batterers, services for batterers and accountability for batterers; and

(5) Collaborate with community representatives on issues of public policy related to safety for battered women and children, and intervention with batterers.

Stat. Auth.: ORS 180.070 - 180.710
Stats. Implemented: ORS 180.070 - 180.710
Hist.: DOJ 16-2005, f. 11-23-05, cert. ef. 1-1-06

137-087-0045
Intervention Strategies

(1) Appropriate Intervention Strategies. A BIP's intervention strategies shall include, but are not limited to, the following:

(a) Using a culturally specific curriculum whenever possible;

(b) Increasing the participant's understanding of the causes, types and effects of his battering behavior;

(c) Identifying beliefs that support battering;

(d) Using respectful confrontation that encourages participants to challenge and change their beliefs and behaviors;

(e) Addressing tactics used to justify battering such as denial, victim blaming, and minimizing; increasing participant recognition of the criminal aspect of his thoughts and behavior; and reinforcing participant identification and acceptance of personal responsibility and accountability for such tactics;

(f) Reinforcing appropriate respectful beliefs and behavioral alternatives;

(g) Promoting participant recognition of and accountability for patterns of controlling and abusive behaviors and their impacts, and participant responsibility for becoming non-controlling and non-abusive; and

(h) Ensuring that the impact of battering on victims, partners and children, including their safety and their right to be treated respectfully as individuals, remains in the forefront of intervention work.

(2) Inappropriate Intervention Strategies. The following intervention strategies are inappropriate and inconsistent with these standards because each compromises victim safety:

(a) Blaming the participant's decision to batter on the victim's qualities or behaviors;

(b) Coercing, mandating, requiring or encouraging victim or partner disclosure of information or participation in the intervention with the participant;

(c) Offering, supporting, recommending or using couples, marriage or family counseling or mediation as appropriate intervention for battering;

(d) Identifying any of the following as a primary cause of battering or a basis for batterer intervention: poor impulse control, anger, past experience, unconscious motivations, substance use or abuse, low self-esteem, or mental health problems of either participant or victim;

(e) Using ventilation techniques such as punching pillows or encouraging the expression of rage;

(f) Viewing battering as a bi-directional process with responsibility shared by the victim;

(g) Viewing battering as an addiction and the victim as enabling or co-dependent in the battering; or

(h) Using actions or attitudes of moral superiority, or controlling or abusive behaviors toward participants.

Stat. Auth.: ORS 180.070 - 180.710
Stats. Implemented: ORS 180.070 - 180.710
Hist.: DOJ 16-2005, f. 11-23-05, cert. ef. 1-1-06

137-087-0050
Intervention Curriculum

(1) Basic Intervention Curriculum Requirements. Challenging and confronting participant beliefs and behaviors shall be balanced by creating a safe and respectful environment for change. To accord with these standards, a curriculum for batterers shall include, but is not limited to, the following basic requirements:

(a) Addressing belief systems that legitimize and sustain battering of women and abuse of children;

(b) Informing participants about the types of battering as defined in OAR 137-087-0005(2);

(c) Challenging participants to identify the patterns of their battering behaviors and all tactics used to justify battering such as denial, victim blaming, and minimizing; increasing participant recognition of the criminal aspect of his thoughts and behavior; reinforcing participant identification and acceptance of personal responsibility and accountability for all such tactics; and reinforcing alternatives to non-battering behavior;

(d) Encouraging participants to identify the cultural factors that are used by a batterer to legitimize both individual acts of abuse and control and battering as a whole;

(e) Modeling respectful and egalitarian behaviors and attitudes;

(f) Increasing participants' understanding and acceptance of the adverse legal, interpersonal and social consequences of battering;

(g) Increasing the participants' overall understanding of the effects of battering upon their victims, themselves, and their community, and encouraging participants to go beyond the minimum requirements of the law in providing victims and their children with financial support and restitution for the losses caused by their battering;

(h) Identifying the effects on children of battering directed at their mothers, including but not limited to the incompatibility of the participant's battering with the child's well-being, the damage done to children witnessing battering, and educating participants about the child's need for a close mother-child bond, nurturance, age-appropriate interactions, and safety;

(i) Encouraging participants to recognize the responsibility of being a father including the emotional, physical and financial support necessary to provide an environment to children that encourages growth and stability;

(j) Facilitating participants' examination of values and beliefs that are used to justify and excuse battering;

(k) Requiring participants to speak with respect about their partners and other women, and challenging participants to respect their partner and other women and to recognize their partner and other women as equals who have the right to make their own choices;

(l) Encouraging empathy and awareness of the effect of participants' behavior on others;

(m) Challenging participants to accept personal responsibility and accountability for their actions;

(n) Encouraging participants to challenge and change their own battering beliefs and behaviors; and

(o) Identifying how the participant uses alcohol and other drugs to support battering behaviors.

(2) Accountability Plan. A BIP shall require every participant to develop an Accountability Plan (Plan), and a BIP's curriculum which shall provide information that a participant can use to develop his Plan. Accountability planning is an ongoing process intended to increase the batterer's self-awareness, honesty and acceptance of responsibility for battering and its consequences. A participant's Plan shall include specific and concrete steps to be identified and implemented by the participant. A BIP shall always prioritize the safety and best interests of the victim when teaching and reporting on accountability planning. Under no circumstances may the terms of a Plan require, or imply authorization of or permission for, conduct that violates the terms of a court order or other legally binding requirements.

(3) Elements of the Plan. The Plan shall include, but need not be limited to, the following elements:

(a) Description of the conduct to stop and to be accountable for, including:

(A) Description of the specific actions that caused harm, including the entire range of attempts used to control and dominate the victim(s) or partner(s), specific actions that led to the participant being in the BIP, and the participant's intentions or purposes in choosing those actions.

(B) Identification of the beliefs, values, and thinking patterns the participant used:

(i) To prepare himself and plan to batter;

(ii) To justify his battering to himself and to others;

(iii) To blame other persons and circumstances outside his control for his battering; and

(iv) To minimize and deny his battering, its harmful effects, and his personal accountability and responsibility for the battering and its effects.

(C) Identification of the full range of effects and consequences of the battering on the victim(s), partner(s), children, the community and the participant.

(b) Participant's plan for choosing to treat his former, current or future partner(s) and children in a continually respectful and egalitarian manner, including:

(A) Description of the excuses and underlying beliefs used to justify his battering;

(B) Description of the participant's plan for intervening in his battering to prevent himself from continuing his pattern of battering;

(C) Description of battering the participant is currently addressing and how he is utilizing his Plan;

(D) Description of how the participant is intervening in his battering including the excuses, beliefs and behaviors he is addressing;

(E) Description of how the participant will choose to act in ways that no longer cause harm to the victim(s), partner(s), children and the community;

(F) Description of how the participant will take responsibility for choosing to act in ways that no longer cause harm to the victim(s), partner(s), children and the community;

(G) Description of the thoughts, beliefs and actions the participant shall need to change to become non-abusive and non-controlling, and a description of alternative thoughts, beliefs and actions he can use to make non-abusive and non-controlling choices; and

(H) Description of the thoughts, beliefs and actions that the participant uses in other areas of his life that demonstrate that he is already aware and capable of making responsible non-abusive and non-controlling choices.

(c) Acceptance of full responsibility for the participant's choices and their consequences, including:

(A) Acknowledgement that the participant's actions causing harm to the victim(s), partner(s), children and the community were his choice, that he had other options, and that he is fully accountable for his choices and the consequences of those choices for himself and others;

(B) Acceptance of full responsibility for having brought the criminal justice system into his life, if applicable, and for other consequences of his behaviors; and

(C) Participant's plan for beginning and continuing to make reparation and restitution for the harms caused, either directly to the

victim(s) if appropriate, approved by the victim(s), and not manipulative, or indirectly by anonymous donation or community service when the victim wants no contact with the participant.

Stat. Auth.: ORS 180.070 - 180.710
Stats. Implemented: ORS 180.070 - 180.710
Hist.: DOJ 16-2005, f. 11-23-05, cert. ef. 1-1-06; DOJ 13-2012, f. 7-31-12, cert. ef. 8-1-12

137-087-0055
Culturally Informed Interventions

(1) Familiarity with Cultural Demographics. A BIP shall maintain familiarity with the cultural demographics of its service area(s) to help the BIP:

(a) Anticipate the various cultural backgrounds that may be represented by participants; and

(b) Identify factors within a particular cultural background that influence battering, or that can be used by the participant to excuse the battering or by the BIP to assist the participant in ending battering without using such factors as excuses for battering.

(2) Scope. For purposes of these rules, cultural groups shall be construed broadly to include race, religion, and national origin, as well as economic and social groups that are identifiable within the BIP's service area(s).

(3) Basic Service Requirement. Culturally-specific services shall be offered to the extent practicable; however, if culturally-specific services are not available, BIPs shall offer culturally informed services.

(4) Culturally Informed Curriculum. A BIP's curriculum shall address, in a culturally informed way, the factors within the particular cultural background of a participant that influence battering. The curriculum shall avoid cultural stereotyping. Facilitators shall show videos and provide information from a variety of cultural perspectives to staff and participants.

(5) Personnel Policies and Procedures. A BIP's personnel policies and procedures shall require training and other activities that:

(a) Promote recognition and understanding of the factors within a particular cultural background that support battering and hinder batterers from stopping violence. Such training shall promote the recognition and avoidance of cultural stereotype views and beliefs by BIP staff. The BIP shall provide staff with the tools to understand their own biases and preconceptions about people from specific cultures, and how to avoid such biases or preconceptions in the provision of BIP services and activities;

(b) Inform staff about the negative effects of all forms of oppression and about how individuals within each specific cultural background in the BIP's service area(s) may experience oppression within their own culture or within the dominant community;

(c) Inform staff about how the cultural backgrounds of the populations in the BIP's service area(s) view gender roles and family structure, and how those cultures typically respond to domestic violence, sexual assault, and conflict;

(d) Inform staff about specific strengths of the cultural backgrounds in the BIP's service area(s), e.g., strong kinship ties and work ethic, adaptability of family roles, and egalitarianism, high achievement goals, and strong religious orientation; and

(e) Inform staff about specific traditions within the particular cultural backgrounds in the BIP's service area(s) that support battering and hinder batterers from stopping their battering.

(6) Library of Information and Resources. A BIP shall develop and maintain a library of information and resources about specific cultural backgrounds and culturally sensitive modes of intervention.

(7) Diverse Staff and Environment. To the extent possible, a BIP shall provide a staff and environment that reflect the diversity of cultural backgrounds in the BIP's service area(s).

(8) Relationship with Other Programs. BIPs shall develop relationships with appropriate culturally-specific programs to obtain information or training about the culture, and to refer participants for non-BIP culturally-specific services as needed. BIPs shall cooperate with other BIPs in developing culturally specific programs that comply with these standards.

Stat. Auth.: ORS 180.070 - 180.710
Stats. Implemented: ORS 180.070 - 180.710
Hist.: DOJ 16-2005, f. 11-23-05, cert. ef. 1-1-06

137-087-0060
Admission Policies and Procedures

(1) Admission Criteria. A BIP shall have written criteria for accepting or refusing admission requests or referrals. An applicant or referral shall be referred to as a potential participant until the BIP admits the person to the BIP program. The admission criteria shall be available to potential participants, staff, victims, partners and the community, and shall include the following provisions:

(a) A BIP may reject any potential participant the BIP deems to be inappropriate. Inappropriate potential participants may include but are not limited to:

(A) Persons whose conduct causing the referral or application is not battering as defined in OAR 137-087-0005(2); and

(B) Persons whose behavior would be disruptive to meaningful participation in the BIP.

(b) Except for reasons identified in section (1) (a) of this rule, a BIP may not reject a potential participant referred for anger management that is intended to address battering.

(c) After admitting a participant, a BIP may terminate participation on the ground the admission was inappropriate based on the criteria in section (1) (a) of this rule.

(d) If a BIP rejects a referral as inappropriate, or terminates participation of a referral because admission was inappropriate, the BIP shall notify the referral source of the reason for rejection or termination of participation and, when appropriate, may make recommendations for other intervention, treatment services or criminal justice action. The BIP shall notify the referral source within seven working days of the rejection or termination of participation.

(e) A BIP's admission criteria and practices shall not discriminate against any potential participant based on national origin, race, culture, age, disability, religion, educational attainment or sexual orientation. Where there is a substantial barrier to a potential participant's participation in a BIP because of cultural background, language, literacy level, or disability, a BIP shall make reasonable modifications in policies, practices, and procedures to provide BIP services within available resources and in consultation with the referring LSA or MA.

(2) Intake procedures: Any BIP contact to obtain information from a victim or partner shall comply with the victim and partner interface standards in these rules, OAR 137-087-0015.

(a) A BIP shall use an intake procedure that includes an interview with the potential participant and written documentation of the information collected.

(b) The BIP shall request information from the potential participant and other relevant sources that the BIP shall use initially to determine whether the potential participant is appropriate and otherwise meets the BIP's admission criteria. That information includes, but is not limited to, the history of battering or violent criminal conduct; history of BIP participation; existence of protection orders; police reports; court orders; post-prison supervision or parole orders; involvement with DHS Child Welfare services; and terms and conditions of probation.

(c) In addition to the information requested pursuant to (b) above, the BIP shall request the following information from the potential participant and other relevant sources:

(A) Factors that may indicate a risk of future violence against the victim or other intimate partner, including but not limited to: safety concerns expressed by the victim; prior assaults against intimate partner(s), children and pets; criminal history; prior violation of conditional release or restraining order(s), other court orders or post-prison supervision or parole orders; history of stalking; extreme isolation or dependence on the victim or partner; attitudes that condone or support domestic violence; history of weapon possession or use; access to firearms; credible threats of injury, death or suicide; lack of personal accountability; minimization or denial of domestic violence history; and association with peers who condone domestic violence.

(B) Factors that may make participation in the BIP difficult or impossible, including but not limited to: lifestyle instability (e.g., unemployment or lack of housing); substance use, abuse or addiction; information about any mental health diagnosis that would affect

ability to appropriately participate in the program; negative response to prior services (dropping out, lack of motivation and resistance to change); and persistent disruptive behavior.

(C) Factors that may indicate risk of future violence toward the BIP provider or other participants, including but not limited to a history of weapon use and violent criminal behavior.

(D) Demographic factors that may be used for statistical reasons or programmatic planning, including but not limited to age at time of offense and length of relationship with current or former victim(s).

(d) In addition to the information requested under subsections (b) and (c) of this rule, a BIP may request any additional information from the potential participant and other relevant sources.

(3) Participant Orientation to the BIP:

(a) A BIP shall use an orientation procedure to inform the participant about BIP requirements and expectations. A BIP may combine orientation with intake.

(b) The orientation shall provide the participant with the following BIP materials verbally and in writing:

(A) Statement of the BIP's philosophy consistent with these standards;

(B) Length of program, program attendance policies, and consequences of failure to comply with attendance policies;

(C) Specified fees, methods of payment, and consequences of failure to comply with payment agreements;

(D) Statement of active participation requirement, including personal disclosure and completion of group or class activities and assignments;

(E) Rules for group or class participation and statement of requirement to cooperate with those rules;

(F) Statement of requirement to develop and present an Accountability Plan;

(G) Statement of the BIP's drug and alcohol policy, including but not limited to a prohibition against attending any sessions while under the influence of drugs or alcohol;

(H) Statement of procedure for asserting grievances with the BIP;

(I) Prohibition of weapons possession while on BIP premises or when participating in a BIP function;

(J) Statement of any other BIP rules and conditions for participation in the BIP;

(K) Statement of the BIP's obligation to follow all federal or state laws and regulations, including these standards, relating to required disclosures in the case of: imminent danger to self, victim, current partner or others; or child abuse, elder abuse, abuse of vulnerable adults, or any other circumstances requiring reporting;

(L) Statement of the BIP's confidentiality policy as to participant records, identity of other BIP participants, and information disclosed by other participants in the BIP groups or classes;

(M) Notification that the BIP shall not provide the participant with any information about the victim or partner, either directly or in any judicial or administrative proceeding;

(N) Statement of a requirement that the participant execute all necessary documents to obtain information from, or release of information to, law enforcement, the courts, prior intervention or treatment services, social services, victim(s), partner(s), and others as appropriate; and

(O) Statement of criteria for program completion or release.

(4) Participant Record:

(a) A BIP shall keep the following information in each participant's record:

(A) Participant's name, address and phone number;

(B) Name and telephone number of contact in case of emergency;

(C) Fee agreement;

(D) Intake information obtained under section (2) of this rule, name of staff member completing intake, and participant's signed acknowledgement of receiving orientation materials;

(E) Copy of any signed releases of information;

(F) Records of participant's attendance and other participation;

(G) Information received by the BIP after intake, including court orders, police reports, protection orders and post-prison supervision or parole orders; and information as to any violations, offenses, new arrests or criminal charges during participation;

(H) Except for victim or partner contact information addressed in subsection (b) of this section, documentation of BIP disclosures, including name(s) of person(s) notified due to imminent danger or mandatory reporting consistent with these rules;

(I) Documentation of the participant's status as to completion of the requirements of the program, and any current obstacles to completion;

(J) Exit summary pursuant to OAR 137-087-0070; and

(K) Documentation of any refusal to provide requested information or to sign authorization forms.

(b) The following information is not a participant record and shall not be documented:

(A) Contact or other information about the whereabouts of a victim or partner, other information about a victim or partner not provided by the participant, and any information received by the BIP from a victim or partner;

(B) Any disclosures to a victim or partner, including any indication that the victim or partner was contacted by the BIP.

(c) Any record of information described in section (4) (b) of this rule shall comply with OAR 137-087-0015.

(5) Participant Access to Records. Subject to denial of access pursuant to subsection (a) of this section, a BIP shall provide the participant an opportunity to review information in the BIP's participant record under section 4(a) of this rule within a reasonable time of receiving a review request, and shall provide a copy of the records upon payment of the cost of duplication.

(a) A BIP may deny or limit a participant's access to the BIP's participant record:

(A) When the BIP determines that disclosure of the records is reasonably likely to endanger the life or safety of the participant or another person;

(B) When the BIP determines that the information was provided to the BIP on the condition that the information not be re-disclosed; or

(C) When the BIP determines that the information was compiled by the BIP in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding involving the BIP.

(b) If a document in the BIP's records contains any information, obtained from a source other than the participant, about a person other than the participant, the BIP shall redact that information.

(c) Except as expressly provided in these rules, nothing in these rules is intended to create any expectation or right of privacy or confidentiality for any records, files or communications relating to potential participants or participants in BIP services. The BIP may use and disclose information unless and to the extent prohibited or restricted by federal or state law or regulation, including these rules. Use or disclosure of otherwise confidential medical, mental health and treatment records shall comply with applicable federal and state law and regulations.

(d) The BIP shall adopt policies that provide for the confidentiality of a participant record, to the greatest extent practicable consistent with these rules, of a participant who is a defendant participating in a domestic violence deferred sentencing agreement.

Stat. Auth.: ORS 180.070 - 180.710
Stats. Implemented: ORS 180.070 - 180.710
Hist.: DOJ 16-2005, f. 11-23-05, cert. ef. 1-1-06; DOJ 13-2012, f. 7-31-12, cert. ef. 8-1-12

137-087-0065
BIP Program Format

(1) Use of Session Format. A BIP shall ordinarily provide intervention sessions in a group or class format. Exceptions to this session or class format shall be rare and the reasons clearly documented and provided to the Council.

(2) Gender-specific. BIP sessions or classes shall be gender-specific.

(3) Session Size. To maximize the impact of the program curriculum, sessions or classes shall ideally be composed of 7-12 participants, but shall have no more than 15 participants in addition to the co-facilitators unless approved by the Council and the LSA or

MA. Sessions or class sizes of more than 12 shall be reported to the Council for review and comment.

(4) Co-facilitation. Whenever possible, BIP sessions shall be conducted by at least one male and one female to establish an egalitarian model of intervention, increase accountability, and to model healthy egalitarian relationships. The BIP shall notify the Council and LSA when co-facilitation is not occurring, stating the reasons and justifications. At least one of the co-facilitators shall have already met all training requirements as specified in these rules.

(5) Number of sessions:

(a) No sooner than a participant's completing 32 sessions and before completing 36 sessions, the BIP shall submit a Summary Report, in accord with subsections (b) or (c) of this section, on the participant's program participation to date and a recommendation as to length of continued program participation, if any, after 36 sessions. At a minimum the Summary Report should address, and the recommendation be based upon: compliance with all program requirements, reporting of any known violations of court orders and conditions, protection orders, post-prison supervision or parole orders, identification of risk factors (as detailed in 137-087-0060 Admission Policies and Procedures (2)(c)(A)(B)(C)), and level of engagement and participation in program activities. The Summary Report is in addition to the monthly reports required in 137-087-0030 Interface Standards (2)(e).

(b) If the participant is on supervised probation, the BIP shall submit the Summary Report and recommendation to the LSA, with a copy to the participant, and request that the LSA promptly provide the BIP with any questions or concerns the LSA has about the Summary Report and recommendation. If no questions or concerns are raised, the BIP shall end program participation after 36 sessions, or continue program participation after 36 sessions, in accord with the BIP's recommendation. If questions or concerns are raised about the Summary Report and recommendation, the BIP shall promptly discuss them with the LSA and shall determine the ending of program participation at 36 sessions, or extending program participation beyond 36 sessions, as approved by the LSA.

(c) If the participant is on bench probation, the BIP shall submit the Summary Report and recommendation to the court, with a copy to the participant, and request that the court notify the BIP if the court will conduct further proceedings, on the court's own motion or the participant's motion, as to the Summary Report and recommendation. If the court does not advise the BIP that further proceedings will be held, the BIP shall end program participation after 36 sessions, or continue program participation after 36 sessions, in accord with the BIP's recommendation.

(d) If the participant, as determined above, continues in the program after completion of 36 sessions, the BIP is encouraged to provide an updated Summary Report to the appropriate authority after completion of each additional 18 sessions. Monthly status reports should continue to be submitted as required in 137-087-0030 Interface Standards (2) (e).

(6) Completion of MA-Mandated Program Participation Shorter than BIP Program: Completion of the BIP program may differ from the length of participation mandated by a MA. If a BIP reports to an MA that a participant has complied with the MA-mandated length of participation, the BIP shall also inform the MA if the participant has not completed the BIP program.

(7) Written Attendance and Tardiness Policies. A BIP shall adopt written group or class attendance and tardiness policies. At a minimum, such policies shall address punctuality of attendance, criteria for excused and unexcused absences, criteria for a maximum number of absences allowed, and criteria for obtaining exceptions to the attendance policies.

(8) Written Completion Requirements. A BIP shall adopt written program completion requirements, including consequences for excessive absences and other non-compliance, and provide a copy of the completion requirements to the LSA and Council.

Stat. Auth.: ORS 180.070 - 180.710
Stats. Implemented: ORS 180.070 - 180.710
Hist.: DOJ 16-2005, f. 11-23-05, cert. ef. 1-1-06; DOJ 13-2012, f. 7-31-12, cert. ef. 8-1-12

137-087-0070
Policies and Procedures as to Termination or Release

(1) Policies and Procedures. A BIP may release a participant based upon program compliance, or terminate participation based on program non-compliance or for other reasons, as provided in sections (3)-(6) of this rule.

(2) Program Exit Summary. No later than 30 days after the last service contact, a BIP shall prepare for the participant's record an exit summary describing the reason for release or termination and the participant's status. A BIP shall provide a copy of the exit summary to the LSA or MA, or both, or their designees within seven business days after its preparation.

(a) In communications about release based on program compliance, a BIP shall note that release is not evidence that the participant is presently non-abusive or non-violent, does not describe current behavior outside the BIP, and does not predict future behavior.

(b) A BIP shall inform the MA if the participant has complied with the MA-mandated length of participation, but not completed the BIP program.

(3) Release for Program Compliance. A BIP may release a participant based on program compliance only if a participant has achieved:

(a) Compliance with the BIP's attendance policy for the entire time period established in accordance with the BIP's rules;

(b) Compliance with group or class rules throughout intervention services;

(c) Completion of the Accountability Plan; and

(d) Compliance with other BIP rules and conditions for participation in the BIP.

(4) Terminating Participation for Program Non-Compliance. A BIP may terminate participation based on program non-compliance for any of the following reasons:

(a) Failing to maintain regular attendance, consistent with OAR 137-087-065(5) and (6);

(b) Failing to participate during BIP services, or failing to complete assignments, as required by BIP policies provided during orientation pursuant to OAR 137-087-0060(3)(b)(D);

(c) Creating an unsafe environment or exhibiting disruptive behavior that undermines the achievement of group or class objectives;

(d) Threatening the safety of the facilitator, staff, or other BIP participants;

(e) Failing to comply with other requirements of a BIP, including violation of the group or class rules or other conditions that are a part of the BIP's participation requirements;

(f) Failing to comply with the BIP payment agreement; or

(g) Ongoing battering behavior.

(5) LSA Request for Re-Admission. Unless the participant was terminated based on section (4)(d) or section (6) of this rule, the BIP may re-admit the participant upon request of the LSA with an increased number of sessions necessary to achieve BIP program completion requirements and other conditions appropriate to the basis for termination.

(6) Terminating Participation for Other Reasons. A BIP may terminate participation because the admission was inappropriate based on the criteria in OAR 137-087-0060(1)(a).

(7) Leaves of Absence. A BIP may permit, only with approval by the MA or LSA, a participant to remain in the BIP while temporarily not attending groups or classes for reasons the BIP and MA or LSA determines are justified. Leaves of absence shall be rare, specifically time limited and granted only upon proper supporting documentation and when there are no other viable options.

Stat. Auth.: ORS 180.070 - 180.710
Stats. Implemented: ORS 180.070 - 180.710
Hist.: DOJ 16-2005, f. 11-23-05, cert. ef. 1-1-06; DOJ 13-2012, f. 7-31-12, cert. ef. 8-1-12

137-087-0075
Post-Release Services

(1) Service Eligibility. A BIP may provide post-release services to a participant only after his release for program compliance.

(2) Cost of Services. Whenever possible, a BIP shall offer post-release services at little or no cost for former participants to encourage long-term and on-going participation in such services.

(3) Elements of Services. Post-release services may include but are not limited to:

(a) Occasional attendance of the group or class the former participant has left;

(b) Periodic individual meetings with BIP staff to assess maintenance and to review the Accountability Plan developed pursuant to OAR 137-087-0050;

(c) Periodic group or class meetings of typical or extended length conducted specifically for post-release men; and

(d) Regularly scheduled group or class meetings on an on-going basis.

(4) Limit on Role of Services. Attendance in a post-release group or class shall not substitute for re-enrolling in a BIP or as the primary intervention when there is a new legal charge, court mandate to complete a BIP, or when the participant or partner reports physical violence.

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Stats. Implemented: ORS 180.070 - 180.710
Hist.: DOJ 16-2005, f. 11-23-05, cert. ef. 1-1-06

137-087-0080
Personnel Standards

(1) Personnel Policies. A BIP shall adopt the following written personnel policies and procedures applicable to program facilitators, managers or supervisors, administrative staff, volunteers and interns, board members and owners (collectively referred to as "staff" for purposes of this rule except as otherwise specifically identified):

(a) Rules of conduct and standards for ethical practices of staff involved in BIP services with participants or contact with victims or partners;

(b) Standards for use and abuse of alcohol and other drugs, and procedures for managing incidents of use and abuse that, at a minimum, would be sufficient to comply with Drug Free Workplace Standards, 41 U.S.C. § 701 et seq. as described in 45 CFR Part 76 Appendix C;

(c) Compliance with laws relating to domestic violence, sexual assault, stalking and these rules, and applicable federal and state personnel regulations including the Civil Rights Act of 1964 as amended, Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1967, Title 1 of the Americans With Disabilities Act, and Oregon civil rights laws related to employment practices;

(d) Policies and procedures relating to the commission of domestic violence, sexual assault, stalking or abuse by any staff, and providing that the BIP shall terminate employment or volunteer service for such conduct unless the BIP documents reasons for not doing so in the personnel file; and

(e) Policies and procedures relating to discipline of staff for misuse or unauthorized disclosure of information obtained from or about participants, partners or victims.

(2) Background Checks for Facilitators. A BIP shall use an appropriate method to obtain and review a fingerprint-based state and federal criminal record check for facilitators.

(a) A BIP may ask an applicant, as a condition of employment or volunteer service, to certify whether he or she is, or has been, a respondent in any civil enforcement proceeding, including but not limited to a protection order, delinquent child support order or if the applicant has been held responsible for battering or child abuse/neglect behavior in a juvenile or family court or held responsible for elder abuse. Failure to disclose the existence of any of the above shall constitute grounds for dismissal or grounds not to rehire.

(b) An applicant shall be disqualified from employment or volunteer service if the individual has ever been convicted of any crime or has been subjected to a protection order or if the applicant has been held responsible for battering or child abuse/neglect behavior in a juvenile or family court or held responsible for elder abuse. The BIP may make an exception to this disqualification if the BIP can document reasons for hiring or retaining the individual consistent with factors in section (5)(d) of this rule. If the facts underlying the conviction were related to domestic violence, the applicant must have completed a BIP with standards similar to these rules, including length of intervention and implementation of an Accountability Plan, and the applicant must have maintained child support and alimony payments, if any. In addition, a period of more than five years shall have passed since the conviction of the crime or expiration of a court order including a protection order, the individual shall have complied with all the terms of his or her sentence or court order, and the individual shall be in compliance with all other qualifications as a facilitator. The BIP shall provide this documentation to the Council for review and comment before hire or continuation of employment, document the response of the Council, and place documentation of the reasons for hiring or retention, and of the Council's response, in the applicant's or employee's personnel file for permanent retention.

(c) A facilitator has an ongoing responsibility to inform the BIP within three working days of any changes in his or her history, including new arrests, convictions, protection orders or rehabilitation services.

(3) Qualifications of Facilitators. A BIP shall adopt the following minimum qualification standards for facilitators, and as a condition of employment or volunteer services at a BIP, a facilitator shall provide the BIP documentation of compliance with the BIP standards.

(a) Facilitator Experience. A facilitator shall document completion of a minimum of 200 hours of face-to-face contact co-facilitating BIP groups or classes with a facilitator who has met all the facilitator qualification requirements in these rules using a model consistent with these rules. A facilitator shall document that this experience was obtained over a period of at least one year. A maximum total amount of 100 hours of this requirement can also be satisfied in one or more of the following ways:

(A) By up to 50 hours of supervised face-to-face contact facilitating victim or survivor support or education classes, or up to 50 hours of working with a caseload primarily of domestic violence offenders on probation or parole;

(B) By up to 50 hours of facilitating offender-related non-domestic violence groups or classes;

(C) By earning a bachelor's degree (50 hours credit for required experience) or master's degree (100 hours credit for required experience) in women's studies, social work, criminal justice, psychology, sociology or other related field from an accredited institution of higher education. The facilitator shall document receipt of the required degree.

(b) Facilitator Training. A facilitator shall document completion of eighty (80) hours of training regarding domestic violence specific issues. Forty (40) hours of the training must be provided by a nongovernmental victim advocacy program approved by the local Council or in the absence of a Council, the LSA or MSA. For purposes of this section, "local" refers to a program that is located in or serves victims in the county in which the facilitator is applying to work. When the required training has been or will be provided by a nongovernmental victim advocacy program that is not local, at least eight (8) of the forty (40) hours shall be provided by a local nongovernmental victim advocacy program, if one exists. The remaining forty (40) hours of required training can be provided by the hiring BIP or another BIP that adheres to these standards.

(A) Training to be included in the forty (40) hours that shall be provided by a local nongovernmental victim advocacy program is as follows:

(i) Dynamics of domestic violence, including sexual assault and stalking, and power and control models;

(ii) Effects on children of exposure to a battering parent and to battering directed at their mothers, including but not limited to, the incompatibility of the battering with the child's well-being, the damage done to children witnessing battering, the child's need for a close mother-child bond, and how abusers use children to gain and maintain control;

(iii) Historical views and social attitudes about male dominance, domestic violence including sexual assault and stalking, and the status of women;

(iv) Risk factors for future or additional battering, aggressive or controlling behavior;

(v) Cultural competence as it relates to domestic violence, sexual assault, stalking and abuse.

(B) Training to be included in the (forty) 40 hours coordinated by the hiring BIP or a BIP adhering to the standards is as follows, but the BIP need not deliver all of the training below if a partner agency has developed appropriate curriculum or has presentation expertise and can deliver the training:

(i) An overview of current state and federal domestic violence laws, including sexual abuse, sexual assault, stalking, child custody and visitation;

(ii) An overview of battering behavior and tactics, including sexual abuse and stalking;

(iii) Risk of facilitator and system collusion with the BIP participant;

(iv) Appropriate safety guidelines for BIP contact with victims;

(v) An overview of the criminal justice system;

(vi) State and local requirements for BIPs, including intervention curriculum requirements in OAR 137-087-0050; and

(vii) Importance and elements of a coordinated community response to domestic violence and methods of collaborating with community programs and services.

(c) Culturally Informed Intervention. To satisfy the training requirements in section 3((A)v) of this rule, a facilitator shall document completion of seven hours of training in oppression theory, cultural factors and anti-racism as it relates to domestic violence.

(d) Interviewing skills requirement. In addition to the experience and training requirements in sections 3(a) and (b) of this rule, a facilitator shall document completion of at least 18 hours of training in basic interviewing and group facilitation skills.

(e) Additional training requirement. In addition to the training requirements in section 3(b) of this rule, a facilitator shall document completion of at least 18 hours of training in substance abuse identification and screening, and at least 12 hours of training in mental health identification and screening.

(f) Documentation requirements. A facilitator shall provide the BIP with documentation of his or her training for each of the topics required by sections 3(b)-(e) of this rule, and shall include the number of hours and dates of training for each specific topic. If the training in any specific topic was received more than five years before the employment application date and the applicant has not been continuously engaged in the domestic violence field either as a BIP provider, victim advocate or probation officer supervising domestic violence offenders for a five year period, the facilitator must also document completion of additional training in the specific topic(s) during the five years prior to the application date, equal to a minimum of 25 percent of the required hours in that topic. Additional training may be needed to ensure sufficient knowledge.

(4) Continuing Education for Facilitators. After a facilitator has met the basic qualification standards in section (3) of this rule, the facilitator shall document a minimum of 32 hours over a two calendar-year period of continuing education or training in topics related to the training requirements under sections 3(b)-(e) of this rule. Not more than eight hours of in-program training, or eight hours of internet or correspondence training, may be used annually to satisfy this biennial requirement.

(5) Background Checks for Staff other than Facilitators. Before employment or volunteer service, a BIP shall use an appropriate method to obtain and review background information for staff and applicants other than facilitators, as follows:

(a) By having the applicant, as a condition of employment or volunteer service, apply for and receive a criminal history check from a local Oregon State Police office and furnish a copy of it to the BIP; or

(b) By having the applicant, as a condition of employment or volunteer service, sign an authorization for the BIP to contact the local Oregon State Police office for an "Oregon only" criminal history check on the individual.

(c) The BIP may ask the applicant to certify whether he or she is, or has been, a respondent in any civil enforcement proceeding, including but not limited to:

(A) A protection order as defined in these rules;

(B) A delinquent child support order; and

(C) Failure to disclose the existence of a protection order or delinquent child support order constitutes grounds for dismissal or grounds not to hire or to allow volunteer service.

(d) The BIP shall establish policies to evaluate criminal history, if any, in determining whether an applicant shall be hired. The policies shall consider:

(A) The severity and nature of the crime(s);

(B) The number of criminal offenses;

(C) The time elapsed since commission of the crime(s);

(D) The facts of the crime(s);

(E) The applicant's participation in intervention or rehabilitation programs, counseling, therapy, or education evidencing a sustained change in behavior; and

(F) A review of the police or arrest report confirming the applicant's explanation of the crime(s).

(e) If the applicant has been convicted of a crime, the BIP shall determine whether the person poses a risk to the BIP's staff, participants, victims or partners, and whether the criminal history indicates a propensity to engage in collusion with batterers. If the BIP intends to hire the applicant, the BIP shall confirm in writing the reasons for doing so. These reasons shall address the applicant's suitability to work with the BIP's staff or participants or to have contact with victims or partners in a safe and trustworthy manner. The BIP shall place this information in the staff's personnel file for permanent retention.

(f) BIP staff have an ongoing responsibility to inform the BIP within three working days of any changes in their history, including new arrests, convictions, protection orders, or delinquent child support orders, rehabilitation services or if the applicant has been held responsible for battering or child abuse/neglect behavior in a juvenile or family court or held responsible for elder abuse.

(6) Professional Standards for Staff. A BIP shall include the following professional standards in personnel policies to ensure that staff maintain their professional objectivity and to minimize collusion or any appearance of favoritism or impropriety by the BIP or its staff:

(a) Staff shall not be delinquent in paying any required child support or spousal support;

(b) Staff shall not be involved in any criminal activity;

(c) Staff shall not be under the influence of alcohol or controlled substances while providing BIP services;

(d) Staff shall not use their position to secure special privilege or advantage with participants;

(e) Staff shall not in any way collude with participants by implicitly or explicitly acting in a manner that minimizes or excuses the battering or joins into the batterer's system of denial or rationalization for the abuse. Collusion includes but is not limited to: legitimizing participants' use of abuse against partners; defending their abusive actions for any reason; laughing at jokes about women, wives, girlfriends, partners or violence; and supporting participants' distortions, disparagement or contempt of their partners by omission (not interrupting) or by commission (actively engaging in supporting or affirming). Staff shall not imply that any victim deserves abuse nor show disrespect of any victim or any woman;

(f) Staff shall not allow personal interest to impair performance of professional duties;

(g) Staff shall not act as a facilitator for a group or class that includes a family member, personal friend, or past or current business associate of the staff member;

(h) Staff shall not accept any gift or favor from current or former participants, or enter into any business contract or association with participants currently enrolled with the BIP. Cultural or traditional values and customs shall at all times be balanced against this principle;

(i) Staff shall report any potential conflict of interest to BIP supervisors; and

(j) Staff shall immediately report to an appropriate licensing authority, or to the MA or LSA, any unethical or illegal behavior by other staff. A BIP shall not take retaliatory action against a staff person making such report.

(7) Prohibition of Sexual Harassment or Sexual Exploitation. A BIP shall adopt a written policy prohibiting sexual harassment and sexual exploitation, and shall document in each staff member's file that he or she has reviewed the policy and agreed to comply with it. The policy shall include disciplinary steps available to the BIP if a staff person violates the policy.

(8) Maintenance of Qualification Records. A BIP shall maintain a record documenting each staff member's compliance with applicable qualification standards. The BIP shall maintain the record for three years after the departure of a staff member.

(9) Mentoring and Internships. A BIP is encouraged to provide mentoring or internship opportunities between its staff and staff of other BIPs or VPs to promote professionalism, to provide experienced role models for less experienced staff, interns or volunteers, and to provide cross-training for the BIP's staff. Interns or those being mentored shall be required to comply with all of the supervising BIP's policies and procedures and instruction of the supervising BIP staff.

(10) Facilitators in Training. Individuals in training who have not met all the training and experience requirements applicable to facilitators under these rules may co-facilitate under the active supervision of a facilitator who meets these standards. Facilitator-trainees can co-facilitate under this status for up to two years from the start of the co-facilitating. The facilitator-trainee is immediately responsible for compliance with all other requirements of these rules applicable to a facilitator.

(11) The BIP program may request an exemption to the co-facilitation requirement if in consultation with the MA and the LSA it is determined that the program is unable to meet this requirement and unlikely to be able to meet the requirement in the future.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 180.070 - 180.710
Stats. Implemented: ORS 180.070 - 180.710
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137-087-0085
Research Programs

(1) Nothing in this section applies to a BIP's disclosure of its own aggregate or non-personally identifying data, or the conduct of its own quality assurance activities.

(2) Research. A BIP may use and disclose participant information for research purposes consistent with this rule. Before making use or disclosure of participant information for research purposes, a BIP shall obtain the following in writing from an independent researcher:

(a) Description of specific actions the researcher shall take to ensure the safety, confidentiality, and autonomy of victims;

(b) An adequate plan to protect participant information from improper use or disclosure;

(c) Description of steps to ensure that any victim or partner participation, or access to information about a victim or partner by the researcher, shall be based solely on the victim's or partner's informed consent obtained in a manner consistent with section (1)(d) of this rule;

(d) Description of steps to ensure that any procedure involving any victim, partner, or family member, and other collateral contacts including but not limited to past or present employers of the research participant, victim or partner, and a request for participation in the research, shall be developed in consultation with a VP to address victim or partner safety;

(e) Description of steps taken to ensure the input and involvement of community-based domestic violence VPs in the design and implementation of the project;

(f) Description of steps to ensure that the research product shall:

(A) Report both positive and negative data about BIP outcomes and the research participants if applicable and acknowledge alternative hypotheses, modalities and explanations;

(B) Include a statement about the limitations of self-reporting in accurately measuring a participant's progress, behavior, or attitudes/beliefs when the research includes information based on self-reporting by participants, including self-reports of program effectiveness; and

(C) Clarify that release for program compliance does not provide any evidence that the participant is presently non-abusive, describe present behavior outside the BIP, or predict future behavior.

(g) Description of a plan to destroy identifiable information at the earliest opportunity or at the conclusion of the research, and to keep confidential any information about, gathered from, or traceable to the victim or partner;

(h) An agreement by the researcher, and his or her agents, not to use or further disclose the research information other than for purposes directly related to the research, and to use appropriate safeguards to prevent misuse of that information;

(i) An agreement by the researcher, and his or her agents, not to publicly identify the research participant or past or current victims or partners; and

(j) An agreement by the researcher to follow federal guidelines relating to Human Subject Research, 45 CFR Part 46, if applicable.

(2) Complaints about Research Conduct. The BIP or other researcher shall make available a person independent of the BIP or other researcher with whom ethical complaints about the conduct of the research can be filed, and establish a procedure for such filing. The BIP or other researcher shall inform both the participant and the victim or partner, and any other person or entity upon request, about the complaint procedure.

(3) Reporting Research. The BIP shall require a researcher conducting research on a BIP or BIPs to advise the LSA and the Council about the nature, scope and intent of the research.

Stat. Auth.: ORS 180.070 - 180.710
Stats. Implemented: ORS 180.070 - 180.710
Hist.: DOJ 16-2005, f. 11-23-05, cert. ef. 1-1-06; DOJ 13-2012, f. 7-31-12, cert. ef. 8-1-12

137-087-0090
Demonstration Projects (see definition in Section 1)

(1) Demonstration Projects. BIPs shall continue to evolve and change as best practices are developed. These standards are not intended to discourage innovative demonstration projects as long as victim safety and participant accountability are maintained. A BIP must propose to operate a demonstration project by a written request for project approval by the Attorney General's BIP Advisory Committee (Advisory Committee), established under OAR 137-087-0100, that addresses the following:

(a) Identification of the sections and subsections in these rules that project approval would waive;

(b) Relevant research, professional experience, or other credible data showing that the batterer intervention method proposed for the project is an effective and appropriate means of intervention, and that under no circumstances shall the project require actions that shall jeopardize the safety of women, children or the community, collude with the participant, or require victim participation;

(c) Expertise of the BIP to conduct the proposed project and the BIP's ability to maintain such expertise for the project's duration;

(d) A means, independent of the BIP, for evaluating the effectiveness of the project;

(e) The BIP's record, if any, of conducting and completing other programs or projects for private or public entities, including the BIP's record of cooperation in resolving problems identified by such entities;

(f) The geographic location to be served, the participating persons, agencies and organizations, and their respective roles in the project; the length of time for the proposed project, subject to section (3) of this rule; and expected outcomes;

(g) The involvement, if any, of community-based VPs in the design and implementation of the project;

(h) Position of the LSA, MA and Council in the area to be included in the project as to approval of the project; and

(i) Any additional information the BIP believes is relevant to deciding whether the proposal shall be approved.

(2) Informing Community Partners of the Demonstration Project. After approval of the project by the Advisory Committee and

before implementing the project, the BIP shall inform community partners (VPs, LSA, courts, Council, community justice, district attorney's office, alcohol and drug treatment providers and other agencies that come in contact with batterers or with victims or partners) of the demonstration project and changes in the BIP's program design. BIP informational materials shall be revised to state clearly the project's changes so as to avoid any misleading or inaccurate information about the BIP. On a quarterly basis, the BIP shall report to the community partners on the progress of the demonstration project, including concerns about its efficacy. A copy of each report shall also be mailed to the Advisory Committee.

(3) Demonstration Project Time Period. In general, a proposal for a demonstration project shall not exceed a 24 month period. While a demonstration project is being conducted, a BIP may petition to extend the demonstration project. The petition shall provide updated information on all the criteria identified in section (1) of this rule.

(4) Discontinuation of Demonstration Project. After a proposed project is approved, evidence of an increase in batterer abuse, or a decrease in batterer accountability, shall lead to immediate discontinuation of the project. The BIP shall immediately inform the community partners specified in section (2) of this rule, and the Advisory Committee, of the discontinuation of the demonstration project.

Stat. Auth.: ORS 180.070 - 180.710
Stats. Implemented: ORS 180.070 - 180.710
Hist.: DOJ 16-2005, f. 11-23-05, cert. ef. 1-1-06; DOJ 13-2012, f. 7-31-12, cert. ef. 8-1-12

137-087-0095
Program Review

(1) Review of BIP Performance. An LSA and/or MA, in consultation with the Council, shall periodically review the performance of BIPs located within the jurisdiction of the LSA for compliance with these rules. LSAs are strongly encouraged to conduct regular reviews of programs and to only refer batterers to programs that are in compliance with these rules or that are working to achieve compliance.

(2) Availability of Records. Except for victim or partner records a BIP shall not disclose, a BIP shall make records available for, and require its staff to cooperate with, program review described in section (1) of this rule.

(3) Distribution of Review. If a review is completed under section (1) of this rule, a copy of the review shall be provided to the BIP executive director, board of directors and owners, and sent by the LSA to the presiding judge and the district attorney for the county in which the LSA operates.

(4) Action on Recommendations. Within 90 days after receipt of the written copy of the review by the BIP, the BIP shall take any corrective actions recommended by the review or advise the LSA and MA in writing why the BIP does not intend to take a particular corrective action. The BIP shall provide a copy of its written response to the Council.

(5) Grievance Policies and Procedures. Each BIP shall develop, implement, and fully inform participants of grievance policies and procedures that provide for receipt of written grievances from participants. The BIP shall document the receipt, investigation, and any action taken as to the written grievance.

(6) Complaint Procedure. Any person, other than a participant, with a concern about a BIP's service delivery may file a written complaint with the BIP. The BIP shall respond to the complaint in writing within a reasonable period of time. In its written response, the BIP shall inform the person that if he or she is not satisfied with the BIP's response, the person may direct his or her complaint to the LSA or the Council.

(7) The BIP Advisory Committee, established in these rules, shall periodically survey BIP compliance with these rules.

Stat. Auth.: ORS 180.070 - 180.710
Stats. Implemented: ORS 180.070 - 180.710
Hist.: DOJ 16-2005, f. 11-23-05, cert. ef. 1-1-06; DOJ 13-2012, f. 7-31-12, cert. ef. 8-1-12

137-087-0100
BIP Advisory Committee

The Attorney General shall appoint an Advisory Committee composed of representatives from LSAs, BIPs and VPs, and of other members the Attorney General deems appropriate. At the request of the Attorney General and consistent with ORS 180.700, the advisory committee shall evaluate the operation of these standards and provide the Attorney General with any amendments the committee recommends, and shall evaluate requests for demonstration projects that require a waiver of these BIP rules.

Stat. Auth.: ORS 180.070 - 180.710
Stats. Implemented: ORS 180.070 - 180.710
Hist.: DOJ 16-2005, f. 11-23-05, cert. ef. 1-1-06

DIVISION 90

CRIMINAL INTELLIGENCE UNIT

137-090-0000
Purpose

The purpose of these rules is to provide standards, policies and procedures for the operation of the Criminal Intelligence Unit (CIU) of the Organized Crime Section, and to ensure compliance with 28 CFR Part 23.

Stat. Auth.: ORS 180
Stats. Implemented: ORS 180.610(2), 180.610(3), 180.610(4) & 28 CFR Part 23
Hist.: JD 2-1989, f. & cert. ef. 9-13-89; DOJ 11-2000, f. & cert. ef. 8-9-00

137-090-0010
Authority

The Criminal Intelligence unit operates under the authority of ORS 180.610(2), (3), and (4).

Stat. Auth.: ORS 180
Stats. Implemented: ORS 180.610 (2), 180.610(3) & 180.610(4)
Hist.: JD 2-1989, f. & cert. ef. 9-13-89

137-090-0020
Abbreviations

(1) CIU: Criminal Intelligence Unit.
(2) CIUS: Criminal Intelligence Unit Supervisor.
(3) CJD: Criminal Justice Division.
(4) AIC: Attorney in Charge of the Organized Crime Section.
(5) CIU/AAG: Assistant Attorney General assigned to the Criminal Intelligence Unit.

Stat. Auth.: ORS 180
Stats. Implemented: ORS 180.610(2), 180.610(3) & 180.610(4)
Hist.: JD 2-1989, f. & cert. ef. 9-13-89; DOJ 11-2000, f. & cert. ef. 8-9-00

137-090-0030
Criminal Intelligence Unit Mission

The mission of the Criminal Intelligence Unit is to provide the Department of Justice and Oregon law enforcement agencies with a statewide criminal information base and analyses which meets their needs to protect the public and suppress criminal activity.

Stat. Auth.: ORS 180
Stats. Implemented: ORS 180.610(2), 180.610(3) & 180.610(4)
Hist.: JD 2-1989, f. & cert. ef. 9-13-89

137-090-0040
Public Access

(1) The Criminal Intelligence Unit will comply with the the Oregon Public Records law in responding to requests by members of the public for file information to the extent that the law allows and to the degree the materials requested are not classified according to defined restrictions on dissemination.

(2) The Criminal Intelligence Unit will comply with the "Third Agency Rule" which is explained as follows: Reports and other investigative material and information received by the Criminal Intelligence Unit shall remain the property of the originating agency, but may, subject to consideration of official need, be retained by the Criminal Intelligence Unit. Such reports and other investigative material and information shall be maintained in confidence, and no access shall be given thereto except, with the consent of the investigative agency concerned, to other departments and agencies on a

right to know, need to know basis. This policy also applies to individuals, groups or organizations requesting specific records or material under the Freedom of Information Act or Oregon Public Records Law.

(3) The originating agency shall determine whether the investigative report, material or other information may be released to the requestor, or whether the requestor should be referred to that agency for disposition of the case. In any case, the decision by the originating agency shall not be contested by the Criminal Intelligence Unit.

Stat. Auth.: ORS 180
Stats. Implemented: ORS 180.610(2), 180.610(3) & 192.410 et seq.
Hist.: JD 2-1989, f. & cert. ef. 9-13-89; DOJ 11-2000, f. & cert. ef. 8-9-00

137-090-0050
Definition of Reasonable Grounds

As used in these rules, reasonable grounds means reasonable suspicion. Reasonable suspicion is suspicion that is reasonable under the totality of the circumstances. It is less than probable cause and more than mere suspicion.

Stat. Auth.: ORS 180
Stats. Implemented: ORS 180.610(2), (3) & (4)
Hist.: JD 2-1989, f. & cert. ef. 9-13-89

137-090-0060
Definition of Criminal Intelligence File

A criminal intelligence file consists of stored information on the activities and associations of:

(1) Individuals who:

(a) Based upon reasonable suspicion are suspected of being or having been involved in the actual or attempted planning, organizing, threatening, financing, or commission of criminal acts; or

(b) Based upon reasonable suspicion are suspected of being or having been involved in criminal activities with known `or suspected crime figures.

(2) Organizations, businesses, and groups which:

(a) Based upon reasonable suspicion are suspected of being or having been involved in the actual or attempted planning, organizing, threatening, financing, or commission of criminal acts; or

(b) Based upon reasonable suspicion are suspected of being or having been illegally operated, controlled, financed, or infiltrated by known or suspected crime figures.

Stat. Auth.: ORS 180
Stats. Implemented: ORS 180.610(2), (3), (4), 181.575 & 28 CFR §23.20
Hist.: JD 2-1989, f. & cert. ef. 9-13-89

137-090-0070
File Content

Only information meeting the CIU's criteria for file input will be stored in the criminal intelligence files. No information will be collected or maintained about the political, religious, racial, or social views, sexual orientation, associations or activities of any individual, group, association, organization, corporation, business or partnership unless such information directly relates to an investigation of criminal activities, and there are reasonable grounds to suspect the subject of the information is, or may be, involved in criminal conduct.

Stat. Auth.: ORS 180
Stats. Implemented: ORS 180.610(2), (3), (4), 181.575 & 28 CFR §23.20
Hist.: JD 2-1989, f. & cert. ef. 9-13-89

137-090-0080
File Categories

All information to be retained in the criminal intelligence files must meet the stated guidelines for file definition and content. Information will only be retained in one of three file categories as set forth below:

(1) Working File:

(a) The working file is the receiving phase of newly acquired raw data. The CIU staff review the new materials for its acceptability to the CIU's criminal intelligence system.

(b) Retention Period: The retention period is thirty working days during which effort is made to determine the value of the raw data and its acceptability to the CIU's criminal intelligence system.

(2) Temporary File:

(a) The temporary file includes individuals, groups, businesses, and organizations which have *not* been positively identified by one or more distinguishing characteristics, or whose criminal involvement is questionable;

(b) Individuals, groups, and organizations are given temporary file status *only* in the following situations:

(A) The subject is unidentifiable because there are no physical descriptors, identification numbers, or distinguishing characteristics available; and

(B) The subject's involvement in criminal or gang activities is questionable; and

(C) The subject has a history of criminal or gang conduct, and the circumstances afford him an opportunity to again become active; and/or

(D) The reliability of the information source and/or the validity of the information content cannot be determined at the time of receipt; and

(E) The information appears to be significant and merits temporary storage.

(c) Retention Period: The retention period is one year during which time effort is made to secure additional data verification. If the information still remains in the temporary file at the end of one year with no update information added, and no information is available, the information is purged and destroyed.

(3) Permanent File:

(a) This file includes individuals, groups, businesses, and organizations which have been positively identified by one or more distinguishing characteristics and criminal involvement;

(b) Retention Period: The retention period is five years after which the information is evaluated for its file acceptability.

Stat. Auth.: ORS 180
Stats. Implemented: ORS 180.610(2), (3), (4), 181.575 & 28 CFR §23.20
Hist.: JD 2-1989, f. & cert. ef. 9-13-89

137-090-0090
Information Input

Information to be stored in the CIU's criminal intelligence file must first undergo a review for relevancy and an evaluation for source reliability and information validity prior to filing:

(1) Relevancy Review: Incoming information is reviewed by the CIUS, or a designee of the Chief Counsel, to determine its relevancy to the CIU's mission.

(2) Source Reliability: The term, source, relates to the individual, group, or organization providing the information to the CIU. Source reliability will be determined according to the criteria set forth in **Table 1.** [Table not included. See ED. NOTE.]

(3) Information Validity: The term, information, relates to written, oral, and/or pictorial materials provided to the CIU by the individual, group, or organization. Information validity will be determined according to the criteria set forth in **Table 2**. [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 180
Stats. Implemented: ORS 180.610(2), 180.610(3), 180.610(4) & 28 CFR §23.20
Hist.: JD 2-1989, f. & cert. ef. 9-13-89; DOJ 11-2000, f. & cert. ef. 8-9-00

137-090-0100
Information Classification

(1) General: In order to protect sources, investigations and individual rights to privacy, information retained in the CIU's criminal intelligence file is classified to indicate the degree to which it must be kept secure. Many documents received by the CIU have classifications assigned to them by the senders. In such cases, CIU personnel must take care to review and to assign levels of security classification not below that given by senders. The classification of criminal intelligence information is subject to continual change. The passage of time, the conclusion of investigations, and other factors may affect the security classification assigned to particular documents. Documents within the intelligence files should be reviewed on an ongoing basis to ascertain whether a higher or lesser degree of document security is required and to insure that information is released only when and if appropriate.

(2) Classification: Criminal intelligence information is classified according to the following system:

(a) Sensitive:

(A) The classification, sensitive, is assigned by the contributor agency or by the CIUS in consultation with the Chief Counsel, Attorney-in-Charge of the Organized Crime Section or the Chief Investigator and is given only to documents which relate to:

(i) Information pertaining to significant law enforcement cases currently under investigation;

(ii) Public Corruption;

(iii) Informant identification information;

(iv) Criminal intelligence reports which require strict dissemination and release criteria;

(v) Documents which have been designated sensitive by another law enforcement agency;

(vi) A document bearing this classification cannot be disseminated without the approval of the contributor agency. When the Oregon Department of Justice is the contributor agency, a document bearing this classification cannot be disseminated without the approval of the Chief Counsel, Attorney-in-Charge of the Organized Crime Section or the Chief Investigator.

(b) Confidential:

(A) The classification, confidential, is assigned by the contributor agency or the CIUS and is given to the following documents:

(i) Criminal intelligence reports which are not designated sensitive;

(ii) Information obtained through intelligence unit channels which is not classified sensitive and is for law enforcement intelligence use only;

(iii) Documents which describe ongoing investigatory projects and open investigations;

(iv) Documents which describe law enforcement strategies and techniques;

(v) Documents which have been designated confidential by another law enforcement agency.

(B) A document bearing this classification can be released with the approval of the contributor agency.

(c) Restricted:

(A) The classification, restricted, is assigned by the contributor agency or the CIUS and is given to documents of general use in the CIU such as reports that at an earlier date were classified sensitive or confidential and the need for high level security no longer exists or non-confidential information prepared for/by law enforcement agencies;

(B) A document bearing this classification can be released for general law enforcement use with the approval of the CIUS.

(d) Unclassified: The classification, unclassified, is assigned by the CIUS and is used to identify documents of a public nature. Examples of unclassified materials include non-news related information to which, in its original form, the general public had direct access (i.e., birth and death certificates, corporation papers, etc.) and news media information such as newspapers, magazine and periodical clippings dealing with specified criminal categories.

Stat. Auth.: ORS 180
Stats. Implemented: ORS 180.610(2), (3), (4), 181.575 & 28 CFR §23.20
Hist.: JD 2-1989, f. & cert. ef. 9-13-89; DOJ 11-2000, f. & cert. ef. 8-9-00

137-090-0110
Information Contributions

To the extent possible, all criminal intelligence maintained in CIU files must display the names and phone numbers of persons and agencies providing the information. When anonymity is requested by a contributor, a contributor code number may be used. All contributor code numbers will be provided and retained by the CIUS. When a contributor's name identification is difficult to obtain, it will suffice to describe the contributor in general terms. All information obtained from the public domain will be identified by document name, date and page number. In addition to identifying the source, the manner in which the source obtained the information is described.

Stat. Auth.: ORS 180
Stats. Implemented: ORS 180.610(2), (3), (4) & 28 CFR §23.20
Hist.: JD 2-1989, f. & cert. ef. 9-13-89

137-090-0120
Quality Control

Information stored in the CIU's criminal intelligence file will undergo a review by the CIUS, or a designee of the Chief Counsel, for compliance with the law and with the standards, policies, and procedures of this chapter before its entry into the file. The CIU/AAG shall provide legal oversight and advice to CIU personnel in all matters involving the CIU to insure compliance with federal and state law.

Stat. Auth.: ORS 180
Stats. Implemented: ORS 180.610(2), (3), (4), 181.575 & 28 CFR §23.20
Hist.: JD 2-1989, f. & cert. ef. 9-13-89; DOJ 11-2000, f. & cert. ef. 8-9-00

137-090-0130
Dissemination

Criminal intelligence information is disseminated only to personnel of criminal justice agencies and only on a "right to know" authority and "need to know" responsibility.

(1) Definitions:

(a) "Right to know": Requester agency has official capacity and statutory authority to the information being requested.

(b) "Need to know": Requested information is pertinent and necessary to the requester agency in initiating, furthering, or completing an investigation.

(2) Control:

(a) It is the policy of the Organized Crime Section to account for date, nature and purpose of all disclosures of criminal intelligence by the CIU. The accounting includes names, title, and agency of the person or agency to whom the disclosure is made, what was disclosed and the name, if any, of the person making the disclosure. Disclosures are made in accordance with the security classification designated by the contributor agency, and the contributor agency shall be notified of all disclosures.

(b) The accounting required by (2)(a) of this rule will be electronically completed every time criminal intelligence is accessed

(c) All disclosures of criminal intelligence are logged and the records of the disclosures are retained for the life of disclosed documents.

(d) An accounting will be electronically completed every time the criminal intelligence files are queried. This accounting will be retained for a period of one year, and includes the inquirer's name and agency, the agency phone number, the nature of the inquiry, and the name of the person who is the subject of the inquiry.

(3) Unauthorized Access: The person requesting and receiving criminal intelligence is solely responsible for the security of that information. Any person possessing the disseminated criminal intelligence other than the original requester, except as provided in section (4) of this rule, is deemed to have unauthorized access.

(4) Unauthorized Dissemination: No CJD employee requesting and receiving CIU criminal intelligence will allow access to this information by other individuals except at meetings or during shared project assignments in which the subject of the criminal intelligence is being used and all the participants in these meetings and/or projects meet the dissemination criteria of this chapter.

(5) Dissemination Restriction: Any person accessing CIU criminal intelligence shall disseminate that information only to law enforcement authorities who shall agree to follow procedures regarding information receipt, maintenance, security, and dissemination which are consistent with these rules. This provision shall not limit the dissemination of an assessment of criminal intelligence information to a government official or to any other individual, when necessary, to avoid imminent danger to life or property.

(6) Dissemination Table: **Table 3** sets forth the classification level, dissemination criteria and release authority for information stored in CIU files. [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 180
Stats. Implemented: ORS 180.610(2), (3) & (4) & 28 CFR §23.20
Hist.: JD 2-1989, f. & cert. ef. 9-13-89; DOJ 11-2000, f. & cert. ef. 8-9-00

137-090-0140
Security

Because security and protection of the materials in the criminal intelligence file is of utmost importance, the following procedures shall be observed:

(1) Policy: All CIU employees shall be thoroughly familiar with access and dissemination policies of this chapter. All other persons authorized to access criminal intelligence information as provided in these rules shall agree to follow procedures regarding information access, security, and dissemination which are consistent with these rules.

(2) Access: Direct access to the CIU's criminal intelligence files is limited to CIU file section employees, the CIUS and personnel of criminal justice agencies as approved by the CIUS.

Stat. Auth.: ORS 180
Stats. Implemented: ORS 180.610(2), (3) & (4) & 28 CFR §23.20
Hist.: JD 2-1989, f. & cert. ef. 9-13-89; DOJ 11-2000, f. & cert. ef. 8-9-00

137-090-0150
File Review and Inspection

(1) Review Authority: All information in the criminal intelligence file is subject to review at any time by the Chief Counsel, Attorney-in-Charge of the Organized Crime Section, Chief Investigator, CIU/AAG, Deputy Attorney General and Attorney General.

(2) CIUS Document Review: By July 1 of each year, the CIUS shall review a representative random sample of the materials in the file to determine the need for document classification change in accordance with this chapter.

(3) CIUS Operational Inspection: By July 1 of each year, the CIUS will inspect all aspects of the intelligence file operation. This inspection shall include, but not be limited to, the following:

(a) Parameters of Review: Review the CIU rules to insure they are in accordance with current law and accurately reflect the standards, policies and procedures of CJD. Check recently submitted criminal intelligence to insure it meets CIU criteria. Review indexing for compliance with established CIU procedures. Check completed electronic source document for accuracy — AKAs, monikers, categories, sequence numbers, and other requirements. Review the electronic accounting audit information to ensure it is properly maintained and functioning appropriately;

(b) Review Procedures: The CIU staff shall select at random five electronic source documents from each major crime category. Staff will review these documents to ensure that all materials meet file criteria. Staff will ensure that electronic purge information is accurate and complete. Staff will study all materials not meeting the criteria and will take immediate corrective action;

(c) Criminal Intelligence Unit Supervisor's Report: The CIUS shall compose a written report of the findings of this review and shall submit the report to the Chief Counsel through the Chief Investigator and Attorney-in-Charge of the Organized Crime Section. The report will describe the general condition of the files and any corrective measures taken.

Stat. Auth.: ORS 180
Stats. Implemented: ORS 180.610(2), (3), (4), 181.575 & 28 CFR §23.20
Hist.: JD 2-1989, f. & cert. ef. 9-13-89; DOJ 11-2000, f. & cert. ef. 8-9-00

137-090-0160
Purging

All information in the Criminal Intelligence file is eventually removed and destroyed. Its removal and destruction is in accordance with the following purge and destruction criteria:

(1) Purging Constraints: All file material selected for purging and destruction will only be removed and destroyed when it meets the requirements of these rules.

(2) Purge Criteria: Information is only purged when it is:

(a) No longer useful;
(b) No longer relevant;
(c) Invalid;
(d) Inaccurate;
(e) Beyond retention period;
(f) Unverifiable; or
(g) Inconsistent with mission.

(3) Purging Process: The first step for determining which documents in file require purging begins with their selection according to purge criteria as described in section (2) of this rule.

(4) Process for Retention: When the CIUS wishes to retain information which has been recommended for purge, he/she must substantiate his/her reasons for retention to the Chief Investigator. Final decision on retention is made by the Attorney-in-Charge of the Organized Crime Section. In matters of great exception, the final decision will be made by the Chief Counsel of the Criminal Justice Division.

(5) Retention Period: Any information ordered retained will be placed in the permanent section of the central file for a new retention period of five years from date of re-entry.

Stat. Auth.: ORS 180
Stats. Implemented: ORS 180.610(2), (3), (4), 181.575 & 28 CFR §23.20
Hist.: JD 2-1989, f. & cert. ef. 9-13-89; DOJ 11-2000, f. & cert. ef. 8-9-00

137-090-0170
Destruction

Material purged from the criminal intelligence file shall be removed and destroyed under the supervision of the CIUS. Removal and destruction will be accomplished electronically consistent with statutes and rules relating to destruction of public records.

Stat. Auth.: ORS 180
Stats. Implemented: ORS 180.610(2), (3) & (4) & 387.805 et seq.
Hist.: JD 2-1989, f. & cert. ef. 9-13-89; DOJ 11-2000, f. & cert. ef. 8-9-00

137-090-0180
File Integrity Officer

The CIUS will be CIU's File Integrity Officer. In this capacity, the CIUS is responsible for the contents of all intelligence files in the CIU and for their compliance with these rules.

Stat. Auth.: ORS 180
Stats. Implemented: ORS 180.610(2), (3) & (4), 181.575 & 28 CFR §23.20
Hist.: JD 2-1989, f. & cert. ef. 9-13-89; DOJ 11-2000, f. & cert. ef. 8-9-00

137-090-0190
File Room Requirements

(1) The CIUS shall adopt effective and technologically advanced computer software and hardware designs to prevent unauthorized access to information contained in the CIU criminal intelligence files.

(2) The CIUS shall restrict access to CIU facilities, operating environment and documentation to organizations and personnel authorized by these rules.

(3) The CIUS shall institute procedures to protect criminal intelligence information from unauthorized access, theft, sabotage, fire, flood, or other natural or manmade disaster.

Stat. Auth.: ORS 180
Stats. Implemented: ORS 180.610(2), 180.610(3) & 180.610(4)
Hist.: JD 2-1989, f. & cert. ef. 9-13-89; DOJ 11-2000, f. & cert. ef. 8-9-00

137-090-0200
File Index Number System

(1) General Information:

(a) The CIU's criminal intelligence files are indexed according to a modified Dewey Decimal System. In the CIU's system, file categories and sub-categories are separated by decimal points;

(b) File categories are created or deleted at the request of CIU personnel as needs arise for more crime topic areas. The list of authorized crime topics is always in a state of change. A request for a change in the index system is first brought to the attention of the CIUS through the use of the memorandum. If approved by the CIUS, the index system is altered to reflect the change and an updated file index list is distributed to all CIU personnel possessing copies of file guidelines.

(2) Crime Topic:

(a) Crime topics are those authorized for collection, storage, and dissemination according to the mission of the CIU. The crime topics list is classified *confidential* and is not to be duplicated or released outside the CIU without the express authorization of the CIUS. The list is for official staff use only;

(b) The crime topics list is not to be removed from the CIU file room without the approval of the CIUS.

(3) Use of Index Numbers: The file category, *general*, is only used when there is insufficient data available to indicate a more specific index selection.

(4) Spread of Index Numbers: The index system is displayed as several independent groupings of numbers separated by decimal points. The following defines the various groupings.

(a) Group 1 (Mission): Index numbers in the first position represent the subject of the file. As examples are the following: 10. Political Corruption; 20. Major Financial Crimes; 30. Traditional Organized Crime; 40. Emerging Criminal Gangs and Street Gangs; 50. General;

(b) Group 2 (Crime Group): Index numbers in the second position represent documented, definable criminal organizations.

(b) Group 3 (Crime): Index numbers in the third position represent crime the subject is involved in;

(c) Group 4 (Geographic Assignment): Index numbers in the fourth position represent geographic areas;

(d) Group 5 (File Position): Index numbers in this last group represent the document's position in the file. The numbers are assigned chronologically.

Stat. Auth.: ORS 180
Stats. Implemented: ORS 180.610(2), (3) & (4)
Hist.: JD 2-1989, f. & cert. ef. 9-13-89; DOJ 11-2000, f. & cert. ef. 8-9-00

137-090-0210
Forms

The CIU will only use forms developed, tested, and approved for use by the Criminal Justice Division. Only the forms described below are authorized for use in the CIU file system.

(1) Criminal Intelligence Report (IR) (CJD Form 35).

(a) The Criminal Intelligence Report form is the CIU's standard collection document pertaining to criminal intelligence. It is designed to provide both collection and a more efficient way to analyze and disseminate what the CIU handles in the way of information;

(b) The IR is used by investigators and CJD staff alike as they collect criminal information in person, by mail, phone, and through access to public and controlled information;

(c) The IR is designed to collect information on one event only. It should never be used to report on several events at the same time such as a stakeout observation combined with information about a later meeting in which the stakeout findings were discussed;

(d) IR Preparation Guide: As a guide for the use of the IR, the following applies:

(A) Record one event per IR

(B) Write in the first person

(C) State and evaluate your sources

(D) Forward the IR promptly.

(2) Request for File Retention (CJD Form __). [Form not included. See ED. NOTE.]

(a) It is the policy of the CJD that all items of information contained in the CIU files will one day be purged and destroyed. Purging is an ongoing effort, thus creating daily voids of items of information in the file. The electronic "Purged and Destroyed" message is designed to earmark purged criminal intelligence information so that all voids are accounted for.

(b) When the CIUS wishes to retain information that has been scheduled for purge, the CIUS must substantiate the reasons for retention. Once an item of information has been identified as possibly meeting retention criteria, a hard copy of the information is attached to the "Request for File Retention" form. The item is then routed to the Chief Investigator for initial review and decision. The Chief Investigator reviews the item of information and makes the initial decision regarding its retention or destruction. The item is then routed to the Attorney-in-Charge of the Organized Crime Section for final review and approval. Criminal intelligence information may be retained in the CIU file for the following reasons:

(A) Additional indices relating to the subject and criminal activities have been submitted and are contained in the CIU file system.

(B) The audit information indicates that the information has been significantly accessed by law enforcement in conjunction with criminal investigation(s).

(C) The subject is a major offender and there is reason to believe the subject still represents a criminal threat.

(D) The subject is an active member of a documented criminal organization and that organization represents a criminal threat.

(c) Criminal intelligence information meeting purge criteria will be removed from the system and destroyed.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 180
Stats. Implemented: ORS 180.610(2), (3) & (4), 181.575, 387.805 et seq. & 28 CFR §23.20
Hist.: JD 2-1989, f. & cert. ef. 9-13-89; DOJ 11-2000, f. & cert. ef. 8-9-00

137-090-0220
Statement of Understanding (CJD Form 34)

All Criminal Justice Division employees who are assigned to the Criminal Intelligence Unit shall read these rules and sign an understanding of such. All persons authorized to access criminal intelligence information as provided in these rules shall agree to follow procedures regarding information receipt, maintenance, security, and dissemination which are consistent with these rules.

Stat. Auth.: ORS 180
Stats. Implemented: ORS 180.610(2), (3) & (4), 181.575, 387.805 et seq. & 28 CFR §23.20
Hist.: JD 2-1989, f. & cert. ef. 9-13-89; DOJ 11-2000, f. & cert. ef. 8-9-00

137-090-0225
Transition Procedures

The handling of "hard-copy" criminal intelligence information submitted to the CIU prior to the effective date of these amended rules shall be governed by the provisions of former OAR 137, division 90, adopted in September 1989. Once the information has been entered into the electronic database in compliance with these amended rules, adopted on August 8, 2000, the hard copy files may be purged and destroyed.

Stat. Auth.: ORS 180 & 357.805 et seq.
Stats. Implemented: ORS 180.610, 181.575 & 357.805 et seq.
Hist.: DOJ 11-2000, f. & cert. ef. 8-9-00

DIVISION 95

MODEL GUIDELINES FOR PROSECUTION OF ENVIRONMENTAL CRIMES

137-095-0010
Background and Purpose of Guidelines for Prosecution of Environmental Crimes

The 1993 legislature adopted Senate Bill 912 (codified as ORS 468.920–468.963), which establishes criminal penalties for certain violations of environmental laws. Section 19 of Senate Bill 912, ORS 468.961, provides that the district attorney of each county shall adopt written guidelines for filing felony criminal charges under Senate Bill 912. It also requires the Attorney General to adopt model guidelines that district attorneys may adopt as their written guidelines. These model guidelines address each of the factors listed in ORS 468.961(2).

Stat. Auth.: ORS 468.961
Stats. Implemented: ORS 468.961
Hist.: JD 3-1994, f. & cert. ef. 6-16-94

137-095-0020
General Principles for Prosecutors to Consider

(1)(a) Each of the acts that Senate Bill 912 makes a felony also violates a civil regulatory statute or administrative rule. For most violations, administrative remedies and civil penalties are an appropriate and adequate response. For some violations, however, criminal sanctions are necessary adequately to punish offenders and to deter similar conduct in the future by the violator or others. For still other violations, both civil/administrative and criminal remedies may be appropriate;

(b) These guidelines are intended to assist prosecutors in deciding when to file criminal charges. Prosecutors are to coordinate with

local, state and federal regulatory agencies in making those decisions. Frequently, those agencies may be able to provide the prosecutor with the most accurate information about the degree of harm caused by a violation, the violator's past record of compliance or noncompliance with the law, the appropriate regulatory agency's past handling of similar violations, and other information pertinent to the decision to file or not to file criminal charges.

(2) For purposes of these guidelines the term "person" includes corporations. The term "prosecutor" includes district attorneys and the Attorney General.

(3)(a) The decision to prosecute or not to prosecute a particular violation of environmental laws is a matter of prosecutorial discretion to be exercised in light of the specific circumstances of each case. The guidelines are intended to promote consistency by making sure that all prosecutors consider the same factors before initiating a prosecution under Senate Bill 912. The intent of the guidelines is to guide the prosecutor's exercise of discretion, however, not to replace it with a formula;

(b) The statute requires prosecutors to consider and apply the guidelines before initiating a prosecution, but the weight to be given each factor is a matter of prosecutorial discretion to be determined on a case-by-case basis. The prosecutor's certification in accordance with ORS 468.961(4) establishes conclusively that the prosecutor has applied the guidelines as required by statute and that the criminal charges are being filed in accordance with the guidelines.

(4) The factors listed in ORS 468.961(2) are nonexclusive. In appropriate cases, prosecutors should also consider additional factors, such as:

(a) The probable efficacy and enforceability of civil penalties and remedial orders;

(b) The impact of criminal prosecution on civil regulatory objectives, including prompt remediation of pollution and its effects;

(c) The likelihood that a prosecution will result in a conviction;

(d) The probable sentence if a conviction is obtained; and

(e) The cost of a prosecution, the resources available to the prosecutor, and the severity of the offense compared to other offenses that would not be prosecuted if the prosecutor uses available resources to prosecute an offense under Senate Bill 912.

Stat. Auth.: ORS 468.961
Stats. Implemented: ORS 468.961
Hist.: JD 3-1994, f. & cert. ef. 6-16-94

137-095-0030
Specific Factors for Prosecutors to Consider and Apply

The following guidelines address each of the factors listed in ORS 468.961(2). Each subsection lists the statutory factor, followed by a suggestion of how the prosecutor might weigh that factor in deciding whether or not to file criminal charges in a particular case.

(1) The complexity and clarity of the statute or regulation violated. The more complex the regulation or regulatory scheme, the greater is the likelihood that a person could violate a statute or regulation despite making a good faith effort to comply with the law. The prosecutor may also consider whether the violation is so egregious that, despite the complexity of the statute or regulation, the person should have known that the person's action was unlawful or the person's conduct was nonetheless reckless as to the consequences for human health or the environment.

(2) The extent to which the person was or should have been aware of the requirement violated. This factor is a corollary to section (l) of this rule. The following questions are examples of the type of questions that may aid the prosecutor in applying this factor. To answer these questions, prosecutors are encouraged to confer with the appropriate regulatory agency (e.g., Department of Environmental Quality):

(a) Is it clear on the face of the regulation that the regulation applies to the person and the activity in question? If not, is applicability determined by agency guidance or policy that is distributed to the persons or entities subject to the regulation? Has the agency clearly defined the conduct that would violate the regulation?

(b) Is the applicable statute or regulation readily available to the person? Is its applicability based on a new interpretation of existing statutes or rules?

(c) Does the person engage in a heavily regulated occupation or industry, subject to substantial environmental regulation of the media at issue, so that knowledge of environmental requirements at issue should be an elementary part of doing business?

(d) Is the occupation or industry one in which hiring environmental consultants is commonplace or regulatory agencies offer technical assistance or published guidance?

(e) Do specific circumstances show that the person knew or clearly should have known that the conduct violated the law?

(3) The existence and effectiveness of the person's program to promote compliance with environmental regulations. The existence of a bona fide effective compliance program suggests that the violation more likely is isolated and that the person has means in place to prevent future violations or detect future violations before they result in substantial harm to human beings or the environment. The existence of an effective compliance program, however, does not negate the possibility that a person has knowingly violated the law or caused substantial harm.

(4) The magnitude and probability of the actual or potential harm to humans or to the environment. The greater the magnitude, probability and foreseeability of harm, the greater is the need for criminal sanctions. In considering the magnitude of harm, the prosecutor should consider the toxicity of the pollutant or regulated substance, and whether the harm is long-lasting or can be remedied promptly. If the person's conduct created a great risk of substantial harm, the fact that little or no harm actually occurred may carry little weight in deciding whether or not to prosecute. The appropriate regulatory agency can provide technical assistance to the prosecutor in evaluating the magnitude, probability and foreseeability of harm.

(5) The need for public sanctions to protect human health and the environment or to deter others from committing similar violations:

(a) A person's persistent and willful violation of environmental laws may mean that incarceration is necessary to protect human health and the environment from the person's criminal activity;

(b) If the requirement that has been violated applies to many citizens or businesses, its enforcement may also deter others from violating that requirement or similar requirements. In addition, the prosecution may create general deterrence against violations of other environmental laws in addition to the specific statute or regulation that was violated in the particular case. Prosecutors should also consider whether more consistent or stringent civil/administrative remedies would be sufficient to deter violations.

(6) The person's history of repeated violations of environmental laws after having been given notice of those violations:

(a) Repeated violations after notice imply intentional criminal conduct, which makes criminal sanctions more appropriate. Repeated violations also support an inference that prior civil/administrative remedies, if invoked, were insufficient to deter misconduct, making criminal sanctions appropriate under the same rationale as described under section (5) of this rule;

(b) By contrast, past determinations by the appropriate regulatory agency that a similar violation did not warrant substantial civil/administrative sanctions may suggest that criminal sanctions are inappropriate, under the rationale described in section (9) of this rule. Regulatory agencies can provide the prosecutor with information about the person's previous violations, the person's subsequent compliance efforts, past agency contacts with the person, and past agency enforcement actions.

(7) The person's false statements, concealment of misconduct or tampering with monitoring or pollution control equipment. Knowingly false statements, concealment and tampering imply intentional misconduct, making criminal sanctions more appropriate. In addition, because the regulatory scheme for many environmental laws relies heavily on self-reporting, false statements, concealment and tampering undermine the integrity of the regulatory system. Where the deviation from reporting requirements is unintentional, however, civil and administrative remedies usually should provide an adequate sanction.

(8) The person's cooperation with regulatory authorities, including voluntary disclosure and prompt subsequent efforts to comply with applicable regulations and to remedy harm caused by the violations:

(a) Voluntary disclosure and prompt efforts to remove violations and remedy harm suggest that criminal prosecution probably is not necessary for public retribution or deterrence of future violations by the same person;

(b) Voluntary disclosure and remediation may also reduce the likelihood that a prosecution would succeed. ORS 468.959(4) provides an affirmative defense for a defendant who:

(A) Did not cause or create the condition or occurrence constituting the offense;

(B) Reported the violation promptly to the appropriate regulatory agency; and

(C) Took reasonable steps to correct the violation. Similar conditions apply to the affirmative defenses of "upset" and "bypass," defined in ORS 468.959(2). If admissible evidence establishes an affirmative defense, criminal prosecution is neither appropriate nor fruitful.

(9) The appropriate regulatory agency's current and past policy and practice regarding the enforcement of the applicable environmental law. If the regulatory agency having jurisdiction has determined that a violation is not serious enough to merit civil or administrative enforcement under current agency policy, criminal sanctions usually would be disproportionate to the severity of the violation. In addition, fairness suggests that regulated persons should have notice that their misconduct will be subject to sanctions; a regulatory practice of nonenforcement of the law in question usually would be at odds with fair notice of criminal liability.

(10) The person's good faith effort to comply with the law to the extent practicable. Although it is not conclusive, a person's good faith effort to comply with the law is a factor that weighs against criminal prosecution. In some instances, a given regulation may be so strict that full compliance or compliance 100 percent of the time is virtually impossible. An operator's view of what is practicable, however, does not substitute for legal requirements, and the decision as to what constitutes a good faith effort to comply with the law for purposes of this factor rests with the prosecutor. In appropriate cases, that decision may be influenced by section 17 of Senate Bill 912, which provides affirmative defenses called "upset" and "bypass" to recognize that certain temporary violations of environmental laws do not entail fault for which sanctions should be imposed.

Stat. Auth.: ORS 468.961
Stats. Implemented: ORS 468.961
Hist.: JD 3-1994, f. & cert. ef. 6-16-94

DIVISION 100

SATISFACTION OF JUDGMENTS

137-100-0005
Definitions

For purposes of these rules the following definitions apply:

(1) "Applicant" — A criminal defendant or an interested person seeking a Satisfaction of Judgment or a Release of Judgment.

(2) "Costs of Sale" — Those costs incurred directly from the sale of a specific parcel of real property, including, but not limited to, advertising fees, listing fees, commissions, and filing, wire service, recordation, or other related fees.

(3) "Court Clerk" — The trial court administrator or trial court clerk of the district or circuit court in which the original judgment was entered and shall include any person to whom the duties of that office lawfully are delegated. ORS 8.185 et seq.

(4) "County Clerk" — The clerk or clerks of the county or counties in which a judgment is recorded in the County Clerk Lien Records. ORS 205.010 et seq.

(5) "Defendant" — The person named in the district or circuit court judgment as the "defendant" who is ordered by that judgment to pay a monetary obligation.

(6) "Equity" — The difference of the sale price and the debt in the property after commissions given for the homestead exemption pursuant to ORS 23.240(1).

(7) "Expenses" — Costs, other than costs of sale, incurred in connection with a specific parcel of real property.

(8) "Issuer of Releases" — The State of Oregon is the judgment creditor in a criminal matter in which a money judgment is ordered. "Issuer of Release" refers to the person, agency or entity or entities authorized by the Attorney General to issue a release of judgment from a specific parcel of real property when the money judgment is not satisfied. ORS 137.452.

(9) "Issuer of Satisfactions" — The State of Oregon is the judgment creditor in a criminal matter in which a money judgment is ordered. "Issuer of Satisfactions" refers to the person, agency or entity or entities authorized by the Attorney General to issue a partial or full satisfaction of judgment after payment of the monetary amounts assessed in the money judgment portion of a criminal judgment. ORS 137.452.

(10) "Judgment Docket" — The record where the clerk of the circuit or district court dockets the money judgment portions of a criminal judgment.

(11) "Money Judgment" — The portion of a judgment issued by a district or circuit court in a criminal proceeding requiring the defendant to pay a sum of money as a criminal fine, forfeiture, compensatory fine, restitution, unitary assessment, costs, forfeited bail, reward reimbursement, county assessment and any other monetary obligation. ORS 137.071.

(12) "Payment" — Payment shall mean receipt of cash or actual deposit of funds in the Trial Court Administrator/Trial Court Clerk's account. When payment is by check, draft or other negotiable instrument, such payment is not considered final until the negotiable instrument is accepted and paid.

(13) "Prosecuting Agency" — The office or agency, such as the District Attorney, the City Attorney or the Attorney General, which prosecuted the original criminal action in the district or circuit court as identified in the judgment.

(14) "Release of Judgment" — A document appropriate for filing in the court clerk records or County Clerk Lien Records issued by the Issuer of Releases as provided by these rules which legally releases the judgment lien from a specific parcel of real property in which the named defendant had or has an interest when the money judgment is not satisfied. ORS 137.452.

(15) "Satisfaction of Judgment" — A document appropriate for filing in the court clerk records or County Clerk Lien Records issued by the Issuer of Satisfaction as provided by these rules which legally releases the judgment lien from the property in which the named defendant had or has an interest. A partial satisfaction of judgment may be issued when less than the full amount of the monetary obligation has been paid. ORS 137.452.

Stat. Auth.: ORS 137.452
Stats. Implemented: ORS 137.452
Hist.: JD 7-1990(Temp), f. & cert. ef. 8-20-90; JD 10-1990, f. & cert. ef. 12-13-90; JD 12-1991, f. & cert. ef. 12-23-91; DOJ 6-2001, f. & cert. ef. 8-24-01

137-100-0010
Appointment of Issuer of Satisfactions

The Attorney General hereby appoints the following as the Issuer of Satisfactions for purposes of issuing a satisfaction of judgment to an applicant as authorized by ORS 137.452(1)(a)(A):

(1) The primary Issuer of Satisfactions shall be the District Attorney or Deputy District Attorney in the county in which the original judgment was entered;

(2) If the District Attorney declines to participate as an Issuer of Satisfactions, the Department of Justice may become that county's Issuer of Satisfactions. A District Attorney who declines to participate in a particular instance should refer the applicant to the Department of Justice in Salem. A District Attorney who declines to participate shall submit in writing to the Department of Justice a request that the Department of Justice handle all Satisfactions for that county. The District Attorney will then provide the applicant with the appropriate forms and refer the applicant to the Department of Justice in Salem.

Stat. Auth.: ORS 137.452
Stats. Implemented: ORS 137.452
Hist.: JD 7-1990(Temp), f. & cert. ef. 8-20-90; JD 10-1990, f. & cert. ef. 12-13-90Z; JD 12-1991, f. & cert. ef. 12-23-91; DOJ 6-2001, f. & cert. ef. 8-24-01

137-100-0015
Appointment of Issuer of Releases

The Attorney General hereby appoints the following as the Issuer of Releases for purposes of issuing a release of judgment to an applicant as authorized by ORS 137.452(1)(a)(B):

(1) The primary Issuer of Releases shall be the District Attorney or Deputy District in the county in which the original judgment was entered;

(2) If the District Attorney declines to participate as an Issuer of Releases, the Department of Justice may become that county's issuer of Releases. A District Attorney who declines to participate shall submit in writing to the Department of Justice a request that the Department of Justice handle all Releases for that County. The District Attorney will then provide the applicant with the appropriate forms and refer the applicant to the Department of Justice in Salem.

Stat. Auth.: ORS 137.452
Stats. Implemented: ORS 137.452
Hist.: DOJ 6-2001, f. & cert. ef. 8-24-01

137-100-0020
Request for Satisfaction

(1) An applicant who has fully or partially paid a money judgment imposed in a criminal proceeding may obtain a full or partial satisfaction of judgment from the Issuer of Satisfactions upon written request. The request for issuance of a satisfaction of judgment shall contain the following information:

(a) The name of the defendant as stated on the judgment;

(b) The address of the applicant;

(c) The telephone number of the applicant;

(d) The designation of the court in which the original judgment was entered whether district or circuit court;

(e) The county in which the court is located;

(f) The case number;

(g) The date of docketing in the judgment docket;

(h) The total amount of the money judgment;

(i) The date of any prior partial satisfactions of judgment issued and the amount satisfied with copies of all partial satisfactions;

(j) A copy of the criminal judgment in which the monetary obligation is set forth must be attached to the request form; and

(k) A certified copy of the court clerk's record of payment which indicates the name of the defendant and the case number must be attached to the request form.

(2) Request for Satisfaction of Judgment Form: An approved request form is required which provides all of the above information. The Issuer of Satisfactions shall determine if the information submitted substantially complies with the rules. If the information submitted is incomplete, additional information may be requested. The decision of the Issuer of Satisfactions as to substantial compliance with these rules shall be final.

(3) Full Satisfaction of Judgment: A satisfaction of judgment may be obtained by the applicant from the Issuer of Satisfactions for payments made to the state after payment in full of the money judgment.

(4) Partial Satisfaction of Judgment: A partial satisfaction of judgment may be obtained by the applicant when less than the full amount of the money judgment has been paid.

(5) Issuance of Satisfaction After Payment: Upon receipt of the Request for Satisfaction of Judgment accompanied by documents required by these rules, the Issuer of Satisfactions shall issue a satisfaction of judgment equal to the total verified amount of judgment equal to the total verified amount of payment received and file the satisfaction with the court clerk of the court in the county in which the original judgment was entered.

(6) Filing of Satisfaction of Judgment: The Issuer of Satisfactions shall mail or deliver the satisfaction of judgment to applicant and the court clerk's office where the original money judgment was filed. If a certified copy of the judgment was filed in the County Clerk Lien Records, a certified copy of the Satisfaction of Judgment shall be mailed or delivered by the Issuer of Satisfactions to the county clerk's office of the county in which the original money judgment was issued. The Issuer of Satisfactions shall also deliver to the applicant an executed Satisfaction of Judgment for every county where a certified copy of the judgment or a lien record abstract has been recorded. Verification of the docketing of the satisfaction of judgment shall be forwarded by the Issuer of Satisfactions to the applicant at the address stated on the Request for Satisfaction of Judgment by first class mail, postage prepaid.

(7) No Independent Verification Required: The Issuer of Satisfactions shall not be required to obtain the certified payment record from the court clerk, obtain additional documentation or verify payment of the money judgment. The Issuer of Satisfactions shall refuse the applicant's request if the documentation presented contains obvious or apparent irregularities or any procedural or substantive basis exists for which a satisfaction should be denied. The decision of the Issuer of Satisfactions to deny a satisfaction on procedural or substantive grounds is final.

(8) No Compromise by Issuer: The Issuer of Satisfactions issuing a satisfaction of judgment shall not be authorized to compromise or make any agreement or stipulation for satisfaction of the money judgment. A judgment may be satisfied by less than the full amount only if the applicant provides the Issuer of Satisfactions with a subsequent court order amending the original judgment or a certified copy of a commutation order of the Governor, and, if any amounts remain payable, a certified payment record from the court clerk evidencing payments received in satisfaction of the amended judgment. If any monetary obligations are deemed judgments for the payment of money under ORS 82.010 and not subject to the court's statutory authority to modify such payments, then interest may accrue on such obligations. Unless the payment of interest is specifically ordered by the court, the Issuer of Satisfactions has absolute discretion to waive any interest due on a monetary obligation in a criminal money judgment. The decision of the Issuer of Satisfactions on waiver of interest is final. Unless stated otherwise in the satisfaction, it shall be presumed that the judgment did not accrue interest or that interest has been waived by the Issuer.

(9) Matters for Which Satisfactions are not Authorized:

(a) The Issuer of Satisfactions is not authorized to issue any satisfaction where the monetary obligation runs to any party other than the state;

(b) The Issuer of Satisfactions is not authorized to issue satisfactions for any part of the judgment other than a money judgment.

(10) Court Proceedings to Determine Payment: If the applicant files a motion to obtain a satisfaction of judgment, the prosecuting agency shall appear and respond as the judgment creditor. ORS 18.410. Upon request of the applicant accompanied by the order of the court and the documents required herein, the Issuer of Satisfactions shall issue the satisfaction of judgment and file such satisfaction of judgment in the county in which the original judgment is entered and provide the applicant with an executed Satisfaction of Judgment for every county where a certified copy of the judgment or lien record abstract has been recorded.

(11) Notice to Defendant of Authorized Issuer: Upon request, the prosecuting agency shall inform an applicant of the name and address of the Issuer of Satisfactions authorized to issue a satisfaction of judgment in the county in which the original judgment was entered. The form may be obtained from the County Clerk.

NOTES:

-1- (1) and (2) Judgment Liens. When a judgment has been docketed in the judgment docket of the circuit court, it becomes a lien upon the real property of the defendant in the county where the judgment is originally docketed. ORS 18.320 and 46.276. After a money judgment has been docketed in the circuit court judgment docket by the clerk, a certified copy of the judgment or a lien record abstract may be filed by the judgment creditor in the County Clerk Lien Records in any other county in which the defendant owns real property. ORS 18.320. The lien is effective against real property owned or acquired by the defendant for ten years and may be renewed for an additional ten year period. ORS 18.360.

-2- (3) and (4) Payment of Judgment. Payments on monetary judgments due to the state are made generally to the clerk. ORS 137.017. A satisfaction of judgment may issue under these rules only for payments made to the court clerk or a state agency or public officer. Entry and docketing of a criminal money judgment has the same effect as a judgment in a civil action. ORS 137.180(4).

-3- (5) and (6) Issuance and Filing of Satisfaction of Judgment. The legislative history of ORS 137.452 evidences an intent that the Attorney General, or his designee, should serve a position analogous to that of the attorney for a civil judgment creditor in issuing satisfactions of judgments in criminal cases in which a money judgment has been entered. A civil judgment creditor has the duty to file the satisfaction of judgment with the court clerk. ORS 18.350. Therefore, the Issuer of Satisfaction is obligated to file the satisfaction.

-4- (7) No Independent Verification. The District Attorney has the duty to enforce criminal money judgments. ORS 8.680. The issuance of a satisfaction of judgment is a documentary task indicating performance has been completed. The Issuer of Satisfactions does not enforce the terms of criminal judgments.

-5- Once the District Attorney elects to participate in issuing a satisfaction in a particular case or cases, the District Attorney is the Issuer of Satisfactions and any decision is final. By contrast, if the District Attorney declines to participate at the outset, then the defendant is referred to the Attorney General or if the District Attorney forwards the request to the Attorney General then the Attorney General, in that instance, is the Issuer of Satisfactions, whose decision is final. The Attorney General does not provide another layer of review for satisfactions denied by District Attorneys.

-6- (8) No Compromise by Issuer. The Issuer of Satisfactions is acting as the attorney for the judgment creditor in the issuance of a satisfaction of judgment. The attorney for the judgment creditor cannot accept anything other than money to satisfy a judgment except by special authority. *Barr v. Rader*, 31 Or 225, 49 P 962(1897). A civil judgment creditor is entitled to compromise and accept less than the full sum set forth in the judgment and may have good economic reasons for doing so. See, *Dickinson v. Fletcher*, 181 Or 316, 182 P2d 371 (1947). A criminal money judgment for restitution is not a final judgment and therefore interest on a judgment for the payment of money as provided in ORS 82.010 is not applicable. *State v. Dickenson*, 68 Or App 283, 680 P2d 1028 (1984). A court may modify a restitution order. ORS 137.540(6). A defendant may petition the court for remission of the payment of costs or any unpaid portion thereof. ORS 161.655(4). If the defendant defaults in the payment of a fine or restitution and is not in contempt, the court may reduce or revoke the fine or order of restitution in whole or part. ORS 161.685(5). There is no specific statutory authority for the court to modify other monetary obligations imposed by the court, unless such payments are encompassed within probation terms. ORS 137.540(6). The court has statutory authority to reduce or remit fines, restitution or costs. ORS 161.665(4) and 161.685(5). Otherwise, a criminal money judgment may be modified only by the Governor. ORS 144.640 et seq. The Issuer of Satisfactions is not authorized to release a lien against a specific parcel of real estate. ORS 137.452. Absent statutory authority the Issuer of Satisfactions may not grant a release. See, 31 Op Attorney General 108 (1962-64). The entry of a satisfaction of judgment is prima facie evidence of a discharge of the obligation. ORS 137.452(5); *Dose v. Bank of Woodburn*, 58 Or 529, 115 P2d 286 (1911).

-7- (9) Matters for Which Satisfactions are not Authorized. ORS 137.452(4)(a) and (b). A money judgment in a criminal action is a judgment in favor of the state and may be enforced only by the state. ORS 137.180(4).

-8- (10) Court proceeding to Determine Payment. It is the duty of the state in criminal cases to release judgment liens after payment in full has been made. An applicant may petition to have the court determine the sufficiency of the payments made or determine the outstanding balance due for a money judgment. ORS 18.410. If a hearing is necessary to determine the sufficiency of payment, the prosecuting agency has access to the records needed to verify the dates and amounts of payment. Therefore, the prosecuting agency should reply to the defendant's or interested person's motion. Thereafter, the Issuer of Satisfactions shall issue the satisfaction in accordance with the court's order.

Stat. Auth.: ORS 137.452

Stats. Implemented: ORS 137.452

Hist.: JD 7-1990(Temp), f. & cert. ef. 8-20-90; JD 10-1990, f. & cert. ef. 12-13-90; JD 12-1991, f. & cert. ef. 12-23-91; DOJ 6-2001, f. & cert. ef. 8-24-01

137-100-0025
Request for Release

(1) An applicant may request release of judgment lien from a specific parcel of real property when either the money judgment lien does not attach to any equity in the real property or the amount of equity in the real property to which the judgment lien attached, less costs of sale or other reasonable expenses, is paid upon the money judgment. The request for issuance of a release of judgment shall contain the following information:

(a) The name of the defendant as stated on the judgment;

(b) The address of the applicant;

(c) The telephone number of the applicant;

(d) The address and legal description of the specific parcel of real property to be released;

(e) The designation of the court in which the original judgment was entered whether district or circuit court;

(f) The county in which the court is located;

(g) The case number;

(h) The date of docketing in the judgment docket:

(i) The total amount of the money judgment;

(j) The date of any prior partial satisfactions of judgment issued and the amount satisfied with copies of all partial satisfactions attached to the request form;

(k) A copy of the criminal judgment in which the monetary obligation is set forth must be attached to the request form;

(l) The criminal defendant's ownership interest in the parcel, including an attached copy of a deed or document evidencing the defendant's ownership interest if less than full attached to the request form;

(m) A recent appraisal or fair market value study of the parcel attached to the request form;

(n) The sale price of the parcel with documents relating to the sale, if any, of the parcel including the sale price and sale terms, attached to the request form;

(o) The amount of the defendant's equity in the property with documents relating to and establishing the defendant's equity in the parcel attached to the request form, including copies of loan or debt documents and/or contracts;

(p) The total costs of sale with documents relating to and establishing costs of sale (can be in the form of the closing statement) attached to the request form;

(q) The total reasonable expenses with documents relating to and establishing these expenses attached to the request form;

(r) A certified copy of the court clerk's record of payment of less than the full amount of the judgment, if any, which identifies the name of the defendant and the case number, must be attached to the request form;

(2) Request for Release of Judgment form: An approved request form is required which provides all of the above information. The form may be obtained by the Issuer of Releases. The Issuer of Releases shall determine if the information submitted substantially complies with the rules. If the information submitted is incomplete, additional information may be requested. The decision of the Issuer of Releases as to substantial compliance with these rules shall be final.

(3) Release of Judgment when the money judgment lien does not attach to any equity in the real property: A release of judgment may be obtained for a specific parcel of real property when the documents required by (1)(a)–(r), above, establish that the money judgment lien does not attach to any equity in the parcel.

(4) Release of Judgment when the amount of equity in the real property, less costs of sale and reasonable expenses, is paid upon the money judgment: A release of judgment may be obtained for a specific parcel of real property when the documents required by (1)(a)–(r) above, establish that payment upon the money judgment has been received by the court clerk in the amount that the defendant's equity in the parcel exceeds the costs of sale or other reasonable expenses.

(a) The costs of sale and other reasonable expenses may or may not be accepted by the Issuer of Releases in his or her sole discretion. The Issuer of Releases may reduce the costs of sale and/or the expenses in his or her sole discretion based on the documents and other information submitted with the Request for Release, and may reduce the expenses based on the Issuer of Releases' determination of reasonableness. An oral or written explanation of such reductions must be provided to the applicant upon request, which request may be oral. The Issuer of Releases may request further information or evidence to substantiate the costs and/or expenses. The applicant is entitled to submit further information or evidence in the event of a reduction.

(b) The payment upon the judgment must equal the equity in the parcel less the costs and reasonable expenses accepted by the Issuer of Releases. If the Issuer of Releases determines that the equity which exceeds the accepted costs and reasonable expenses is greater than the amount of payment upon the judgment, the additional

amount must be paid to the court clerk and a certified copy of the court clerk's record of this payment, identifying the name of the defendant and the case number, must be submitted to the Issuer of Releases in order to obtain a release.

(5) In addition to when the applicant has complied with (1)–(4), the Issuer of Releases will consider the following factors in making its decision:

(a) The documentation presented contains obvious or apparent irregularities or any procedural or substantive basis exists for which a release should be denied;

(b) The monetary obligation runs to any party other than the state;

(c) There is any continued use, direct or indirect use of the property by the or for the future benefit of defendant. The release of judgment shall specify the parcel of real property subject to the release. The money judgment shall remain a lien against all real property not specifically released.

(6) Filing of Release of Judgment: The Issuer of Releases shall mail or deliver the Release of Judgment to the applicant and the court clerk's office where the original money judgment was filed. If a certified copy of the judgment was filed in the County Clerk Lien Records, a certified copy of the Release of Judgment shall be mailed or delivered by the Issuer of Releases to the county clerk's office of the county in which the original money judgment was issued. The Issuer of Releases shall also deliver to the applicant an executed Release of Judgment for every county where a certified copy of the judgment or lien record abstract has been recorded. Verification of the docketing of the Release of Judgment shall be forwarded by the Issuer of Releases to the applicant at the address stated on the Request for Release of Judgment by first class mail, postage prepaid.

(7) No Independent Verification Required: The Issuer of Releases shall not be required to obtain the certified payment record from the court clerk, obtain additional documentation or verify payment of the money judgment.

(8) No Compromise by Issuer; Interest Not Applicable: The Issuer of Releases will not be authorized to compromise or make any agreement or stipulation for release of the lien. Because releases shall not be authorized to compromise or make any agreement or stipulation for release of the lien. Because releases of judgment liens to the defendant's equity in the parcel, and not to the total obligation, the issue of whether interest accrues on the judgment is not relevant to the release.

Stat. Auth.: ORS 137.452
Stats. Implemented: ORS 137.452
Hist.: DOJ 6-2001, f. & cert. ef. 8-24-01

DIVISION 105

NON-PARTICIPATING MANUFACTURERS

137-105-0001
Definitions

The following definitions shall apply to all Oregon Administrative Rules contained in division 105 unless the context requires otherwise:

(1) "Brand Family" has the meaning given that term in ORS 180.405.

(2) "Cigarette" has the meaning given that term in ORS 323.800.

(3) "Certification" means the information required to be provided to the Attorney General under ORS 180.410 and 180.415.

(4) "Directory" means the listing of tobacco product manufacturers that have provided current and accurate certifications pursuant to the provisions of ORS 180.425.

(5) "Distributor" has the meaning given that term in ORS 180.405(3).

(6) "NPM Distributor report" means the information required to be provided to the Attorney General under ORS 180.435(1).

(7) "Escrow deposit" means deposits required to be made into a qualified escrow fund pursuant to ORS 323.806(2)(a).

(8) "Master Settlement Agreement" has the meaning given that term in ORS 323.800.

(9) "Participating manufacturer" has the meaning given that term in ORS 180.405.

(10) "Qualified escrow fund" has the meaning given that term in ORS 323.800.

(11) "Tobacco product manufacturer" has the meaning given that term in ORS 323.800.

(12) "Units Sold" has the meaning given that term in ORS 323.800.

Stat. Auth.: ORS 180.445
Stats. Implemented:
Hist.: DOJ 9-2004, f. & cert. ef. 5-25-04

137-105-0010
Tobacco Product Manufacturers Directory

(1) In exercising the discretion granted by ORS 180.425(2), the Attorney General will consider the following:

(a) Whether the entity tendering a certification is a tobacco product manufacturer;

(b) Timeliness of the certification made by the tobacco product manufacturer;

(c) Completeness, or lack thereof, of the certification made by the tobacco product manufacturer;

(d) Whether the tobacco product manufacturer has provided all requested documents supporting its certification;

(e) Whether the certification is based on misrepresentation, false information, nondisclosure or concealment of facts;

(f) Whether the tobacco product manufacturer is in full compliance with all provisions of Local, State and Federal Law, including but not limited to the provisions of ORS 180.410, 180.415 and 323.800 to 323.806.

(g) Whether the tobacco product manufacturer, predecessor of the tobacco product manufacturer, or previous manufacturer of the brand is the subject of an injunction obtained by the State of Oregon for previous failure to comply with the nonparticipating manufacturer statutes;

(h) Whether the tobacco product manufacturer has failed to fully or timely fund a qualified escrow fund approved by the Attorney General;

(i) Whether all final judgments and penalties, including interest, costs and attorney fees thereon, in favor of the State of Oregon, or any political subdivision thereof, for violation of any Oregon statute, administrative rule or other law, including but not limited to violations of ORS 323.800 to 323.806, have been fully satisfied for the name, brand family, or tobacco product manufacturer;

(j) Whether the tobacco product manufacturer has corrected deficiencies in its certification or criteria set forth in this section in a timely and thorough manner;

(k) Whether the tobacco product manufacturer has complied in a timely and thorough manner with any request by the Attorney General for additional information or documentation supporting its certification or the criteria set forth in this section; and

(l) Any other facts or circumstances the Attorney General determines are relevant.

(2) In a manner provided in subsection (5) of this rule, the Attorney General shall remove a tobacco product manufacturer or brand family from the directory if the Attorney General determines that the tobacco product manufacturer or the brand family no longer meet the requirements of ORS 180.410 and 180.415.

(3) In the manner provided in subsection (5) of this rule, the Attorney General shall reject the application of a tobacco product manufacturer or brand family to be listed in the directory if the Attorney General determines that the tobacco product manufacturer or the brand family does not meet the requirements of ORS 180.410 and 180.415.

(4) The Attorney General shall promptly notify a tobacco product manufacturer in writing (via email or regular mail) if the manufacturer has met the requirements of ORS 180.410 and 180.415 and will be included in the directory. The notice shall include each brand family that the Attorney General determines will be included in the directory.

(5) If, on or after the effective date of these rules, the Attorney General intends to deny a tobacco product manufacturer or brand family a place in the directory, to remove a manufacturer or brand family from the directory, or to exclude an entity because the entity is not a tobacco product manufacturer, the Attorney General shall mail a written Notice of Intended Action to the manufacturer or entity. The Notice of Intended Action shall specify:

(a) The factual and legal basis upon which the Attorney General's intended action rests;

(b) The actions that the tobacco product manufacturer or entity must complete to cure the factual or legal deficiencies upon which the intended action is based; and,

(c) The date upon which attempts to cure the deficiencies must be completed and documentation of completion must be submitted to the Attorney General. In no event shall the Attorney General allow the tobacco product manufacturer or entity less than 15 days within which to cure the deficiencies upon which the Attorney General's intended action is based.

(6) On or before the deadline set in the Notice of Intended Action, the tobacco product manufacturer or entity shall provide documentation to the Attorney General detailing the actions, if any, that the tobacco product manufacturer or entity has taken to cure the deficiencies identified by the Attorney General in the Notice of Intended Action.

(7) Within 45 days of the date on which a certification that is the subject of a Notice of Intent is received, the Attorney General shall determine whether the deficiencies have been cured.

(a) If the deficiencies have been cured to the satisfaction of the Attorney General, the attorney General shall promptly notify a tobacco product manufacturer in writing (via email or regular mail) that the manufacturer or brand name family will be included in the directory.

(b) If any of the deficiencies have not been cured to the satisfaction of the Attorney General, the Attorney General shall promptly issue an order in Other than Contested Case denying a manufacturer, brand name family, or entity a place in the directory.

(8) A tobacco product manufacturer or entity that has complied with subsection (6) of this rule and is aggrieved by an Order denying the manufacturer or brand name family a place in the directory may file a petition for judicial review of the Attorney General's order as provided in ORS 183.484.

(9) The Attorney General may, for any reason and at the Attorney General's discretion, extend any period allowed by these rules.

Stat. Auth.: ORS 180.445
Stats. Implemented:
Hist.: DOJ 9-2004, f. & cert. ef. 5-25-04

137-105-0020
Escrow Deposits

(1) Discretionary authorization to make annual payments. The Attorney General may at any time permit a tobacco product manufacturer to make annual escrow deposits for any period, provided that:

(a) The tobacco product manufacturer has previously established and funded a qualified escrow fund for the State of Oregon;

(b) The tobacco product manufacturer has not failed to make a full and timely escrow deposit into a qualified escrow fund for the State of Oregon for any period as required under ORS 323.806(2)(a) or by these rules;

(c) The Attorney General has no reason to believe that the tobacco product manufacturer or brand family should be removed or excluded from the directory; and,

(d) The Attorney General has no reason to believe that the tobacco product manufacturer may not make its full required escrow deposit at the end of the sales year.

(2) Timing of deposits; conditions:

(a) Deposits for the period ending January 1, 2005. Unless ordered by the Attorney General to make quarterly payments, tobacco product manufacturers that have been in full and continuous compliance with the provisions of ORS 323.806, 180.410 to 180.420 and 180.430 to 180.440 may make annual payments on April 15 for the periods January 1, 2003 through January 1, 2004 and January 1, 2004 through January 1, 2005.

(b) Deposits for periods beginning January 1, 2005 or thereafter.

(A) Unless authorized by the Attorney General to make annual deposits, beginning with the deposit due for the period January 1, 2005 through March 31, 2005, each tobacco product manufacturer shall make the escrow deposits required by ORS 323.806 in quarterly payments for each of the following periods of the year: January 1 through March 31; April 1 through June 30; July 1 through September 30; and October 1 through December 31. The quarterly escrow payments shall be made no later than 15 days after the end of each quarter.

(B) As provided in subsection (1) of this rule, the Attorney General may authorize a tobacco product manufacturer required to make annual deposits for any period after January 1, 2005.

(c) Discretionary authority to require quarterly payments for any period. The Attorney General may at any time require a tobacco product manufacturer to make quarterly escrow deposits if the Attorney General determines that any of the following circumstances exist:

(A) The tobacco product manufacturer has not previously established and funded a qualified escrow fund for Oregon;

(B) The tobacco product manufacturer has failed at any time during the four quarters preceding the date on which the manufacturer's deposit to escrow would be due to make a full and timely escrow deposit into a qualified escrow fund for the State of Oregon for any period as required under ORS 323.806(2)(a) or by these rules;

(C) The Attorney General has reason to believe that the tobacco product manufacturer or brand family should be removed or excluded from the directory; or

(D) The Attorney General has reason to believe that the tobacco product manufacturer may not make its full required escrow deposit at the end of the sales year.

(3) The Attorney General may at any time, upon written request, require a tobacco product manufacturer to produce all documents and information that the Attorney General determines are relevant to determining whether a tobacco product manufacturer is in compliance with ORS 180.400 to 180.455, and with these rules.

(4) Nonparticipating tobacco manufacturers who are required to make quarterly escrow deposits must provide the Attorney General with official notification of the quarterly escrow deposit by filing an Oregon Quarterly Certification of Escrow Funding Compliance form with the Office of the Attorney General no later than ten (10) days after the deadline for which an escrow deposit is required.

Stat. Auth.: ORS 180.445
Stats. Implemented:
Hist.: DOJ 9-2004, f. & cert. ef. 5-25-04

137-105-0030
Distributor Reports ("Schedule B")

(1) Prior to the enactment into law of ORS 180.400 to 180.455, distributors reported information to the Attorney General through the Department of Revenue. Distributors submitted reports to the Department of Revenue on a form entitled "Schedule B" attached to the distributors' quarterly cigarette excise tax payment.

(2) For reports due on or prior to January 20, 2004 (that is, for reports relating to sales in any quarter of 2003), distributors shall continue to submit quarterly reports on Schedule B to: State of Oregon, Cigarette and Tobacco Tax, Oregon Department of Revenue, P.O. Box 14110, Salem, Oregon 97309-0910.

(3) The Department of Justice shall promulgate a form entitled Brand Specific Report for Cigarettes, Little Cigars, and Roll-Your-Own Product with Oregon Tax Paid for All Manufacturers. Distributors shall use the Brand Specific Report for Cigarettes, Little Cigars, and Roll-Your-Own Product with Oregon Tax Paid for All Manufacturers form for reports due on or after January 20, 2004 (i.e. reports relating to sales in 2004 and subsequent years). Brand Specific Report for Cigarettes, Little Cigars, and Roll-Your-Own Product with Oregon Tax Paid for All Manufacturers forms shall be mailed to Department of Justice, Civil Enforcement, 1162 Court Street NE, Salem, Oregon 97301.

(4) The calculation for the amount of the escrow deposit required for deposit into the qualified escrow fund for any given quarter will be based on the number of units sold by the tobacco product manufacturer during the corresponding quarter, as adjusted for inflation pursuant to ORS 323.806(2)(a)(A)–(E).

Stat. Auth.: ORS 180.445
Stats. Implemented:
Hist.: DOJ 9-2004, f. & cert. ef. 5-25-04

137-105-0040
Calculation of Time for Purposes of These Rules

In computing any period of time prescribed or allowed by these rules, the period shall be calculated as provided in Oregon Rule of Civil Procedure 10A.

Stat. Auth.: ORS 180.445
Stats. Implemented:
Hist.: DOJ 9-2004, f. & cert. ef. 5-25-04

137-105-0050
Monitoring and Enforcing Tobacco Product Manufacturer Compliance

(1) ORS 323.862 authorizes the Department of Revenue to disclose to the Attorney General, and such other parties as the Attorney General deems necessary, information submitted to the department relating to cigarettes, tobacco product manufacturers, and tobacco retailers to allow the Attorney General to monitor and enforce compliance by tobacco product manufacturers with ORS 323.800 to 323.806.

(2) For the purposes of ORS 323.862 and this rule:

(a) "Attorney General" includes attorneys employed by the Oregon Department of Justice;

(b) "Department" means the Department of Revenue;

(c) "Distributor" has the meaning given that term in ORS 180.405(3);

(d) "Information" and "information submitted to the department" means cigarette related documents and data submitted to the department, including but not limited to cigarette tax reports and returns filed by distributors, documents related to such tax reports and returns filed by distributors, and department audit documents relating to cigarette tax reports and returns. "Information" includes the amount of tax, penalty, interest, sales information, purchase information, and any other particulars, set forth or disclosed in a cigarette tax report or return or other cigarette related document submitted by a distributor to the Department;

(e) "Legal proceeding" includes but is not limited to lawsuits in state or federal court, proceedings relating to the Master Settlement Agreement, arbitrations, mediations and settlement conferences or negotiations;

(f) "Master Settlement Agreement" has the meaning given that term in ORS 323.800;

(g) "Monitoring and enforcing compliance" includes, but is not limited to:

(A) Investigating and calculating the amount of escrow a nonparticipating manufacturer must deposit in a qualified escrow fund;

(B) Investigating and determining whether a nonparticipating manufacturer has deposited sufficient funds in a qualified escrow fund;

(C) Investigating and determining whether a participating manufacturer is generally performing its obligations under the Master Settlement Agreement;

(D) Investigating and demonstrating enforcement by the Attorney General or the State of Oregon of ORS 323.800 to 323.806 in a legal proceeding relating to 323.800 to 323.806, 180.400 to 180.405 or the Master Settlement Agreement;

(E) Investigating and assessing whether a tobacco product manufacturer is in compliance with ORS 323.800 to 323.806 for the purposes of ORS 180.400 to 180.455;

(h) "Nonparticipating Manufacturer" has the meaning given that term in ORS 323.800;

(i) "Participating Manufacturer" has the meaning given that term in ORS 180.405;

(j) "Particulars" has the meaning given that term in ORS 314.835(2)(b);

(k) "Qualified escrow fund" has the meaning given that term in ORS 323.800;

(l) "Tobacco product manufacturer" has the meaning given that term in ORS 323.800.

Stat. Auth.: ORS 323.865
Stats. Implemented: ORS 323.862
Hist.: DOJ 9-2010(Temp), f. & cert. ef. 4-19-10 thru 10-15-10; DOJ 10-2010, f. & cert. ef. 6-30-10

DIVISION 110

OREGON FORECLOSURE AVOIDANCE PROGRAM

Purpose, Application, Definitions and Structure

137-110-0010
Definitions

As used in these division 110 rules:

(1) "Foreclosure avoidance facilitator roster" means the roster of qualified facilitators maintained by the service provider.

(2) "Oregon Foreclosure Avoidance Program" means the resolution conference program established under Oregon Laws 2013, chapter 304.

(3) "Party" means the grantor, the beneficiary and the beneficiary's agent if the beneficiary authorizes the agent to appear on the beneficiary's behalf at the resolution conference.

(4) "Service provider website" means an internet-based system maintained by the service provider at http://www.foreclosuremediationor.org and designed to facilitate the exchange of necessary program-related documents and other information.

Stat. Auth.: 2013 OL Ch. 304
Stats. Implemented: 2013 OL Ch. 304
Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13; DOJ 2-2013, f. 1-3-13, cert. ef. 1-7-13; DOJ 6-2013(Temp), f. 7-22-13, cert. ef. 8-4-13 thru 1-31-14; DOJ 2-2014, f. 27-14, cert. ef. 1-31-14

Facilitator Qualifications, Training and Experience

137-110-0110
Facilitator Qualifications, Training and Experience

(1) A facilitator conducting a resolution conference under the Oregon Foreclosure Avoidance Program shall:

(a) Have conducted at least 20 mediations or resolution conferences of any type or subject matter as a mediator or facilitator. Work performed as an assistant or apprentice under the supervision of a lead mediator or facilitator may also be counted toward the 20-resolution conference requirement. Observations of sessions may not count toward work performed as an assistant or apprentice;

(b) Provide evidence of at least 100 hours of mediation or resolution conference experience as a mediator or facilitator or as an assistant or apprentice mediator or facilitator. Work that a mediator or facilitator performs to prepare for and schedule the mediation or resolution conference or to prepare the parties for a mediation or resolution conference may be counted towards this 100-hour requirement. Observations of sessions may not count toward the 100-hour requirement;

(c) Disclose to the service provider the professional standards to which the facilitator subscribes;

(d) Have successfully participated in at least 30 hours of training that is consistent with the curriculum found in Section 3.2 of the Oregon Judicial Department Court Connected Mediator Qualification Rules effective August 1, 2005;

(e) Provide evidence of successful participation in at least 16 hours of training on foreclosure avoidance programs and the substantive law and legal processes regarding foreclosures in Oregon including ORS Chapter 86; and

(f) Provide evidence of successful participation in at least 8 hours of training on the procedures, practices and policies of the Oregon Foreclosure Avoidance Program. This training shall include some interactive instruction, such as role-playing.

(2) The service provider may grant a waiver from the training requirements in subsections 1(d), 1(e) and 1(f) of this rule upon a

showing by the facilitator of significant and related education or experience.

(3) The service provider shall decide whether or not an individual:

(a) Meets the minimum qualifications as a facilitator under these rules;

(b) Is included on the foreclosure avoidance resolution conference roster; or

(c) Is assigned to a resolution conference.

(4) An individual who meets the minimum qualifications as a facilitator under these rules or who is added to the foreclosure avoidance resolution conference roster may not represent that fact as license or certification of their competency for anything other than their role in the Oregon Foreclosure Avoidance Program.

Stat. Auth.: 2013 OL Ch. 304 Sec. 6(1)(e)
Stats. Implemented: 2013 OL Ch. 304 Sec. 6(1)(e)
Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13; DOJ 2-2013, f. 1-3-13, cert. ef. 1-7-13; DOJ 6-2013(Temp), f. 7-22-13, cert. ef. 8-4-13 thru 1-31-14; DOJ 2-2014, f. 27-14, cert. ef. 1-31-14

Fee Schedule

137-110-0200
Fees Paid by the Grantor, Fee Waiver

(1) The grantor shall pay a fee of $175 to the service provider at the time required by Oregon Laws 2013, chapter 304, section 3(2)(a). If there are joint or multiple grantors, only one grantor must pay this fee.

(2) The grantor may apply for a waiver of $125 of the fee described in section (1) of this rule at the time the grantor is required by Oregon Laws 2013, chapter 304, section 3(2)(a), to pay the fee. The grantor shall pay $50 at the time of the fee waiver request.

(3) A grantor's application for a fee waiver under section (2) of this rule shall be granted if the grantor is able to provide satisfactory evidence to the service provider that the grantor's annual household income is less than:

(a) $ 23,340 for a household of one;
(b) $ 31,460 for a household of two;
(c) $ 39, 580 for a household of three;
(d) $ 47,700 for a household of four;
(e) $ 55,820 for a household of five;
(f) $ 63,940 for a household of six;
(g) $ 72,060 for a household of seven;
(h) $ 80,180 for a household of eight;
(i) $ 88,300 for a household of nine; or
(j) $ 96,420 for a household of ten or more.

(4) The service provider shall decide whether to grant a grantor's application for a fee waiver made under section (2) of this rule within 10 days of receiving the application.

(5) If the service provider denies a grantor's application for a fee waiver made under section (2) of this rule, the grantor shall pay the remaining $125 within 15 days of receiving the service provider's determination not to grant a fee waiver but never later than the date of the scheduled resolution conference.

(6) Failure by a grantor to timely pay fees will result in cancellation of the resolution conference.

Stat. Auth.: 2013 OL Ch. 304, Sec. 3(2)(a), 6(1)(d) & 6(1)(g)
Stats. Implemented: 2013 OL Ch. 304, Sec. 3(2)(a) & 6(1)(d)
Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13; DOJ 2-2013, f. 1-3-13, cert. ef. 1-7-13; DOJ 6-2013(Temp), f. 7-22-13, cert. ef. 8-4-13 thru 1-31-14; DOJ 2-2014, f. 27-14, cert. ef. 1-31-14

137-110-0210
Fees Paid by Beneficiary

(1) If a beneficiary requests a resolution conference, the beneficiary shall pay a $200 processing fee to the service provider at the time of making the request. The beneficiary shall pay an additional $325 to the service provider within 25 days after the service provider makes the grantor's documents available to the beneficiary, as required by Oregon Laws 2013, chapter 304, section 3(4)(a).

(2) If a grantor requests a resolution conference, the beneficiary or the beneficiary's agent shall pay a fee of $525 to the service provider within 25 days after the service provider makes the grantor's documents available to the beneficiary, as required by Oregon Laws 2013, chapter 304, section 3(4)(a).

(3) If a lienholder other than a beneficiary who requested the resolution conference participates, the lienholder is not required to pay a fee under this rule.

(4) A beneficiary that is otherwise exempt from the requirement to participate in a resolution conference with a grantor pursuant to Oregon Laws 2013, chapter 304, section 2(1)(b), may participate in a resolution conference by:

(a) Submitting a request for a resolution conference in the manner prescribed by OAR 137-110-0410;

(b) Paying $325 within 25 days of the date on which the grantor makes the documents required by OAR 137-110-0610 available to the service provider; and

(c) Following the resolution conference guidelines set forth in OAR 137-110-0600 to 137-110-0670.

(5) The service provider and beneficiary may enter into an agreement allowing the fees described in sections (1)-(4) of this rule to be paid in regular lump sums.

Stat. Auth.: 2013 OL Ch. 304, Sec. 2(2), 3(4)(a), 6(1)(d) & 6(1)(g)
Stats. Implemented: 2013 OL Ch. 304, Sec. 2(2), 3(4)(a))
Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13; DOJ 2-2013, f. 1-3-13, cert. ef. 1-7-13; DOJ 6-2013(Temp), f. 7-22-13, cert. ef. 8-4-13 thru 1-31-14; DOJ 2-2014, f. 27-14, cert. ef. 1-31-14

137-110-0300
Beneficiary Exemptions

Beneficiaries claiming an exemption from the requirement to participate in a resolution conference with a grantor under Or Laws 2013, chapter 304, section 2(1)(b), shall submit an affidavit that substantially complies with the model form provided in Appendix A to these division 110 rules and available as "Form 300" at http://www.doj.state.or.us/consumer/foreclosure_mediation.shtml.. The affidavit may be submitted to the Attorney General either:

(1) By U.S. mail addressed to Attorney General of Oregon, Foreclosure Avoidance Mediation Program,1162 Court St. NE, Salem, OR 97301-4096; or

(2) By electronic mail addressed to DOJ@foreclosuremediationOR.org.

Stat. Auth.: 2013 OL Ch. 304, Sec. 2(1)(b) & 6(1)(g)
Stats. Implemented: 2013 OL Ch. 304, Sec. 2(1)(b)
Hist.: DOJ 6-2013(Temp), f. 7-22-13, cert. ef. 8-4-13 thru 1-31-14; DOJ 2-2014, f. 27-14, cert. ef. 1-31-14

Requesting A Resolution Conference

137-110-0410
Beneficiary Request for Resolution Conference

(1) A beneficiary may request a resolution conference under Or Laws 2013, chapter 304, section 2(2), by submitting the request, applicable fees, and required information to the service provider using the service provider website or by facsimile or mail. The beneficiary's request under this rule must identify the residential trust deed that the beneficiary intends to foreclose and list the name, title, address, telephone number and other available contact information for:

(a) The beneficiary;

(b) Any agent of the beneficiary that will attend the resolution conference;

(c) Any person other than a person identified in paragraph (a) or (b) of Or Laws 2013, chapter 304, section 2(2), that will receive, on the beneficiary's behalf, notices or other communications related to the resolution conference; and

(d) The grantor.

(2) If the information provided in section (1) of this rule changes prior to the resolution conference, the beneficiary shall update that information with the service provider.

Stat. Auth.: 2013 OL Ch. 304, Sec. 2(2), 6(1)(f) & 6(1)(g)
Stats. Implemented: 2013 OL Ch. 304, Sec. 2(2) & 6(1)(f)
Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13; DOJ 2-2013, f. 1-3-13, cert. ef. 1-7-13; DOJ 6-2013(Temp), f. 7-22-13, cert. ef. 8-4-13 thru 1-31-14; DOJ 2-2014, f. 27-14, cert. ef. 1-31-14

137-110-0420
Grantor Request for Resolution Conference

A grantor may request a resolution conference either:

(1) Through a housing counselor who may request a resolution conference on behalf of the grantor by using the service provider website to certify that the grantor is more than 30 days in default on the obligation that the residential trust deed secures or, if the grantor is not in default, that the grantor has a financial hardship that the housing counselor believes may qualify the grantor for a foreclosure avoidance measure.

(2) By submitting a request to the service provider electronically via e-mail or the service provider website, by facsimile, or by mail. The request shall include a certification by a housing counselor that the grantor is more than 30 days in default on the obligation that the residential trust deed secures or, if the grantor is not in default, that the grantor has a financial hardship that the housing counselor believes may qualify the grantor for a foreclosure avoidance measure.

Stat. Auth.: 2013 OL Ch. 304, Sec. 2(3), 3(2), 3(3) & 6(1)(g)
Stats. Implemented: 2013 304, sec 2(3), 3(2), 3(3), 6(1)(g)
Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13; DOJ 2-2013, f. 1-3-13, cert. ef. 1-7-13; DOJ 6-2013(Temp), f. 7-22-13, cert. ef. 8-4-13 thru 1-31-14; DOJ 2-2014, f. 27-14, cert. ef. 1-31-14

Mediation Initiated by a Grantor at Risk of Default

Resolution Conference Guidelines

137-110-0600
Facilitator Authority and Role

(1) The facilitator has no authority to impose a settlement on the grantor or the beneficiary or to render any decisions on any substantive issue or to make any legal determinations.

(2) The facilitator and the service provider may rely on assertions made in the documents provided by the parties and need not make an independent inquiry.

(3) The facilitator shall:

(a) Act as an impartial intermediary and not as an advocate for the beneficiary or the grantor;

(b) Make appropriate disclosures to the parties about the facilitator's skills and the specific resolution conference approaches the facilitator uses;

(c) Support the ability of the parties to make informed decisions regarding the resolution conference process and outcomes by ensuring that parties are provided with information regarding the resolution conference process and that relevant documents are available to the parties;

(d) Conduct resolution conferences fairly, diligently, even-handedly, and with no personal stake in the outcome;

(e) Avoid actual, potential, or perceived conflicts of interest that can arise from a facilitator's relationship or experience that reasonably raise a question about the facilitator's impartiality;

(f) Affirmatively disclose to the service provider and the parties any actual, potential or perceived conflicts of interest that could raise a question about the facilitator's impartiality;

(g) Where a party, the facilitator or the service provider questions the facilitator's ability to act impartially, and the issue cannot be resolved to the satisfaction of the questioner, the facilitator shall decline to serve or withdraw if already serving as the facilitator in a particular resolution conference. Having questioned a facilitator's impartiality, and that facilitator having declined to serve, the ability of a party to exclude any subsequent facilitator shall be at the discretion of the service provider;

(h) Not engage in any other services, other than the resolution conference, for any of the parties involving the same or significantly related issues, unless the parties agree in writing; and

(i) Preserve the grantor's and the beneficiary's desired levels of confidentiality.

Stat. Auth.: 2013 OL Ch. 304, Sec. 6(1)(e) & 6(1)(f)
Stats. Implemented: 2013 OL Ch. 304, Sec. 6(1)(e) & 6(1)(f)
Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13; DOJ 2-2013, f. 1-3-13, cert. ef. 1-7-13; DOJ 6-2013(Temp), f. 7-22-13, cert. ef. 8-4-13 thru 1-31-14; DOJ 2-2014, f. 27-14, cert. ef. 1-31-14

137-110-0605
Resolution Conference Scheduling

(1) Within 10 days after the date on which the beneficiary or grantor requested a resolution conference as provided in Oregon Laws 2013, chapter 304, section 2, the service provider shall send a Notice of Resolution Conference to the grantor and beneficiary. The notice must:

(a) Specify a range of dates within which and a location at which the resolution conference will occur;

(b) State that the beneficiary and the grantor must each pay the facilitator's fees for the resolution conference;

(c) List and describe the documents that the beneficiary and grantor must submit to the service provider;

(d) State that the grantor must consult a housing counselor before attending the resolution conference unless the grantor notifies the service provider that the grantor could not obtain an appointment with a housing counselor before the date of the resolution conference;

(e) State that the grantor may have an attorney or housing counselor present to represent the grantor at the resolution conference, and that the grantor must attend the resolution conference in person unless there are compelling circumstances that prevent attendance in person;

(f) Provide contact information for:

(A) The Oregon State Bar's Lawyer Referral Service;

(B) Service agencies or other providers that offer free or low-cost legal services; and

(C) A list of not-for-profit housing counselors approved the Oregon Housing and Community Services Department.

(2) Within 5 days after receiving the grantor's fee, the service provider shall send a written notice to the grantor and the beneficiary that specifies the date, time and location of the resolution conference.

Stat. Auth.: 2013 OL Ch. 304, Sec. 3(1), 3(2), 3(4) & 6(1)(g)
Stats. Implemented: 2013 OL Ch. 304, Sec. 3(1), 3(2), 3(4) & 6(1)(g)
Hist.: DOJ 6-2013(Temp), f. 7-22-13, cert. ef. 8-4-13 thru 1-31-14; DOJ 2-2014, f. 27-14, cert. ef. 1-31-14

137-110-0610
Documents Required of the Grantor

(1) The grantor shall provide the following documents to the service provider for provision to the beneficiary within 25 days after the date on which the service provider sends a Notice of Resolution Conference:

(a) A completed "Universal Intake Form" provided in Appendix B and available by selecting "Form 610" at http://www.doj.state.or.us/consumer/foreclosure_mediation.shtml or a substantially similar form;

(b) Information about the grantor's income, expenses, debts and other obligations;

(c) A description of the grantor's financial hardship, if any;

(d) Documents that verify the grantor's income.

(2) In addition to the documents listed in subsection (1), a grantor's successor-in-interest shall provide documents that establish the person's identity and legal interest in the property, including but not limited to letters testamentary, letters of administration, or a court certified copy of a small estate affidavit.

(3) Within 5 days of receiving documents provided by the grantor, the service provider shall make those documents available to the beneficiary using the service provider website. The service provider shall provide the documents to the beneficiary in an alternative format upon request.

(4) If a grantor fails to timely provide documents as required by Oregon Laws 2013, chapter 304 and section (1) of this rule, the grantor and the beneficiary shall nevertheless appear at the resolution conference. A grantor who does not timely provide a document required by this rule is at increased risk of the resolution conference concluding without reaching an agreement for a foreclosure avoidance measure.

(5) The Oregon Foreclosure Avoidance Program may ask grantors to provide documents that contain social security numbers. The Program will inform grantors that it does not require them to provide their social security numbers, but that grantors may do so voluntarily to facilitate resolution with the beneficiary. The Program will

tell grantors that if they provide their social security numbers, the numbers will be disclosed to the beneficiary, the grantor's housing counselor and the facilitator for the purposes of the resolution conference and to the service provider for the purpose of ensuring that the grantor has submitted the necessary documents.

Stat. Auth.: 2013 OL Ch. 304, Sec. 3(2)(c) & 6(1)(g)
Stats. Implemented: 2013 OL Ch. 304, Sec. 3(2)(c) & 6(1)(g)
Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13; DOJ 2-2013, f. 1-3-13, cert. ef. 1-7-13; DOJ 6-2013(Temp), f. 7-22-13, cert. ef. 8-4-13 thru 1-31-14; DOJ 8-2013(Temp), f. & cert. ef. 8-22-13 thru 1-31-14; DOJ 2-2014, f. 27-14, cert. ef. 1-31-14

137-110-0620
Documents Required of the Beneficiary

(1) Within 25 days after the service provider makes the information the grantor provided under Oregon Laws 2013, chapter 304, and OAR 137-110-0610 available to the beneficiary, the beneficiary shall provide the following documents to the service provider for provision to the grantor:

(a) Copies of:

(A) The residential trust deed; and

(B) The promissory note that is evidence of the obligation that the residential trust deed secures and that the beneficiary or beneficiary's agent certifies is a true copy;

(b) The name and address of the person that owns the obligation that is secured by the residential trust deed;

(c) A record of the grantor's payment history for the longer of the preceding 12 months or since the beneficiary last deemed the grantor current on the obligation;

(d) An itemized statement that shows:

(A) The amount the grantor owes on the obligation, itemized to reflect the principal, interest, fees, charges and any other amounts included within the obligation; and

(B) The amount the grantor must pay to cure the grantor's default;

(e) A document that identifies:

(A) The input values for each net present value model that the beneficiary or the beneficiary's agent uses in this transaction; and

(B) The output values that each net present value model produces;

(f) The appraisal or price opinion the beneficiary relied on most recently to determine the value of the property that is the subject of the residential trust deed;

(g) The portion of any pooling agreement, servicing agreement or other agreement that the beneficiary cites as a limitation or prohibition on modifying the terms of the obligation, together with a statement that describes the extent to which the beneficiary sought to have the limitation or prohibition waived;

(h) A description of any additional documents the beneficiary requires to evaluate the grantor's eligibility for a foreclosure avoidance measure.

(2) Nothing in section (1)(e) of this rule requires a beneficiary or the beneficiary's agent to disclose the algorithmic formula of the net present value model used by the beneficiary or the beneficiary's agent.

(3) If a beneficiary fails to timely provide documents as required by section (1) of this rule, the grantor and the beneficiary shall nevertheless appear at the resolution conference. A beneficiary who fails to provide a document required by this rule is at risk of the resolution conference concluding without the beneficiary receiving a certificate of compliance.

Stat. Auth.: 2013 OL Ch. 304, Sec. 3(4)(b) & 6(1)(g)
Stats. Implemented: 2013 OL Ch. 304, Sec. 3(4)(b) & 6(1)(g)
Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13; DOJ 2-2013, f. 1-3-13, cert. ef. 1-7-13; DOJ 6-2013(Temp), f. 7-22-13, cert. ef. 8-4-13 thru 1-31-14; DOJ 2-2014, f. 27-14, cert. ef. 1-31-14

137-110-0630
Rescheduling the Resolution Conference

(1) Upon written request from both the grantor and beneficiary, the service provider may reschedule the resolution conference to a mutually agreed-upon date. Written notice shall be provided by facsimile, electronic mail, regular mail, or through the service provider's website.

(2) Upon written request from either grantor or beneficiary, and upon good cause shown, the service provider may reschedule the resolution conference for not more than 30 days after the original date scheduled for the resolution conference. The request shall set forth the circumstances demonstrating good cause with particularity and shall be provided by facsimile, electronic mail, regular mail, or through the service provider's website.

(3) If the service provider grants rescheduling, the service provider shall issue a notice that provides the new date, time, and location of the resolution conference within 10 days of the request for rescheduling.

Stat. Auth.: 2013 OL Ch. 304, Sec. 6(1)(f) & 6(1)(g)
Stats. Implemented: 2013 OL Ch. 304, Sec. 3(5), 6(1)(f) & 6(1)(g)
Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13; DOJ 2-2013, f. 1-3-13, cert. ef. 1-7-13; DOJ 6-2013(Temp), f. 7-22-13, cert. ef. 8-4-13 thru 1-31-14; DOJ 2-2014, f. 27-14, cert. ef. 1-31-14

137-110-0640
Confidentiality

No videotaping, transcription or other recording of resolution conferences is permitted except by written agreement of the parties and the facilitator.

Stat. Auth.: 2013 OL Ch. 304, Sec. 6(1)(f) & 6(1)(g)
Stats. Implemented: 2013 OL Ch. 304, Sec. 3(5), 6(1)(f) & 6(1)(g)
Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13; DOJ 2-2013, f. 1-3-13, cert. ef. 1-7-13; DOJ 6-2013(Temp), f. 7-22-13, cert. ef. 8-4-13 thru 1-31-14; DOJ 2-2014, f. 27-14, cert. ef. 1-31-14

137-110-0650
Participation in the Resolution Conference

(1) Any party wishing to participate in a resolution conference shall do so in accordance with all other provisions of OAR 137-110-0001 to 137-110-0670.

(2) If a trust deed includes joint or multiple grantors, and fewer than all grantors confirm participation in the resolution conference, the resolution conference may nevertheless occur with the consent of the beneficiary.

(3) The grantor, or any individual that a court appoints to act on the grantor's behalf, must attend the resolution conference in person unless there are compelling circumstances that prevent attendance in person.

(4) The service provider may assist the parties in obtaining an interpreter. However, if the service provider is unable to provide an interpreter, the party needing an interpreter is responsible for securing and paying for the interpreter. The manner of participation of a language interpreter during a resolution conference will be determined by the facilitator.

(5) Any mediator or facilitator wishing to observe a resolution conference for training purposes may only do so with the written consent of all participants.

Stat. Auth.: 2013 OL Ch. 304, Sec. 6(1)(f) & 6(1)(g)
Stats. Implemented: 2013 OL Ch. 304, Sec. 6(1)(f) & 6(1)(g)
Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13; DOJ 2-2013, f. 1-3-13, cert. ef. 1-7-13; DOJ 6-2013(Temp), f. 7-22-13, cert. ef. 8-4-13 thru 1-31-14; DOJ 2-2014, f. 27-14, cert. ef. 1-31-14

137-110-0670
Certificate of Compliance

(1) The service provider shall issue a certificate of compliance if:

(a) The grantor fails to timely pay the fee required by Oregon Laws 2013, chapter 304, section 3(2)(a) and OAR 137-110-200; or

(b) The service provider receives a report from the facilitator that complies with Oregon Laws 2013, chapter 304, section 4(4) and the beneficiary has:

(A) Submitted the materials required under section 3(4) of Oregon Laws 2013, chapter 304, to the service provider;

(B) Appeared in person at, or sent an agent to, the resolution conference with complete authority to negotiate on the beneficiary's behalf and commit the beneficiary to a foreclosure avoidance measure, or if the beneficiary or agent did not have complete authority, required the participation by remote communication of a person with

complete authority to negotiate on the beneficiary's behalf and commit the beneficiary to a foreclosure avoidance measure;

(C) Signed a document that sets forth the terms of any foreclosure avoidance measure to which the beneficiary and the grantor agreed; and

(D) Complied with sections 2, 3, and 4 of Oregon Laws 2013, chapter 304.

(2) The certificate of compliance that has been signed and notarized by the service provider shall be issued to the beneficiary or the beneficiary's agent no later than five days following:

(a) Cancellation of the resolution conference if the certificate is issued pursuant to section (1)(a) of this rule.

(b) Receipt of the facilitator's report under Oregon Laws 2013, chapter 304, section 4(4) if the certificate is issued pursuant to section (1)(b) of this rule.

(3) The certificate of compliance shall include:

(a) The name of the grantor;

(b) The name of the beneficiary;

(c) The address of the property at issue;

(d) Reference to the recording information of the trust deed at issue;

(e) A certification that either:

(A) The beneficiary or its agent appeared at the resolution conference and complied with sections 2, 3, and 4 of Oregon Laws 2013, chapter 304; or

(B) The grantor failed to timely pay the fee required by Oregon Laws 2013, chapter 304, section 3(2)(a), and OAR 137-110-0200.

(4) The certificate of compliance described in this rule shall substantially comply with the model form provided in Appendix C to these division 110 rules and available as "Form 670" at http://www.doj.state.or.us/consumer/foreclosure_mediation.shtml.

(5) Unless otherwise requested, the service provider shall mail the original certificate of compliance to the beneficiary(ies) or, if a beneficiary is represented by an attorney, the beneficiary's attorney. The service provider shall mail a copy of the certificate to the grantor(s).

Stat. Auth.: 2013 OL Ch. 304, Sec. 6(1)(f) & 6(1)(g)
Stats. Implemented: 2013 OL Ch. 304, Sec. 5, 6(1)(f) & 6(1)(g)
Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13; DOJ 2-2013, f. 1-3-13, cert. ef. 1-7-13; DOJ 6-2013(Temp), f. 7-22-13, cert. ef. 8-4-13 thru 1-31-14; DOJ 2-2014, f. 27-14, cert. ef. 1-31-14

137-010-0675
Notice That No Certificate of Compliance Will Be Issued

(1) If a beneficiary failed to meet a requirement to which the beneficiary was subject under sections 2, 3 or 4 of Oregon Laws 2013, chapter 304, the service provider shall issue a notice explaining why the service provider will not issue a certificate of compliance.

(2) The service provider may cancel a resolution conference if, prior to the date the resolution conference first convenes, the grantor and beneficiary agree to cancel the conference and confirm their agreement in writing to the service provider. The service provider shall issue a notice explaining why the service provider will not issue a certificate of compliance.

(3) This notice issued under section (1) of this rule shall substantially comply with the model form provided in Appendix D to these division 110 rules and available as "Form 670a" at http://www.doj.state.or.us/consumer/foreclosure_mediation.shtml. Unless otherwise requested, the service provider shall mail the notice described in this rule to the beneficiary(ies) or, if a beneficiary is represented by an attorney, the beneficiary's attorney. The service provider shall mail a copy of the notice described in this rule to the grantor(s).

(4) Unless otherwise requested, the service provider shall mail the notice described in this rule to the beneficiary(ies) or, if a beneficiary is represented by an attorney, the beneficiary's attorney. The service provider shall mail a copy of the notice described in this rule to the grantor(s).

Stat. Auth.: OL 2013, ch. 304, sec 6(1)(f), 6(1)(g)
Stats. Implemented: OL 2013, ch. 304, sec 5, 6(1)(f), 6(1)(g)
Hist.: DOJ 2-2014, f. 27-14, cert. ef. 1-31-14

DIVISION 120

FORECLOSURE AVOIDANCE MEASURE NOTICES

137-120-0020
Determination of Grantor Ineligibility for or Noncompliance With Foreclosure Avoidance Measure

(1) A beneficiary may comply with the notice requirements of Oregon Laws 2012, chapter 112, section 4a by using the model form provided in the Appendix to these division 120 rules and available as "Form 20" at http://www.doj.state.or.us/consumer/foreclosure_mediation.shtml.

(2) A copy of the notice required by Oregon Laws 2012, chapter 112, section 4a shall be submitted to the Attorney General of Oregon at 1162 Court St. NE, Salem, OR 97301-4096 or foreclosureavoidance@doj.state.or.us.

Stat. Auth.: 2013 OL Ch. 304, Sec. 6(1)(g)
Stats. Implemented: 2013 OL Ch. 304, Sec. 9
Hist.: DOJ 11-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13; DOJ 1-2013, f. 1-3-13, cert. ef. 1-7-13; DOJ 7-2013(Temp), f. 7-22-13, cert. ef. 8-4-13 thru 1-31-14; DOJ 3-2014, f. 1-27-14, cert. ef. 1-31-14

DIVISION 130

ENVIRONMENTAL CLAIMS MEDIATION PROGRAM

Purpose, Application, Definitions and Structure

137-130-0001
Purpose

These division 130 rules govern the Environmental Claims Mediation Program created by Oregon Laws 2013, chapter 350.

Stat. Auth.: ORS 465.484(2)(e)
Stats. Implemented: ORS 465.484(2), ORS 465.483(3)(b)
Hist.: DOJ 14-2014(Temp), f. & cert. ef. 10-31-14 thru 4-28-15; DOJ 4-2015, f. & cert. ef. 2-23-15; DOJ 10-2015, f. & cert. ef. 9-8-15

137-130-0005
Application

These division 130 rules apply to any Mediation resulting from a request for Environmental Claim Mediation pursuant to Oregon laws 2013, ch 350.

Stat. Auth.: ORS 465.484(2)(e)
Stats. Implemented: ORS 465.484(2), ORS 465.483(3)(b)
Hist.: DOJ 14-2014(Temp), f. & cert. ef. 10-31-14 thru 4-28-15; DOJ 4-2015, f. & cert. ef. 2-23-15; DOJ 10-2015, f. & cert. ef. 9-8-15

137-130-0010
Definitions

As used in these division 130 rules:

(1) "Environmental Claims Mediation Program" means the Mediation program established under Oregon Laws 2013, chapter 350.

(2) "Environmental Claims Mediation" means a Mediation conducted pursuant to Oregon Laws 2013 Chapter 350 Section 6.

(3) "Environmental Claims Mediator Roster" means the roster of qualified Mediators established by the Mediation Service Provider pursuant to these rules.

(4) "Mediation" is defined in ORS 36.110(5).

(5) "Mediation Communications" is defined in ORS 36.110(7).

(6) "Mediation Service Provider" ("MSP") means the entity appointed by the Attorney General pursuant to Oregon Laws 2013, chapter 350, section 6.

(7) "Mediation Session" means a meeting involving the mediator, the insured and the insurer.

(8) "Mediator" is defined in ORS 36.110(9).

(9) "Party" is defined in ORS 36.234.

Stat. Auth.: ORS 465.484(2)(e)
Stats. Implemented: ORS 465.484(2), ORS 465.483(3)(b)
Hist.: DOJ 14-2014(Temp), f. & cert. ef. 10-31-14 thru 4-28-15; DOJ 4-2015, f. & cert. ef. 2-23-15; DOJ 10-2015, f. & cert. ef. 9-8-15

Mediator Qualifications, Training and Experience

137-130-0110
Mediator Qualifications, Training and Experience

(1) The Mediation Service Provider shall publish, in writing and on its website, an Environmental Claims Mediator Roster composed of those Mediators who meet or exceed the minimum qualifications set forth below, and who have entered into an agreement with the Mediation Service Provider for the provision of Environmental Claims Mediation.

(2) To be included on the Environmental Claim Mediation Roster a mediator must:

(a) Provide the MSP with the mediator's experience and education, including but not limited to:

(A) The number of mediations conducted, approximate number of hours of mediation experience, and approximate number of hours dealing with cases or matters related to environmental matters or insurance claims;

(B) General mediator training;

(C) Specific subject training;

(D) Education level; and

(E) Continuing education.

(b) Provide to the MSP the Mediator's:

(A) Professional standards of mediation practice to which the mediator adheres;

(B) Contact information;

(C) Languages spoken;

(D) Website links, if applicable;

(E) Counties of Oregon where they are willing to serve and the counties they are able to serve without charging travel expenses; and

(F) Fee information.

(c) Certify to the MSP that the Mediator has:

(A) The equivalent of at least 5 (five) years of full-time experience in the environmental or insurance fields in their professional capacity. This professional role may have included, but is not limited to, the role of attorney, insurance or environmental professional, judge, hearing officer or mediator;

(B) Conducted at least 20 Mediations of any type or subject matter and have over 200 hours of experience as a Mediator; or

(C) Conducted 5 (five) mediations involving environmental insurance claims.

(d) Certify to the MSP that the Mediator has participated in or conducted 30 hours of basic mediator training meeting the standards in Section 3.2 of the Oregon Judicial Department Court Connected Mediator Qualification Rules effective August 1, 2005, or a comparable, integrated training;

(e) Certify to the MSP that the Mediator has, within five years prior to the date of application to join the Roster, participated in a total 16 hours of training in the following areas:

(A) Program orientation approved by the MSP; and

(B) Subject-matter training related to environmental matters or insurance claims, including but not limited to:

(i) Environmental cleanup;

(ii) Key cases and substantive law related to environmental insurance claims;

(iii) Court procedures, laws and rules relevant to environmental insurance claims; or

(iv) Role playing exercises involving the negotiated or mediated resolution of environmental insurance claims.

(f) Certify to the MSP that the Mediator will, if included on the Roster, complete 6 (six) hours of continuing education every two years on topics related to environmental matters or insurance claims in a course approved for continuing education by the MSP, a state or national professional accrediting organization or bar association.

(3) A Mediator who meets the minimum qualifications as a Mediator under these rules and is added to the Environmental Claims Mediator Roster may not represent that fact as license or certification of their competency for anything other than their role in the Environmental Claims Mediation Program.

(4) Notwithstanding any other provision of these rules:

(a) If all the parties to an Environmental Claims Mediation agree in writing to the use of a mediator who is not on the Environmental Claims Mediator Roster, and that Mediator enters into an agreement with the MSP as provided in Section (1) of this rule, that Mediator may serve as the Mediator in that specific matter.

(b) A mediator who enters into an agreement under section 4(a) of this rule may be included on the Environmental Claims Mediator Roster upon satisfaction of the requirements of (2)(a), (2)(b), (2)(d) and certification that the Mediator has completed the program orientation referred to in section (2)(e)(A) of this rule.

(5) Notwithstanding any other provision of these rules, if a Mediator is eligible for inclusion on the Environmental Claims Mediator Roster on the basis that they have conducted 5 (five) or more mediations involving environmental insurance claims, the Mediator shall be excused from compliance with the requirements of (2)(d), (2)(e)(B) and (2)(f) above.

(6) Upon becoming aware that a mediator does not meet the requirements of this rule or has performed in a manner inconsistent with the mediator's professional standards identified in section 2(b)(i) of this rule, the MSP shall remove that mediator from the Roster.

Stat. Auth.: ORS 465.484(2)(e)
Stats. Implemented: ORS 465.484(2), ORS 465.483(3)(b)
Hist.: DOJ 14-2014(Temp), f. & cert. ef. 10-31-14 thru 4-28-15; DOJ 4-2015, f. & cert. ef. 2-23-15; DOJ 10-2015, f. & cert. ef. 9-8-15

Fee Schedule

137-130-0210
Mediation Fees

(1) The fees for each Mediator on the Environmental Claims Mediator Roster, and any other fees that may be charged to the parties to an Environmental Claims Mediation shall be provided by the Mediation Service Provider to the Department of Justice and published on the Mediation Service Provider's website and at the Department of Justice website at http://www.doj.state.or.us/adr/pages/environmental_claims.aspx.

(2) Unless agreed otherwise by the parties in writing, the Mediation Service Provider shall ensure that the fees and costs of the Mediation are billed equally to the parties to the Mediation.

(3) The Mediation Service Provider shall ensure that the parties are billed for the Mediator's services consistent with the published fee schedule.

(4) The Mediation Service Provider shall provide to the Department of Justice a schedule for any additional fees charged for mediation services that are not included in the Mediator's hourly rate. This fee schedule shall be published on the Mediation Service Provider's website and at the Department of Justice website at http://www.doj.state.or.us/adr/pages/environmental_claims.aspx .

Stat. Auth.: ORS 465.484(2)(e)
Stats. Implemented: ORS 465.484(2), ORS 465.483(3)(b)
Hist.: DOJ 14-2014(Temp), f. & cert. ef. 10-31-14 thru 4-28-15; DOJ 4-2015, f. & cert. ef. 2-23-15; DOJ 10-2015, f. & cert. ef. 9-8-15

DIVISION 140

COLLECTION, RETENTION, PRESERVATION AND CATALOGING OF BIOLOGICAL EVIDENCE

137-140-0010
Policy and Purpose

(1) The integrity and significance of biological evidence in the detection, apprehension, and prosecution of criminal offenders, as well as the exoneration of persons wrongfully convicted of criminal offenses, is essential. The integrity, admissibility, and use in criminal cases is therefore contingent on the proper collection, preservation, retention, and cataloging of trace biological evidence. In addition, current DNA technology allows for very small amounts of biological evidence to be analyzed and tested for DNA and DNA profiling and inadvertent contamination of biological evidence is therefore possible if custodians who collect, retain, preserve, and catalogue biological evidence do not take safety and contamination

prevention precautions. Accordingly, care must be taken to prevent contamination and loss of biological evidence.

(2) Effective June 29, 2009, the Oregon legislature enacted Oregon Laws 2009, chapter 489 (Senate Bill 310) that required custodians to preserve biological evidence that is collected as part of a criminal investigation into a covered offense or that was in the possession of the custodian prior to any person being convicted of a covered offense that could reasonably be used to incriminate or exculpate any person for a covered offense. The legislature further required custodians to preserve biological evidence in amounts and manners sufficient to develop a DNA profile from such biological evidence.

(3) Effective June 7, 2011, the Oregon legislature amended Senate Bill 310 (2009) by Oregon Laws 2011, chapter 275 (Senate Bill 731) and enacted retention periods, processes and procedures that custodians are required to follow for the preservation and disposition of biological evidence. Additionally, the legislature required the Oregon Attorney General to adopt administrative rules that establishes the standards for the proper collection, retention, preservation and cataloging of biological evidence applicable to criminal investigations into, and criminal prosecution for, covered offenses. The Oregon Attorney General is further required to adopt by administrative rule a standard form for use by custodians when providing written notice to district attorneys for early disposition of biological evidence for covered offenses.

(4) It is the policy of the Oregon Attorney General that the best scientific methods should be used in the collection, retention, preservation, and cataloguing of trace biological evidence. However, when selecting detection, collection, preservation, retention, and cataloguing methods and biological evidence processing sequences, custodians should consider the circumstances of each case, the ambient conditions under which the evidence is detected, the discriminatory power of the different detection and collection techniques, and the need to preserve or collect other types of evidence. Custodian personnel responsible for the detection and collection of biological evidence should be aware that various types of evidence might be present during the processing of a crime scene and that evidence other than trace biological evidence may be more significant to a particular case and therefore should be given higher priority. Custodians should contact the Oregon State Police Forensic Services Division with any questions regarding best scientific practices for the collection, retention, preservation, and cataloguing of specific items of trace biological evidence not listed in these administrative rules.

(5) These administrative rules provide best practice scientific guidelines, procedures and techniques for the collection, retention, preservation, and cataloguing of trace biological evidence from crimes scenes, individuals, and items to be submitted to the Oregon State Police Forensic Services Division for testing, analysis, or DNA profiling for covered offenses. Therefore, a custodian's failure to follow a particular guideline or administrative rule should not be construed as rendering subject biological evidence inadmissible in any judicial or administrative proceeding. Instead, in the event of a custodian's failure to follow a particular guideline or administrative rule, it remains within the judgment of a court of competent jurisdiction to determine the relevance, admissibility and weight to be given for any biological evidence.

Stat. Auth.: ORS 133.709
Stat. Implemented: ORS 133.705-133.717
Hist.: DOJ 9-2015 f. 8-31-15, cert. ef. 9-1-15

137-140-0020
Definitions

As used in OAR 137-140-0010 to 137-140--0070, the following definitions apply:

(1) "Biological evidence" means an individual's blood, semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids or other identified biological material. "Biological evidence" includes the contents of a Sexual Assault Forensic Evidence (SAFE) kit.

(2) "Buccal" and "buccal swab" means the collection of DNA from the cells and saliva contained on the inside of a person's cheek or mouth by means of a sterile cotton swab.

(3) "Chain of custody" means written or electronic continuous chronological documentation of the seizure, custody, control, transfer, analysis, access to, and disposition of biological evidence.

(4) "Convicted" includes a finding of guilty or responsible except for insanity and a finding that a person is within the jurisdiction of the juvenile court under ORS 419C.005.

(5) "Correctional facility" means any place used for the confinement of persons charged with or convicted of a crime or otherwise confined under a court order and includes but is not limited to a youth correction facility. "Correctional facility" includes a state hospital or a secure intensive community inpatient facility only as to persons detained therein charged with or convicted of a crime, or detained therein after having been found guilty except for insanity of a crime under ORS 161.290 to 161.370. "Correctional facility" includes a youth correctional facility as defined in ORS 420.005 and a detention facility as defined in ORS 419A.004.

(6) "Covered offense" means:

(a) Aggravated murder under ORS 163.095;

(b) Murder under ORS 163.115;

(c) Manslaughter in the first degree under ORS 163.118;

(d) Manslaughter in the second degree under ORS 163.125;

(e) Aggravated vehicular homicide under ORS 163.149;

(f) Rape in the first degree under ORS 163.375;

(g) Sodomy in the first degree under ORS 163.405; or

(h) Unlawful sexual penetration in the first degree under ORS 163.411.

(7) "Custodian" means a law enforcement agency as defined in ORS 131.550, or any other person or public body as defined in ORS 174.109, that is charged with the collection, preservation or retrieval of evidence in connection with a criminal investigation or criminal prosecution. "Custodian" does not include a court.

(8) "DNA" means deoxyribonucleic acid.

(9) "Sentence" means a term of incarceration in a correctional or juvenile detention facility, a period of probation, parole or post-prison supervision and the period of time during which a person is under the jurisdiction of the Psychiatric Security Review Board.

(10) "Store" and "Storage" means the time between the initial collection of biological evidence and the expiration of the retention periods for biological evidence under ORS 133.707 and these administrative rules.

(11) "Victim" has the meaning given that term in ORS 131.007.

Stat. Auth.: ORS 133.709
Stat. Implemented: ORS 133.705-133.717
Hist.: DOJ 9-2015 f. 8-31-15, cert. ef. 9-1-15

137-140-0030
Safety, Contamination Prevention, and Security of Biological Evidence

(1) Custodian personnel who routinely collect, retain, preserve, and catalogue biological evidence are encouraged to submit a DNA elimination standard to the Oregon State Police Forensic Services Division for DNA profiling in order to be ruled out as a possible source of contamination of a particular item of biological evidence.

(2) Custodians collecting, retaining and preserving biological evidence should follow best scientific practices. Custodians should avoid:

(a) Over-handling biological evidence in order to minimize loss of evidence and exposure to possible contaminants;

(b) Touching the tips of collection swabs with any individual's fingers or other items except the substrate from which a sample is to be taken;

(c) Contaminating collection swabs by getting them dirty, talking over them, sneezing on them, or blowing on them to make samples dry faster;

(d) Touching water droppers or other bottle tips to any surface or biological evidence;

(e) Allowing tape edges of adhesive lift material from contacting any unclean or contaminated surfaces; and

(f) Licking envelope seals.

(3) Security. The security and integrity of collected biological evidence is the responsibility of the custodian and all personnel who may identify, collect, package, store, transport, or examine such evi-

dence. Custodians shall keep all biological evidence in a secure, controlled-access area, protected from loss, damage, or contamination.

Stat. Auth.: ORS 133.709
Stat. Implemented: ORS 133.705-133.717
Hist.: DOJ 9-2015 f. 8-31-15, cert. ef. 9-1-15

137-140-0040
Documentation Guidelines for Biological Evidence

(1) When a custodian initiates a criminal investigation, custodian personnel should create a written or electronic file specific for that case in order to contain case documentation of biological evidence for the length of time required by these administrative rules and prevailing law.

(2) Custodians should document the following information regarding biological evidence:

(a) The techniques used for the detection and collection of the evidence;

(b) Date of collection;

(c) Name of persons collecting the evidence;

(d) A descriptive listing of the evidence collected;

(e) A unique identifier of each item of evidence collected such as an item number and case number;

(f) The location where each item of evidence was collected which should be documented by notes, sketches, measurements, photographs, or other similar items; and

(g) Any additional information that the custodian or law enforcement agency deems appropriate.

(3) Custodians shall initiate and maintain a continuous chain of custody for each item of biological evidence from the time of evidence collection until the time the evidence is admitted into court and from a court's return of the evidence to the custodian's custody until the expiration of the retention periods specified in ORS 133.707 and these administrative rules.

Stat. Auth.: ORS 133.709
Stat. Implemented: ORS 133.705-133.717
Hist.: DOJ 9-2015 f. 8-31-15, cert. ef. 9-1-15

137-140-0050
General Collection and Preservation Guidelines for Biological Evidence

(1) General collection guidelines.

(a) Custodian personnel responsible for the detection and collection of biological evidence should be aware of applicable laws governing searches, seizures, and search warrants.

(b) Custodians may assign responsibility for biological evidence detection, collection, preservation, retention, and cataloging to appropriate personnel of varying occupations and levels of expertise, for example law enforcement personnel, medical examiners, and medical personnel.

(c) Custodians shall ensure that its personnel are properly trained in biological evidence detection, collection, preservation, retention, and cataloging techniques. Training must include, but not be limited to, record-keeping protocols; crime scene search techniques; rules of evidence handling; safety concerns of biological evidence handling and detection techniques; legal aspects of search warrants, searches, and biological evidence recovery; chain-of-custody documentation and requirements; proper storage techniques for biological evidence; detection, collection, and preservation methods used for biological evidence; and contamination prevention.

(2) General preservation guidelines.

(a) Custodians shall store and preserve biological evidence in the manner set forth in ORS 133.705 to 133.717 and these administrative rules when biological evidence is either:

(A) Collected as part of a criminal investigation of any covered offense; or

(B) In the possession of the custodian and reasonably may be used to incriminate or exculpate any person for any covered offense.

(b) Custodians should, whenever possible, collect and preserve biological evidence from physical evidence in an amount and manner that is sufficient to develop a DNA profile.

(c) When physical evidence is of a size, bulk, or physical characteristic as to make preservation and retention of the entire physical evidence impracticable, custodians shall remove and preserve portions of the physical evidence likely to contain biological evidence in a quantity sufficient to permit future DNA testing. Thereafter, custodians may return or dispose of the physical evidence according to the custodian's policies and practices.

(3) General drying guidelines. In general, moisture can degrade DNA. If possible, custodians should dry wet or moist biological evidence and package it into clean and previously unused paper containers (for example envelopes, bags, cardboard boxes). If custodians cannot air dry evidence, custodians should refrigerate liquid evidence and freeze wet evidence. When drying wet or moist biological evidence, custodians should:

(a) Air dry physical evidence thoroughly;

(b) Place wet or moist evidence in a secure environment or locked room that has ventilation in order to prevent contamination;

(c) Take care not expose physical evidence to excessive heat or sunlight; and

(d) Take steps to prevent cross-contamination.

(4) General packaging guidelines. Appropriate preservation and packaging techniques of biological evidence vary, and custodians should use appropriate clean packaging to prevent loss, degradation or contamination of biological evidence. Custodians should:

(a) Properly seal all evidence packages in a manner to prevent tampering and eliminate loss or contamination of the biological evidence through open edges;

(b) Contact the Oregon State Police Forensic Services Division for questions about appropriate techniques for unique items of biological evidence.

Stat. Auth.: ORS 133.709
Stat. Implemented: ORS 133.705-133.717
Hist.: DOJ 9-2015 f. 8-31-15, cert. ef. 9-1-15

137-140-0060
Storage and Preservation of Biological Evidence

(1) Custodians shall use best evidence practices when storing and preserving biological evidence.

(2) Custodians should consider such factors as environmental and ambient conditions when storing biological evidence in order to ensure the isolation, security and integrity of the evidence for future DNA testing through the retention periods specified in ORS 133.717 and these administrative rules. Custodians should contact the Oregon State Police Forensic Services Division for questions about appropriate techniques for storing unique items of biological evidence.

Stat. Auth.: ORS 133.709
Stat. Implemented: ORS 133.705-133.717
Hist.: DOJ 9-2015 f. 8-31-15, cert. ef. 9-1-15

137-140-0070
Retention Periods for Biological Evidence

(1) Custodians shall retain biological evidence for any covered offense for the periods specified in ORS 137.707.

(2) Custodians should confirm with the local district attorney whether a person convicted of a covered offense has served the person's sentence.

(3) Custodians shall use the form provided in Appendix A to seek early disposal of biological evidence.

(4) Custodians shall not dispose of biological evidence without a signed order from a court.

Stat. Auth.: ORS 133.709
Stat. Implemented: ORS 133.705-133.717
Hist.: DOJ 9-2015 f. 8-31-15, cert. ef. 9-1-15