137-050-0320
Definitions

(1) OAR 137-050-0330 through OAR 137-050-0490 constitute the formula for determining child support awards as required by ORS 25.275. For purposes of OAR 137-050-0320 to 137-050-0490, unless the context requires otherwise, the following definitions apply:

(2) "Adjusted gross income" means modified gross income minus deductions for the nonjoint child(ren) as allowed by OAR 137-050-0400 and plus Social Security or Veterans' benefits as allowed by OAR 137-050-0405.

(3) "Apportioned Veterans' benefits" means the amount the Veterans Administration deducts from the veteran's award and disburses to the child or his or her representative payee. The apportionment of Veterans' benefits is determined by the Veterans Administration and is governed by 38 CFR 3.450 through 3.458.

(4) Health care coverage, as defined in ORS 25.321, is "appropriate" when the coverage is:

(a) Reasonable in cost, as defined in OAR 137-050-0410;

(b) Accessible, as defined in OAR 137-050-0410; and

(c) Comprehensive, as defined in OAR 137-050-0410.

(5) "Basic child support obligation" means the support obligation determined by applying the parent's adjusted gross income, or if there are two parents, their combined adjusted gross income, to the scale in the manner set out in OAR 137-050-0490.

(6) "Cash medical support" means an amount ordered to be paid toward the cost of health care coverage, including premiums, provided by a government sponsored health care program or by another parent through employment or otherwise, and copayments, deductibles and other medical expenses not covered by a health benefit plan. See also section (12) of this rule.

(7) "Child attending school" has the meaning given in ORS 107.108 and OAR 137-055-5110.

(8) "Gross income" means:

(a) The gross income of the parent calculated pursuant to OAR 137-050-0340 and 137-050-0350;

(b) The potential income of the parent calculated pursuant to OAR 137-050-0360 in certain cases where the parent is unemployed or employed on less than a full time

basis; or

(c) A combination of gross income and potential income as calculated under subsections (a) and (b) of this section.

(9) "Joint child" means the dependent child who is the son or daughter of both parents involved in the support proceeding. In those cases where support is sought from only one parent of a child, a joint child is the child for whom support is sought.

(10) “Low income adjustment” means the child support scale amount appropriate for a low income obligor under the provisions of OAR 137-050-0465, determined by applying the lesser of:

(a) The parents’ pro rata share of the basic support obligation; or

(b) The support obligation determined by applying the parents’ single modified gross income to the scale in the manner set out in OAR 137-050-0490.

(11) “Medical child support” includes health care coverage and cash medical support and is considered child support for purposes of establishing and enforcing child support orders.

(12) “Medical support” has the meaning given in ORS 25.321 and for purposes of OAR 137-050-0310 through OAR 137-050-0490, OAR 137-055-4620 and OAR 137-055-4640 will be known as “cash medical support”.

(13) “Modified gross income” means gross income minus any mandatory contribution to a labor organization and plus or minus court ordered spousal support as allowed by OAR 137-050-0390.

(14) "Nonjoint child" means:

(a) The legal child of one, but not both of the parents subject to this determination; or

(b) A legal child of the parent other than the child for whom support is being sought when establishing a one parent order as allowed by OAR 137-050-0490.

(c) Specifically excluded from this definition are stepchildren.

(15) “Parent A" means the parent who has more than 50 percent of the overall parenting time with the joint child(ren) as calculated in OAR 137-050-0450. If the child(ren) is in the physical custody of the Department of Human Services or the Oregon Youth Authority or another person who is not the child’s parent, there will be no Parent A for purposes of calculating child support.

(16) “Parent B" means the parent who has less than 50 percent of the overall parenting

time with the joint child(ren) as calculated in OAR 137-050-0450, or a parent whose child(ren) is in the physical custody of the Department of Human Services or the Oregon Youth Authority or another person who is not the child's parent.

(17) "Parenting time" means the amount of time the child(ren) is scheduled to spend with a parent according to a current written agreement between the parents or a court order.

(18) The parent having "primary physical custody" means the parent who provides the primary residence for the child(ren) and is responsible for the majority of the day-to-day decisions concerning the child(ren).

(19) "Providing party" has the meaning given in ORS 25.321 and for purposes of OAR 137-050-0310 through OAR 137-050-0490, OAR 137-055-3340, OAR 137-055-4620 and OAR 137-055-4640 includes a party ordered to provide cash medical support.

(20) "Public health care coverage" means health care coverage provided by a government sponsored health care program that provides medical benefits for children.

(21) "Social Security benefits" means the monthly amount the Social Security Administration pays to a joint child or his or her representative payee due solely to the disability or retirement of either parent. Specifically excluded from this definition are benefits paid to a parent due to the disability of a child.

(22) "Split custody" means that each parent in a two parent calculation has primary physical custody of at least one of the joint children.

(23) "Survivors' and Dependents' Educational Assistance" are funds disbursed by the Veterans Administration under 38 USC chapter 35, to the child or his or her representative payee.

Stat. Auth.: ORS 25.270 – ORS 25.290 & 107.108, 180.345
Stats. Implemented: ORS 25.270 – ORS 25.290 and ORS 107.135
Effective date: October 1, 2007

COMMENTARY TO OAR 137-050-0320 - DEFINITIONS

This rule contains definitions of key terms as well as defining the elements contained in terms within the calculation. OAR 137-050-0330 will refer to several of these items in quotations. In these instances, the reader should refer back to the definitions to reference the appropriate use of that term.

Section (4): This section was added to the rule in 2007 to implement the changes from the Deficit Reduction Act of 2005, Public Law 109-171 (DEFRA). Health care coverage must be found to be appropriate before it can be ordered. The definition of appropriate is set out in this section while the three prongs of appropriate are further defined in OAR 137-050-0410.

Sections (6) and (12): ORS 25.321 defines medical support and for purposes of the guideline rules the drafters wanted to equate the statutory definition and the federal definition of “cash medical support” as being the same thing.

Section (11): Medical child support is the umbrella term for any coverage or support ordered specifically for the medical needs of a child for ease of use in the guideline rules.

Section (13): Modified gross income allows for the subtraction of mandatory contributions to a labor organization. These contributions are not voluntary and reduce a parent’s gross income. The drafters found this to be a frequent rebuttal to support calculations. As the guidelines are federally required to set forth the formula for calculating support in the majority of situations, it was appropriate to permanently add this to the child support calculation.

Section (14): Stepchildren are specifically excluded from the definition of “nonjoint child” in OAR 137-050-0320 as it is presumed that the biological parents of the stepchild are providing for his or her support. However, this may be an appropriate basis for a rebuttal. See OAR 137-050-0333(1)(e).

There are times when a one party calculation would be appropriate; when a child is in the care of the state and the state is the obligee, or when the child is with a caretaker. In these situations a legal child of the parent should be considered a “nonjoint child” for purposes of calculating support. *See OAR 137-050-0400.*

Sections (15) and (16): The drafters chose to use the terms “Parent A" and “Parent B" to denote the parties in the calculation. Other suggestions considered were noncustodial and custodial parent, obligee/obligor and mother/father. These terms were rejected as either parent may have custody of one or more of the children and the parent in either column of the child support calculation may end up being the obligor (obligated parent).

Section (18): “Primary physical custody” is also defined. Parent A may have custody of two children with Parent B having custody of one child. Parent B is still the primary physical custodian of the child in his or her care.

Section (19): The definition of “providing party” in ORS 25.321 is specific to a party ordered to provide health care coverage. In order to not have two different terms, one for a party ordered to provide health care coverage and one for a party ordered to provide cash medical support, the drafters chose to add to the statutory definition of providing party for use in the guideline rules.

137-050-0330
Computation of Individual Child Support Obligations

To determine the amount of support owed by a parent follow the procedure set forth in this rule.

(1) Determine “Parent A" and “Parent B".

(2) Determine the "gross income" of each parent.

(3) Determine the “modified gross income” of each parent.

(4) Determine the "adjusted gross income" of each parent, and if there are two parents, the combined “adjusted gross income."

(5) If there are two parents, determine the percentage contribution of each parent to the combined adjusted gross income by dividing the combined adjusted gross income into each parent's adjusted gross income.

(6) Determine the "basic child support obligation."

(7) Determine the basic child support obligation for joint minor children by dividing the "basic child support obligation" from section (6) by the total number of joint children and then multiply that figure by the number of joint *minor* children.

(8) Determine the basic child support obligation for children attending school, if any, by subtracting the figure from section (7) from the “basic child support obligation” figure in section (6).

(9) Determine each parent’s share of the basic child support obligation for joint minor children by multiplying the percentage figure from section (5) by the “basic child support obligation” from section (7).

(10) Determine the parenting time credit for joint minor children, if any, and apply to the basic child support obligation as provided in OAR 137-050-0450.

(11) Apply the “low income adjustment”, if appropriate, as provided in OAR 137-050-0465.

(12) Determine the monthly child support obligation for joint minor children by subtracting section (11), if any, from section (10).

(13) Determine the child care costs for each parent as allowed by OAR 137-050-0420. If child care costs are not equal each month, annual costs must be averaged to determine a monthly cost.

(14) Apply rebuttal(s), if any, as appropriate under OAR 137-050-0333 for joint minor children.

(15) Calculate the total costs owed by each parent to the other by applying the parent's percentage of income as determined in section (5) of this rule to the out-of-pocket costs incurred by the other parent. Subtract Parent A's costs from Parent B's costs.

(16) Determine each parent's share of the basic child support obligation for child(ren) attending school by multiplying the percentage figure from section (5) by the "basic child support obligation" from section (8).

(17) Apply the "low income adjustment", if appropriate, as provided in OAR 137-050-0465.

(18) Determine the monthly child support obligation before costs for child(ren) attending school by subtracting section (17), if any, from section (16).

(19) Apply rebuttal(s), if any, as appropriate under OAR 137-050-0333 for child(ren) attending school.

(20) Calculate the total costs, for child(ren) attending school, owed by each parent to the other by applying the parent's percentage of income as determined in section (5) of this rule to the out-of-pocket costs incurred by the other parent. Subtract Parent A's costs from Parent B's costs.

(21) Determine the monthly child support obligation for child(ren) attending school by adding section (20) and section (18) for each parent.

(22) Determine the net child support obligation by adding sections (12), (15) and (21) together for each parent.

(23) Calculate private health care coverage costs, if any, as provided in OAR 137-050-0410 and determine the net child support obligation.

(24) Calculate cash medical support, if any, as provided in OAR 137-050-0430 and determine the net child support obligation.

(25) If Social Security benefits or Veterans' benefits are received by Parent A as a representative payee for a joint child due to Parent B's disability or retirement, subtract the amount of benefits from Parent B's net child support obligation, if any.

(26) Determine the portion of the calculated child support obligation the obligated parent has the ability to pay as provided in OAR 137-050-0475.

(27) Apply rebuttal(s), if any, as appropriate under OAR 137-050-0333.

(28) Determine the total monthly child support obligation by adding or subtracting section (27) from section (26).

Stat. Auth.: ORS 25.270 – 25.290,107.108, 180.345
Stats. Implemented: ORS 25.270 – 25.290
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COMMENTARY TO OAR 137-050-0330 - COMPUTATION OF INDIVIDUAL CHILD SUPPORT OBLIGATIONS

This rule sets forth the step-by-step procedure for a child support calculation, for minor children and children attending school pursuant to ORS 107.108, under the guidelines. All rebuttal criteria were removed from this rule in 2003 and placed in OAR 137-050-0333.

Practitioners have requested the drafters adopt a formal method for calculating support for a child attending school. The 2007 amendments to this rule formalize the standard for calculating support when a child is a child attending school under ORS 107.108 and OAR 137-055-5110. The amendments also apply when a tiered modification, pursuant to ORS 107.108(10) is calculated and in situations where the fact finder will take a one party order (see commentary to OAR 137-050-0333 and OAR 137-050-0490).

The practitioners have requested direction as to what method of rounding should be used for a child support calculation. We recommend the use of standard rules of rounding (Standard of Rounding from the U.S. Department of Education, Center for Education Statistics) as follows:

- If the digit next beyond the one to be retained is less than five, the retained digit is kept unchanged. (E.g., 2.541 becomes 2.5 to two significant figures)
- When the digit next beyond the one to be retained is greater than or equal to five, the retained digit is increased by one. (E.g., 2.453 becomes 2.5 to two significant figures)

The Child Support Program will round to the nearest cent except for the final support amount which will be to the nearest dollar. Percentages will be rounded to the nearest whole percentage point.

137-050-0333
Rebuttals

(1) The amount of child support to be paid as determined in OAR 137-050-0330 is presumed to be the correct amount. This presumption may be rebutted by a finding that the amount is unjust or inappropriate based upon the criteria included but not limited to as set forth in subsections (1)(a) through (1)(p) of this rule. Both the presumed correct amount and the new amount, in variance from the guidelines, must be recited as part of findings that explain the reason for the variance.

(a) Evidence of the other available resources of the parent;

(b) The reasonable necessities of the parent;

(c) The net income of the parent remaining after withholdings required by law or as a condition of employment;

(d) A parent's ability to borrow;

(e) The number and needs of other dependents of a parent;

(f) The special hardships of a parent including, but not limited to, any medical circumstances or extraordinary travel costs related to the exercise of parenting time, if any, of a parent affecting the parent's ability to pay child support;

(g) The extraordinary or diminished needs of the child;

(h) 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;

(i) 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.

(j) The financial advantage afforded a parent's household by the income of a spouse or domestic partner.

(k) 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.

(L) Evidence that a child who is subject to the support order is not living with either parent or is a "child attending school" as defined in ORS 107.108.

(m) Prior findings in a Judgment, Order, Decree or Settlement Agreement that the existing support award was made in consideration of other property, debt or financial

awards.

(n) The net income of the parent remaining after payment of financial obligations mutually incurred.

(o) The tax advantage or adverse tax effect of a party's income or benefits.

(p) The return of capital.

(2) If the child support presumption is rebutted pursuant to subsection (1) of this rule, a written finding or a specific finding on the record must be made that the amount is unjust or inappropriate. That finding must recite the amount that under the guidelines is presumed to be correct, and must include the reason why the order varies from the guidelines amount. A new support amount must be calculated by determining an appropriate dollar value to be attributed to the rebuttal criteria upon which the finding was based and by making an appropriate adjustment to the calculation.

Stat. Auth.: ORS 25.270 – 25.290, 180.345
Stats. Implemented: ORS 25.270 – 25.290
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COMMENTARY TO OAR 137-050-0333 - REBUTTALS

The scale is based on a national average of incomes, cost of living, etc., therefore rebuttals should not be used for lower/higher wages and/or cost of living for out-of-state obligors.

The child support amounts set by these rules are presumptive and should be adjusted if the result of the formula is unjust or inappropriate. This rule sets forth the criteria for a rebuttal of the presumptively correct amount produced by a guidelines calculation. The court has found in *Petersen and Petersen*, 132 Or. App. 190, 198; 888 P.2d 23 (1994), that the list of criteria are not exclusive. The rebuttal list is not a comprehensive list and the fact finder may consider other appropriate economic factors not listed that directly affect the needs and best interests of the child(ren). The drafters have chosen not to add rebuttal criteria for other scenarios and believe that circumstances that do not fall within the listed rebuttal criteria should be rare. The above cited case law states that parties can stipulate to child support amounts but that the stipulation is not binding on the fact finder, it is just one of the factors the fact finder can consider .

Section (1)(a): “Evidence of the other available resources of the parent” may include any income earned as overtime, not already included in gross income. The drafters note that overtime earnings are generally included in quarterly or annual earnings reports and should be considered as part of regular gross income. Evidence of overtime earnings not included in quarterly or annual reports is “evidence of other available resources of the parent.”

Section (1)(b): Some practitioners requested that an adjustment to child support be allowed when a party is required to provide life insurance. The drafters question whether it is appropriate to reduce the current support amount in order to provide for future support in the eventuality that the obligated parent is deceased. This decision is better left to the fact finder for a case by case determination as to whether the additional expense places an unnecessary burden on the obligated parent.

Section (1)(c): The phrase, “including, but not limited to the parent’s mandatory contribution to a retirement plan as a condition of employment” was removed from this section of the rule in 2003.

Employee contributions to a retirement plan required as a condition of employment may or may not make a significant impact on a parent’s ability to pay the presumed amount of child support. In order to be considered as a rebuttal by the trier of fact, any adjustment must be mandatory and significantly reduce or enhance the income that is available to the parent.

Section (1)(d): ORS 25.275 and case law directs the fact finder to look at all required criteria, including the parent’s ability to borrow when setting child support amounts. See Shlitter v. Shlitter, 188 Or. App. 277, 286; 71 P.3d 154 (2003).

Section (1)(e): Stepchildren are specifically excluded from the definition of “nonjoint child” in OAR 137-050-0320 as it is presumed that the biological parents of the stepchild are providing for his or her support. However, the drafters recognize that this may not always be the case and the stepparent may be providing substantial support for stepchild(ren) in their home. In this circumstance, a rebuttal may be appropriate.

Section (1)(f): This rebuttal was broadened in 1994 to specifically include extraordinary travel costs related to the exercise of parenting time. The drafters were persuaded that in certain cases, when a parent incurs extraordinary transportation costs in the exercise of parenting time with a child(ren), and when that expense would impair the ability to pay the presumed correct child support amount, the trier may find it appropriate to reduce the amount of support to be paid by a parent. This criterion could also be used, however, to justify an increase in the amount of support when the nonpaying parent incurs extraordinary travel costs to facilitate parenting time between the child and the other parent.

Note that the transportation costs must be extraordinary, such as the traveling of a distance which requires an overnight stay or transportation other than by auto. The parenting time credit is intended to provide for the basic travel costs of the parent in exercising parenting time.

This rebuttal is being broadened in the 2006 review to include the needs of a parent who is trying to comply with the specific requirements of a reunification plan or other agreement to reunite with their child(ren), who are in custody of Child Welfare or the Oregon Youth Authority. The drafters were in agreement that when a parent is required to pay for expenses (such as classes, counseling, medical costs, appropriate housing, transportation costs, visitation costs, etc.) as part of the reunification plan or other agreement, it may be appropriate to reduce the amount of support to be paid by the parent when such expense(s) would impair the ability to pay the presumed correct child support amount.

Section (1)(g): The formula for the presumed guideline amount is intended to provide for the educational, physical and emotional needs of the child for whom support is sought. In some circumstances, these needs may be higher or lower than that of the average child.

In 2003, the phrase “extraordinary or diminished” was inserted before “needs of the child”, and the phrase “including but not limited to extraordinary child care costs due to special needs” was removed. The drafters acknowledge the original language appeared to suggest that needs of the child could only be considered to the extent that they increased the child support obligation. This is not the intent.

In 2006, the drafters were asked to clarify this section of the rule commentary to explain how to take into consideration extracurricular expenses. The guidelines do not take into consideration extracurricular expenses. This is an issue that needs to be negotiated between the parents as these types of expenses are wants, not needs, and the guidelines and scale cover only the needs of children.

When there are extraordinary medical expenses the fact finder should first look at OAR 137-050-0430 before applying the medical expenses as a rebuttal.

Regarding a child’s earnings or property, the drafters adopt the Oregon Supreme Court’s analysis in Redler and Redler, 330 Or. 51, 996 P.2d 963 (2000), that a child’s earnings may be considered as a possible basis for departing from the presumed support amount if there is evidence that those earnings diminish the child’s need for parental support. Such earnings, therefore, should be extraordinary, e.g., a large personal injury settlement or a significant trust fund, etc. In the vast majority of cases, a child’s earnings or property should not impact a parent’s responsibility to contribute to the support of his or her child. To conclude otherwise would negatively impact the parent-child relationship and provide a disincentive for children to obtain experience in the workforce.

Social Security benefits paid to a child because of a child’s disability are generally paid because of extraordinary needs of the child and can not be included as income to either parent or be used to reduce the child support obligation. Because the benefits paid by the Social Security Administration are intended to defray the additional costs associated with a child’s disability, an upward deviation from the guideline amount is not necessary. On a related but distinctly different issue, please see OAR 137-050-0405 for the treatment of Social Security benefits received on behalf of a child due to a parent’s disability.

When the fact finder determines that a child is in the care and custody of the state, a one party calculation as set out in OAR 137-050-0490, would be more appropriate than applying a rebuttal.

For case law on this section of the rule *see* Longcor v. Longcor 114 Or App 89, 834; P2d 479 (1992), and Dawson v. Dawson 142 Or App 35, 919; P2d 517 (1996).

Section (1)(h): “Working less than full time to fulfill the role of parent and homemaker” may be considered as a reason to rebut the presumptively correct support amount. These guidelines have always included as a rebuttal criterion “the desirability of the custodial parent remaining in the home as a full-time parent”. To increase the support order based on this factor, it would presumably be demonstrated that both the custodial parent’s failure to work full time (or at all) was justified by the compelling desirability of remaining at home with the child(ren) and that the custodial parent’s failure to produce the expected income should be compensated for by increased payments on the part of the noncustodial parent. In considering an argument that this criterion stands as the reason for a rebuttal, the trier will probably have

to be persuaded both on the merits of the custodial parent remaining at home, the noncustodial parent's ability to pay an increased amount and the equities of such an order.

The above discussion is not intended to suggest that application of this criterion is appropriate only to facts similar to those recited.

Section (1)(i): The language, "determination of which parent will name the child as a dependent", has raised questions about how to handle the dependency exemption. The formula and scale presume that the parent with primary physical custody of the child will receive the dependency exemption. This presumption is stated in OAR 137-050-0490. If this presumption is correct, no further consideration need be given to this issue. If in a particular case, however, this exemption goes to the parent who does not have primary physical custody, there may be a reason to adjust the calculation. For further discussion, see commentary to OAR 137-050-0490.

The consideration of child tax credits or the earned income tax credit received by either parent was added to the rule in 2003. The scale does not take into account the additional child tax credits adopted in the Economic Growth and Tax Relief Reconciliation Act of 2001. In some circumstances, the income of the party may increase substantially as a result of these credits. The fact finder may use actual evidence of the earned income or child tax credit(s) in these scenarios.

Section (1)(j): This criteria is intended to apply in situations where an obligor or obligee is unemployed or employed at a level that is less than his or her full earning capacity where they have a spouse or domestic partner who provides a financial advantage to the household which enables the obligor or obligee to be unemployed or work at less than a full-time job.

A contemplated example would be as follows: Obligee used to work full-time, but is no longer working because he or she is married to a spouse who earns a significant income. Because obligee has chosen not to work his or her presumed income would be calculated based on a determination of potential income. Under this situation the fact finder may consider the financial advantage afforded to obligee's household resulting from the spouse's income to rebut the presumed child support amount.

A new spouse/domestic partner's income is not considered in calculating gross or adjusted income for purposes of the child support calculation itself. This criteria is discussed in Ainsworth and Ainsworth, 114 Or App 311, 314-315 (1992). The Court of Appeals has found that it was error for the court to include the wages of each parent's new partner in calculating the presumptive child support obligation of each parent. *See* Hardiman and Hardiman, 133 Or App 112, 113 (1995). Nor is a step-parent's income used in calculating income unless the fact-finder considers the opportunities afforded the family as outlined above. For further discussion on the use of step-parent income see the commentary to OAR 137-050-0490.

Section (1)(k): The "benefits of employment" could be any benefit not counted as "gross income" which provided a financial advantage. Those benefits may include, but are not limited to those which provide or subsidize housing, transportation, food, clothing, health benefits and the like. The trier, in allowing a rebuttal based on this criterion, must assign a dollar value to the benefit and make a decision about how that amount affects the need for, or the ability to pay, child support.

Section (1)(l): The guidelines assume that a child who is a beneficiary of the support award is in the physical custody of one, or both parents as a result of a parenting time arrangement. When that is not true, the guidelines do not provide for a formalistic solution to the problem of child support. Rather, it is left in those situations for the trier to determine whether the presumptive amount of support should be ordered, given the living arrangements for the child, or whether a departure from the guidelines is appropriate.

Application of these guidelines is often difficult in those situations where an 18-21 year old child is a "child attending school" as defined in ORS 107.108. The scale itself is based on the average expenses of children in the home from ages 0-17. (For further discussion, see commentary to OAR 137-050-0490.) A

child attending school may continue to live with the parent, live with a roommate, or form a domestic partnership. These situations may call for a rebuttal of the presumptive amount of child support.

Section (1)(m): If previous orders regarding child support varied from the presumptively correct amount because of other property, debt or financial awards, and those facts remain relevant to any subsequent proceeding (i.e., a modification proceeding), then those facts should be allowed to support rebuttal argument to any support award contemplated.

Section (1)(n): One party may assume financial responsibility for significant obligations incurred jointly. If this obligation relieves one parent of a significant financial burden while reducing the available resources of the other, it may be appropriate to increase or reduce the income of the parent accordingly.

Section (1)(o): The guidelines assume that income will be taxed as earnings and that there is a standard net income for each gross income level specified in these guidelines. That is, even though the guidelines provide for calculations using gross income amounts, the child support awards produced by the guidelines are, in fact, based upon the net income resulting from that particular gross income amount, assuming a tax deduction claim for only one person, i.e., the person whose income is being determined.

Therefore child support for one child based on a gross income of $2000, and filing as described above, is $245. What is transparent to the user is that $245 is really the child support for net disposable income of $1477, which is $2000 minus $237 federal income taxes, $133 state income tax and $153 in Social Security deductions.

This is not to imply that a parent who claims more or less than one deduction, and whose net income is therefore more or less than would result from one deduction, should be treated differently by this process. The method of deriving net income from gross as explained here is simply a method of “leveling the playing field”, so that when we deal with people with similar gross earnings we will also be attributing similar net incomes to them regardless of the number of exemptions they may claim.

It is true, however, that if the nature of the income or benefit received by the parent is such that it is subject to either more or less taxes than earned income then consideration should be given to both the parent’s before tax and after tax income. If the trier finds that the income or benefit is not taxable as assumed by the guidelines or taxed at a lower than normal rate, then the presumptively correct support award is probably not correct and should be subject to rebuttal under this rule.

Section (1)(p): In 1994, we proposed including “return of capital” in the definition of gross earnings. Comments received persuaded us not to do that, but rather to provide for a rebuttal of the presumptively correct support amount based on return of capital. Users of these guidelines should not confuse “return of capital” with “return on capital”, which has always been considered gross income pursuant to OAR 137-050-0340 and remains so. “Return on capital” can be, for instance, interest earnings on investments. “Return of capital,” on the other hand, could be that part of a payment received on a land sale contract in payment for real property which represents the principal and not the interest. In other words, in this example, “return of capital” is income derived from conversion of the real property (capital) into monthly income, but would not include the interest payment, which would be “return on capital”.

Generally, it is not intended that an obligated parent should be required to spend down an asset in order to pay support. However, it may be appropriate to increase the parent’s income in certain scenarios, such as where a parent has opted to live off of the sale of an asset rather than earning income.

The drafters have been asked to provide guidance in the commentary as to how the rebuttals should be applied. The following chart shows recommended application of the rebuttal.

"Important Disclaimer: This chart is for informational and educational purposes only. It serves as guidance of how rebuttals can be applied. The fact finder may consider other appropriate factors that are

not listed in this chart but can directly affect the particular facts of a case. The Administrator, Administrative Law Judge, or Court has the final authority in determining how the rebuttals will be applied."

REBUTTAL REASON	Addition to or Subtraction from Gross Income	Addition to or Subtraction from Costs	Addition to or Subtraction from Monthly Child Support
a. Evidence of other available resources of the parent	X		
b. The reasonable necessities of the parent	X		
c. Net income of parent after withholdings required by law or as a condition of employment	X		
d. Parent's ability to borrow	X		
e. Number and needs of other dependents	X		
f. Special hardships of a parent	X		
g. Extraordinary or diminished needs of the child (*include expenses caretaker incurs for the child in this catagory*)		X	X
h. Desirability of parent remaining in home as full-time parent and homemaker	X		
i. Tax consequences, if any, to both parents resulting from spousal support awarded and determination of which parent will name child as dependent	X		
j. Financial advantage afforded a parent's household by the income of a spouse or domestic partner	X		
k. Financial advantage afforded a parent's household by benefits of employment	X		
l. Evidence that child is not living with either parent or is a "child attending school" as defined in ORS 107.108		X	X
m. Prior findings in a Judgment, Order, or Settlement Agreement that the existing support award was made in consideration of other property, debt or financial awards	X	X	X
n. Net income of parent remaining after payment of financial obligations mutually incurred	X		
o. Tax advantage or adverse tax effect of a party's income or benefits	X		
p. The return of capital	X		

137-050-0335
Implementation of Changes to Child Support Guidelines

(1) Changes to these rules (OAR 137-050-0320 through 137-050-0490) apply to all judicial and administrative actions initiated or pending after the effective date of any new, amended, or repealed rule included in this series.

(2) Rule changes do not constitute a substantial change in circumstances for purposes of modifying a child support order.

(3) As used in this rule, “pending” means any matter that has been initiated before the effective date of a rule change but requires amendment, modification or hearing before a final judgment can be entered.

Stat. Auth.: ORS 25.270 – 25.290, 180.345
Stats. Implemented: ORS 25.270 – 25.290
Effective date: October 1, 2007

COMMENTARY TO OAR 137-050-0335 - IMPLEMENTATION OF CHANGES TO CHILD SUPPORT GUIDELINES

This rule was amended in 2003 to clarify that the changes to the guidelines will apply to all administrative or judicial actions that are initiated, amended or have a hearing after the effective date of the changes. Previously, OAR 137-050-0335 stated that the guidelines applied to any administrative or judicial action initiated after the effective date of the rules. Given the difficulties and confusion of using two sets of guidelines during this same time period, the drafters researched whether the new rules may be applied to those actions that are still pending when the new rules become effective.

While the law generally disfavors retroactivity (Landgraf v USI Film Products, 114 S CT 1483 (1994)), retroactivity may be overcome if there is clear legislative intent to do so and the retroactivity does not take away a substantive right or impose an additional or unforeseeable obligation or new duty.

Applying these principles, the drafters conclude that the new rules can be made applicable to pending cases. The changes in the rules do not take away a substantive right or impose an unforeseeable obligation. Application of the law in effect at the time of the determination does not offend general principles of fairness, especially in light of the continuous review granted to support awards and the fact that de novo review allows the court to consider new intervening facts.

137-050-0340
Gross Income

(1) Except as excluded below, gross income includes income from any source including, but not limited to, salaries, wages, commissions, advances, bonuses, dividends, severance pay, pensions, interest, honoraria, trust income, annuities, return on capital, Social Security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, gifts, prizes, including lottery winnings, and alimony or separate maintenance received.

(2) Expense reimbursements or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business must be counted as income if they are significant and reduce personal living expenses.

(3) Gross income may be calculated on either an annual or monthly basis. Weekly income must be translated to monthly income by multiplying the weekly income by 4.33.

(4) If the parent of a joint child is a recipient of Temporary Assistance for Needy Families (TANF), the gross income attributed to that parent must be the amount which could be earned by full-time work (40 hours a week) at the state minimum wage.

(5) Excluded and not counted as income is any child support payment. It is a rebuttable presumption that adoption assistance payments, guardianship assistance payments and foster care subsidies are excluded and not counted as income.

Stat. Auth.: ORS 25.270 – 25.290, 180.345
Stats. Implemented: ORS 25.270 – 25.290
Effective date: October 1, 2007

COMMENTARY TO OAR 137-050-0340 - GROSS INCOME

As explained at length in the commentary to OAR 137-050-0333(1)(o), the guideline scale amounts are based on the combined net incomes of the parent, taking into account one deduction for each parent. The income figures are then converted back to gross income figures in order to avoid inconsistency between the number of exemptions taken by a particular parent. Note that the assumption of using one deduction per parent takes a conservative approach to gross income.

The drafters recognize that some employers contribute to medical benefits beyond the cost of health care coverage. This employer contribution should be included as gross income to the person. Any cash benefits a person may receive from not enrolling in, or "opting out" of, a health care coverage plan are considered income.

Employer contributions to profit sharing, such as unexercised stock options, should be treated as gross income only if such contributions are capable of ready conversion into cash (i.e., considered liquid assets).

Parents often question the fairness of including overtime in gross income. While overtime is clearly "income" to the parent, the drafters believe that flexibility should be exercised in determining whether the overtime will continue. If a parent is working overtime for a short period of time to "catch up" or an employer can verify that overtime will not continue in the future, it may not be appropriate to include overtime in gross income for purposes of the child support calculation or rebuttal.

Section (3): After reviewing accounting formulas, the drafters agreed that the most accurate way to determine an average monthly income when wages are paid weekly is to multiply the weekly earnings by 4.33. This method of converting weekly earnings captures all 52 pay periods per year. This language is included in the rule so that wage computations will be consistent among practitioners and tribunals.

Section (4): The recipient of Temporary Assistance to Needy Families (TANF) is imputed an amount of income equal to that earned for full-time work at the state minimum wage. Even though TANF recipients are presumed to be unable to pay support (ORS 25.245), it is necessary and reasonable to impute some income to all parties (even parents who receive public assistance). Income is imputed for purposes of calculating the relative responsibility of each parent and not to order a TANF recipient to pay support.

Section (5): A rebuttable presumption was added in 2003 to state that adoption assistance payments, foster care subsidies and guardianship subsidies are excluded and not included in a parent's gross income. In the case of adoption assistance, these payments are intended to cover the cost of care for children who may have extraordinary education, emotional or physical needs. The parents are still obligated to provide for the basic needs of the child. In the case of foster care or guardianship subsidies, these payments are intended for the care of the child for whom they are paid. It would be inequitable to use these payments to reduce the support award for another child. However, the drafters acknowledge that special circumstances exist that may lead the trier of fact to conclude that such payments should be included in whole or in part in a parent's gross income. The specific facts of a case allow the presumption to be rebutted.

137-050-0350
Income from Self-Employment or Operation of a Business

For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, gross income is defined as gross receipts minus costs of goods sold minus ordinary and necessary expenses required for self-employment or business operation. Specifically excluded from ordinary and necessary expenses for purposes of OAR 137-050-0320 to 137-050-0490 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 administrator, court, or the administrative law judge to be inappropriate or excessive for determining gross income for purposes of calculating child support.

Stat. Auth.: ORS 25.270 – 25.290, 180.345
Stats. Implemented: ORS 25.270 – 25.290
Effective date: October 1, 2007

COMMENTARY TO OAR 137-050-0350 - INCOME FROM SELF-EMPLOYMENT OR OPERATION OF A BUSINESS

Expense reimbursements or in-kind payments are not addressed in this rule, but can be found in OAR 137-050-0340.

Undistributed corporate income is included in determining the gross income of the parties (*see* Perlenfein and Perlenfein, 316 Or 16 (1993)). However, the gross income thus calculated may be rebutted in whole or in part if there is evidence that such income is not actually available to the parent.

The drafters are aware that in certain cases determining gross income for persons involved in the operation of a business is difficult. The problem is best addressed by the discovery process and by the fact finding authority of the decision maker.

Practitioners have requested that the drafters explain in commentary the difference between accelerated depreciation and regular depreciation. The drafters realize that there is confusion in this area and by providing this information appropriate orders will be easier to calculate.

In the straight line method (regular depreciation) you deduct the same amount of depreciation each year. Using an accelerated depreciation method one would front-load the depreciation, which will show less income realized in the beginning and then, if the property is sold and new property purchased it continues to show a lower amount of income due to the higher depreciation allowed in the accelerated depreciation methods. *See IRS Publication 534 (11/1995).*

137-050-0360
Potential Income

(1) If a parent is unemployed, employed on less than a full-time basis or there is no direct evidence of any income, child support shall be calculated based on a determination of potential income. For purposes of this determination, it is rebuttably presumed that a parent can be gainfully employed on a full-time basis.

(2) Determination of potential income shall be made according to one of three methods, as appropriate:

(a) The parent’s probable earnings level based on employment potential, recent work history, and occupational qualifications in light of prevailing job opportunities and earnings levels in the community; or

(b) If a parent is receiving unemployment compensation or workers' compensation, that parent's income may be calculated using the actual amount of the unemployment compensation or workers' compensation benefit received; or

(c) Notwithstanding any other provision of this section, the amount of income a parent could earn working full-time at the current state minimum wage.

(3) This presumption does not apply to a parent who is unable to work full-time due to a verified disability or to an incarcerated obligor as defined in OAR 137-055-3300.

(4) As used in this rule, “full-time” means forty 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 180.340 & ORS 25.270 – ORS 25.290
Stats. Implemented: ORS 25.270 – ORS 25.290
Effective date: October 1, 2003

COMMENTARY TO OAR 137-050-0360 - POTENTIAL INCOME

When either one of the parents is unemployed or working less than full time or there is no direct evidence of employment, this rule creates a presumption that the parent's income can be based on a demonstrated ability to earn. If there is no evidence which demonstrates the level of earning ability, income may be based upon full time work at the minimum wage or the amount of unemployment or worker's compensation benefits received by a parent.

Section (2): Language was added in 2003 to clarify that when analyzing a parent's earning ability, the parent's employment potential, recent work history and occupational qualifications must be analyzed in light of prevailing job opportunities and earning levels within the community. If job opportunities are currently not available in the same field in which the party was previously employed, it may not be appropriate to use this method to determine a parent's earning ability.

A provision was also added in 2003 to provide that potential income may be based on the amount of unemployment or workers' compensation benefits received by a party. This amendment is in response to a repeal of the temporary income rule. The temporary income rule provided that a calculation may be based on temporary income (such as UC/WC) or potential income. Temporary income was defined as income that was not anticipated to continue for more than six months. This rule was often misinterpreted to allow a modification of support only if the income change was not temporary. This was not the intent and the addition of UC/WC to the potential income rule should eliminate this confusion.

Both of these changes are intended to address the following fact pattern: A parent formerly worked as a computer programmer. The parent earned $80,000 or more a year for several successive years. The computer company went out of business and the parent became unemployed. The parent now receives $1200 per month in unemployment compensation. Job opportunities and wage levels in the community are such that this parent without retraining and without experience in some other comparably paid field, will probably not earn $80,000 per year again in the foreseeable future.

It would not seem appropriate, given these facts, to impute $80,000 per year in earnings to this parent. It would seem more appropriate to attribute actual income (i.e., $1200 per month unemployment compensation). In such a case, any order entered based upon this level of income could be modified as the parent's job situation improved.

Section (3): The potential income rule does not apply to a parent who is unable to work due to a verified disability or an incarcerated obligor. In these scenarios, the actual income of the party should be used, even if this amount is less than minimum wage. A parent who is unable to work due to a verified disability is not defined, but rather, is left to the trier of fact. Disability may be verified through a doctor's letter or the receipt of Social Security Disability benefits.

Section (4): The drafters have adopted the definition of "full time work" used by the Employment Department, i.e., forty 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. The term "underemployed" is not contemplated by this rule. The drafters agree with the reasoning in La Favor and La Favor, 151 Or App 257 (1997), that the question of whether a person is employing his or her abilities on a full-time basis must be determined on a case-by-case basis. The drafters also note that ORS 107.135(3)(b) and the analysis found in Hogue and Hogue, 115 Or App 697 (1992), adequately address the issue of intentional underemployment.

137-050-0370
Income Verification

Income statements of the parents shall be verified with documentation of both current and past income where available. Suitable documentation of current earnings includes pay stubs, employer statements, the records of the Oregon Employment Department, or receipts and expenses if self-employed. Documentation of current income shall be supplemented with copies of the most recent tax return to provide verification of earnings over a longer period.

Stat. Auth.: ORS 180.340 & ORS 25.270 – ORS 25.290
Stats. Implemented: ORS 25.270 – ORS 25.290
Effective date: October 1, 2003

COMMENTARY TO OAR 137-050-0370 - INCOME VERIFICATION

Income verification should be done in every case where doubt exists about the amount of a parent's earnings. As in OAR 137-050-0340, however, disputes and uncertainty about income are best resolved by the discovery process provided for by the statute governing the judicial or administrative action in process.

137-050-0390
Spousal Support

The amount of any pre-existing or concurrently entered court-ordered spousal support shall be deducted from the gross income of the parent obligated to pay such spousal support whether the spousal support is to be paid to the other parent or any other person. The amount of any pre-existing or concurrently entered court-ordered spousal support to be received by a parent from the other parent or any other person shall be added to the gross income of the parent entitled to receive such spousal support.

Stat. Auth.: ORS 180.340 & ORS 25.270 – ORS 25.290
Stats. Implemented: ORS 25.270 – ORS 25.290
Effective date: October 1, 2003

COMMENTARY TO OAR 137-050-0390 - SPOUSAL SUPPORT

Spousal support is deducted from the gross income of the parent ordered to pay it and added to the income of any recipient of spousal support. In any proceeding (such as a dissolution) in which both child support and spousal support are being determined, spousal support must be determined first, so that the gross incomes of the parents may be adjusted accordingly to allow for a correct determination of child support under these guidelines.

This rule applies equally to spousal support to or from a third party as it applies to spousal support paid between parents of joint children. The adjustment made under this rule requires the order of a specific amount of money as spousal support. Property received in lieu of cash spousal support is not an adjustment to the gross income of the party receiving the property but may be considered as a rebuttal to the presumed Guidelines amount pursuant to OAR 137-050-0333(1)(m).

137-050-0400
Nonjoint Children

(1) When either or both parents of the joint child subject to this determination are legally responsible for a nonjoint child who resides in that parent's household, or a nonjoint child to whom or on whose behalf a parent owes an ongoing child support obligation under a court or administrative order, a credit for this obligation shall be calculated pursuant to this rule.

(2) Subtract from a parent's gross income the amount of any spousal support a court orders that parent to pay, and any mandatory contribution to a labor organization, and add to a parent's gross income any spousal support the parent is entitled to receive as allowed by OAR 137-050-0390.

(3) Determine the number of nonjoint children in the parent's immediate household, and the number of nonjoint children to whom the parent has been ordered to pay support by prior court or administrative order. The result is "total nonjoint children."

(4) Using the scale as established in OAR 137-050-0490, determine the basic child support obligation for the nonjoint child or children by using the income of the parent for whom the credit is being calculated and adjusting that income according to section (2) of this rule, and using the number of “total nonjoint children” in section (3) of this rule.

(5) Subtract the amount calculated in section (4) of this rule from the parent’s modified gross income.

Stat. Auth.: ORS 25.270 – 25.290, 180.345
Stats. Implemented: ORS 25.270 – 25.290
Effective date: October 1, 2007

COMMENTARY TO OAR 137-050-0400 - NONJOINT CHILDREN

Prior to 1994, this rule provided a separate formula for calculating a nonjoint child credit when the nonjoint child(ren) resided in the parent's household. The effect was to slightly reduce the amount of the support order being established in consideration of the parent's other (nonjoint) children. The rule was rewritten to give the same level of credit for nonjoint children regardless of whether those nonjoint children reside with the parent or are children for whom the parent owes child support. For a parent who owes child support to obtain a nonjoint child credit, the parent must have an ongoing child support obligation. The payment of arrears only does not qualify for a nonjoint child credit.

Prior to 2007, this rule did not allow a nonjoint child credit to an obligee who is receiving TANF. The history for this decision was that the state is covering the needs of the child so the obligee should not receive the credit. In order to meet the goals of the federal government to help families become self-sufficient and to have fair and equitable child support orders the Guidelines Advisory Committee recommended that the drafters reevaluate and change this position.

Section (2): The 2002 Guidelines Advisory Committee recommended that a subtraction for mandatory labor organization contributions be subtracted from gross income in the same manner as when determining gross income for a joint child. Due to an oversight the rule change was not made during the last guidelines rule changes. This corrects the oversight and conforms the rule to current practice.

137-050-0405
Social Security or Veterans' Benefit Payments Received on Behalf of the Child

(1) The amount of the monthly Social Security benefits or apportioned Veterans' benefits received by the child or on behalf of the child may be added to the gross income of the parent for whom the disability or retirement benefit was paid.

(2) The amount of the monthly Survivors' and Dependents' Educational Assistance received by the child or on behalf of the child shall be added to the gross income of the parent for whom the disability or retirement benefit was paid.

(3) If the Social Security or apportioned Veterans' benefits are paid on behalf of Parent B, and are received by Parent A as a representative payee for the child or by the child attending school, as defined in ORS 107.108, then the amount of the benefits may also be subtracted from Parent B's net child support obligation as calculated pursuant to OAR 137-050-0330.

(4) If the Survivors' and Dependents' Educational Assistance is paid on behalf of Parent B, and is received by Parent A as a representative payee for the child or by the child attending school, as defined in ORS 107.108, then the amount of the assistance shall also be subtracted from Parent B's net child support obligation as calculated pursuant to OAR 137-050-0330.

Stat. Auth.: ORS 180.340, ORS 25.270 – ORS 25.290
Stats. Implemented: ORS 25.270 – ORS 25.290, ORS 107.135
Effective date: October 1, 2003

COMMENTARY TO OAR 137-050-0405 - SOCIAL SECURITY OR VETERANS' BENEFIT PAYMENTS RECEIVED ON BEHALF OF THE CHILD

While Social Security benefits (based upon the parent's retirement or disability) received on behalf of the joint child(ren) was previously a permissible consideration under rebuttal OAR 137-050-0333(1)(g) (*see* Lawhorn and Lawhorn, 119 Or App 225, 850 P2d 1126 (1993)), the drafters concluded that a systematic treatment of this kind of household income would be helpful to practitioners and produce a more equitable result for families.

Social Security death/survivor benefits are not addressed under this rule because such benefits are not derived from either party to the support order. Death benefits should be treated as income to the child only and should be considered, when appropriate, as a rebuttal under OAR 137-050-0333(1)(g).

Due to 1999 and 2003 amendments to ORS 25.275 and ORS 107.135, Veterans' benefits are also included in this rule and should be treated in the same manner that Social Security benefits received on behalf of a child are treated. Veterans' benefits are included if they are apportioned Veterans' benefits (divided from the veteran's award and sent directly to the child or his or her representative payee) or Survivors' and Dependents' Educational Assistance payments as defined in 38 USC chapter 35. The rule follows the statutory construction in that Social Security and apportioned Veterans' benefits may be included in the calculation. That is, this step is discretionary with the fact finder. Survivors' and Dependents' Educational Assistance shall be included and is not a discretionary step.

The rule was amended in 2003 to change the calculation from a pro rata credit to a dollar-for-dollar credit against child support owed by Parent B. The pro rata credit included the amount of the benefits in the combined income of the parties. The total basic child support was then reduced by the amount of benefits without regard to whether the obligated parent was the parent who was disabled or retired. This produced inequitable results. These circumstances prompted the drafters to change the way benefits were included in the calculation. If the benefits are received because of Parent A's disability or retirement, the benefit amount will be included in the Parent's income but will not affect the child support obligation. If the benefits are received (by Parent A) as a result of Parent B's disability or retirement, the benefit amount will be included in Parent B's income and subtracted dollar-for-dollar from Parent B's obligation.

137-050-0410
Health Care Coverage

(1) In addition to the definitions found in ORS 25.321 and OAR 137-050-0320 the following terms, used to determine if health care coverage is appropriate, have the meanings given below:

(a) “Accessible” health care coverage means:

(A) Available for at least one year based on the work history of the parent providing coverage;

(B) A health benefit plan does not have service area limitations or the health benefit plan provides an option not subject to service area limitations; and

(C) The child lives within the geographic area covered by the plan or within 30 minutes or 30 miles of primary care services.

(b) “Reasonable in cost” for health care coverage means the share of the health care coverage premium, if any, does not make the application of the formula established under ORS 25.275 unjust or inappropriate:

(A) If the pro-rated portion of the health care premium is equal to or less than seven percent of the providing party’s adjusted gross income; or

(B) Other compelling factors in the case support a finding that an amount greater than seven percent of the providing party’s adjusted gross income is reasonable in cost.

(c) “Comprehensive” health care coverage means that the coverage is “satisfactory” as defined in ORS 25.321. Comprehensive health care coverage may also include but is not limited to, coverage for surgical, dental, optical, prescription drugs, office visits, counseling or any combination of these or any other comparable health care expenses.

(2) Private health care coverage must be found to be “appropriate” as defined in section (1) of this rule and OAR 137-050-0320 before it can be ordered.

(3) Public health care coverage is considered to be “appropriate” as defined in section (1) this rule and OAR 137-050-0320 unless a party contests this finding.

(4) Each newly established or modified child support order must directly address medical child support, whether or not private health care coverage is currently available. The child support order must address how the parents will provide for the child’s health care needs by:

(a) Including a provision for appropriate health care coverage; and

(b) Making a finding regarding cash medical support, pursuant to OAR 137-050-0430, if appropriate health care coverage is not available or if other medical expenses need to be addressed.

(5) When establishing or modifying a child support order to include medical child support provisions the resources of both parents must be considered, except as provided in section (8), and the following process followed:

(a) If the obligor has access to private health care coverage from any source, including a spouse, domestic partner or other family member, and that coverage is deemed to be “appropriate” for the child, the obligor will be ordered to include the child in the coverage and pay any associated premiums;

(b) If the obligor does not have appropriate private health care coverage, determine if the obligee has access to private health care coverage from any source, including a spouse, domestic partner or other family member, and if that coverage is deemed to be “appropriate” for the child, the obligee will be ordered to provide coverage and pay any associated premiums; or

(c) If both parents have access to private health care coverage from any source that is deemed to be “appropriate”, the obligee may choose the coverage to be provided;

(d) If neither parent has access to “appropriate” private health care coverage, one or both parents may be ordered to apply to enroll the child in public health care coverage; Medicaid, State Children's Health Insurance Program (SCHIP), Family Health Insurance Assistance Program (FHIAP), or some other government sponsored health care coverage program, and one or both parties may be required to pay some or all of the associated costs in an order for cash medical support as provided in OAR 137-050-0430;

(e) If neither private nor public health care coverage is found to be “appropriate” cash medical support may be ordered pursuant to OAR 137-050-0430, and if ordered will continue until appropriate health care coverage becomes available and the order is modified; and

(f) If the child has access to appropriate public or private health care coverage but also has uncovered medical needs, either or both parents may be ordered to contribute toward these costs by an order for cash medical support pursuant to OAR 137-050-0430.

(6) The child support obligation must be adjusted for health care coverage provided for the joint child if health care coverage is:

(a) Appropriate, as defined in OAR 137-050-0320 and subsections (1)(a) - (c) of this rule; and

(b) Ordered, pursuant to ORS 25.323 and the child is or will be enrolled upon finalization of the order and the cost of the health care coverage is determinable at the time the order is entered.

(7) Determine the cost to the providing party of carrying health care coverage for only the joint child(ren) of the parties. If family coverage is provided for the joint child(ren) and other family members, prorate the out-of-pocket cost of the health care coverage premium for the joint child(ren) only.

(8) When the support obligation of a parent is determined for a child who is not in the custody of either parent, and assuming that only the income of the parent against whom support is ordered is considered, the entire out-of-pocket cost of any health care coverage premiums for that child provided by the providing party, up to the support amount, may be allowed with respect to that parent if the health care coverage is found to be appropriate .

(9) The cost of providing health care coverage to insure the joint child(ren) and incurred by a parent's spouse or domestic partner may be attributed to the parent.

Stat. Auth.: ORS 25.270 – 25.290, 25.321 - 25.343, 180.345
Stats. Implemented: ORS 25.270 – 25.290, 25.321 - 25.343
Effective date: October 1, 2007

COMMENTARY TO OAR 137-050-0410 - HEALTH CARE COVERAGE

This rule implements the provisions of ORS 25.321 - 25.343 as required by federal law at 45 CFR 303.31 and 303.32, in adjusting or supplementing the child support obligation in consideration of health care coverage costs incurred by either parent for the joint child.

Section (1): In addition to ORS 25.321 and OAR 137-050-0320 the terms in this section provide the fact finder with guidance as to whether health care coverage is appropriate and therefore should be ordered. Under DEFRA, either parent can be ordered to provide health care coverage and when ordered that parent becomes the providing party under this rule.

Section (1)(a)(A): This requirement as a part of “accessible” allows the fact finder to make a determination that based on the potential providing party’s work history health care coverage may not be accessible due to the parent leaving jobs more than once in a year. In this scenario the fact finder should look at ordering cash medical support under OAR 137-050-0430 in lieu of health care coverage.

Section (1)(b)(A): There will be situations when the fact finder finds that less than or equal to “reasonable in cost” may result in an order for a party to obtain health care coverage with an amount ordered that may be zero. A zero amount is still within the “reasonable in cost” formula and health care coverage should still be ordered.

Section (1)(b)(B): This exception to the reasonable in cost numeric formula provides that if it is in the best interests of the child or another equally compelling reason, the fact finder can use actual cost not based on seven percent of providing party’s adjusted gross income to determine if health care coverage is reasonable in cost.

Section (2): If the fact finder finds that the obligor, or if not the obligor the obligee, has private health care coverage available to them the fact finder must determine if it is appropriate as defined in this rule and OAR 137-050-0320 before it can be ordered.

Section (3): If appropriate private health care coverage is not available the fact finder can order either parent to apply to enroll the child in public health care coverage as public health care coverage is already determined to be appropriate unless a party contests the finding of appropriate.

Section (4): DEFRA mandates that state guidelines require the inclusion of medical support provisions in each child support order even if appropriate health care coverage is not currently available. The fact finder will need to ascertain if health care coverage is appropriate and if not, a finding regarding cash medical support must be included, even if the amount is determined to be zero at the time the order is entered.

It is possible that both health care coverage and cash medical support would be included in a support order. For example, where a custodial parent has access to health care coverage for the parties' child, the noncustodial parent may be required to pay a share of the premium's cost. And each parent may be ordered to pay a fixed sum or a percentage of the cost of allergy shots, or orthodontic treatment or psychological counseling etc. not covered by insurance. Such costs, if included, must be determined to be reasonable in cost pursuant to OAR 137-050-0430.

Section (5): This section provides guidance for the fact finder in ordering health care coverage and cash medical support pursuant to OAR 137-050-0430.

Section (6): Allows credit prior to enrollment if health care coverage costs are determinable at the time.

Section (7): The rule was amended in 2001 to allow for a credit based upon the cost to cover all the parents’ dependents divided by the number of dependents covered, regardless of whether there is any “additional” cost to include the joint child(ren). Previously, credit could only be given for adding the joint children if the addition increased the support amount.

Practitioners have requested that the drafters provide an example in commentary to show how to prorate the health care costs when there are multiple parties covered under the same health plan.

Example: Health care coverage plan costs $556 and covers obligor, obligor's three nonjoint children and one joint child. The cost to cover the obligor is $300 and the cost to cover the children is $256.

The cost to cover the "children only" is divided by the number of children and does not include the obligor or the obligor's spouse if any; $256 divided by 4 children = $64 per child. Sixty four dollars is the amount to be used for the joint child health care coverage cost.

Section (8): When the child is not in the custody of either parent (e.g., child is in foster care) and only one parent is subject to the determination, health care coverage costs incurred by the parent subject to the action will cause the support order to be reduced by an amount equal to those costs, up to the amount of the support obligation. In a more typical case, where both parents are parties, the child support obligation is adjusted so that the costs of health care coverage are shared. Where there is only one parent, however, and that one parent assumes full responsibility for health care coverage costs, then the support order is reduced by the full amount of the coverage costs because there is no other parent with whom to share responsibility.

Section (9): Many health care plans allow stepchildren to be added to the health care coverage of the stepparent. At times, this may be the most efficient means of providing adequate health care coverage to the child(ren). This section clarifies that the child support obligation may be adjusted for the costs of coverage incurred by a spouse or domestic partner as if those costs were incurred by the parent.

137-050-0420
Child Care Costs

(1) The child support obligation must be adjusted for child care costs for a joint child under the age of 13 or a child with disabilities in an amount equal to the annualized monthly child care costs, including government child care subsidies, less the estimated federal and state child care credit payable on behalf of a joint child.

(2) Child care costs are those costs incurred or to be incurred by either parent that are determinable and documentable and are due to the parent's employment, job search, or training or education necessary to obtain a job.

(3) Child care costs are allowable only to the extent that they are reasonable and do not exceed the level required to provide quality care for the child(ren) from a licensed source.

(4) Child care costs incurred or to be incurred by a parent include any amounts paid by government subsidies for that parent.

(5) As used in this rule, "child with disabilities" means a child who has a physical or mental disability that substantially limits one or more major life activities (self-care, walking, seeing, speaking, hearing, breathing, learning, working, etc.).

Stat. Auth.: ORS 25.270 – 25.290, 180.345
Stats. Implemented: ORS 25.270 – 25.290
Effective date: October 1, 2007

COMMENTARY TO OAR 137-050-0420 - CHILD CARE COSTS

In 2003, the shared custody calculation was eliminated and replaced with a parenting time credit for the parent who has custody of the children less than 50% of the time. This credit recognizes that both parents incur costs for the child(ren) while the child(ren) is in the parent's care. Likewise, either parent may incur child care costs for the child(ren). The child support calculation should reflect the costs incurred by either or both parents so long as those costs meet the criteria set out in this rule. This rule only applies in two party orders. In cases where you are taking a one-parent order and a caretaker or obligor has child care costs it would be appropriate to use a rebuttal under OAR 137-050-0333.

Prior to 2003, the child care credit computation worksheet (S-4) limited the allowance of child care costs to those for a child who is under the age of 13 or qualifies as a child with disabilities as defined in federal tax law. As the worksheets are not binding, the drafters have moved to incorporate these provisions in the rule. Some practitioners have commented that the federal tax law definition of a "child with disabilities" is too narrow and a child may have other disabilities which would require child care over the age of 12. The drafters have chosen to adopt the definition from the American Disabilities Act, 42 USC 12101, which recognizes that many children with disabilities may require extra or longer term child care as compared to other children of the same age. Note, however, that due to the narrow definition of a child with disabilities in federal tax law, it may not be appropriate in these circumstances to reduce the child care costs by an estimated tax credit.

This rule has changed several times since its adoption in 1989 as to whether the calculation should take into account only the out-of-pocket costs incurred by the parent or whether the calculation should also incorporate any subsidized cost of child care. In 1999, the rule was amended in its current form to clarify that government subsidies should be included in the cost of child care.

For example, if the obligee is working and receiving an Employment Related Day Care (ERDC) subsidy from the Department of Human Services (DHS), he or she may be paying $100 per month in out-of-pocket child care costs and the state may be paying the day care provider the remaining $200 through the ERDC program. In this scenario, the figure that should be used in the guidelines calculation is the full $300.

This policy was adopted because ERDC is an income-based program. Once child support is received, the obligee's eligibility for day care assistance is reduced. If government subsidies are not included in the calculation, a disproportionate share of the cost of child care is transferred to the obligee. It is the goal of DHS to decrease assistance as other resources to the parent increase, eventually eliminating the need for assistance altogether. This policy only applies to government subsidized day care costs. There is no like rationale to include subsidies received through a private plan provided by an employer or insurance policy.

Although the worksheets provided by the Division of Child Support are not part of the official child support guidelines, they are widely used by Oregon child support practitioners for calculating child support obligations. On Supplemental Worksheet S-3, Federal and Oregon tax credit tables for child care credit are given as a reference for calculating the child care credit. The tax credit tables are based on federal adjusted gross income, including exemptions and deductions. The worksheet directs the user to calculate the tax credit using modified gross monthly income (gross monthly income plus or minus spousal support). Other factors such as the income of a spouse or the earned income of the parent may affect the amount of the tax credits. Note further that a tax credit for child care may only be obtained by the "custodial" parent. Custodial parent is defined in tax law as the parent having the child(ren) greater than 50% of the time. If child care costs are incurred by the noncustodial parent, child care costs should not be reduced by an estimated tax credit.

Section (2): Future child care costs that are determinable and certain to occur should be included in the guidelines calculation in the same manner that future health care costs (*see* OAR 137-050-0410) are calculated when those future costs are known to the parties. (*See* Alexander and Alexander 87 Or App 259, 742 P2d 63 (1987))

137-050-0430
Cash Medical Support

(1) Cash medical support, as defined in OAR 137-050-0320, for the joint child(ren) must be added as part of the child support obligation amount, if any, if cash medical support:

(a) Is reasonable in cost as defined in section (2) of this rule; and

(b) Is ordered pursuant to ORS 25.323.

(2) “Reasonable in cost” for cash medical support means the amount, if any, of the cash medical support does not make the application of the formula established under ORS 25.275 unjust or inappropriate:

(a) If the pro-rated portion of cash medical support is equal to or less than seven percent of the providing party’s adjusted gross income; or

(b) Other compelling factors in the case support a finding that an amount greater than seven percent of the providing party’s adjusted gross income is reasonable in cost.

(3) When establishing or modifying a child support order to include cash medical support the resources of both parents must be considered.

(4) If a parent has been ordered to apply to enroll the child(ren) in public health care coverage under OAR 137-050-0410, a finding regarding cash medical support must be included in the order.

(5) If the child has access to public or private health care coverage but also has uncovered medical expenses, either or both parents may be required to contribute toward the cost of these expenses by an order for cash medical support.

(6) If private or public health care coverage is not available and the child has uncovered medical expenses, cash medical support may be ordered to the extent the uncovered medical expenses exceed $250 per year per child.

(7) Medical expenses are defined as those expenses that are not eligible for payment by health care coverage or other insurance and are reasonably expected to occur regularly and periodically in the future based on documented past experience or on substantial evidence of future need and include, but are not limited to, hospital, surgical, dental, optical, prescription drugs, office visits, counseling or any combination of these of any other comparable health care expenses.

(8) Notwithstanding the provisions of this rule or OAR 137-050-0410, if a parent, or a parent with an eligible dependent child in the household, provides evidence of eligibility to receive medical assistance under ORS 414.032 that party may not be ordered to

provide cash medical support.

Stat. Auth.: ORS 25.270 – 25.290, 180.345
Stats. Implemented: ORS 25.270 – 25.290
Effective date: October 1, 2007

COMMENTARY TO OAR 137-050-0430 - CASH MEDICAL SUPPORT

This rule allows adding as part of the child support obligation an amount that recognizes recurring medical costs that are not covered by health care coverage. That is, if the child's medical needs are such, or the health care coverage is such that there are uninsured costs which can be anticipated, then the basic support may be increased to recognize this fact. Out-of-pocket costs incurred by the Oregon Health Plan or other government sponsored health plan will be treated like the costs incurred for any other health care coverage under this rule.

A support order would not be increased to cover an unexpected minor medical event such as a one-time event, which could not be planned for because of its unexpected nature. This provision should not be confused with the courts' authority to order parents to share future medical costs on some equitable basis (e.g., share any and all future costs 50/50) whether or not those costs are recurring costs as that term is defined in this rule. That issue is not dealt with in these guidelines and nothing in the guidelines gives or precludes authority for such an order.

Sections (1) - (5): DEFRA requires the guidelines provide for a provision for cash medical support in each child support order if appropriate health care coverage is not currently available or if appropriate health care coverage is available and the child has other medical expenses. The fact finder will need to ascertain if health care coverage is appropriate and if not, make a finding in the order regarding cash medical support. If cash medical support is ordered it should be ordered until such a time that appropriate health care coverage is available and the order is modified. Cash medical support may be ordered up to the amount of reasonable in cost and may also be ordered at zero until such a time that the party's financial situation changes and/or public or private health care coverage becomes available.

Section (2)(b) allows the fact finder to order cash medical support in an amount other than the standard reasonable in cost numeric formula (7% of the providing party's adjusted gross income) if in the best interests of the child or other compelling factors apply.

Section (4): When public health care coverage has been ordered under OAR 137-050-0410 cash medical support that is "reasonable in cost" must be addressed in the order.

Section (6): The term "eligible" was added to this section in 2001 to reflect that medical costs may be "eligible" for payment by health care coverage but may not be paid for a period of time. This lag in payment does not make the costs uninsured costs.

Uninsured or out-of-pocket medical costs may include co-payments, payments toward premiums paid by the other parent (under certain circumstances decided by the fact finder), deductibles, over-the-counter medications and other medical costs not covered by the family health care coverage. The guidelines scale amounts include ordinary unreimbursed medical costs of $250 per child per year. (Economic Basis for Updated Child Support Schedule, prepared by Policy Studies Inc., December 31, 2001) Medical expenses, as defined by this rule, which exceed $250 per child per year may be added to the basic support obligation. Uninsured costs that exceed $250 per child per year and that are not predictable or anticipated are not addressed in this rule. This has always been an underlying assumption of the child support scale, even though this provision was not adopted formally in the rule until 2003.

Section (8): While DEFRA requires that every child support order include medical provisions for health care coverage and/or cash medical support the drafters realize that it may not be in the best interests of the family to require a payment towards cash medical support if the family is receiving TANF assistance. This section was included to implement ORS 25.323(3).

137-050-0450
Parenting Time

(1) If there is a current written parenting time agreement or court order providing for parenting time and/or the parents have split custody, the percentage of overall parenting time for each parent must be calculated as follows:

(a) Determine the average number of overnights using two consecutive years.

(b) Multiply the number of joint minor children by 365 to arrive at a total number of minor child overnights. Add together the total number of overnights the parent is allowed with each joint minor child and divide the parenting time overnights by the total number of minor child overnights.

(c) If the parents have split custody but no current written parenting time agreement or court order providing for parenting time, each parent will be attributed 365 days for the minor child(ren) in the parent's physical custody.

(d) Notwithstanding the calculation provided in subsections (1)(b) and (1)(c), the percentage of 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.

(2) 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 percentage of parenting time may be calculated using the actual parenting time exercised by the parent.

(3) If there is no written parenting time agreement or court order providing for parenting time, the parent having primary physical custody shall be treated as having 100 percent of the parenting time.

(4) No parenting time will be attributed to either parent for a child who is a child attending school as defined in ORS 107.108 and OAR 137-055-5110.

Stat. Auth.: ORS 25.270 – 25.290, 180.345
Stats. Implemented: ORS 25.270 – 25.290
Effective date: October 1, 2007

COMMENTARY TO OAR 137-050-0450 - PARENTING TIME

This rule provides a formula for determining the percentage of parenting time for each parent regardless of whether the custody of the minor children is shared or split. If no agreement or court order for parenting time exists, the parent having primary physical custody of the minor child is presumed to have the child 100% of the time.

Relative percentages of parenting time can only be calculated under this rule if the parties have a current written parenting time agreement or a court order providing for parenting time. Many practitioners have suggested that the actual parenting time exercised by the parent may vary from that provided by a court order. We acknowledge that this may occur. In such circumstances, the court may calculate the percentage of parenting time based on what is actually occurring without changing the parenting time to which the parties are entitled.

Section (2) was amended in 2007 to allow an administrative law judge to make a finding on the record of the actual parenting time exercised and modify the support obligation appropriately. The finding does not alter the written parenting time agreement or court order. If the parties want the written parenting time agreement to reflect the actual parenting time exercised the parties will need to amend the written parenting time agreement through the judicial process or stipulate to a new written parenting time agreement.

This rule applies equally to those situations where the child is in the care of a third party who is not the parent or in the care of the state. If an agreement or court order provides for parenting time for that parent, it is appropriate to calculate their percentage of parenting time.

The drafters recognize in (1)(c) that an obligor may be responsible for significant periods of parenting time during the day that does not involve overnights. For example, the parents may have an agreement where the obligor has parenting time during the day in lieu of the obligee obtaining day care. Such a situation should not prevent an obligor from getting credit for parenting time, even though the child is not with the parent overnight. A suggested methodology used by other states to account for this time might be to count 12 continuous hours as one day, and 4 hour up to 12 hour blocks as a half-day. This methodology should only be used when the parents have an alternative parenting time schedule that is out of the ordinary. That is, if a parent has a normal overnight schedule, half days should not be added on to the parenting time days in order to increase the amount of parenting time credit. Furthermore, half day blocks and 12-hour blocks of time cannot be added together to create more than one day of total parenting time for a single 24-hour period. Such a calculation would lead to expanding the year to more than 365 days.

Parenting time cannot be calculated using speculative data. Since parenting time is calculated based on 365 days in a year, averaged over two consecutive years, practitioners may calculate the number of days spent with the parent for known periods of time (E.g., “The child will spend Memorial Day weekend with the Mother”, quantifiable as 3 overnights). Unknown or unquantifiable periods of time would not be calculated (E.g., “The child will spend time during the summer months with the Father”, unquantifiable period of time, no overnights calculated).

The drafters added the word “current” to “a written parenting time agreement or court order providing for parenting time” to acknowledge those situations where the current parenting time situation is not reflected in the last court order or written agreement. For example, assume Mother has custody of the child and Father has a court order for 30% parenting time. At some point, the child goes to live with the Father, and Mother now exercises parenting time. Father seeks a support order, but the existing custody order has never been changed. Pursuant to ORS 25.240, the parent with primary physical custody (now, the Father) may get a support order, regardless of the terms of the last custody order. In this circumstance, the existing custody (or parenting time) order is not “current” and, therefore, would not be used to calculate parenting time for child support. Support is calculated with no parenting time until a new written parenting time agreement or court order providing for parenting time is entered.

Section (4) was added in 2007 to provide guidance when determining parenting time for joint children.

Parenting time is only applicable for children under 18 years of age. *(See* ORS chapter 107; Smith and Smith, 44 Ore. App. 635 (1980); Miller and Miller, 62 Ore. App. 371, 374 (1983))

137-050-0455
Parenting Time Credit

(1) This rule applies when the overall parenting time calculated pursuant to OAR 137-050-0450 is 25 percent or greater for each parent.

(2) Parent B will be entitled to a parenting time credit for joint minor children only and will be calculated as follows:

(a) Multiply the “Basic Child Support Obligation for Joint Minor Child(ren)”, from OAR 137-050-0330 section (7), by 1.5 (150%).

(b) Multiply each parent’s percentage share of income by the amount in subsection (a).

(c) Multiply the amount for each parent in subsection (b) by the percentage time with each parent.

(d) Subtract the amount in subsection (c) from the amount in subsection (b) for each parent.

(3) If the parenting time is equal, the expenses for the children are equally shared and the adjusted gross incomes of the parents also are equal, no support shall be paid.

(4) If the parenting time is equal but the parents adjusted gross incomes are not equal, the parent having the greater adjusted gross income shall be obligated for the amount of basic child support needed to equalize the basic child support to each parent, calculated as follows:

(a) After the basic child support obligation has been prorated between the parents, subtract the lower amount from the higher amount and divide the balance in half.

(b) The resulting figure is the obligation after parenting time credit for the parent with the greater adjusted gross income.

(5) This parenting time credit reflects the presumption that while exercising parenting time, a parent is responsible for and incurs the costs of caring for the child, including but not limited to, food, clothing, transportation, recreation and household expenses.

Stat. Auth.: ORS 25.270 – 25.290, 180.345
Stats. Implemented: ORS 25.270 – 25.290
Effective date: October 1, 2007

COMMENTARY TO OAR 137-050-0455 - PARENTING TIME CREDIT

In 2003, this rule, along with OAR 137-050-0450, replaced the previous Shared Physical Custody rule directing how to calculate support when both parents had custody of the child greater than 35% of the time. The drafters recognized two major drawbacks of the Shared Physical Custody rule. One, due to the 35% threshold for determining shared custody, there was a significant difference in the amount of support ordered against an obligor who had custody of the child(ren) 34% of the time versus the obligor who had custody of the child(ren) 35% of the time. This caused many practitioners and judges to make parenting time decisions based largely upon the amount of support that would be ordered. Second, the regular support calculation did not take into consideration costs the obligor incurs for the child(ren) while the children are in his or her custody. The 2003 drafters decided on the "percentage credit" method that gradually increased with the percentage of parenting time and started at a 20% parenting time threshold.

The assumption underlying this rule is that there is a direct relationship between child support, the amount of time each parent has physical custody of the child and parental income. Therefore, under this rule, if each parent has the child 50% of the time and parental incomes are equal, then no support would be paid, assuming each parent contributed equally to the needs of the child. However, if each parent has physical custody 50% of the time, and one parent's income is greater than the other parent's, then the parent with the larger income would pay some support.

Parenting time credit was reviewed again during the 2006 Guidelines review at the request of practitioners, judges and Child Support Program staff. There was much discussion about the current method of applying parenting time credit and the possibility of going back to the way it was done in the last guidelines. It was addressed that there are problems with both methods. A concern with the way parenting time is currently calculated is when there is a low income custodial parent, and the other parent earns significantly more money but has a fair amount of overnights that it reduces the support amount significantly. It seems to suggest that it costs less to raise a child when parenting time exists, although the commentary does say it recognizes that the costs of the child do not go down just because parenting time exists.

The 2006 guidelines review committee noted that the average supplemental county parenting time is 24 percent statewide. The consensus of the committee was to begin the parenting time credit at 25 percent to capture the statewide average.

Section (5): Some commentators suggested the list of items in this section should be more lengthy and expressed concern that this item may be cause for more disagreements between the parties. This statement was added to clarify that the parenting time credit is to recognize those costs associated with the exercise of parenting time and that the more equal the parenting time between the parents, the more likely they will be sharing in the basic expenses for the child. This presumption may be rebutted if this is not the case.

137-050-0465
Low Income Adjustment

(1) The low income adjustment is a calculation to ensure that parents who are at or near the federal poverty level have sufficient income to support themselves after the payment of child support.

(2) To determine if the low income adjustment applies, find each parent’s single income obligation by referencing the scale in OAR 137-050-0490 for the appropriate number of joint children and each parent's individual modified gross income as defined in OAR 137-050-0320.

(3) Compare the amounts obtained in section (2) of this rule to the prorated basic child support obligation after parenting time credit and apply the lower of the two figures to the remaining calculation for each parent.

Stat. Auth.: ORS 25.275 & 25.280, 180.345
Stats. Implemented: ORS 25.275 & 25.280
Effective: October 1, 2007

COMMENTARY TO OAR 137-050-0465 - LOW INCOME ADJUSTMENT

This rule was created in 2003 to ensure that parents who are at or near the poverty level have sufficient income to support themselves after the payment of child support.

A policy decision was made to include this new computation in an attempt to take more appropriate and reasonable orders for low income parents. The lower end of the scale has been adjusted by Policy Studies Inc., to take into account the 2006 federal poverty level of income required to support one person ($4,100 and below, depending on the number of children). Because both parties' incomes are added together prior to referencing the scale, these adjusted scale figures are never utilized. The low income adjustment directs the practitioner to do a comparison of the scale figure using the parent's single income to the prorated amount of the scale figure for both incomes. In the higher income ranges, the prorated portion will always be lower than the single income figure.

The drafters acknowledge that OAR 137-050-0465 and OAR 137-050-0475 may result in lower child support orders. See commentary in OAR 137-050-0475.

137-050-0475
Ability to Pay

A child support order should not exceed the obligated parent's ability to pay. To determine the amount of child support the obligated parent has the ability to pay, follow the procedure set out in this rule:

(1) Calculate the obligated parent's income available for support by subtracting a self-support reserve of $953.00 from the obligated parent's "modified gross income" as defined in OAR 137-050-0320.

(2) Compare the obligated parent's income available for support to the amount of support calculated as per OAR 137-050-0330 sections (1) through (13). The amount of child support that is presumed to be correct as defined in OAR 137-050-0333 is the lesser of these two amounts.

(3) This rule does not apply to an incarcerated obligor as defined in OAR 137-055-3300.

Stat. Auth.: ORS 25.275, 25.280, 180.345
Stats. Implemented: ORS 25.275, 25.280
Effective date: October 1, 2007

COMMENTARY TO OAR 137-050-0475 - ABILITY TO PAY

This rule presumes that an obligated parent needs a self support reserve of $953 in order to meet his or her basic needs. $953 is a gross income figure and is the self support reserve factored into the current guidelines scale developed in 2001, as a result of the study entitled Economic Basis for Updated Child Support Schedule, prepared by Policy Studies Inc.

Even with the low income adjustment in OAR 137-050-0465, a self support reserve is not always maintained for lower income obligors when other items are factored into the child support calculation such as child care costs, large numbers of nonjoint children, extraordinary medical expenses, or health care costs. The ability to pay calculation provides a further assurance that the obligated parent is left with this basic amount of income in order to support him or herself.

In 2003, this rule was changed to direct that the self support reserve be subtracted from modified income. This rule previously provided that the obligor's ability to pay should be calculated by subtracting the self support reserve from the obligor's modified gross income. This was to provide a measure of relief when the obligor owed support to more than one household. However, with the increased self support reserve, this calculation may result in a nonjoint child credit greater than the amount of support calculated using the obligor's ability to pay. This would create an unintended windfall to the obligor. While a low income obligor owing support to more than one household may qualify for a rebuttal due to limited resources, this determination is better left to the fact finder.

The drafters acknowledge that OAR 137-050-0465 and OAR 137-050-0475 may result in lower child support orders and therefore the potential that an obligee will receive less support for the care of the children. However, it is unreasonable to assume that an obligor will pay an amount of support that exceeds his or her ability to pay. The drafters agree with federal child support policy interpretation that an obligor is more likely to pay child support if the order is within the obligor's means. A smaller amount of support that is actually paid to an obligee is better than no support at all.

137-050-0490
The Scale Used in Child Support Determinations

(1) Table 1 (“the scale”) must be used in any judicial or administrative proceeding to establish or modify a support obligation under ORS Chapters 25, 107, 108, 109, 110, 416, 419B and 419C and determinations pursuant to OAR 137-050-0320 through 137-050-0490.

(2) The basic child support obligation is determined by referencing the scale for the appropriate number of joint children and the combined adjusted gross income of the parents.

(3) Where a child is not in the custody of either parent and a support order is sought against one or both parents, the basic child support obligation is determined by referencing the scale for the appropriate number of joint children and the parent's individual adjusted gross income, not the combined adjusted gross income of the parents.

(4) For combined adjusted gross incomes exceeding $30,000 per month, the presumed basic child support obligations will be as for parents with combined adjusted gross income of $30,000 per month. A basic child support obligation in excess of this level may be demonstrated for those reasons set forth in OAR 137-050-0333.

(5) When the combined income falls between two income amounts on the scale, use the lower income amount on the scale to determine the child support obligation.

(6) The scale below presumes the parent with primary physical custody will take the tax exemption for the joint child(ren) for income tax purposes. When that parent does not take the tax exemption, the rebuttals in OAR 137-050-0333 may be used to adjust the child support obligation.

http://www.dcs.state.or.us/forms/csf020809f.pdf

Stat. Auth.: ORS 25.275, 25.280, 180.345
Stats. Implemented: ORS 25.275, 25.280
Effective date: October 1, 2007

COMMENTARY TO OAR 137-050-0490 - THE SCALE USED IN CHILD SUPPORT DETERMINATIONS

The Division of Child Support (DCS) is required by ORS 25.270 and federal law to review the Child Support Guidelines every four years. In particular, DCS must ensure that the formula and scale are in line with the economic conditions in Oregon. To accomplish this, DCS contracts with an independent company to analyze the child support scale and relevant economic indicators.

The drafters recognize that Oregon's economic reality may vary somewhat from that of the nation. In 2001, DCS contracted with an independent company in Oregon, ECONorthwest, to complete a study examining Oregon-specific economic data to determine if Oregon economic conditions were sufficiently different from national conditions as to justify an adjustment to Policy Studies Inc.'s (PSI) recommended scale. This study compared all available economic indicators for Oregon to that of the nation as a whole. On average, ECONorthwest found Oregon's economic situation to be substantially similar to that of the nation and therefore recommended that DCS not make any adjustment to the guidelines scale.

During this review period, DCS contracted with PSI, and in March 2006, they completed the study analyzing nationwide data on the cost of raising children. The updated obligation scale is developed from new economic estimates of child-rearing expenditures that were developed by Dr. David Betson. They were developed specifically for Oregon's 2006 review from expenditures data collected from households in 1998 through 2004 through the Consumers Expenditures Survey (CEX) conducted by the U.S. Bureau of Labor Statistics. The obligation scale also considers 2006 price levels, 2006 federal and state income taxes and FICA, and the 2006 poverty guidelines. The data period considered in the obligation is based on a larger sample, so produces more statistically robust estimates; and it covers a range of economic cycles (i.e., the economic boom of the 1990s, the economic recession that began and ended in 2002, and the post-recovery period of today), so is less economically volatile than previous estimates.

The scale covers the basic needs of raising a child and does not cover the "wants" of a child. The drafters realize that extra-curricular activities and other "wants" are common decisions being made when the child support obligation is being calculated but the scale is based on basic needs only. Any considerations above basic needs should be addressed as a possible rebuttal under OAR 137-050-0333.

Practitioners often comment that the scale should be adjusted depending on the age of the child. Parents typically believe that it is more expensive to raise a teenager than a toddler. The Child Support Guidelines Rules Advisory Committee reviewed this matter in depth. The guidelines scale already incorporates an average of expenses for children from 0 through 17 years old. Further, analysts cannot agree on the differences in expenditures at various age levels or that the differences are statistically significant. For these reasons, the drafters have declined to adopt varying standards for children at different age levels.

Oregon is unique in that it provides that child support be distributed directly to the child if the child is attending school and is over the age of 18 and under the age of 21 years old under ORS 107.108. As mentioned above, the scale shows expenses for children from 0 - 17 years old. Reliable and comprehensive data is not available for costs of children between 18 and 21 years old. The drafters chose to provide a guidelines formula which incorporates the updated scale and apply it to children in this age group. The presumption can be rebutted under OAR 137-050-0333.

Prior to 2003, this rule provided a formula for determining the amount of support when support is sought for seven or more children. This formula was developed in 1994 to determine a presumed support amount by using a fixed multiplier of 6.6% to the presumed amount for six children for each additional child thereafter. To make the scale easier to use, the drafters have applied the formula to the scale and continued the scale out to 10 children. The formula was removed from the rule in 2003.

There is no current data to support a specific 6.6% increase for each additional child after six children. PSI's 1998 study discusses adjustments for the number of children, and reports that the multiplier decreases as the number of children increases, because of a reallocation of the adult's share of expenditures to provide for more children, and each child's share of expenditures is reduced to accommodate the needs of additional children. The drafters have extrapolated support figures provided by PSI to go beyond six children, and taken into consideration those adjustments discussed in the study

that gradually reduces the “needs factor” for each child after six and recognizes that there is a point at which additional support is not needed or is no longer affordable. Therefore, the current scale adds 5.6% to the figure for six children for the seventh child, and to that adds 4.2% for the eighth child, and to that adds 2.8% for the ninth child, and to that adds 1.4% for the tenth child. There is no further additional support for any child beyond the tenth child.

This rule provides for using the income of one parent only when a child is not in the custody of either parent, i.e., child is in the care of the state or with a caretaker, and a support order is sought against that one parent. In these types of situations a one party calculation is appropriate.

The drafters have been asked to explain why step-parent income is not included in the calculation as ORS 108.045 states that step-parents have an obligation to support the children as a matter of the marriage. Step-parent income is not included except as a possible rebuttal under OAR 137-050-0333 because the intent of ORS 108.045 was for creditor and debt collection situations, rather than family law. DCS is often asked to explain the underlying assumptions to the guidelines scale. In the interest of answering these inquiries, the drafters set out the key assumptions from PSI in their entirety, as taken from the June 26, 2006, “State of Oregon Guidelines Review” by Policy Studies Inc., Ch IV, pp. 14 - 16 as follows:

(1) Guidelines based on net income, then converted to gross income. As implied above, a table of child support based on obligor net income is developed before converting the tables to gross income. The tables are converted to gross income for three reasons:

- Use of gross income greatly simplifies use of the child support guidelines because it obviates the need for a complex gross to net calculation in individual cases;
- Use of gross income can be more equitable because it avoids non-comparable deductions that may arise in making the gross to net calculation in individual cases; and
- Use of gross income does not cause child support to be increased when an obligor acquires additional dependents, claims more exemptions, and therefore has a higher net income for a given level of gross income.

In converting the obligation scale to a gross income base, we have assumed that the obligated parent claims two exemptions, which is consistent with the IRS withholding formula for employers. It simulates the standard deduction and one exemption. Because the IRS withholding formula provides the same tax formula for single individuals and head-of-households, there is no distinction. Similarly, the Earned Income Tax Credit is not considered because it is not advanced to single, qualifying individuals without dependents. In all, this is the most favorable assumption that can be made concerning an obligor's filing status. Obligors with more exemptions or itemized deductions, would have a slightly higher obligation under an equivalent net income guideline even if the obligee receives the advanced Earned Income Tax Credit. The child tax credit is not considered because it is not advanced and not all families are eligible.

(2) Tax exemptions for child(ren) due support. The obligation scale presumes that the obligated parent does not claim the tax exemptions for the child(ren) due support. In computing federal tax obligations, the primary residential parent is entitled to claim the tax exemption(s) for any divorce occurring after 1984, unless the primary residential parent signs over the exemption(s) to the alternate residential parent each year. Given this provision, the most realistic presumption for development of the obligation scale is that the primary residential parent claims the exemption(s) for the child(ren) due child support.

(3) Income assumed to be taxable. Because the obligation scale has withholding tables built into it, the design assumes that all income of both parents is taxable.

(4) Obligation scale does not include expenditures on child care, extraordinary medical expenses, and children's share of health insurance costs. The obligation is based on economic data that represent estimates of total expenditures on child-rearing costs up to age 18. The major categories of expenditures include food, housing, home furnishings, utilities, transportation, clothing, education, and

recreation. Excluded from these figures are average expenditures for child care, childrens' extraordinary medical care, and the children's' share of health insurance. These costs are deducted from the base amounts used to establish the Schedule because they are added to child support obligations as actually incurred in individual cases. Deducting these expenditures from the base amounts avoids double-counting them in the child support calculation.

(5) Obligation scale includes expenditures on ordinary medical care. Although expenditures for the children's extraordinary medical care and the children's share of health insurance are to be added to the child support obligation as actually incurred in individual cases, it is assumed that parents will make some expenditures on behalf of the children's ordinary medical expenses (i.e., out-of-pocket expenses not covered by insurance). This includes band-aids, co-pays for doctor's well visits, and over-the-counter medicines. Expenditures on ordinary medical care are $250 per year per child, which approximates average out-pocket expenses nationally.

(6) Obligation scale is based on average expenditures on children 0 - 17 years. Child-rearing expenditures are averaged for children across the entire age range of 0 - 17 years. Dr. Betson did not find statistically significant differences in expenditures on younger and older children using the Rothbarth methodology.

(7) Parenting expenses incurred by the obligated parent are not factored into the obligation scale. Since the obligation scale is based on expenditures for children in intact households, there is no consideration given for parenting expenses incurred by the obligated parent. Taking such costs into account would be further complicated by the variability in actual parenting time patterns and the duplicative nature of many parenting expenses (e.g. utilities, home furnishings). Parenting expenses, however, are considered in the worksheet.