

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION



**Reopened Claims Program
Oregon Administrative Rules
Chapter 436, Division 045**

Revision-marked copy

[Bracketed 8 point text is deleted]; **bold/underlined text is added**

Effective January 2, 2006

TABLE OF CONTENTS

Rule		Page
436-045-0001	Authority for Rules	1
436-045-0002	Purpose.....	1
436-045-0003	Applicability of Rules	1
436-045-0005	Definitions.....	1
436-045-0006	Administration of Rules	2
436-045-0008	Administrative Review	2
436-045-0010	Criteria for Eligibility.....	3
436-045-0020	Limitation of Program.....	4
436-045-0025	Dispositions.....	4
436-045-0030	Reimbursement	4

Blank page for two-sided printing

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
REOPENED CLAIMS PROGRAM**

**EXHIBIT "A"
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 045**

436-045-0001 Authority for Rules

These rules are promulgated under the director's authority contained in ORS 656.625 and ORS 656.726

Stat. Auth.: ORS 656.625 and ORS 656.726
Stats. Implemented: ORS 656.625
Hist: Filed 12-18-87 as WCD Admin. Order 8-1987, eff. 1-1-88

436-045-0002 Purpose

The purpose of these rules is to establish guidelines for administering disbursements made from the Reopened Claims Program established to reimburse compensation paid as a result of awards made by the Board or voluntary claim reopenings pursuant to ORS 656.278.

Stat. Auth.: ORS 656.625 and ORS 656.726
Stats. Implemented: ORS 656.625 and ORS 656.726
Hist: Filed 12-18-87 as WCD Admin. Order 8-1987, eff. 1-1-88.
Amended 12/4/97 as WCD Admin. Order 97-061, eff. 1/1/98
Amended 12/6/01 as WCD Admin. Order 01-062, eff. 1/1/02

436-045-0003 Applicability of Rules

(1) These rules are effective January 1, 2002, and shall apply to all requests for reimbursement from the Reopened Claims Program.

(2) These rules apply to all awards ordered on claims opened by the Board pursuant to ORS 656.278 on or after January 1, 1988 and all voluntary claim reopenings on or after January 1, 2002.

(3) These rules carry out the provisions of ORS 656.625.

(4) Applicable to this chapter, the director may, unless otherwise obligated by statute, in the director's discretion waive any procedural rules as justice so requires.

Stat. Auth.: ORS 656.625
Stats. Implemented: ORS 656.236, ORS 656.289 and ORS 656.625
Hist: Filed 12-18-87 as WCD Admin. Order 8-1987, eff. 1-1-88
Amended 6-18-90 as WCD Admin. Order 10-1990, eff. 7-1-90 Temp
Amended 11-30-90 as WCD Admin. Order 22-1990, eff. 12-26-90
Amended 12-13-91 as WCD Admin. Order 14-1991, eff. 1-1-92
Amended 12/4/97 as WCD Admin. Order 97-061, eff. 1/1/98
Amended 12/6/01 as WCD Admin. Order 01-062, eff. 1/1/02

436-045-0005 Definitions

As used in OAR 436-045-0001 through 436-045-0030 unless the context requires otherwise:

(1) "Board" means the Workers' Compensation Board of the Department of Consumer and Business Services.

(2) "Compensation" includes all benefits payable as a result of any order or award made by the Board or voluntary claim reopening pursuant to ORS 656.278.

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
REOPENED CLAIMS PROGRAM**

(3) "Compliance" means the Compliance Section of the Workers' Compensation Division of the Department of Consumer and Business Services.

(4) "Department" means the Department of Consumer and Business Services.

(5) "Director" means the director of Department of Consumer and Business Services or the director's delegate for the matter.

(6) "Disposition" or "claim disposition" means the written agreement executed by all parties in which a claimant agrees to release rights, or agrees to release an insurer or self-insured employer from obligations, under ORS 656.001 to 656.794, except for medical services, in an accepted claim.

(7) "Hearings Division" means the Hearings Division of the Workers' Compensation Board.

(8) "Paying Agency" means the insurer, self-insured employer, self-insured employer group or designated representative of the self-insured employer/group, responsible for paying compensation for a compensable injury.

(9) "Reopened Claims Program" and "Program" means the program established pursuant to ORS 656.625.

(10) "Voluntary Claim Reopening" means any claim reopened by the insurer or self-insured employer to provide benefits or to grant additional medical or hospital care to the claimant pursuant to ORS 656.278.

Stat. Auth.: ORS 656.726
Stats. Implemented: ORS 656.726
Hist: Filed 12-18-87 as WCD Admin. Order 8-1987, eff. 1-1-88
Amended 6-18-90 as WCD Admin. Order 10-1990, eff. 7-1-90 Temp
Amended 11-30-90 as WCD Admin. Order 22-1990, eff. 12-26-90
Amended 12/4/97 as WCD Admin. Order 97-061, eff. 1/1/98
Amended 12/6/01 as WCD Admin. Order 01-062, eff. 1/1/02

436-045-0006 Administration of Rules

Any orders issued by the divisions in carrying out the director's authority to enforce ORS Chapter 656 and these rules are considered orders of the director.

Stat. Auth.: ORS 656.704 and ORS 656.726
Stats. Implemented: ORS 656.704 and ORS 656.726
Hist: Filed 12-18-87 as WCD Admin. Order 8-1987, eff. 1-1-88
Amended 12/4/97 as WCD Admin. Order 97-061, eff. 1/1/98

436-045-0008 Administrative Review

(1) Any party as defined by ORS 656.005 aggrieved by a proposed order or proposed assessment of civil penalty of the director or division issued pursuant to ORS 656.745 or 656.750 may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with ORS 656.740 [(section 9, chapter 170, Oregon Laws 2003)].

(a) The request for hearing must be sent in writing to the Administrator of the Workers' Compensation Division. No hearing shall be granted unless the request specifies the grounds upon which the person requesting the hearing contests the proposed order or assessment.

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
REOPENED CLAIMS PROGRAM**

(b) The request for hearing must be filed with the Administrator of the Workers' Compensation Division by the aggrieved person within 60 days after the mailing of the proposed order or assessment. No hearing shall be granted unless the request is mailed or delivered to the administrator within 60 days after the mailing of the proposed order or assessment.

(2) **Under ORS 656.704(2)**, [A]ny party [as defined by ORS 656.005 aggrieved by] **that disagrees with** an action or order of the director [or division pursuant to] **under** these rules, other than as described in section (1), [where such action or order qualifies for review by hearing before the director as a contested case.] may request [review pursuant to ORS 183.310 through 183.550 as modified by these rules pursuant to ORS 183.315(1). When the matter qualifies for review as a contested case, the process for review will be as follows:

(a) The] **a hearing by filing a** request for hearing [must be sent in writing to the Administrator of the Workers' Compensation Division. No hearing will be granted unless the request specifies the grounds upon which the action or order is contested and is mailed or delivered to the administrator] **as provided in OAR 436-001-0019** within 30 days of the [action or from the date of] mailing **date of the order or notice of action** [or other service of an order]. **OAR 436-001 applies to the hearing.**

[(b) The hearing will be conducted by an Administrative Law Judge of the Office of Administrative Hearings.

(c) Any proposed order issued by the administrative law judge is subject to revision by the director. The director may allow objections to the proposed order to be filed for the director's consideration within 30 days of issuance of the proposed order.]

Stat. Auth.: ORS 656.704, 656.726(4), 656.745

Stats. Implemented: ORS 656.236, 656.289, 656.625, 656.704, OL 2005 ch 26, 656.726(8), 656.740, 656.745

Hist: Filed 12-18-87 as WCD Admin. Order 8-1987, eff. 1-1-88

Amended 6-18-90 as WCD Admin. Order 10-1990, eff. 7-1-90 Temp

Amended 11-30-90 as WCD Admin. Order 22-1990, eff. 12-26-90

Amended 12/4/97 as WCD Admin. Order 97-061, eff. 1/1/98

Amended 12/3/03 as WCD Admin. Order 03-072, eff. 1/1/04

Amended 10/19/05 as WCD Admin. Order 05-063, eff. 1/2/06

436-045-0010 Criteria for Eligibility

(1) In order to qualify for reimbursement from the Reopened Claims Program there must be:

(a) An order or award issued by the Board upon its own motion pursuant to ORS 656.278 and as provided by OAR Chapter 438, Division 12 or a voluntary claim reopening; and

(b) Verifiable compensation paid in accordance with the order or award issued by the Board or voluntary claim reopening, including permanent disability awarded as a result of a reopening due to a new or omitted medical condition pursuant to ORS 656.278(1)(b).

(2) Notwithstanding paragraph (1)(b) of this rule, reimbursement may be made from the Program for reasonable overpayments of temporary disability. Reasonable overpayments are those made from the date a worker becomes medically stationary, returns to work or is released to work until the insurer is notified or should have known of the status change.

(3) Costs for claims to subject workers of an employer who is in a noncomplying status as defined in ORS 656.052 are not eligible for reimbursement from the Program but remains a cost recoverable from the employer as provided by ORS 656.054(3).

Stat. Auth.: ORS 656.625

Stats. Implemented: ORS 656.236, ORS 656.289 and ORS 656.625

Hist: Filed 12-18-87 as WCD Admin. Order 8-1987, eff. 1-1-88

Amended 12/4/97 as WCD Admin. Order 97-061, eff. 1/1/98

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
REOPENED CLAIMS PROGRAM**

Amended 12/6/01 as WCD Admin. Order 01-062, eff. 1/1/02

436-045-0020 Limitation of Program

(1) Reimbursement shall be limited to the monies available in the Workers' Benefit Fund.

(2) In the event of insufficient funds in the Workers' Benefit Fund, the director shall have final authority to determine an equitable distribution which will proportionately distribute the available funds among the claims having qualified for reimbursement under the Program.

Stat. Auth.: ORS 656.625

Stats. Implemented: ORS 656.625

Hist: Filed 12-18-87 as WCD Admin. Order 8-1987, eff. 1-1-88

Amended 12/4/97 as WCD Admin. Order 97-061, eff. 1/1/98

436-045-0025 Dispositions

(1) In order for a disposition of a claim by the parties to be considered for reimbursement eligibility under the Reopened Claims Program, it must be submitted to the director during the period of time in which the claim remains open under the Board's Own Motion or voluntary claim reopening.

(2) Dispositions submitted in accordance with (1) are not eligible to receive reimbursement from the Reopened Claims Program unless made with the prior written approval of the director.

(3) Requests for written approval of proposed dispositions shall include:

(a) A copy of the proposed disposition which specifies the amount of the proposed contribution to be made from the Reopened Claims Program;

(b) A statement from the insurer indicating how the amount of the contribution was calculated;

(c) Any other information as required by the director.

(4) The director will not approve the disposition for reimbursement if the proposed contribution from the Program exceeds a reasonable projection of that claim's future liability to the Program under that Board's Own Motion reopening or voluntary claim reopening.

Stat. Auth.: ORS 656.236, ORS 656.289 and ORS 656.625

Stats. Implemented: ORS 656.236, ORS 656.289 and ORS 656.625

Hist: Filed 6-18-90 as WCD Admin. Order 10-1990, eff. 7-1-90 Temp

Amended 11-30-90 as WCD Admin. Order 22-1990, eff. 12-26-90

Amended 12-13-91 as WCD Admin. Order 14-1991, eff. 1-1-92

Amended 12/4/97 as WCD Admin. Order 97-061, eff. 1/1/98

Amended 12/6/01 as WCD Admin. Order 01-062, eff. 1/1/02

436-045-0030 Reimbursement

(1) Reimbursement shall be made by Compliance quarterly after receipt and approval of documentation of compensation paid by the paying agent.

(2) The director, by bulletin, shall prescribe the form and format for requesting reimbursement from the Program. Documentation to support the reimbursement request shall include but not be limited to:

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
REOPENED CLAIMS PROGRAM

(a) Net temporary disability compensation paid, net permanent disability paid, and net medical compensation paid for dates of injury prior to January 1, 1966. For purposes of this section, "net" compensation paid means the total compensation paid less any recoveries, including but not limited to, third party recovery, Retroactive Program reimbursement, and Handicapped Workers' Program reimbursement.

(b) Payment certification statement.

(c) Any other information deemed necessary by the director.

(3) Periodically Compliance shall audit the physical file of the paying agent to validate the amount reimbursed and to verify that the closing report is correct. Reimbursement shall not be approved if, upon such audit, it is found:

(a) Payments were not authorized in the Board's Own Motion order or voluntary claim reopening; or

(b) Payments of temporary disability compensation were made for periods of time during which the worker did not qualify as a "worker" pursuant to ORS 656.005(30); or

(c) Compensation has been paid as a result of untimely, inaccurate, or improper claims processing; or

(d) The separate payments of compensation have not been documented, as required under generally accepted accounting procedures; or

(e) Medical payments for claims with injury dates prior to January 1, 1966 are in excess of what should have been paid if paid in accordance with OAR 436-009-0030 and properly audited as required by OAR 436-009-0020; or

(f) Permanent disability payments were made in claims reopened for other than a new medical or omitted condition.

Stat. Auth.: ORS 656.625

Stats. Implemented: ORS 656.625

Hist: Filed 12-18-87 as WCD Admin. Order 8-1987, eff. 1-1-88.

Amended 6-18-90 as WCD Admin. Order 10-1990, eff. 7-1-90 Temp

Amended 11-30-90 as WCD Admin. Order 22-1990, eff. 12-26-90

Amended 12/4/97 as WCD Admin. Order 97-061, eff. 1/1/98

Amended 12/6/01 as WCD Admin. Order 01-062, eff. 1/1/02