

DEPARTMENT OF INSURANCE AND FINANCE  
WORKERS' COMPENSATION DIVISION  
REOPENED CLAIMS RESERVE REIMBURSEMENT

EXHIBIT "A"  
TEMPORARY OREGON ADMINISTRATIVE RULES  
CHAPTER 436, DIVISION 45

EFFECTIVE JULY 1, 1990

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**436-45-001 Authority for Rules**

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

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

**436-45-002 Purpose**

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

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

**436-45-003 Applicability of Rules**

(1) These rules are effective [January 1, 1988] **July 1, 1990** and shall apply to all requests for reimbursement from the Reopened Claims Reserve.

(2) These rules apply to all awards ordered on claims opened by the Board pursuant to ORS 656.278 on or after 1-1-88

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

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

**436-45-005 Definitions**

As used in OAR 436-45-001 through 436-45-030 unless the context requires otherwise:

(1) "Board" means the Workers' Compensation Board of the Department of Insurance and Finance.

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

(3) "Compliance" means the Compliance Section of the Workers' Compensation Division of the Department of Insurance and Finance.

(4) "Department" means the Oregon Department of Insurance and Finance.

(5) "Director" means the Director of Department of Insurance and Finance 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.**

[~~(6)~~](7) "Hearings Division" means the Hearings Division of the Workers' Compensation Board.

[~~(7)~~](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.

[~~(8)~~](9) "Reopened Claims Reserve" and "Reserve" means the reserve established pursuant to 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

**436-45-006 Administration of Rules**

Any orders issued by the Divisions or Sections within the Department in carrying out the Director's authority to enforce ORS Chapter 656 and the rules adopted pursuant thereto, are considered orders of the Director.

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

**436-45-008 Administrative Review**

(1) [Upon receipt of a request for a hearing, Compliance shall forward the request to the Department of Justice with pertinent records in the matter as requested] **Any party as defined by ORS 656.005(20) and including SAIF Corporation as a designated processing agent under ORS 656.054, aggrieved by an action taken pursuant to these rules may request an informal administrative review. The process for administrative review shall be as follows:**

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**(a) The request for administrative review shall be made in writing to the administrator of the Workers' Compensation Division within thirty (30) days of the action.**

**(b) The review shall be conducted by the administrator, or the administrator's designee. The administrator's decision on review will establish whether the decision is final or whether the aggrieved party may request a hearing before the director pursuant to ORS 183.310.**

(2) [The Department of Justice shall forward the request and other pertinent information to the Hearings Division] **When the issue which caused the action or decision qualifies for a hearing before the director as a contested case, it shall be reviewed pursuant to ORS 183.310 to 183.550, as modified by these rules pursuant to ORS 183.315(1). When the matter qualifies as a contested case, the process for review shall be as follows:**

**(a) The request for hearing shall be sent to the administrator of the Workers' Compensation Division. No hearing shall be granted unless the request specifies the grounds and is received by the division within thirty (30) days of the action or from the date of mailing or other service of an order.**

**(b) The hearing shall be conducted by the director or the director's designee.**

**(c) Any order in a contested case issued by another person on half of the director is a proposed order subject to revision by the director. The director may allow objections to the proposed order to be filed for the director's consideration within thirty (30) days of issuance of the proposed order.**

[ (3) Notwithstanding ORS 183.135(1), the issuance of orders under these rules, the conduct of hearings and the judicial review thereof by the Court of Appeals shall be as provided in ORS 183.415 through ORS 183.495 except:

- (a) The Board may promulgate rules for the conduct of the hearings under these rules;
- (b) The order of the hearing referee shall be deemed to be a final order of the Director; and
- (c) The Director shall have the same right to a judicial review of the order of the referee as any person who is adversely affected or aggrieved by such final order.]

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

#### **436-45-010          Criteria for Eligibility**

(1) In order to qualify for reimbursement from the Reopened Claims reserve 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; and

(b) Verifiable compensation paid in accordance with the order or award.

(2) Notwithstanding paragraph (1)(b) of this rule, reimbursement may be made from the Reserve 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 Reserve but remains a

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cost recoverable from the employer as provided by ORS 656.054(3).

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

**436-45-020          Limitation of Program**

(1) Reimbursement shall be limited to the monies available in the Reopened Claims Reserve.

(2) In the event of insufficient funds in the Reserve, 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 from the Reserve.

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

**436-45-025          Dispositions**

**(1) After a Board's Own Motion Order has been issued allowing reimbursement from the Reopened Claims Reserve, any disposition of the claim by the parties pursuant to ORS 656.236, or settlement of the claim pursuant to ORS 656.289, is not eligible to receive reimbursement from the Reopened Claims Reserve unless made with the prior written approval of the Director.**

**(2) 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 Reserve;**

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

**(c) Any other information as required by the Director.**

**(3) The insurer shall submit dispositions to the Division in the format prescribed by the Director.**

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

**436-45-030          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 documentation required to support reimbursement. Such documentation shall include but not be limited to:

(a) The form and format for requesting reimbursement from the Reserve;

(b) Total amounts paid, separated into disability benefits and medical benefits;

(c) Payment certification statement; and

(d) 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. 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

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

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

(d) 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 436-10-090 and properly audited as required by OAR 436-10-100.

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