

Secretary of State  
**STATEMENT OF NEED AND FISCAL IMPACT**  
A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

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Before the Oregon Department of Justice, Financial Fraud/Consumer Protection Section  
Civil Enforcement Division

Administrative Rules Chapter Number: 137

In the Matter of: **Adoption of Amendments to OAR 137-020-0015.**

Rule Caption: **Misleading Use of "Free" Offers and Rebates**

Statutory Authority: **ORS 646.608(4).**

Other Authority: **Not Applicable.**

Stats. Implemented: **ORS 646.608(1)(u).**

**Need for the Rule(s):**

**"Free."** Businesses sometimes offer a "free" item if customers purchase another item. The common and ordinary understanding of the term "free" is "without charge." Consumers thus solicited reasonably expect that they will pay nothing for the "free" article and no more than the regular price for the other. "Thus, a purchaser has a right to believe that the merchant will not directly and immediately recover, in whole or in part, the cost of the free merchandise or service by marking up the price of the article which must be purchased, by the substitution of inferior merchandise or service, or otherwise." Federal Trade Commission (FTC) Guide Concerning Use Of The Word "Free" and Similar Representations, §25.1(2)(b) [<http://www.ftc.gov/bcp/guides/free.htm>: Viewed online April 10, 2007].

Consumers are particularly vulnerable when "free" offers are made in transactions in which the price of goods or services is established by bargaining between consumers and sellers. In such transactions, consumers cannot confirm that the negotiated price excludes additional charges for the purportedly "free" article. Negotiated price consumer transactions are often associated with the advertising, sale and lease of motor vehicles. They can also occur in in-home solicitations, construction contracts and manufactured home transactions.

This rule is necessary to ensure that Oregonians receive the benefit of their reasonable expectations when they purchase goods or services that are accompanied by an offer of "free" goods or services.

**"Rebate."** Businesses sometimes offer "rebates" to consumers agreeing to purchase goods or services. The common and ordinary understanding of the term "rebate" is a retroactive reduction or credit. Consumers offered a "rebate" reasonably expect that the rebate will reduce the net cost of the consumer goods or services the consumer purchased. Misleading or deceptive rebate offers defeat this expectation.

This rule is necessary to ensure that Oregonians receive the benefit of their reasonable expectations when they purchase goods or services in a transaction accompanied by a "rebate."

Please visit [www.doj.state.or.us](http://www.doj.state.or.us) for a copy of the draft rule and of the draft official commentary which will accompany the rule if it is adopted.

**Documents Relied Upon, and where they are available:**

(a) Department of Justice (DOJ), Financial Fraud/Consumer Protection Section records regarding past enforcement actions undertaken by DOJ related to the misleading use of "free" offers and rebates. These records are too numerous to list here individually. These documents can be made available for inspection, upon reasonable advance notice, from Senior Assistant Attorney General Gene Ebersole, Oregon Department of Justice, Financial Fraud/Consumer Protection Section, 1162 Court Street NE, Salem, OR 97310-4096.

(b) Records of past enforcement actions undertaken by DOJ, other state attorneys general, and the FTC related to the use of "free" and "rebate" offers for the sale or lease of goods and services. These records are too numerous to list here individually. These documents can be made available for inspection, upon reasonable advance notice, from Senior Assistant Attorney General Gene Ebersole, Oregon Department of Justice, Financial Fraud/Consumer Protection Section, 1162 Court Street NE, Salem, OR 97310-4096.

(c) FTC Guide Concerning Use Of The Word "Free" and Similar Representations, §25.1(2)(b)  
[<http://www.ftc.gov/bcp/guides/free.htm>: Viewed online April 10, 2007.]

**Fiscal and Economic Impact, including Statement of Cost of Compliance:**

The proposed amendments should have no net fiscal or economic impact on DOJ or any other state agency, unit of local government, or member of the public. DOJ's enforcement costs would be reduced to the extent that the proposed amendments deter would-be violators from committing new violations of law. As to currently law-abiding members of the public, the proposed amendments should have no fiscal or economic impact. The rules add no new reporting requirements and no new professional services are anticipated to be required. No additional equipment, supplies or labor are required for compliance.

**How were small businesses involved in the development of this rule?**

DOJ convened an advisory committee to consider the proposed amendment. The committee included small businesses that would be affected. DOJ requested comments about any fiscal impact of the rule on each represented industry. All comments were reviewed and considered in preparing the proposed amendment. DOJ caused notice of this rulemaking process to be published in March, 2006 and hearing were held on July 20 and 21, 2006.

**Administrative Rule Advisory Committee consulted?:** Yes.

**Types of Small Businesses or Industries Affected:** There are approximately 2,650 independent motor vehicle dealers and 350 franchised car dealers, most of which are small businesses. In 2007, 25,612 licensed construction contractors reported to the Construction Contractors Board (CCB) that they have no employees; all are small businesses. In addition, 17,518 construction contractors reported to the CCB that they have one or more employees; some of them would be small businesses.

  
Peter D. Shepherd  
Deputy Attorney General

4/13/07  
Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

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