

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 001**

**PROCEDURAL RULES GOVERNING RULEMAKING AND HEARINGS
& related rules in divisions 009, 045, 070, 075, 080, 085, 140, & 150**

PROPOSED 8/12/05

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BEFORE THE DIRECTOR OF THE
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
OF THE STATE OF OREGON

In the Matter of the Amendment of)
OAR Chapter 436-001,) SUMMARY OF TESTIMONY
Procedural Rules Governing Rulemaking and Hearings) AND AGENCY RESPONSES

This document summarizes the significant data, views, and arguments contained in the hearing record. The purpose of this summary is to provide the Director with a record of the agency conclusions about the major issues raised.

The proposed amendment to the rules was announced in the Secretary of State’s *Oregon Bulletin* dated September 1, 2005. On September 26, 2005, a public rulemaking hearing was held as announced at 10:00 a.m. in Room F of the Labor and Industries Building, 350 Winter Street NE, Salem, Oregon 97301-3879. Fred Bruyns, from the Workers’ Compensation Division, acted as hearings officer. Business Support Services audio-recorded the hearing and created a written transcript. The record was held open for written comment through September 30, 2005.

No one testified on these rules at the public hearing. The transcript of the hearing is marked as Exhibit 2.

The following written testimony was received:

Exhibit 1 Michael A. Mueller, Vice President for Legal Services, SAIF Corporation

Testimony: Rule: OAR 436-001-0003

The rule is unclear. Section (2) states that OAR chapter 438 of the Workers’ Compensation Board applies to the conduct of hearings except where these rules *explicitly* provide otherwise. However, nowhere does OAR 436-001 explicitly provide otherwise. The rule should not refer to an explicit statement. Suggested wording:

The rules of the Workers’ Compensation Board, OAR chapter 438, in general, apply to the conduct of hearings. Where these rules conflict with the rules of the Workers’ Compensation Board, these rules will apply to the conduct of hearings on matters within the director’s jurisdiction.

Response: We agree this language can be clarified. However, draft rule language used the term “conflict,” and the external advisory committee was not comfortable with it. The intent is that chapter 438 applies to the conduct of hearings, and chapter 436 applies to pre-hearing and post-hearing matters, as well as any substantive issues (e.g., scope of review). Where chapter 436 does not have a rule, chapter 438 applies. New rule:

These rules apply to hearings on matters within the director’s jurisdiction that are held on or after January 2, 2006. In general, the rules of the Workers’ Compensation Board, in OAR chapter 438, apply to the conduct of hearings, unless these rules provide otherwise.

Testimony: Rule: OAR 436-001-0004

The definition of a party should include the legal representatives of the parties. Or, OAR 436-001-0023 should provide that notice to a party’s legal representative is sufficient.

Response: To address this concern, we added language to OAR 436-001-0023 to provide that a copy of any document must be sent to the other parties or their legal representatives.

Testimony: **OAR 436-001-0019(5)**

Section (5) includes vague wording about the authority of the director to withdraw a hearing upon determination that the matter “is not appropriate for hearing.” We suggest this clause be deleted.

Response: We expect it will be a rare circumstance in which we will withdraw a matter that has been referred for hearing. However, we feel it is important to retain some amount of flexibility and discretion as we implement this new process. Therefore this language is retained in the rules.

Testimony: **OAR 436-001-0027**

Will an email or fax sent after business hours be considered filed on that day or on the next day?

Response: To minimize any question, rule language changed:

If a document is faxed or e-mailed, it must be received by the division by 11:59 p.m. Pacific time to be considered filed on that date.

Testimony: **OAR 436-001-0252**

Sections (1) and (2) of this rule should have “and” added in order to make sense:

- (1) If matters are consolidated * * *, **and** a party request board review of the order * * *
- (2) Same wording change.

Instead of two “and” clauses in the same sentence, the rule could say:

If the matters are consolidated under ORS 656.704(3)(c), and there is both a request for Board review of the order for those matters concerning a claim, and a party files exceptions on the proposed and final order . . . [etc.].

Response: Consistent with the first recommendation, “and” is added to (1) and (2).

Having reviewed and considered all data, views and arguments presented, I hereby submit this report as a summary of statements given and exhibits received. I recommend the adoption of the amendments to the rules consistent with the above responses.

Dated this 21st day of October 2005.

WORKERS’ COMPENSATION DIVISION

/s/ Fred Bruyns

Fred Bruyns, Hearings Officer

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING
 A Statement of Need and Fiscal Impact accompanies this form.

Dept of Consumer and Business Services, Workers' Compensation Division		OAR CHAPTER 436	
Agency and Division		Administrative Rules Chapter Number	
Fred Bruyns		(503) 947- 7717 Fax (503) 947-7581	
Rules Coordinator		Telephone	
PO Box 14480, Salem, OR 97309-0405; 350 Winter Street NE, Rm 27, Salem, OR 97301-3879			
Address			
		Room F (basement, Labor & Industries Building)	
September 26, 2005	10:00 a.m.*	350 Winter Street NE, Salem, Oregon	Fred Bruyns
Hearing date	Time	Location	Hearings Officer

***NOTE: The hearing will begin at 10:00 a.m. and end when all present who wish to testify have done so. Written testimony will be accepted through September 30, 2005.**

**The site of the hearing is accessible for individuals with mobility impairments.
 Auxiliary aids for persons with disabilities are available upon advance request.**

RULEMAKING ACTION

ADOPT: OAR 436-001-0023, 436-001-0027, 436-001-0252, 436-001-0259, 436-001-0296

AMEND: OAR chapter 436, division 001; OAR 436-009-0008, 436-045-0008, 436-070-0008, 436-075-0008, 436-080-0070, 436-085-0008, 436-140-0008, 436-150-0008

REPEAL: OAR 436-001-0001, 436-001-0007, 436-001-0008, 436-001-0110, 436-001-0150, 436-001-0160, 436-001-0185, 436-001-0201, 436-001-0210, 436-001-0226, 436-001-0260, 436-130-0000, 436-130-0010, 436-130-0020, 436-130-0030, 436-130-0040, 436-130-0050, 436-130-0060, 436-130-0070, 436-130-0080, 436-130-0090, 436-130-0100

AMEND AND RENUMBER: OAR 436-001-0000 to 0009, 436-001-0155 to 0019, 436-001-0275 to 0246

ORS 656.726(4)
 Stat. Auth.

Other Authority
 ORS 656.704, Enrolled House Bill 2091 – Oregon Laws 2005, chapter. 26
 Stats. Implemented

RULE SUMMARY

The Workers' Compensation Division proposes to amend OAR chapter 436, division 001, "Procedural Rules Governing Rulemaking and Hearings," and several related rules in divisions 009, 045, 070, 075, 080, 085, 140, and 150.

- House Bill 2091 (Oregon Laws 2005, chapter 26) moves hearings on workers' compensation matters currently processed by the Office of Administrative Hearings to the Workers' Compensation Board, for all hearings held on or after January 2, 2006. These proposed adoptions and amendments reflect that change. The Workers' Compensation Division proposes to repeal several rules in OAR 436-001 because the Workers' Compensation Board already has rules in place that govern the conduct of hearings. The Workers' Compensation Division proposes to amend and renumber some rules in OAR 436-001 to place rules in a sequence more aligned with the sequence of appeals and hearings.

Notice of Proposed Rulemaking Hearing

Page 2

The Workers' Compensation Division proposes to repeal OAR chapter 436, division 030, "Rehabilitation Facilities," in its entirety.

- ORS 656.530, the statute implemented by OAR 436-130, was repealed by Oregon Laws 1999, chapter 273, section 1.

Request for public comment: The Workers' Compensation Division requests public comment on whether other options should be considered for achieving the rules' substantive goals while reducing the negative economic impact of the rules on business.

Address questions to:

Fred Bruyns, Rules Coordinator; phone 503-947-7717; fax 503-947-7581; e-mail fred.h.bruyns@state.or.us

Proposed rules are available on the Workers' Compensation Division's Web site: <http://wcd.oregon.gov/policy/rules/rules.html#proprules> or from WCD Publications, 503-947-7627 or fax 503-947-7630.

September 30, 2005
Last Day for Public Comment

/s/ John L Shilts
Authorized Signer and Date

8/12/05

John L. Shilts, Administrator, Workers' Compensation Division
Printed name

*The *Oregon Bulletin* is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm on the preceding workday.

Distribution: WCD-ID, S, T, U, AT, CE, EG, IA, LU, LL, NM, CI, ML, MR, VR, S0, S1, S2, S3, S4, S5, S6, S7, S8

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Department of Consumer and Business Services,
 Workers' Compensation Division

OAR CHAPTER 436

Agency and Division

Administrative Rules Chapter Number

In the Matter of)	
The Amendment of OAR:)	
436-001, Procedural Rules Governing Rulemaking and Hearings)	
436-009-0008, Oregon Medical Fee and Payment)	Statutory Authority,
436-045-0008, Reopened Claims Program)	Statutes Implemented,
436-070-0008, Workers' Benefit Fund Assessment)	Statement of Need,
436-075-0008, Retroactive Program)	Principal Documents Relied Upon,
436-080-0070, Noncomplying employers)	Statement of Fiscal Impact
436-085-0008, Premium Assessment)	
436-140-0008, Construction Carve-Out Programs)	
436-150-0008, Workers' Benefit Fund Claims Program)	
The Repeal of:)	
436-130, Rehabilitation Facilities)	

Statutory Authority: ORS 656.726(4)

Other Authority:

Statutes Implemented: ORS 656.704, Enrolled House Bill 2091 – Oregon Laws 2005, chapter 26

Need for the Rule(s): These proposed rule changes implement changes to Oregon laws brought about by passage of House Bill 2091.

Documents Relied Upon: House Bill 2091; rulemaking advisory committee meeting records and issues documents. These records are available for public inspection in the Administrator's Office, Workers' Compensation Division, 350 Winter Street NE, Salem, Oregon 97301-3879, upon request and between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday. Please call (503) 947-7717 to request copies.

Fiscal and Economic Impact: House Bill 2091 (Oregon Laws 2005, chapter 26) moves hearings on workers' compensation matters currently processed by the Office of Administrative Hearings to the Workers' Compensation Board, for all hearings held on or after January 2, 2006. This streamlines the hearing process such that all hearings, regardless of the disputed issue, will be processed by the Workers' Compensation Board. The related proposed rule changes do not substantially alter the actions required of the parties to a hearing, and should not have any significant economic impact on any persons or businesses, including small businesses. The Workers' Compensation Division estimates a savings to the Department of Consumer and Business Services, Premium Assessment Operating Account, during the 2005-2007 biennium of \$277,500. This savings estimate was prepared during analysis of House Bill 2091 and is not altered by proposed rule changes.

ORS 656.530, the statute implemented by OAR 436-130, was repealed by Oregon Laws 1999, chapter 273, section 1. The repeal of OAR 436-130 will not have any fiscal impact on any party.

Administrative Rule Advisory Committee consulted: Yes, 7/20/2005

/s/ John L. Shilts

8/12/05

 Signature and Date

 John L. Shilts, Administrator, Workers' Compensation Division

Printed name

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
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**EXHIBIT "A"
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 001**

General Provisions

436-001-0001 Authority (*Repeal*)

[The director adopts these rules under the general rulemaking authority in ORS 656.726, and the director's specific authority and responsibility under ORS chapters 183 and 656.]

Stat. Auth.: ORS 656.704(2), 656.726(4)

Stats. Implemented: ORS Chapter 183, ORS 656.245, 656.248, 656.260, 656.262, 656.268, 656.283, 656.327, 656.385, 656.388, 656.447

Hist: Filed 5/22/92 as WCD Admin. Order 9-1992, eff. 5/25/92

Amended 02/12/96 as WCD Admin. Order 96-055 eff. 02/12/96

Amended 3/4/04 as WCD Admin. Order 04-053, eff. 4/1/04

Repealed XX/XX/XX as WCD Admin. Order 05-XXX, eff. 1/2/06

436-001-0003 Applicability and Purpose

(1) This rule division establishes supplemental procedures governing rulemaking and [contested case] hearings, and carries out the provisions of ORS chapters 183 and 656.

(2) These rules apply to [all contested case] hearings [and rulemaking] **on matters within the director's jurisdiction that are held** on or after [the effective date] **January 2, 2006. The rules of the Workers' Compensation Board, in OAR chapter 438, where applicable, apply to the conduct of hearings, except where these rules explicitly provide otherwise.**

(3) These rules apply to all division rulemaking on or after January 2, 2006.

[3](4) Unless otherwise obligated by statute, the director may waive any procedural rules as justice so requires.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.704, ORS ch. 183, OL 2005 ch 26

Hist: Filed 5/22/92 as WCD Admin. Order 9-1992, eff. 5/25/92

Amended 02/12/96 as WCD Admin. Order 96-055 eff. 02/12/96

Amended 08/10/98 as WCD Admin. Order 98-057, eff. 9-15-98

Amended 3/4/04 as WCD Admin. Order 04-053, eff. 4/1/04

Amended XX/XX/XX as WCD Admin. Order 05-XXX, eff. 1/2/06

436-001-0004 Definitions

The following definitions apply to these rules, unless the context requires otherwise.

(1) "Administrative [L]law [J]judge" or "ALJ" means an [A]administrative [L]law [J]judge [assigned by the Office of Administrative Hearings] **appointed by the Workers' Compensation Board, as defined in OAR 438-005-0040.**

(2) "Administrator" means the administrator of the Workers' Compensation Division or the administrator's designee.

(3) "Board" means the Workers' Compensation Board and includes its Hearings Division.

[3] (4) "Delivered" means physical delivery to the division's Salem office **during regular business hours.**

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[4] **(5)** "Department" means the Department of Consumer and Business Services.

[5] **(6)** "Director" means the director of the Department of Consumer and Business Services or the director's designee.

[6] **(7)** "Division" means the department's Workers' Compensation Division.

[7] **(8)** "Filed" means mailed, [electronically transmitted by telephonic facsimile] **faxed**, [or] **e-mailed**, or delivered to the division.

[8] **(9)** "Final order" means a final, **written** action [by] **of** the director[, expressed in writing].

[9] "Good cause" includes, but is not limited to, mistake, inadvertence, surprise, or excusable neglect.]

(10) "Mailed" means correctly addressed, with sufficient postage and placed in the custody of the U. S. Postal Service.

(11) "Party" **may** include[s], but is not limited to, a worker, an employer, an insurer, a self-insured employer, a managed care organization, [or] a medical provider, **or the division**.

(12) "Proposed and final order" means an order subject to revision by the director which becomes final unless exceptions are timely filed[,] or the director issues a notice of intent to review the proposed and final order.

(13) Matters within the director's jurisdiction are matters other than those concerning a claim, as defined by ORS 656.704.

[13] **(14)** Other words and phrases have the same meaning as given in ORS 183.310, where applicable.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.704, ORS ch. 183, OL 2005 ch 26

Hist: Filed 5/22/92 as WCD Admin. Order 9-1992, eff. 5/25/92

Amended 02/12/96 as WCD Admin. Order 96-055 eff. 02/12/96

Amended 08/10/98 as WCD Admin. Order 98-057, eff. 9-15-98

Amended 3/4/04 as WCD Admin. Order 04-053, eff. 4/1/04

Amended XX/XX/XX as WCD Admin. Order 05-XXX, eff. 1/2/06

Rulemaking

436-001-0005 Model Rules of Procedure Governing Rulemaking

The Model Rules of Procedure, OAR 137-001-0005 through 137-001-0080, in effect on December 9, 2003, as promulgated by the Attorney General of the State of Oregon under the Administrative Procedures Act are adopted as the rules of procedure for rulemaking actions of the Workers' Compensation Division.

{**ED. NOTE:** The full text of the Attorney General's Model Rules of Procedures is available from the Office of the Attorney General or the Workers' Compensation Division.}

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 183.325 through 183.410

Hist: Filed 5/15/86 as WCD Admin. Order 3-1986, eff. 5/15/86

Amended 5/22/92 as WCD Admin. Order 9-1992, eff. 5-22-92

Amended 2/12/96 as WCD Admin Order 96-055 eff. 2/12/96

Amended 08/10/98 as WCD Admin. Order 98-057, eff. 9-15-98

Amended 3/4/04 as WCD Admin. Order 04-053, eff. 4/1/04

Amended 1/14/05 as WCD Admin. Order 05-050, eff. 1/14/05

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436-001-0007 Designation of Proposed or Final Order (*Repeal*)

[(1) Unless provided otherwise by statute or administrative rule, an order issued by an administrative law judge is a proposed and final order subject to revision by the director.

(2) An order suspending or revoking the insurer's authority to issue guaranty contracts under ORS 656.447 is a proposed and final order subject to revision by the director.]

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.704(2) and 656.447

Hist: Filed 5/22/92 as WCD Admin. Order 9-1992, eff. 5/25/92

Amended 2/12/96 as WCD Admin Order 96-055 eff. 2/12/96

Amended 3/4/04 as WCD Admin. Order 04-053, eff. 4/1/04

Repealed XX/XX/XX as WCD Admin. Order 05-XXX, eff. 1/2/06

436-001-0008 Model Rules of Procedure in Contested Cases (*Repeal*)

[These rules supplement the Attorney General's Model Rules of Procedure for Contested Cases, OAR 137-003-0501 to 137-003-0700, which govern the procedures for a contested-case hearing before the Office of Administrative Hearings. If there is a conflict between these rules and the model rules, the provisions of the model rules will control.]

Stat. Auth: ORS 656.726(4)

Stats. Implemented: ORS 183.310 through 183.550 and 656.704(2) (and §7, ch. 75, OL 2003)

Hist: Filed 12/2/91 as WCD Admin. Order 9-1991, eff. 12/2/91 (Temporary)

Filed 11/2/95 as WCD Admin. Order 95-066 eff. 11/1/95 (Temporary)

Amended 2/12/96 as WCD Admin. Order 96-055 eff. 2/12/96

Amended 08/10/98 as WCD Admin. Order 98-057, eff. 9-15-98

Amended 3/4/04 as WCD Admin. Order 04-053, eff. 4/1/04

Repealed XX/XX/XX as WCD Admin. Order 05-XXX, eff. 1/2/06

436-001-0009 Notice of Agency Action Concerning Rules (*Renumbered from Rule 0000*)

(1) Except when adopting a temporary rule, the division will give prior **public** notice of the **proposed** adoption, amendment, or repeal of any rule [(s), as provided in ORS 183.335 and this rule.] **by:**

(2) (a) [The division will p] **Publishing** notice of [a] **the** proposed action in the Secretary of State's Oregon Bulletin at least 21 days prior to the effective date of the action[.], **and**

(3) (b) [The division will n] **Notifying** interested persons and organizations on the division's notification lists of proposed rulemaking actions under ORS 183.335.

(4) (2) **The division will add a** [A] person or organization [may be included on the division's] **to its** notification list [as follows] **if the person or organization:**

(a) [To receive electronic notification through] **Subscribes to** the division's e-mail notification service, [by subscribing] through the division's [w] **Web [board] site** at [www.oregonwcd.org] **wcd.oregon.gov**[. The on-line subscription form requires a first name, last name, password, e-mail address, and phone number.], **or**

(b) **Requests in writing** [T] **to** receive hard-copy notification, **and** [by submitting a written request,] includes[ing] the person or organization's full name and **mailing** address.

(5) The division's notification list includes persons and organizations receiving electronic and hard-copy notification of proposed actions. The list complies with the requirements of the mailing list as required by ORS 183.335(8), and the Uniform Electronic Transactions Act, ORS 84.001 to 84.061.]

Stat. Auth.: ORS 656.726 (4)

Stats. Implemented: ORS 183.335 and 84.022

Hist: WCB 16-1975, f. & eff., 10-20-75

WCD 4-1977 (Admin) (Temp f. & eff. 11-7-77;

WCD 4-1978 (Admin) f. 7 eff. 3-6-78;

Renumbered from 436-90-505, 5-1-85;

WCD 3-1986 f. & eff. 5-15-86;

Amended 5/22/92 as WCD Admin. Order 9-1992, eff. 5/25/92

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Amended 08/10/98 as WCD Admin. Order 98-057, eff. 9-15-98

Amended 3/4/04 as WCD Admin. Order 04-053, eff. 4/1/04

Amended and renumbered from 436-001-0000, XX/XX/XX as WCD Admin. Order 05-XXX, eff. 1/2/06

Hearings

436-001-0019 [Manner of Filing a Contested-Case Hearing] **Requests for Hearing**
(Renumbered from rule 0155)

(1) A request for hearing **on a matter within the director's jurisdiction** must be **filed with the administrator** [mailed to the division] no later than the filing deadline. The date and time of receipt for electronic filings is determined under ORS 84.043. [Parties are responsible for submitting a request timely, which] **Filing deadlines** will not be extended except as provided in section (6) of this rule. The requesting party [should] **must** [be copied] **send a copy of the request** to all known parties and their legal representatives, if any.

(2) A [contested case hearing] request **for hearing** must be in writing. A party may use the division's Form 2839. [If filing by electronic mail and attaching a word processing document, the document must be in Microsoft Word 97 format.] A request for hearing must include **the following information, as applicable:**

- (a) The identity, name, address, and phone number of the party making the request;
- (b) The division's administrative order number;
- (c) The worker's name, address, and phone number;
- (d) The name, address, and phone number of the worker's attorney, if any;
- (e) The date of injury;
- (f) The insurer or self-insured employer claim number;
- (g) The division's file number; **and**
- (h) The reason for requesting [review] **a hearing.** [; and]

[i] If applicable, the justification for holding an in-person hearing.]

(3) [A request for hearing may be mailed or delivered to the division.]

[4] A request for hearing may be [electronically transmitted] **e-mailed** to [“]wcd.hearings@state.or.us[”], the division's [contested-case] hearing electronic mail address. **If the request for hearing is an attachment to the e-mail, it must be in a format that Microsoft Word 2000® (.doc, .txt, .rtf) or Adobe Reader® (.pdf) can open. Image formats that can be viewed in Internet Explorer® (.tif, .jpg) are also acceptable.** The division will acknowledge receipt of the [transmission] **e-mail** [by electronic response]. A party [submitting] **filing** a request for hearing [under this section] **by e-mail** consents and agrees to conduct the **request for hearing** transaction electronically. The party's electronic mailing address qualifies as its electronic signature.

[5] **(4)** A [telephonic facsimile] request for hearing **may be faxed,** [will be accepted] provided the document transmitted indicates that it has been delivered by [FAX] **fax, is sent to the correct fax** [uses the division's facsimile transmission] number, and **indicates the date the document was sent** [the original signed document is simultaneously mailed to the division. The complete facsimile copy must be received by the filing deadline. When reception of a document begins after 5 p.m., the receipt date will be the date of the next regular workday.]

(5) The director will refer timely requests for hearing to the board for a hearing

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before an administrative law judge. The director may withdraw a matter that has been referred if the request for hearing is premature, if the issues in dispute become moot, or if the director otherwise determines that the matter is not appropriate for hearing at that time.

(6) The director will deny requests for hearing [if the request is] **that are filed** [submitted or received] after the filing deadline. The party may request a [show-cause] **limited hearing on the denial of the request for hearing** within 30 days after the **mailing** date of the denial [notice]. **The request must be filed with the administrator. At the limited hearing,** [T]the administrative law judge may only consider whether:

(a) The **denied** request for [contested case] hearing was filed timely; or

(b) If good cause existed that prevented the party from timely requesting a hearing on the merits. **For the purpose of this rule, "good cause" includes, but is not limited to, mistake, inadvertence, surprise, or excusable neglect.**

Stat. Auth.: ORS 656.726(4) and ORS 84.013

Stats. Implemented: ORS 656.704, OL 2005 ch 26

Hist: Filed 2/12/96 as WCD Admin. Order 96-055 eff. 2/12/96

Amended 08/10/98 as WCD Admin. Order 98-057, eff. 9-15-98

Amended 3/4/04 as WCD Admin. Order 04-053, eff. 4/1/04

Amended and renumbered from 436-001-0155, XX/XX/XX as WCD Admin. Order 05-XXX, eff. 1/2/06

436-001-0023 Other Filings and Submissions (*New rule*)

(1) Except as provided in section (3) of this rule, any filing, motion, request, document, or correspondence filed or submitted in a matter within the director's jurisdiction must be filed or submitted:

(a) To the division before the dispute is referred to the board;

(b) To the administrative law judge after the dispute is referred to the board but before the ALJ issues a proposed and final order; and

(c) To the division after the ALJ issues a proposed and final order, unless it is a request for correction of errors in the proposed and final order under OAR 436-001-0246(6).

(2) A copy of any filing, motion, request, document, or correspondence must be sent to the other parties at the same time it is filed or submitted to the division or administrative law judge.

(3) A party must notify the division and the other parties of any changes in the party's mailing address or legal representation.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.704, OL 2005 ch 26

Hist: Filed XX/XX/XX as WCD Admin. Order 05-XXX, eff. 1/2/06

436-001-0027 Timeliness; Calculation of Time (*New rule*)

(1) Timeliness of any document required by these rules to be filed or submitted to the division is determined by the date the document is mailed, faxed, e-mailed, or delivered as provided in these rules.

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(2) Time periods allowed for a filing or submission to the division are calculated in calendar days. The first day is not included. The last day is included unless it is a Saturday, Sunday, or legal holiday. In that case, the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday. Legal holidays are those listed in ORS 187.010 and 187.020.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.704, OL 2005 ch 26
Hist: Filed XX/XX/XX as WCD Admin. Order 05-XXX, eff. 1/2/06

436-001-0030 Role of the Workers' Compensation Division

(1) In any [contested-case proceeding] **hearing**, the director[,] may request to:

- (a) Receive notice of all matters;
- (b) Receive copies of all documents; and
- (c) Present evidence, testimony, and argument.

(2) The director may appear by providing the administrative law judge and parties with an entry of appearance in the [contested-case] hearing. The director may be represented by **an agency** [contested-case] representative, assistant attorney general, or special assistant attorney general as authorized by the Department of Justice. If the director enters an appearance, all notices and documents in the [dispute] **hearing** must be provided to the director's representative.

[(3) In every contested-case proceeding the administrative law judge must copy the director with all:

- (a) Notices and reset notices of hearing;
- (b) Substitution of Counsel notices;
- (c) Addition of a party notices; and
- (d) All orders.]

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 180.220(2), 180.235, and 656.704
Hist: Filed 5/22/92 as WCD Admin. Order 9-1992, eff. 5/25/92
Amended 2/12/96 as WCD Admin. Order 96-055 eff. 2/12/96
Amended 08/10/98 as WCD Admin. Order 98-057, eff. 9-15-98
Amended 3/4/04 as WCD Admin. Order 04-053, eff. 4/1/04
Amended XX/XX/XX as WCD Admin. Order 05-XXX, eff. 1/2/06

436-001-0110 Consolidation or Separation (*Repeal*)

[(1) The administrative law judge may consolidate cases in which there are common parties or common issues of law and fact.

(2) The administrative law judge may separate cases which will promote efficient disposition of the matters.]

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 183.310 through 183.508 and 656.704(2)
Hist: Filed 5/22/92 as WCD Admin. Order 9-1992, eff. 5/25/92
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Repealed XX/XX/XX as WCD Admin. Order 05-XXX, eff. 1/2/06

436-001-0150 Change of Administrative Law Judge (*Repeal*)

[The director adopts OAR 471-060-0005, by reference.]

Stat. Auth.: ORS 656.726(3)

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Stats. Implemented: ORS 183.310 through 183.550, 656.704(2)
Hist: Filed 5/22/92 as WCD Admin. Order 9-1992, eff. 5/25/92
Amended 2/12/96 as WCD Admin. Order 96-055 eff. 2/12/96
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Amended 3/4/04 as WCD Admin. Order 04-053, eff. 4/1/04
Repealed XX/XX/XX as WCD Admin. Order 05-XXX, eff. 1/2/06

436-001-0160 Extension of Time for Filing (*Repeal*)

[Requests for extension of time for filing documents other than a request for hearing must be received by the director, or the administrative law judge if the contested case has been referred to the Office of Administrative Hearings, on or before the document's filing deadline.]

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 183.310 through 183.550 and 656.704(2)
Hist: Filed 5/22/92 as WCD Admin. Order 9-1992, eff. 5/25/92
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Amended 3/4/04 as WCD Admin. Order 04-053, eff. 4/1/04
Repealed XX/XX/XX as WCD Admin. Order 05-XXX, eff. 1/2/06

436-001-0170 Duties and Powers of the Administrative Law Judge

(1) The administrative law judge may conduct the hearing in any manner, consistent with these rules, that will achieve substantial justice.

(2) Unless provided otherwise by statute or administrative rule, any order issued by an administrative law judge regarding a matter within the director's jurisdiction is a proposed and final order subject to review by the director under OAR 436-001-0246.

(3) Notwithstanding section (2), an administrative law judge may issue a final order of dismissal when the requesting party withdraws the request for hearing and no cross-request for hearing has been filed.

(4) If the parties settle as provided in OAR 436-001-0296(3), the administrative law judge may issue a proposed and final order of dismissal. If the parties settle as provided in OAR 436-001-0296(1) or (2), the director will dismiss the request for hearing.

[⁽¹⁾] **(5) Where appropriate,** [T]the administrative law judge may remand a dispute to the director for further administrative action.

[⁽²⁾ Unless otherwise provided in writing, the director delegates to an administrative law judge conducting a contested case hearing on the director's behalf the authority to:

- (a) Rule on a petition to participate as a party or as a limited party under OAR 137-003-0535;
- (b) Issue subpoenas in support of a discovery order, and manage discovery motions, under OAR 137-003-0572(10) when a motion for an order requiring discovery has been filed with the administrative law judge under OAR 137-003-0520(2);
- (c) Issue a written order granting or denying a deposition, or issue a subpoena to compel a deposition, of persons other than department employees under OAR 137-003-0572;
- (d) Determine whether a party is unable to pay for a qualified interpreter under OAR 137-003-0590;
- (e) Execute and issue final orders of dismissal when the requesting party has withdrawn the request, and no cross-request for hearing was filed; and
- (f) Execute and issue final orders by default under OAR 137-003-0670.]

(6) The administrative law judge may consolidate matters in which there are common parties or common issues of law or fact.

(7) The administrative law judge may separate matters which will promote efficient

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disposition of the matters.

(8) Consolidation of matters under section (6) of this rule or under ORS 656.704(3)(c) [Oregon Laws 2005, chapter 26, section 15] is only for the purpose of hearing. The administrative law judge must issue a separate order for matters other than those concerning a claim.

[(3)] **(9)** [If necessary] **On the motion of a party, the division, or the administrative law judge,** the [administrative law judge shall] **ALJ may** continue a hearing to allow the presentation of oral or written legal argument by the Department of Justice.

(10) The administrative law judge may send the division a written question regarding which rules or statutes apply to the matter, or regarding the division's interpretation of the rules and statutes. If the administrative law judge sends such a question, the ALJ must provide a written summary of the context in which the question arises, provide a reasonable time for the division to respond, and send a copy to all parties.

(11) The administrative law judge may conduct a hearing by telephone if all parties agree.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.704, OL 2005 ch 26

Hist: Filed 5/22/92 as WCD Admin. Order 9-1992, eff. 5/25/92

Amended 2/12/96 as WCD Admin. Order 96-055 eff. 2/12/96

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Amended 3/4/04 as WCD Admin. Order 04-053, eff. 4/1/04

Amended XX/XX/XX as WCD Admin. Order 05-XXX, eff. 1/2/06

436-001-0185 Hearings (*Repeal*)

[(1) At the discretion of the administrative law judge, hearings may be conducted either by telephone or in-person.

(2) In-person contested case hearings are held in Salem, Oregon except when the administrative law judge authorizes a hearing outside of Salem.

(3) Upon prior arrangement and approval of the administrative law judge, a party or witness for an in-person hearing may appear by telephone.

(4) The administrative law judge shall make an audio recording of all hearings.

(5) Prior to the hearing, each party and the division must provide copies of documentary evidence that it will seek to introduce into the record to all other parties, the director's representative under OAR 436-001-0030(2), and the administrative law judge.

(6) Nothing in this rule precludes any party or the division from seeking to introduce documentary evidence in addition to evidence described in section (5) during the hearing. The administrative law judge may receive such evidence, subject to the applicable rules of evidence, if inclusion of the evidence in the record is necessary to conduct a full and fair hearing. When new evidence is introduced, the other parties may request an opportunity to submit rebuttal evidence. The administrative law judge may allow the admission of rebuttal evidence. If any evidence introduced during the hearing has not previously been provided to the administrative law judge, the director's representative, and to the other parties, the hearing may be continued for sufficient time to allow the party or the division to obtain and review the evidence.]

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 183.310 through 183.550 and 656.704(2)

Hist: Filed 2/12/96 as WCD Admin. Order 96-055 eff. 2/12/96

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Repealed XX/XX/XX as WCD Admin. Order 05-XXX, eff. 1/2/06

436-001-0201 Failure to Appear (*Repeal*)

[(1) If the petitioner fails to appear at the hearing, the administrative law judge may issue an order of dismissal or an order to show cause. An order to show cause shall allow the petitioner ten days to present argument establishing good cause reason for the failure to appear.

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(2) If the respondent does not appear, the administrative law judge has the discretion to proceed with the hearing.]

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 183.415 and 656.704(2)

Hist: Filed 08/10/98 as WCD Admin. Order 98-057, eff. 9-15-98

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Repealed XX/XX/XX as WCD Admin. Order 05-XXX, eff. 1/2/06

436-001-0210 Record and Transcript of Hearing (*Repeal*)

[(1) A verbatim record shall be made of all hearings, including all motions, rulings and testimony. The record shall be made by audio tape or reporter, at the discretion of the administrative law judge.

(2) At any time before the decision becomes final, the administrative law judge or director may order a full or partial transcript of the record.

(3) At any time before the reporter's notes or recordings of the hearing are destroyed, any party may order a transcript at that party's expense.

(4) Audio tapes, reporters' notes or records of a hearing may be destroyed six months after final disposition of the case.]

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 183.310 through 183.550 and 656.704(2)

Hist: Filed 5/22/92 as WCD Admin. Order 9-1992, eff. 5/25/92

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Amended 3/4/04 as WCD Admin. Order 04-053, eff. 4/1/04

Repealed XX/XX/XX as WCD Admin. Order 05-XXX, eff. 1/2/06

436-001-0225 Scope of Review/Limitations on the Record

(1) Except for the matters listed in sections (2) and (3), the administrative law judge reviews all matters within the director's jurisdiction de novo, unless otherwise provided by statute or administrative rule.

[(1)] **(2) In [Review of] medical service and medical treatment disputes under [(ORS 656.245, [and] 656.247(3)(a)[)], [and treatment (ORS 656.327 and 656.260) disputes], and 656.327, and managed care disputes under ORS 656.260(16), the administrative law judge may only modify the director's order if it is not supported by [is for] substantial evidence in the record or if it reflects an error of law. New medical evidence or issues may not be admitted or considered [at the contested-case hearing].**

[(2)] **(3) In vocational assistance [(ORS 656.340)] disputes under ORS 656.340, new evidence may be admitted and considered. Under ORS 656.283(2), the administrative law judge may only modify [The standard of review is to determine whether] the director's order if it:**

(a) Violates a statute or rule;

(b) Exceeds the **director's** statutory authority [of the agency];

(c) Was made upon unlawful procedure; or

(d) Was characterized by abuse of discretion or clearly unwarranted exercise of discretion.

[(3) The scope of review for medical fee (ORS 656.248 and 656.247(3)(b))disputes is *de novo*.

(4) The scope of review in all other contested-case hearing disputes is *de novo*, unless otherwise prescribed by statute or administrative rule.]

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.245, 656.247, 656.260, 656.283, 656.327, 656.704

Hist: Filed 2/12/96 as WCD Admin. Order 96-055 eff. 2/12/96

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Amended 08/10/98 as WCD Admin. Order 98-057, eff. 9-15-98
Amended 3/4/04 as WCD Admin. Order 04-053, eff. 4/1/04
Amended XX/XX/XX as WCD Admin. Order 05-XXX, eff. 1/2/06

436-001-0226 Notice of Expert Testimony (*Repeal*)

[At least 14 days before the hearing, a party shall provide written notice to the administrative law judge, all other parties, and the director's representative identifying each expert witness the party will call to testify at hearing. If a party fails to provide 14 days notice, the contested-case hearing will be continued to allow sufficient time for the parties to prepare.]

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 183.415 and 656.704(2)
Hist: Filed 08/10/98 as WCD Admin. Order 98-057, eff. 9-15-98
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436-001-0240 Exhibits and [Exchange of Exhibits] Evidence

(1) **Within 21 days after referral of the request for hearing to the board,** [T]the division will provide the parties and the administrative law judge legible copies of all [documents] **exhibits** that were relied upon in the underlying [administrative review] **action or order,** together with an index. [The index will include a description of each document, author, number of pages, and date of the document. The documents will be arranged in chronological order and designated by numbers in the lower right corner of each page, beginning with the document of earliest date. Pagination of multiple-page documents will be designated by the document number, followed by the page number. For example, page two of document five may be marked as "Exhibit 5, page 2" or "Ex. 5-2." etc.]

(2) Not less than [14] **28** days before the hearing, or within seven days of receipt of the division's document index and documents, whichever is later, the petitioner(s) must provide **legible copies of any additional exhibits that they will offer at hearing to** the other parties, the director's representative, and the administrative law judge [legible copies of any additional documents to be relied upon at hearing]. The additional [documents] **exhibits** must be marked and accompanied by a supplemental [document] **exhibit** index, numbered to coincide in chronological order with the division's exhibits and exhibit list. For example, an [document] **exhibit** which is chronologically between **the division's exhibits** [documents] 5 and 6 [of the division's exhibit list may] **would** be marked as "Exhibit 5a[.]" **or** "Ex. 5a[.]" [etc.]

(3) Not less than [seven] **14** days before the hearing, the respondent(s)/cross-petitioner(s) must provide **legible copies of any additional exhibits that they will offer at hearing** to the other parties, the director's representative, and the administrative law judge [legible copies of any additional documents that they will offer at hearing]. **The exhibits must be marked and indexed** in the same manner as provided **in section (2)** [by the petitioner(s)].

(4) [Any party using photographs as exhibits must provide each party, the director's representative, and the administrative law judge with a set of the photographs.]

(5) **Unless withdrawn,** [A]all exhibits offered[, whether or not admitted into evidence, unless withdrawn.] will be part of the record in the case, **whether or not admitted into evidence.**

(6) (5) At the discretion of the administrative law judge, an accurate description or photograph of an object or real evidence may be substituted for [such] **the** object or real evidence. The party offering [such] **the** evidence [shall be] **is** responsible for providing the description or photograph, and for retaining custody of the object until the case is closed.

(7) If any party, in the regular course of the party's business or activity, had kept or recorded any memorandum, writing, entry, print, reproduction, or a combination thereof, of any act, transaction, occurrence, or event, and in the regular course of the party's business or activity has caused any or all of the same to be recorded, copied, or reproduced by any photographic, photostatic, microfilm, micro-card, miniature

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photographic, optical imaging, or other process that accurately reproduces or forms a durable medium for so reproducing the original, the original may be destroyed in the regular course of business. Such reproduction, when satisfactorily identified, is as admissible in evidence as the original itself whether the original is in existence or not at the time a party introduces into evidence such reproduction. The introduction of a reproduced record, enlargement, or facsimile does not preclude admission of the original.]

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.704, OL 2005 ch 26

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Amended XX/XX/XX as WCD Admin. Order 05-XXX, eff. 1/2/06

**436-001-0246 Proposed and Final Orders - [, Filing] Exceptions, Correction, Director Review
(Renumbered from rule 0275)**

(1) **Under ORS 656.704(2)(a) [Oregon Laws 2005, chapter 26, section 15], a party must seek director review of a proposed and final order before petitioning for judicial review under ORS 183.482.** [When the administrative law judge serves a proposed and final order on the parties, the Office of Administrative Hearings shall notify the parties that written exceptions]

(2) The parties or the division may initiate director review of a proposed and final order by filing exceptions as follows:

(a) Written exceptions must be filed **with the administrator** within 30 days of the **mailing** date [of service] of the proposed and final order[.];

[2] **(b) A** [w]ritten response[s] to **the** exceptions must be filed within 20 days of [service of] **the date** the exceptions **were filed**;

(c) [and a] **A written** reply **to the response**, if any, must be filed within 10 days of [service of] **the date** the response(s) **was filed**.

(3) If exceptions are timely filed, the director may issue a final order or an amended proposed and final order, request the administrative law judge to hold further hearing, or remand the matter for further administrative action.

(4) Within 30 days of the mailing date of the proposed and final order, the director may issue a notice of intent to review the proposed and final order, even if no exceptions are filed.

(5) All proposed and final orders must contain language notifying the parties of their right to file exceptions, how to file, and the timeframes.

(6) The administrative law judge may withdraw a proposed and final order for correction of errors within 10 calendar days of the mailing date of the order. The time for filing exceptions begins on the date the corrected proposed and final order is mailed.

[3] **(7) If no exceptions are timely filed or if no notice of intent to review is issued**, the proposed and final order **will** become[s] final 30 days after the **mailing** date of [service of] the order.

[4] Notwithstanding section (3) of this rule, the administrator may revise the proposed and final order under OAR 137-003-0501 to 137-003-0700, or these rules.]

(8) Any requests for review or requests for reconsideration of a proposed and final order filed with the administrative law judge or board within 30 days of the mailing date of

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the order will be forwarded to the director and treated as timely exceptions under this rule.

[(5) "Date of service" means the date mailed or delivered.]

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.704, OL 2005 ch 26

Hist: Filed 2/12/96 as WCD Admin. Order 96-055 eff. 2/12/96

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Amended and renumbered from OAR 436-001-0275, XX/XX/XX as WCD Admin. Order 05-XXX, eff. 1/2/06

**436-001-0252 Stay of Director and Administrative Review in Consolidated Matters
(New rule)**

(1) If matters are consolidated under ORS 656.704(3)(c) [Oregon Laws 2005, chapter 26, section 15], a party requests board review of the order for those matters concerning a claim, and a party files exceptions on the proposed and final order for matters other than those concerning a claim, the director may stay director review of the proposed and final order. If director review is stayed, the parties will be provided the opportunity to file a written response and reply as provided in OAR 436-001-0246, and director review will then be stayed until the board issues an order for those matters concerning a claim.

(2) If matters are consolidated under ORS 656.704(3)(c) [Oregon Laws 2005, chapter 26, section 15], a party requests board review of the order for those matters concerning a claim, and the administrative law judge remands the matters other than those concerning a claim to the director for further administrative action, the director may stay further administrative action until the board issues an order for those matters concerning a claim.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.704, OL 2005 ch 26

Hist: Filed XX/XX/XX as WCD Admin. Order 05-XXX eff. 1/2/06

436-001-0259 Ex Parte Communication (New rule)

An ex parte communication is an oral or written communication to the administrator or administrator's designee during director review of the matter not made in the presence of all parties to the dispute, concerning a fact in issue, but does not include communication from division staff or the Department of Justice about legal issues or facts in the record. Ex parte communications received during director review will be promptly disclosed to all parties, and the parties will be allowed a reasonable opportunity to respond.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.704, OL 2005 ch 26

Hist: Filed XX/XX/XX as WCD Admin. Order 05-XXX eff. 1/2/06

436-001-0260 Unacceptable Conduct (Repeal)

[(1) Contested case hearings are not public meetings and are not open to the public, except with the consent of the parties and as authorized by the administrative law judge.

(2) The administrative law judge may expel a person from a contested case hearing if that person disrupts the proceeding.

(3) The administrative law judge may prohibit broadcasting, television, sound or video recording, and the taking of photographs of proceedings in the hearing room. These prohibitions, in the administrative law judge's discretion, may be applied to areas immediately adjacent to the hearing room where the activities may interrupt or interfere with entry or exit from the hearing room and distract or disturb the proceedings or interfere with the conduct of the hearing.]

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436-001-0265 Attorney Fees

(1) In cases where the director **or administrative law judge** is required to assess an attorney fee under ORS 656.385(1):

(a) The fee must be based on the factors listed in ORS 656.385(1).

(b) Absent a showing of extraordinary circumstances or unless otherwise agreed by the parties, the fee may not exceed \$2,000 nor fall outside the ranges provided in the following matrix:

Estimated Benefit Achieved	Professional Hours Devoted				
	1-2 hours	2.1-4 hours	4.1-6 hours	6.1-8 hours	Over 8 hours
\$1-\$2000	\$100-400	\$200-700	\$300-750	\$600-1000	\$800-1250
\$2001-\$4000	\$200-500	\$400-800	\$600-900	\$800-1300	\$1050-1500
\$4001-\$6000	\$300-700	\$600-1000	\$800-1250	\$1000-1450	\$1300-1750
Over \$6000	\$400-900	\$800-1300	\$1050-1600	\$1350-1800	\$1550-2000

(c) Extraordinary circumstances are not established by merely exceeding eight hours or exceeding a benefit of \$6000.

(d) In cases under ORS 656.245, **656.247**, 656.260, or 656.327, the factors listed in OAR 436-010-0008(13) may also be considered.

(e) In cases under ORS 656.340, the factors listed in OAR 436-120-0008(2) may also be considered.

(2) Except as provided in section (3), in cases where the administrative law judge or director assesses an attorney fee, the following factors may also be considered:

(a) The complexity of the issue(s) involved;

(b) The quality of the legal representation;

(c) The value of the interest involved;

(d) The nature of the proceedings;

(e) The risk in a particular case that an attorney's efforts may go uncompensated;

(f) The assertion of frivolous issues or defenses;

(g) A statement of services, if submitted within seven days of the hearing date, unless the administrative law judge instructs otherwise; and

(h) Any other relevant consideration deemed appropriate by the administrative law judge or director.

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(3) In cases under ORS 656.262(11) where the issue is solely the assessment and payment of a penalty and attorney fee, OAR 438-015-0110 applies.

(4) If an attorney fee has been assessed by an administrative law judge in a proposed order, the opposing parties may file written exceptions to the fee under OAR 436-001-0275.

Stat. Auth.: ORS 656.385(1), 656.726(4)
Stats. Implemented: ORS 656.262, 656.385, 656.388, and 656.704
Hist: Filed 2/12/96 as WCD Admin. Order 96-055 eff. 2/12/96
Amended 08/10/98 as WCD Admin. Order 98-057, eff. 9-15-98
Amended 12/12/03 as WCD Admin. Order 03-067, eff. 1/1/04 (Temporary)
Amended 3/4/04 as WCD Admin. Order 04-053, eff. 4/1/04
Amended 6/9/05 as WCD Admin Order 05-056, eff. 7/1/05
Amended XX/XX/XX as WCD Admin. Order 05-XXX eff. 1/2/06

436-001-0296 Settlements and Dismissals (*New rule*)

(1) If, after a request for hearing is filed but before a proposed and final order is issued, an agreement under ORS 656.236 or 656.289(4) is approved that resolves all issues in the matter within the director's jurisdiction, the party that filed the request for hearing must notify the director in writing that the request for hearing may be dismissed by the director.

(2) If, after a request for hearing is filed but before a proposed and final order is issued, the parties reach agreement on all issues in the matter within the director's jurisdiction, and only those issues, the parties must submit a written settlement agreement, signed by the parties, to the director for approval.

(3) If the matter within the director's jurisdiction is consolidated with matters concerning a claim and the parties reach agreement on all issues in the matter within the director's jurisdiction prior to issuance of a proposed and final order, the administrative law judge may issue a proposed and final order approving the agreement and dismissing the request for hearing.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.704, OL 2005 ch 26
Hist: Filed XX/XX/XX as WCD Admin. Order 05-XXX eff. 1/2/06

436-001-0300 Alternative Dispute Resolution

(1) The director may [contact] **offer** the parties to a [contested case dispute for the purposes of offering a] **matter within the director's jurisdiction alternative dispute** resolution [alternative] **as a way to resolve the matter prior** to a [contested-case] hearing.

(2) [If consent to attempt alternative dispute resolution is received prior to referral of the dispute to the Office of Administrative Hearings, the director will stay the referral. Once the dispute is settled, or it becomes clear that no resolution can be reached, the director will refer it.]

[3] If **the parties** consent to attempt alternative dispute resolution **before the director** [is received] after referral of the [dispute to the Office of Administrative Hearings] **matter to the board for hearing**, the director will notify the administrative law judge that the parties have agreed to **attempt** [use an alternative dispute] resolution [process], and that the hearing should be [suspended] **deferred** until the process is complete. [Once the dispute is settled, or it becomes clear that no resolution can be reached] **If the parties do not settle**, the director will notify the administrative law judge to [resume] **proceed with** the hearing.

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[4] **(3)** If the parties [resolve only the issues under] **settle the matter within** the director's jurisdiction **through alternative dispute resolution before the director,** [related to the contested case notice, then the director will incorporate the agreement into a final order under OAR 137-003-0665] **the director will issue an order dismissing the request for hearing.**

(4) [5] If the parties resolve any or all matters regarding the claim under ORS 656.236, or issues resolving disputes over compensability of a claim under ORS 656.289(4), the disposition must be submitted to the Workers' Compensation Board for approval.] **Nothing in this rule prevents the parties from participating in the board's mediation program for those matters within the director's jurisdiction.**

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 183.502, 656.704, OL 2005 ch 26

Hist: Adopted 3/4/04 as WCD Admin. Order 04-053, eff. 4/1/04

Amended XX/XX/XX as WCD Admin. Order 05-XXX eff. 1/2/06

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436-009-0008 Administrative Review [and Contested Cases] (Oregon Medical Fee and Payment Rules)

Administrative review before the director:

(1)(a) The director has exclusive jurisdiction to resolve all disputes concerning medical fees and non-payment of compensable medical bills. A party need not be represented to participate in the administrative review before the director [except as provided in ORS chapter 183 and OAR chapter 436, division 001].

(b) Any party may request the director provide voluntary mediation after a request for administrative review or [contested case] hearing is filed. When a dispute is resolved by agreement of the parties to the satisfaction of the director, any agreement shall be reduced to writing and approved by the director. If the dispute does not resolve through mediation, a director's order shall be issued.

(2) The medical provider, injured worker, or insurer may request review by the director in the event of a dispute about either the amount of a fee or non-payment of bills for medical services on a compensable injury. The following time frames and conditions apply to requests for administrative review before the director under this rule:

(a) For all MCO enrolled claims where a party disagrees with an action or decision of the MCO, the aggrieved party shall first apply to the MCO for dispute resolution within 30 days pursuant to OAR 436-015-0110. When the aggrieved party is a represented worker, and the worker's attorney has given written notice of representation, the 30 day time frame begins when the attorney receives written notice or has actual knowledge of the dispute. Administrative review by the director must be requested within 60 days of receipt of the MCO's final decision under the MCO's dispute resolution process. If a party has been denied access to the MCO dispute process or the process has not been completed for reasons beyond a party's control, the party may request director review within 60 days of the failure of the MCO process. If the MCO does not have a process for resolving fee and billing disputes, the insurer shall advise the medical provider or worker that they may request review by the director.

(b) For all claims not enrolled in an MCO, or for disputes which do not involve an action or decision of the MCO, the aggrieved party must request administrative review by the director within 90 days of the date the party knew, or should have known, there was a dispute over the provision of medical services. This time frame only applies if the aggrieved party other than the insurer is given written notice that they have 90 days in which to request administrative review by the director. When the aggrieved party is a represented worker, and the worker's attorney has given written notice of representation, the 90 day time frame begins when the attorney receives written notice or has actual knowledge of the dispute. For purposes of this rule, the date the insurer should have known of the dispute is the date action on the bill was due pursuant to OAR 436-009-0030. Filing a request for administrative review under this rule may also be accomplished in the manner prescribed in OAR chapter 438, division 005.

(c) The director may, on the director's own motion, initiate a medical services review at any time.

(d) **Under ORS 656.704(3)(c) [Oregon Laws 2005, chapter 26, section 15], [w]hen**

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there is a formal denial of the underlying condition or a denial of the causal relationship between the medical service and the accepted condition, the issue [must] **may** first be decided by the Hearings Division of the Workers' Compensation Board.

(3) Parties must submit requests for administrative review to the director in the form and format prescribed by the director. When an insurer or the worker's representative submits a request without the required information, at the director's discretion the administrative review may not be initiated until the information is submitted. Unrepresented workers may contact the director for help in meeting the filing requirements. The requesting party must simultaneously notify all other interested parties of the dispute, and their representatives, if known, as follows:

- (a) Identify the worker's name, date of injury, insurer, and claim number.
- (b) Specify the issues in dispute and the relief sought.
- (c) Provide the specific dates of the unpaid disputed treatment or services.

(d) If the request for review is submitted by either the insurer or medical provider, it shall state specific code(s) of service(s) in dispute and include sufficient documentation to support the review request, including but not limited to copies of original HCFA/CMS bills, chart notes, bill analyses, operative reports, any correspondence between the parties regarding the dispute, and any other documentation necessary to evaluate the dispute. The insurer or medical provider requesting review shall certify that the involved parties have been provided a copy of the request for review and attached supporting documentation and, if known, [that] **whether** there is [no] **an** issue of causation or compensability of the underlying claim or condition.

(4) The division shall investigate the matter upon which review was requested.

(a) The investigation may include, but shall not be limited to, request for and review of pertinent medical treatment and payment records, interviews with the parties to the dispute, or consultation with an appropriate committee of the medical provider's peers.

(b) Upon receipt of a written request for additional information, the party shall have 14 days to respond.

(c) A dispute may be resolved by agreement between the parties to the dispute. When the parties agree, the director may issue a letter of agreement in lieu of an administrative order, which will become final on the 10th day after the letter of agreement is issued unless the agreement specifies otherwise. Once the agreement becomes final, the director may revise the agreement or reinstate the review only under one or more of the following conditions:

- (A) A party fails to honor the agreement;
- (B) The agreement was based on misrepresentation;
- (C) Implementation of the agreement is not feasible because of unforeseen circumstances; or
- (D) All parties request revision or reinstatement.

[d) Pursuant to section (6) of this rule, within 30 days of the administrative order, any party may appeal to a contested case before the Office of Administrative Hearings.]

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(5) The director may on the director's own motion reconsider or withdraw any order that has not become final by operation of law. A party may also request reconsideration of an administrative order upon an allegation of error, omission, misapplication of law, incomplete record, or the discovery of new information which could not reasonably have been discovered and produced during the review. The director may grant or deny a request for reconsideration at the director's sole discretion. A request must be mailed to the director before the administrative order becomes final.

(6) [Contested cases] **Hearings** before [the Office of Administrative Hearings] **an administrative law judge**: [Pursuant to] **Under** [ORS 183.310 through 183.690, as modified by OAR chapter 436, division 001 and] ORS 656.704(2), any party that disagrees with an action or order of the director [pursuant to] **under** these rules[,] may request a [contested case] hearing[. For purposes of these rules, "contested case" has the meaning prescribed in ORS 183.310(2) and OAR chapter 436 division 001. A party may appeal to the director as follows:

(a) The party must send a written request to the administrator of the Workers' Compensation Division. The request must specify the grounds upon which the order or other action of the director is contested and include a copy of the order being appealed.

(b) The appeal must be mailed] **by filing a request for hearing as provided in OAR 436-001-0019** within 30 days of the mailing date of the order or notice of action [being appealed]. **OAR 436-001 applies to the hearing.**

(7) Contested case hearings of sanction and civil penalties: Under ORS 656.740 , any party that disagrees with a proposed order or proposed assessment of a civil penalty issued by the director pursuant to ORS 656.254, or 656.745 may request a hearing by the Hearings Division of the Workers' Compensation Board as described in OAR 436-010-0008(15).

(8) Director's administrative review of other actions: Any party seeking an action or decision by the director or aggrieved by an action taken by any other party, not covered under sections (1) through (7) of this rule, pursuant to these rules, may request administrative review by the director. Any party may request administrative review as follows:

(a) A written request for review must be sent to the administrator of the Workers' Compensation Division within 90 days of the disputed action and must specify the grounds upon which the action is contested.

(b) The division may require and allow such input and information as it deems appropriate to complete the review.

(c) A director's order may be issued and will specify if the order is final or if it may be appealed in accordance with section (6) of this rule.

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

Stats. Implemented: ORS 656.704

Hist: Renumbered from OAR 436-010-0110(1), (2), (3), (4), and (5) to OAR 436-009-0008(2), (3), (4), and (5); from OAR 436-010-0110(6) to OAR 436-009-0008(1)(b); and,

Filed 5/3/96 as Admin. Order 96-059, eff. 6/1/96

Amended 4/3/98 as Admin. Order 98-052, eff. 7/1/98

Amended 5/27/99 as Admin. Order 99-057, eff. 7/1/99

Amended 03/15/00 as Admin. Order 00-051, eff. 04/01/00

Amended 3/8/01 as WCD Admin. Order 01-051, eff. 4/1/01

Amended 2/25/02 as WCD Admin. Order 02-052, eff. 4/1/02

Amended 5/28/03 as WCD Admin. Order 03-055, eff. 7/1/03

Amended 12/12/03 as WCD Admin. Order 03-068, eff. 1/1/04 (Temporary)

Amended 3/4/04 as WCD Admin. Order 04-054, eff. 4/1/04

Amended 3/23/05 as WCD Admin. Order 05-051, eff. 4/1/05

Amended XX/XX/XX as WCD Admin. Order 05-XXX, eff. XX/XX/XX

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436-045-0008 Administrative Review (Reopened Claims Program Rules)

(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.

(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]any 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, ORS 656.726(4) and ORS 656.745
Stats. Implemented: ORS 656.236, ORS 656.289, ORS 656.625, ORS 656.704, ORS 656.726(8), section 9, chapter 170, Oregon Laws 2003, and ORS 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 XX/XX/XX as WCD Admin. Order 05-XXX, eff. XX/XX/XX

436-070-0008 Administrative Review (Workers' Benefit Fund Rules)

(1) Contested case hearings regarding sanctions and civil penalties: Any employer as defined by ORS 656.005 aggrieved by a proposed order or proposed assessment of civil penalty of the director issued pursuant to ORS 656.745 may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with 656.740 .

(a) The 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 person requesting the hearing contests the proposed order or assessment.

(b) The request for hearing must be filed with the administrator of the Workers' Compensation Division within 60 days after the mailing of the proposed order or assessment. No

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hearing will be granted unless the request is mailed or delivered to the administrator within 60 days after the mailing date of the proposed order or assessment.

(2) [Contested case h] **Hearings regarding estimation actions and orders: Under ORS 656.704(2), [A]any employer [as defined by ORS 656.005 aggrieved by] who disagrees with an action or order of the director [pursuant to] under these rules, other than as described in section (1), may request [review pursuant to ORS 183.310 through 183.690 and OAR 436-001. The process for review will be as follows:**

(a) The 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] **a hearing by filing a request for hearing as provided in OAR 436-001-0019 within 30 days of the mailing date of the order or notice of action [or from the date of mailing 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 656.735 and 656.740
Stats. Impltd: ORS 656.704, 656.735, and 656.740
Hist: Filed 10/31/94 as WCD Admin. Order 94-060, eff. 1/1/95
Amended 1/12/96 as WCD Admin. Order 96-050, eff. 1/12/96
Amended 12/3/03 as WCD Admin. Order 03-075, eff. 1/1/04
Amended 3/23/05 as WCD Admin. Order 05-053, eff. 4/1/05
Amended XX/XX/XX as WCD Admin. Order 05-XXX, eff. XX/XX/XX

436-075-0008 Administrative Review (Retroactive Program Rules)

(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 will be granted unless the request specifies the grounds upon which the person requesting the hearing contests the proposed order or assessment.

(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 will be granted unless the request is mailed or delivered to the administrator within 60 days after the mailing date of the proposed order or assessment.

(2) **Under ORS 656.704(2)**, [A]any 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 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 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] **a hearing by filing a request for hearing as provided in OAR 436-001-0019 within 30 days of the mailing date of the order or notice of action [or from the date of mailing or other service of an order].**

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

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(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.] **OAR 436-001**

applies to the hearing.

Stat. Auth.: ORS 656.740, 656.745, 656.750, and 183.310 thru 183. 550
Stats. Implemented: ORS 656.704, 656.740, 656.745, 656.750, and 183.310 thru 183. 550
Hist: Filed 12-22-89 as WCD Admin. Order 6-1989, eff. 1-1-90
Amended 6-18-90 as WCD Admin. Order 11-1990, eff. 7-1-90 (Temp)
Amended 11-29-90 as WCD Admin. Order 23-1990, eff. 12-26-90
Amended 12/4/97 as WCD Admin. Order 97-062, eff. 1/1/98
Amended 12/3/03 as WCD Admin. Order 03-076, eff. 1/1/04
Amended XX/XX/XX as WCD Admin. Order 05-XXX, eff. XX/XX/XX

436-080-0070 Reimbursement of Assigned Claims Agent for Claims Costs for Injured Workers of Noncomplying Employers (Noncomplying Employers Rules)

(1) When an assigned claims agent pays compensation to a claimant or incurs other costs on a claim referred to it under ORS 656.054, the assigned claims agent shall report the payment to the department as established by contract with the assigned claims agent. Any amounts received by the assigned claims agent and reported to the department under subsections (5) and (6) of this rule will be offset against such expenditures. Subject to section (3) of this rule, costs incurred by the assigned claims agent for which reimbursement will be allowed include:

(a) All compensation paid claimant.

(b) All expenses incurred for medical services.

(c) Attorney fees paid to the claimant in addition to any compensation, and sums assessed under ORS 656.382(3) and paid by the assigned claims agent, but not fees and sums paid under ORS 656.262 (11) and 656.382(1).

(d) A reasonable amount for administrative costs at a rate proposed by the assigned claims agent and approved by the director prior to June 30 of each year. Late requests for increase on the rate of reimbursement, if approved, shall be effective on the date the request was received by the director.

(2) The department will review the request and issue the reimbursement out of the Workers' Benefit Fund.

(3) The department will conduct an annual audit of the noncomplying employer claim files processed by the assigned claims agent to validate the amount reimbursed pursuant to section (1) of this rule. Reimbursement shall not be allowed, if, upon such audit, any of the following are found to apply:

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

(b) Compensation has been paid negligently for treatment of any condition unrelated to the compensable condition;

(c) The compensability of an accepted claim is questionable and the rationale for acceptance has not been reasonably documented in accordance with generally accepted claims management procedures;

(d) The separate payments of compensation have not been documented in accordance

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with generally accepted accounting procedures; or

(e) The payments were made pursuant to a disposition agreement as provided by ORS 656.236 without the prior approval of the department.

(4) **Under ORS 656.054 and 656.704(2)**, [T]the assigned claims agent may appeal any disapproval of reimbursement made by the department under this rule [pursuant to ORS 183.310 to 183.550 and as provided by OAR 436-080-0008] **as provided in OAR 436-001.**

(5) When a damage action is brought against a noncomplying employer or an action is brought against a third party by an employee of a noncomplying employer or the employee's beneficiaries, or by the assigned claims agent as the paying agency for such an employee, as authorized by ORS 656.576 to 656.595, the assigned claims agent shall report the commencement and termination of such action to the department. Thereafter, at the end of each calendar year, the assigned claims agent shall report the status of all such actions that are pending.

(6) When an action against an employer, or third party is settled or if damages are recovered, the assigned claims agent shall report within (30) days to the department the amount of the recovery retained by the assigned claims agent under ORS 656.593(1)(c).

(7) The Business Administration Division of the department is responsible for collecting from noncomplying employers those costs incurred by the Workers' Benefit Fund for which the assigned claims agent is entitled to reimbursement from the department under this rule. The Business Administration Division will inform each noncomplying employer of the liability under ORS 656.054(3) and keep the employer advised of costs incurred by the assigned claims agent.

Stat. Auth.: ORS 656.054, ORS 656.726
Stats. Implemented: ORS 656.054
Hist: WCB 10-1970, f. & ef. 7-24-70;
WCB 4-1973 (Temp), f. & ef. 12-6-73;
WCB 4-1974, f. 2-13-74, ef. 3-11-74;
WCB 15-1975, f. 9-22-75, ef. 10-11-75;
WCD 5-1978 (Admin), f. 3-31-78, ef. 4-1-78
Amended 12-18-87 as WCD Admin. Order 7-1987, effective 1-1-88
Amended 12/22/89 as WCD Admin. Order 4-1989, effective 1-1-90
Amended 01/10/92 as WCD Admin. Order 3-1992, effective 2/1/92
Amended 1/2/96 as WCD Admin. Order 95-073, ef. 1/5/96
Amended 12/3/03 as WCD Admin Order 03-065, eff. 1/1/04
Amended XX/XX/XX as WCD Admin. Order 05-XXX, eff. XX/XX/XX

436-085-0008 Administrative Review (Premium Assessment Rules)

(l) Any insurer or self-insured employer aggrieved by a proposed order or proposed assessment of civil penalty of the director issued pursuant to ORS 656.745 may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with ORS 656.740.

(a) The 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 person requesting the hearing contests the proposed order or assessment.

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

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within 60 days after the mailing date of the proposed order or assessment.

(2) **Under ORS 656.704(2)**, [A]any insurer or self-insured employer [aggrieved by] **that disagrees with** an action or order of the director [pursuant to] **under** these rules, other than as described in section (1), [where such action or order qualifies for review as a contested case,] may request **a hearing** [review pursuant to ORS 183.310 through 183.690 and OAR 436-001. When the matter qualifies for review as a contested case, the process for review will be as follows:

(a) The 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] **by filing a request for hearing as provided in OAR 436-001-0019** within 30 days of the **mailing date of the order or notice of action** [or from the date of mailing 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.: 656.612, 656.614 & 656.726(4), 656.740
Stats. Implemented: ORS 183.310 - 183.690, 656.704, 656.740, 656.745, 656.735
Hist: Filed 12/9/85 as WCD Admin. Order 5-1985, eff. 1/1/86
Amended 12/18/87 as WCD Admin. Order 5-1987, eff. 1/1/88
Amended 11/29/90 as WCD Admin. Order 24-1990, eff. 1/1/91
Amended 12/13/91 as WCD Admin. Order 15-1991, eff. 1/1/92
Amended 12/3/03 as WCD Admin. Order 03-077, eff. 1/1/04
Amended 3/23/05 as WCD Admin. Order 05-054, eff. 4/1/05
Amended XX/XX/XX as WCD Admin. Order 05-XXX, eff. XX/XX/XX

436-140-0008 Administrative Review (Construction Carve-Out Programs Rules)

(1) If the director determines that a proposed construction carve-out program is not eligible, the director will issue a notice to the employer [and/]or collective bargaining representative.

(a) **Under ORS 656.704(2)**, [i]f the employer [and/]or collective bargaining representative disagrees with the notice, it may request a [contested case] hearing [before the director] by filing a [written] request **for hearing** [with the director] **as provided in OAR 436-001-0019** within 60 days of the [date of service] **mailing date** of the notice.

(b) [The contested case hearing will be conducted in accordance with ORS Chapter 183 and] OAR 436-001 **applies to the hearing.**

(2) If the director determines that the acts or omissions of a construction carve-out program justify suspension, the director may issue a notice of intent to suspend eligibility pursuant to OAR 436-140-0090 and schedule a hearing on the matter of suspension. The notice must be served upon the employer [and/]or collective bargaining representative as provided in OAR 436-140-0130.

(a) At a hearing on a notice of intent to suspend, the employer [and/]or collective bargaining representative must show cause why eligibility should not be suspended.

(A) If the director determines that the acts or omissions of the employer [and/]or collective bargaining representative justify suspension, the director may issue an order suspending eligibility. If the director determines that the acts or omissions of the employer [and/]or collective bargaining representative do not justify suspension, the director shall issue an order withdrawing

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the notice.

(B) The order must be served upon the employer [and/]or collective bargaining representative as provided in OAR 436-140-0130.

(C) If the employer [and/]or collective bargaining representative disagrees with the order, it may request a [contested case] hearing [before the director] by filing a [written] request **for hearing** [with the director] **as provided in OAR 436-001-0019** within 60 days of the **mailing** date of [service of] the order.

(D) [The contested case hearing will be conducted in accordance with ORS Chapter 183 and] OAR 436-001 **applies to the hearing.**

(3) If the director determines that the acts or omissions of a construction carve-out program justify revocation, the director may issue a notice of intent to revoke eligibility pursuant to OAR 436-140-0090. The notice must be served upon the employer [and/]or collective bargaining representative as provided in OAR 436-140-0130.

(a) The revocation shall become effective within 10 days after service of notice, unless within such period of time the employer [and/]or collective bargaining representative correct(s) the grounds for revocation to the satisfaction of the director or files a written request for hearing with the director.

(A) If the employer [and/]or collective bargaining representative request(s) a hearing, the director will set a date and time, and give at least 10 days' notice of the hearing. At hearing, the employer [and/]or collective bargaining representative must show cause why eligibility should not be revoked.

(B) Within 30 days after the hearing, the director shall issue an order affirming or withdrawing the revocation. The director shall serve a copy of the order upon the employer [and/]or collective bargaining representative as provided in OAR 436-140-0130.

(C) If the employer [and/]or collective bargaining representative disagrees with the order, it may request a [contested case] hearing [before the director] by filing a [written] request **for hearing** [with the director] **as provided in OAR 436-001-0019** within 60 days of the **mailing** date of [service of] the order.

(D) [The contested case hearing will be conducted in accordance ORS Chapter 183 and] OAR 436-001 **applies to the hearing.**

(b) An emergency revocation issued pursuant to OAR 436-140-0090(5), is effective immediately. To contest the revocation, the employer [and/]or collective bargaining representative must file a request for [contested case] hearing within 60 days of the **mailing** date of [service of] the order; the revocation shall remain in effect until the director orders otherwise. [The contested case hearing will be conducted in accordance with the ORS Chapter 183 and] OAR 436-001 **applies to the hearing.**

Stat. Auth.: ORS 656.726(4), 656.174
Stats. Implemented: ORS 656.170, 656.172, 656.174, 656.704
Hist: Adopted 12/11/00 as WCD Admin. Order 00-059, eff. 12/15/00
Amended XX/XX/XX as WCD Admin. Order 05-XXX, eff. XX/XX/XX

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436-150-0008 Administrative Review (Workers' Benefit Fund Claims Program Rules)

(1) Any party as defined by ORS 656.005, and including the Oregon Insurance Guaranty Association, 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.

(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 date of the proposed order or assessment. No hearing will be granted unless the request is mailed or delivered to the administrator within 60 days after the mailing date of the proposed order or assessment.

(2) **Under ORS 656.704(2)**, [A]ny party [as described in section (1) of this rule, 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) of this rule, [where such action or order qualifies for review as a contested case.] may request **a hearing** [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 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] **by filing a request for hearing as provided in OAR 436-001-0019** within 30 days of the **mailing date of the order or notice of** action [or from the date of mailing 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 656.445, 656.726(4)

Stats. Implemented: ORS 656.445, 656.704, 656.740

Hist: Adopted 12/6/01 as WCD Admin. Order 01-063, eff. 1/1/02

Amended 12/3/03 as WCD Admin. Order 03-078, eff. 1/1/04

Amended XX/XX/XX as WCD Admin. Order 05-XXX, eff. XX/XX/XX