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## PERMANENT ADMINISTRATIVE ORDER

**DOJ 18-2018**  
CHAPTER 137  
DEPARTMENT OF JUSTICE

**FILED**  
08/16/2018 12:43 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE  
& LEGISLATIVE COUNSEL

FILING CAPTION: Implementing Program policies for the new child support automated system.

EFFECTIVE DATE: 08/20/2018

AGENCY APPROVED DATE: 08/16/2018

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### RULES:

137-055-3410, 137-055-3420, 137-055-3430, 137-055-3480, 137-055-3485

AMEND: 137-055-3410

RULE TITLE: Notice and Finding of Financial Responsibility or Modification

NOTICE FILED DATE: 04/26/2018

RULE SUMMARY: OAR 137-055-3410 is restructured for better flow. Defines current court or administrative order for purposes of determining whether to issue a Notice and Finding of Financial Responsibility or a modification; clarifies process when establishing paternity for a subsequent child of the parties.

### RULE TEXT:

- (1) ORS 416.415(1)(a) provides that the administrator may issue a notice and finding of financial responsibility only if there is no current court order or administrative support order.
- (2) If there is a current court order or administrative support order, the administrator must issue a modification, pursuant to ORS 25.287, ORS 416.425, or other applicable authority in order to set or modify the ongoing support obligation.
- (3) "Current court order or administrative support order" means that an existing support order or judgment, with regard to the same parent and child:
  - (a) Finds that the parent's support obligation for the child is zero;
  - (b) Finds that the parent should not be ordered to pay support for the child;
  - (c) Orders the parent to pay ongoing support or to provide medical support, pursuant to ORS 25.321 to 25.323, for the child; or
  - (d) Has ambiguous or conflicting language such that the administrator, administrative law judge, or court is unable to reasonably determine as required by ORS 416.415(1)(a) whether there is a support order.
- (4) An order or judgment that determines parentage, custody, or other matters but is silent on or declines to address child support does not prohibit the administrator from issuing a notice and finding of financial responsibility pursuant to ORS 416.415.
- (5) Notwithstanding sections (1) and (2) of this rule, when establishing an initial support obligation for another child of the same parties, the administrator will first establish paternity, if needed, and then seek to modify the existing order to

include the other child.

STATUTORY/OTHER AUTHORITY: ORS 180.345

STATUTES/OTHER IMPLEMENTED: ORS 25.080, 107.135, 416.415, 416.417, 416.425

AMEND: 137-055-3420

RULE TITLE: Periodic Review and Modification of Child Support Order Amounts

NOTICE FILED DATE: 04/26/2018

RULE SUMMARY: OAR 137-055-3420 is amended to clarify that a signature is not required if it can be determined who submitted the documentation; removes language that no longer applies regarding temporary employment-related modifications.

RULE TEXT:

(1) "Periodic Review" means a proceeding initiated under ORS 25.287(1) to modify an existing order to comply with the child support guidelines.

(2) The administrator will initiate a periodic review if 35 months have passed since the date the most recent support order took effect, and

(a) The family is currently receiving TANF; or

(b) The requesting party submits a written request to review or modify the order (signature is not required if it can be determined who submitted the request).

(3) For purposes of a periodic review, a child support order is not in substantial compliance with the guidelines if it has been more than 35 months since the order took effect.

(4) The administrator must complete the modification of the existing order within 180 days of receiving a written request for a periodic review, initiating the mandatory review, or locating the non-requesting party(ies), whichever occurs later.

(5) The administrator is responsible for conducting a periodic review in this state or for requesting that another jurisdiction conduct a review pursuant to OAR 137-055-7190.

(6) On receipt of a written request for a periodic review or when a mandatory periodic review is required, the administrator will notify the parties of the review in writing, allowing the parties 30 days to provide information that may affect the support calculation.

(7) If there is an adult child on the case:

(a) A tier as defined in OAR 137-055-1020 may be included for the adult child; or

(b) The order may be modified to remove support provisions for the adult child but can be modified later to include support provisions for a child attending school if the adult child qualifies for support under ORS 107.108.

(8) For all child support cases receiving support enforcement services under ORS 25.080, the Child Support Program will annually notify the parties:

(a) Of their right to request a periodic review of the amount of support ordered; and

(b) That the Child Support Program will perform a mandatory periodic review and adjustment if the family is currently receiving TANF.

STATUTORY/OTHER AUTHORITY: ORS 180.345, 416.455

STATUTES/OTHER IMPLEMENTED: ORS 25.080, 25.287, 25.321 to 25.343, 107.135, 416.425

AMEND: 137-055-3430

RULE TITLE: Substantial Change in Circumstance Modification of Child Support Order Amounts

NOTICE FILED DATE: 04/26/2018

RULE SUMMARY: OAR 137-055-3430 is amended to clarify that a signature is not required if it can be determined who submitted the request for a modification; adds administrative hearing rights for a Denial of Request for Modification; provides that if there is an adult child, a modification may include tiered support amount, but it is not required.

RULE TEXT:

(1) For purposes of this rule: "Substantial compliance" means that the difference between the existing support order and the amount calculated using current guidelines is not greater than \$50 or 15% of the current guideline amount, whichever is less.

(2) Notwithstanding OAR 137-055-3420, proceedings may be initiated at any time to review and modify a support obligation based upon a substantial change in circumstance.

(3) The administrator will conduct a review based on a request for a change of circumstance modification when:

(a) Oregon has jurisdiction to modify; and

(b) The administrator:

(A) Receives a request for modification based on a change of circumstance and at least 60 days have passed from the date the existing support order was entered. For those cases where a review is requested pursuant to paragraphs

(3)(c)(I), (J), or (K), there is no need for 60 days to have passed; or

(B) Determines that a modification should be initiated based on the administrator's motion; and

(c) At least one of the following criteria is met:

(A) A change in the written parenting time agreement or order has taken place;

(B) The financial or household circumstances of one or more of the parties are different now than they were at the time the order was entered;

(C) Social Security benefits received on behalf of a child due to a parent's disability or retirement were not previously considered in the order or they were considered in an action initiated before May 12, 2003;

(D) Veterans benefits received on behalf of a child due to a parent's disability or retirement were not previously considered in the order or they were considered in an action initiated before May 12, 2003;

(E) Survivors' and Dependents' Education Assistance benefits received by the child or on behalf of the child were not previously considered in the order;

(F) The needs of the child(ren) have changed;

(G) Since the date of the last order or January 1, 2018, whichever is later, the obligor was incarcerated for at least 180 consecutive days or was released from incarceration as defined in OAR 137-055-3300;

(H) The support order has been suspended and reinstated under OAR 137-055-3300 and qualifies for a review pursuant to ORS 25.247, Section 2;

(I) There is a need to add or change medical support provisions for a child;

(J) A change in the physical custody of a minor child has taken place;

(K) An order is being modified to add or remove a child of the parties;

(L) A child who is 18 years of age or older and under 21 years of age does not qualify as a child attending school under ORS 107.108 and OAR 137-055-5110 and, pursuant to ORS 107.108(10), tiered order provisions will be added, removed, or changed. Tiered order has the meaning given in OAR 137-055-1020.

(d) And the requesting party (if other than the administrator) submits the following documentation, or its equivalent:

(A) A written request for modification based on a substantial change of circumstance (signature is not required if it can be determined who submitted the request);

(B) Appropriate information for the criteria in subsection (3)(c) showing that a substantial change of circumstance has occurred; and

(C) A completed Uniform Income and Expense Statement or Uniform Support Declaration.

(4) Upon receipt of a request for modification, or at the administrator's initiative, the administrator will notify the parties of the review in writing, allowing the parties 30 days to provide information that may affect the support calculation.

(5) A request for modification will be granted:

(a) If the order is not in substantial compliance with the guidelines and the request was due to one of the criteria in paragraphs (3)(c)(A) through (3)(c)(F).

(b) Whether or not the order is in substantial compliance with the guidelines, so long as:

(A) The request was due to one of the criteria in paragraphs (3)(c)(G) through (3)(c)(L), or

(B) The new calculation:

(i) Includes consent by the parties as provided in OAR 137-050-0765;

(ii) Includes compelling factors as provided in OAR 137-050-0750;

(iii) Includes application of rebuttals, as provided in OAR 137-050-0760; or

(iv) Is for a modification to consider receipt of Social Security or Veterans benefits as provided in paragraphs (3)(c)(C) or (D).

(6) If the request for modification is granted, the administrator will advise the parties of the guideline child support obligation. Notification may be by motion for modification and will include a request for hearing form.

(7) If there is an adult child on the case:

(a) A tier as defined in OAR 137-055-1020 may be included for the adult child; or

(b) The order may be modified to remove support provisions for the adult child but can be modified later to include support provisions for a child attending school if the adult child qualifies for support under ORS 107.108.

(8) Pursuant to ORS 25.287, if a request under this rule is denied, the administrator will notify the requesting parties in writing of their right to object to the determination within 30 days after the date of the determination. If a request for hearing is received regarding the denial, the administrator will forward the request to the Office of Administrative Hearings to conduct a hearing to determine whether the modification will be granted or denied. The OAH will issue a final order regarding the request.

(9) No provision of this rule prevents the parties from obtaining the services of private legal counsel at any time to pursue modification of the support order.

(10) If a request for review and modification is received because a change in the physical custody of the minor child(ren) has taken place, a party may also request a credit back to the date the change in physical custody took place in accordance with OAR 137-055-5510.

STATUTORY/OTHER AUTHORITY: ORS 25.247, 180.345, 416.455

STATUTES/OTHER IMPLEMENTED: ORS 25.080, 25.247, 25.287, 25.321 to 25.343, 107.108, 107.135, 416.425

AMEND: 137-055-3480

RULE TITLE: Modification of a Support Order to Zero

NOTICE FILED DATE: 04/26/2018

RULE SUMMARY: OAR 137-055-3480 is amended to clarify that a change in custody applies only to minor children for purposes of allowing a modification to zero for those minor children; adds language to address scenarios with an adult child who does not qualify as a child attending school; provides that a tier may be included for an adult child and allows an adult child to be modified back into an order if they later qualify as a child attending school.

RULE TEXT:

(1) The administrator may, upon its own initiative, or upon the request of a party, initiate the necessary action to modify a child support obligation to zero when one of the conditions listed in subsections (a), (b), and (c) of this section apply;

(a) The minor child or children for whose benefit the support was ordered no longer are in the physical custody of the obligee.

(b) The family has reconciled (that is, the obligor, obligee, and minor children live together as an intact family).

(c) Support rights are not assigned to the state and the obligee has requested that the administrator modify the support obligation to zero.

(2) If modifying under subsections (1) (a) or (c), and there is an adult child:

(a) A tier as defined in OAR 137-055-1020 may be included for the adult child; or

(b) The order may be modified to remove support provisions for the adult child but can be modified later to include support provisions for a child attending school if the adult child qualifies for support under ORS 107.108.

(3) No order modifying a support obligation to zero shall be taken ex parte.

(4) Nothing in this rule prohibits the suspension of support accrual under any order for the reason that the obligor receives cash assistance as provided in ORS 25.245, or qualifies as an incarcerated obligor, as provided in ORS 25.247.

(5) If an additional child of the parties is covered by a separate order, that order may be terminated so the additional child can be added to the existing order for the parties' other children.

STATUTORY/OTHER AUTHORITY: ORS 180.345, 416.455

STATUTES/OTHER IMPLEMENTED: ORS 25.287, 416.425

AMEND: 137-055-3485

RULE TITLE: Establishment or Modification for a Child Who Is Approaching or Has Reached 18 Years of Age

NOTICE FILED DATE: 04/26/2018

RULE SUMMARY: OAR 137-055-3485 is restructured for better flow. Clarifies that a modification of an existing support obligation may be initiated for a child attending school, but only from a parent previously or currently ordered to pay cash child support or cash medical support in an amount greater than zero for that child; clarifies that if an order modified an adult child out of an order, that order may be modified to include support if that child later qualifies as a child attending school.

RULE TEXT:

- (1) For purposes of this rule, "support" includes past support, current support and support for the time a child is expected to be a child attending school pursuant to ORS 107.108.
- (2) The administrator may not initiate the establishment of paternity or support for a child after the child turns 18 years old.
- (3) Legal proceedings initiated before a child turns 18 years old may continue after the child has turned 18 years old.
- (4) The administrator may initiate modification of a support obligation for a child nearing age 18 only if four or more months of support will be impacted.
- (5) The administrator may initiate modification of a support obligation for a child attending school, as defined in OAR 137-055-5110, but only from a parent previously or currently ordered to pay cash child support or cash medical support in an amount greater than zero for that child, and only if four or more months of support will be impacted.
- (6) If an order is modified and did not include support provisions for an adult child because the child was 18, 19 or 20 years old and was not qualified as a child attending school, as defined in OAR 137-055-5110, the order can be modified to include support for the child if the child later qualifies as a child attending school provided at least four months of support will result.

STATUTORY/OTHER AUTHORITY: ORS 25.080, 180.345, 416.430

STATUTES/OTHER IMPLEMENTED: ORS 25.010, 25.080, 25.287, 107.105, 107.108, 107.135, 109.100, 109.510, 109.704, 110.503, 416.425, 416.455, 418.001, 418.035, 419C.590, 419B.400