

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION



**Handicapped Workers Reserve
Oregon Administrative Rules
Chapter 436, Division 040**

Effective December 26, 1990

TABLE OF CONTENTS

Rule		Page
ORDER OF ADOPTION.....		iii
436-040-0001	Authority for Rules	1
436-040-0002	Purpose.....	1
436-040-0003	Applicability of Rules	1
436-040-0005	Definitions	1
436-040-0006	Administration of Rules	2
436-040-0008	Administrative Review	2
436-040-0010	Criteria for Eligibility	3
436-040-0020	Limitation of Program.....	4
436-040-0030	Application for Determination of Relief From the Handicapped Workers Reserve.....	4
436-040-0040	Eligibility Determination	5
436-040-0050	Reimbursement	5
436-040-0060	Effects on Rates; Reporting	7
436-040-0070	Settlements.....	8
436-040-0080	Third Party Recoveries	8
436-040-0090	Assessment of Civil Penalties.....	8
436-040-0100	Suspension and Revocation of Authorization to Issue Guaranty Contracts.....	9

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**BEFORE THE DIRECTOR OF THE
DEPARTMENT OF INSURANCE AND FINANCE
OF THE STATE OF OREGON**

In the Matter of the Amendment of Rules)
Governing Handicapped Workers Reserve)
(OAR Chapter 436, Workers' Compensation)
Division, Division 40))

ORDER OF ADOPTION

The Director of the Department of Insurance and Finance, pursuant to his general rule making authority under ORS 656.726(3) and in accordance with the procedure provided by ORS 183.335, amends OAR Chapter 436, Workers' Compensation Division, Division 40, Handicapped Workers Reserve.

On September 14, 1990, the Department of Insurance and Finance filed Notice of Public Hearing with the Secretary of State to adopt rules governing the Handicapped Workers Reserve. The Statement of Need and Legal Authority and the Statement of Fiscal Impact were also filed with the Secretary of State.

Copies of the Notice were mailed to interested persons in accordance with ORS 183.335(7) and OAR 436-01-000 and to those on the Department's distribution mailing list as their interest indicated. The Notice was published in the October 1, 1990, Secretary of State's Administrative Rule Bulletin.

On October 31, 1990, the public hearing was held as announced. A summary of the written testimony and agency responses thereto is contained in Exhibit "C." This summary is on file and available for public inspection between the hours of 8 A.M. and 5 P.M., normal working days Monday through Friday in the Administrator's Office, Workers' Compensation Division, Room 201, Labor & Industries Building, Salem, OR 97310.

Having reviewed and considered the record of public hearing and being fully advised, I make the following findings:

- a. The applicable rule making procedures have been followed.
- b. The rules are within the Director's authority.
- c. The rules being adopted are a reasonable administrative interpretation of the statutes and are required to carry out statutory responsibilities

Order of Adoption
OAR 436-040

IT IS THEREFORE ORDERED THAT:

- (1) OAR Chapter 436, Division 40, Rules Governing Handicapped Workers Reserve, as set forth in Exhibit "A" attached hereto, certified a true copy and hereby made a part of this order, is adopted effective January 1, 1990.

[Incorrect date was published; The effective date was December 26, 1990.]

- (2) A certified true copy of the Order of Adoption and these rules, with Exhibit "B" consisting of the Citation of Statutory Authority, Statement of Need, Documents Relied on and Fiscal Impact Statement, attached hereto and hereby made a part of this order, be filed with the Secretary of State.
- (3) A copy of the rules and attached Exhibit "B" be filed with the Legislative Counsel pursuant to the provisions of ORS 183.715 within ten days after filing with the Secretary of State.

Dated this 29th day of November, 1990.

DEPARTMENT OF INSURANCE AND FINANCE

/s/ Theodore R. Kulongoski

Theodore R. Kulongoski, Director

DISTRIBUTION: A thru V,
Y thru AA

EXHIBIT "A"
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 040

436-040-0001 Authority for Rules

These rules are promulgated under the director's authority contained in ORS 656.726 and 656.628.

Stat. Auth.:

Stats. Implemented:

Hist: WCD 1-1982(Admin), f. 1-20-82, ef. 2-1-82; WCD 6-1983(Admin), f. 12-20-83, ef. 1-1-84

436-040-0002 Purpose

The purpose of these rules is to establish guidelines for the administration of the Handicapped Workers Reserve program established to encourage the employment or reemployment of handicapped workers.

Stat. Auth.:

Stats. Implemented:

Hist: WCD 1-1982(Admin), f. 1-20-82, ef. 2-1-82; WCD 6-1983(Admin), f. 12-20-83, ef. 1-1-84
Amended 12-22-89 as Admin. Order 3-1989, effective 1-1-90

436-040-0003 Applicability of Rules

(1) These rules are effective December 26, 1990, and apply to all applications for relief submitted prior to May 1, 1990 and all requests for reimbursement from the Handicapped Workers Reserve filed with the director on or after December 26, 1990 for injuries occurring on or after November 1, 1981.

(2) These rules carry out the provisions of ORS 656.628.

Stat. Auth.:

Stats. Implemented:

Hist: WCD 1-1982(Admin), f. 1-20-82, ef. 2-1-82; WCD 6-1983(Admin), f. 12-20-83, ef. 1-1-84
Amended 12-18-87 as Admin. Order 6-1987, effective 1-1-88
Amended 12-22-89 as Admin. Order 3-1989, effective 1-1-90
Amended 6-18-90 as WCD Admin. Order 12-1990, eff. 7-1-90 (Temp.)
Amended 11-29-90 as WCD Admin. Order 21-1990, eff. 12-26-90

436-040-0005 Definitions

Except where the context requires otherwise, these rules are governed by the following definitions:

(1) "Compensation" means all benefits, including medical services and attorney fees, provided for a compensable injury to a subject worker or the worker's beneficiaries. However, it does not include expenses as defined by the National Council on Compensation Insurance, in its Workers' Compensation Statistical Plan, Part IV.

(2) "Deductible" means the initial \$1,000 of cumulative compensation paid on qualifying claim(s) applied once per handicapped worker.

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

ORDER NO. 21-1990

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
HANDICAPPED WORKERS RESERVE**

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

(5) "Employer" means an employer who qualifies pursuant to the provisions of ORS 656.017, either as a carrier-insured employer or as a self-insured employer under ORS 656.407.

(6) "Handicapped Worker" means a worker who is afflicted with, or subject to, any permanent physical or mental impairment, whether congenital or due to an injury or disease, including periodic impairment of consciousness or muscular control of such character that the impairment would prevent the worker from obtaining or retaining employment.

(7) "Handicapped Worker Claim Reserve" means the total anticipated liability (paid plus future reimbursable costs) regardless of any relief granted under the Handicapped Workers Reserve program.

(8) "Handicapped Workers Reserve" means the reserve established under ORS 656.628 to fund reimbursement under this program.

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

(10) "Settlement" means any agreement produced as a result of the act or process of settling differences between a paying agent and a Handicapped Worker, or disposition of a claim pursuant to ORS 656.236 or 656.289.

Stat. Auth.:

Stats. Implemented:

Hist: WCD 1-1982(Admin), f. 1-20-82, ef. 2-1-82; WCD 6-1983(Admin), f. 12-20-83, ef. 1-1-84
Amended 12-18-87 as Admin. Order 6-1987, effective 1-1-88
Amended 12-22-89 as Admin. Order 3-1989, effective 1-1-90
Amended 11-29-90 as WCD Admin. Order 21-1990, eff. 12-26-90

436-040-0006 Administration of Rules

For the purpose of administration of the Handicapped Workers Reserve, orders of the Division are deemed orders of the director.

Stat. Auth.:

Stats. Implemented:

Hist: WCD 1-1982(Admin), f. 1-20-82, ef. 2-1-82;
WCD 6-1983(Admin), f. 12-20-83, ef. 1-1-84
Amended 12-18-87 as Admin. Order 6-1987, effective 1-1-88

436-040-0008 Administrative Review

(1) If a paying agency or employer is aggrieved by a decision of the Division, the director may be petitioned for reconsideration.

(2) The director shall examine the application and such further evidence filed, and enter an order. Copies of the order will be sent to the paying agency, the Division, and employer, if applicable. Granting or denying reimbursement from the Handicapped Workers Reserve is at the sole discretion of the director. Pursuant to ORS 656.628(7), the director's order is final and not subject to review by any court or other administrative body.

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
HANDICAPPED WORKERS RESERVE**

(3) In adopting these rules, the director reserves the right to reexamine any liability created against the Handicapped Workers Reserve and to modify or terminate such liability, where such action is justified.

Stat. Auth.:**Stats. Implemented:**

Hist: WCD 1-1982(Admin), f. 1-20-82, ef. 2-1-82;
WCD 6-1983(Admin), f. 12-20-83, ef. 1-1-84
Amended 12-18-87 as Admin. Order 6-1987, effective 1-1-88
Amended 12-22-89 as Admin. Order 3-1989, effective 1-1-90

436-040-0010 Criteria for Eligibility

(1) The criteria used to determine eligibility for relief from the Handicapped Workers Reserve are:

(a) Without regard to employer knowledge, a worker must have a permanent physical or mental impairment, whether congenital or due to an injury or disease which would prevent the worker from obtaining or retaining employment. For the purpose of this section, a worker has a preexisting permanent impairment if it is equal to or greater than twenty five percent (25%) of the whole person.

(b) There must be a subsequent compensable injury or injuries:

(A) To the handicapped worker resulting in cumulative claim(s) costs in excess of \$1,000; or

(B) To other workers employed by the handicapped workers' employer resulting in cumulative claim(s) costs in excess of \$1,000.

(c) The insurer or employer must demonstrate that the subsequent injury or injuries:

(A) Would not have been sustained except for the handicapped worker's impairment; or

(B) Would not have occurred, to workers of the same employer, except for the act or omission of a handicapped worker which resulted from the handicapped worker's impairment; or

(C) Resulted in disability which is at least one-fourth greater by reason of the worker's preexisting impairment, as determined by the Division.

(2) An employer declared noncomplying in accordance with ORS 656.052 is not eligible for relief from the Handicapped Workers Reserve for injuries to subject workers occurring during any period of noncompliance.

(3) A paying agency is not eligible for reimbursement from the Handicapped Workers Reserve for any claim occurring to a worker during a period for which the employer is receiving premium reimbursement from the Reemployment Assistance Reserve, for that worker, pursuant to ORS 656.622(3).

Stat. Auth.:**Stats. Implemented:**

Hist: WCD 1-1982(Admin), f. 1-20-82, ef. 2-1-82; WCD 6-1983(Admin), f. 12-20-83, ef. 1-1-84
Amended 12-18-87 as Admin. Order 6-1987, effective 1-1-88
Amended 12-22-89 as Admin. Order 3-1989, effective 1-1-90
Amended 6-18-90 as WCD Admin. Order 12-1990, eff. 7-1-90 (Temp.)

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
HANDICAPPED WORKERS RESERVE

Amended 11-29-90 as WCD Admin. Order 21-1990, eff. 12-26-90

436-040-0020 Limitation of Program

(1) Reimbursement is limited to the monies available in the Handicapped Workers 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 which have qualified for reimbursement from the reserve.

Stat. Auth.:

Stats. Implemented:

Hist: WCD 1-1982(Admin), f. 1-20-82, ef. 2-1-82;
WCD 6-1983(Admin), f. 12-20-83, ef. 1-1-84
Amended 12-22-89 as Admin. Order 3-1989, effective 1-1-90

436-040-0030 Application for Determination of Relief From the Handicapped Workers Reserve

(1) The paying agency must provide the director adequate evidence to establish eligibility for determination of relief from the Handicapped Workers Reserve.

(2) When the deductible has been met and possible eligibility for relief becomes known, the paying agency shall make prompt application to the Division requesting determination of relief from the Handicapped Workers Reserve in a form prescribed by the director.

(3) The application shall be submitted prior to the date of the last valuation affecting an employer's experience rating, prior to the last valuation for retrospective rating, whichever is the last to occur and prior to the employer ceasing to do business. The application shall be supported by sufficient evidence establishing eligibility for reimbursement under the general provisions herein and in accordance with OAR 436-040-0010. For employers that are not experience rated, application shall be submitted prior to the date there would have been a last valuation, had the employer been so rated, and prior to the employer ceasing to do business. The preceding application time frames do not apply to self-insured employers or their paying agencies.

(4) To meet the requirements of OAR 436-040-0030(3), the paying agency shall:

(a) Specify the condition which caused permanent impairment and which constituted a handicap;

(b) Specify whether this request is based on a causal or contributory relationship pursuant to OAR 436-040-0010(1)(c);

(c) Provide documentation describing prior impairment: such as medical reports, direct information from the worker, employer documentation, prior Determination Orders, Opinion and Orders, and Orders on Review;

(5) The Division will review the application to assure it is complete and the \$1,000 deductible has been met. The application, supporting documentation, and claims involved will then be submitted to the Division for an eligibility determination.

Stat. Auth.:

Stats. Implemented:

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
HANDICAPPED WORKERS RESERVE**

Hist: WCD 1-1982(Admin), f. 1-20-82, ef. 2-1-82;
WCD 6-1983(Admin), f. 12-20-83, ef. 1-1-84
Amended 12-18-87 as Admin. Order 6-1987, effective 1-1-88
Amended 12-22-89 as Admin. Order 3-1989, effective 1-1-90

436-040-0040 Eligibility Determination

(1) The Division shall determine whether a claim qualifies for reimbursement, and the percentage of the reimbursement.

(2) The Division shall issue a determination order accepting or denying the application within 30 calendar days after receipt of the application and supporting documentation.

(3) The reimbursement percentage shown on the determination order will be:

(a) 100% after the \$1,000 deductible in those cases qualifying under OAR 436-040-0010(1)(c)(A) and (B); or

(b) In direct proportion to the percentage the resulting disability was increased as a result of the preexisting impairment in those cases qualifying under OAR 436-040-0010(1)(c)(C).

Stat. Auth.:

Stats. Implemented:

Hist: WCD 1-1982(Admin), f. 1-20-82, ef. 2-1-82;
WCD 6-1983(Admin), f. 12-20-83, ef. 1-1-84
Amended 12-18-87 as Admin. Order 6-1987, effective 1-1-88
Amended 12-22-89 as Admin. Order 3-1989, effective 1-1-90

436-040-0050 Reimbursement

(1) Reimbursement will be made to the paying agency based on the percentage of reimbursement ordered by the Division.

(2) Request for reimbursement shall not be made until the deductible has been met.

(3) Requests for reimbursement are not to include: costs incurred for conditions unrelated to the compensable claim; costs incurred due to inaccurate, untimely, or improper processing; expenses; and settlement amounts not approved by the Division, to which the parties agreed after relief was granted.

(4) The Division will authorize reimbursement to the paying agency quarterly after receipt and approval of documentation of compensation paid from the paying agency. Documentation shall include, but not be limited to:

(a) Net amounts paid separated into disability benefits by type, and medical benefits for corresponding quarterly time periods;

(b) The current Handicapped Worker Claim Reserve as defined in these rules;

(c) Payment certification statement; and

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

(5) For purposes of subsection 4(a) of this rule, "net amounts paid" means the total compensation paid less any recoveries, including but not limited to, third party recovery, Retroactive Reserve reimbursement and Rehabilitation Reserve reimbursement.

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
HANDICAPPED WORKERS RESERVE

(6) Periodically the Division will audit the physical file of the paying agency to validate the amount reimbursed. Reimbursement shall not be approved 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 for treatment of any condition unrelated to the compensable claim for which Handicapped Workers Reserve relief was granted.

(c) The compensability of the accepted claim is questionable and the rationale for acceptance has not been reasonably documented, as required under generally accepted claims management procedures;

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

(e) For applications received after January 1, 1990, the subject employer was no longer doing business at the time of application for the Handicapped Workers Reserve determination; that the employer was on a retrospective rating plan that was closed prior to the application for the Handicapped Workers Reserve determination; or, if not on an open retrospective rating plan, that the last valuation for experience rating modification purposes that could affect the employer was completed prior to the application for the Handicapped Workers Reserve determination;

(f) The insurer did not adjust the claims reserve value used in dividend, retrospective evaluation, or any claim valuation for experience rating determination to the percentage level specified in the order of acceptance, allowing for the \$1,000 compensation minimum, or did not make the necessary monetary adjustments with the employer; or

(g) The insurance carrier is not able to provide applicable records relating to experience rating, retrospective rating or dividend calculations at the time of audit or within ten working days thereafter. Any reimbursements received on claims, for which the insurer is unable to provide records, will be returned to the Division at least until the next annual audit is conducted and all applicable records are reviewed.

(7) The Division will authorize reimbursement to insurance companies only for compensation which could reasonably be projected at the first of either to occur;

(a) The last claim evaluation which would affect the employer's experience rating modification or retrospective rating adjustment, whichever is later; or

(b) For applications received after January 1, 1990, the employer ceases to do business, if that occurs first.

(8) The insurance company shall submit a claim valuation to the Division at the first to occur of:

(a) The last claim valuation date which would affect the employer's experience rating modification or retrospective rating adjustment, whichever is later (usually three and one half years after the inception of the policy period); or

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
HANDICAPPED WORKERS RESERVE**

(b) For applications received after January 1, 1990, the employer ceases to do business. The valuation shall include future reserves for the claim at that time. The Division will verify the future reserves are reasonable and based on the appropriate valuation date. If the Division determines the submitted claim valuation is unreasonable or based on inappropriate information, the Division may establish the claim valuation or adjust the claim valuation period. The claim valuation, when approved by the Division, shall be the maximum Handicapped Worker Claim Reserve used as the basis for reimbursement for the claim.

(9) When a claim is settled by a Compromise and Release or a Disputed Claims Settlement, the department shall review and modify the final reserve to reflect resulting changes in liability. The paying agent shall be notified of any change in the final reserve. A Director Review of this action will be considered only when paid claim costs have exceeded the established reserve.

(10) In the event that a denied claim is found compensable by a hearing referee, the Workers' Compensation Board, or the Court of Appeals, and that decision is reversed by a higher level of appeal, the paying agency shall receive reimbursement for claim payments required to be made while the claim was in accepted status.

Stat. Auth.:**Stats. Implemented:**

Hist: WCD 1-1982(Admin), f. 1-20-82, ef. 2-1-82;
WCD 6-1983(Admin), f. 12-20-83, ef. 1-1-84
Amended 12-18-87 as Admin. Order 6-1987, effective 1-1-88
Amended 12-22-89 as Admin. Order 3-1989, effective 1-1-90
Amended 11-29-90 as WCD Admin. Order 21-1990, eff. 12-26-90

436-040-0060 Effects on Rates; Reporting

(1) Where an order of acceptance has established the percentage of reimbursement to an insured, the incurred claim cost above \$1,000, prior to reimbursement, shall be reduced by that percentage. The net incurred cost after such reduction shall be used in any dividend calculation, retrospective rating evaluation or experience rating computation, retroactively if necessary, and shall be reported at that net incurred cost to the rating organization. Any subsequent reevaluation of the claims reserve requirements under the rules of the Unit Statistical Plan Manual shall be similarly reduced by the percentage of reimbursement.

(2) The paying agency "eligible for" or receiving reimbursement from the Handicapped Workers Reserve, shall report the subject claims in such method and manner as the Insurance Commissioner shall require. Notwithstanding the reporting requirements of the Insurance Commissioner and an authorized rating organization, the paying agency must be able to document that such reimbursed costs are not and will not be included in data reported that will affect the rates and/or dividend eligibility.

(3) If compensation reported to the appropriate rating organization subsequently becomes eligible for reimbursement from the Handicapped Workers Reserve, the insured paying agency shall immediately file a "reevaluation of losses" report, pursuant to the Insurance Commissioner's rules, with a rating organization licensed by the Insurance Commissioner.

(4) If compensation used by the Division for experience rating purposes becomes eligible for reimbursement from the Handicapped Workers Reserve, the self-insured paying agency may

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
HANDICAPPED WORKERS RESERVE**

file a request for reevaluation of experience rating modification(s) with the Division. Any necessary calculation(s) will be made, retroactively if necessary, when the annual experience rating modification is calculated.

Stat. Auth.:**Stats. Implemented:**

Hist: WCD 1-1982(Admin), f. 1-20-82, ef. 2-1-82;
WCD 6-1983(Admin), f. 12-20-83, ef. 1-1-84
Amended 12-18-87 as Admin. Order 6-1987, effective 1-1-88
Amended 12-22-89 as Admin. Order 3-1989, effective 1-1-90

436-040-0070 Settlements

(1) Any settlement of the claim by the parties is not eligible for reimbursement from the Handicapped Workers Reserve unless made with the prior written approval of the Division.

(2) Requests for written approval of proposed settlements should include:

(a) A copy of the proposed settlement;

(b) Correspondence between the paying agency and the claimant or claimant's representative which establishes the basis for settlement or a statement from the paying agency of how the amount of the settlement was calculated;

(c) Additional medical reports not available at the time of the determination; and

(d) Other material which would support the proposed settlement as an appropriate manner to handle the claim.

(3) The paying agency shall submit settlements to the Division in the format prescribed by the director.

Stat. Auth.:**Stats. Implemented:**

Hist: WCD 1-1982(Admin), f. 1-20-82, ef. 2-1-82;
WCD 6-1983(Admin), f. 12-20-83, ef. 1-1-84
Amended 12-18-87 as Admin. Order 6-1987, effective 1-1-88
Amended 12-22-89 as Admin. Order 3-1989, effective 1-1-90
Amended 6-18-90 as WCD Admin. Order 12-1990, eff. 7-1-90 (Temp.)
Amended 11-29-90 as WCD Admin. Order 21-1990, eff. 12-26-90

436-040-0080 Third Party Recoveries

(1) If a third party recovery is made prior to a claim qualifying for Handicapped Workers Reserve relief, compensation recovered shall be credited against the compensation of the claim prior to any request for reimbursement.

(2) The Handicapped Workers Reserve shall be a party to any third party recovery on a claim if payment from the reserve has been made prior to the third party recovery as provided in ORS 656.591 and ORS 656.593(1)(c).

Stat. Auth.:**Stats. Implemented:**

Hist: WCD 1-1982(Admin), f. 1-20-82, ef. 2-1-82;
WCD 6-1983(Admin), f. 12-20-83, ef. 1-1-84

436-040-0090 Assessment of Civil Penalties

The director, through the Division and pursuant to ORS 656.745, may assess a civil

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
HANDICAPPED WORKERS RESERVE**

penalty against an insurer. When the Division imposes a penalty under this section, the Order shall be issued in accordance with ORS 656.447, ORS 656.704 and the contested case provisions of the Administrative Procedures Act (ORS Chapter 183).

Stat. Auth.:

Stats. Implemented:

Hist: Filed 12-22-89 as WCD Admin. Order 3-1989, effective 1-1-90

436-040-0100 Suspension and Revocation of Authorization to Issue Guaranty Contracts

(1) Pursuant to ORS 656.447, the director may suspend or revoke the insurer's authority to issue guaranty contracts upon a determination that the insurer has failed to comply with its obligations under such contract or that it has failed to comply with the rules or orders of the director.

(2) For the purpose of this rule:

(a) "Suspension" and its variations means a stopping by the director of the insurer's authority to issue new guaranty contracts for a specified period of time.

(b) "Revocation" and its variations means a permanent revocation by the director of an insurer's authority to issue guaranty contracts.

(c) "Show-cause hearing" means an informal meeting with the director or designee in which the insurer shall be provided an opportunity to be heard and present evidence regarding any proposed orders by the director to suspend or revoke an insurer's authority to issue guaranty contracts.

(3) Suspension or revocation under this rule will not be made until the insurer has been given notice and the opportunity to be heard through a show- cause hearing before the director and "show cause" why it should be permitted to continue to issue guaranty contracts.

(4) A show-cause hearing may be held at any time the director finds that an insurer has failed to comply with its obligations under a guaranty contract or that it failed to comply with rules or orders of the director.

(5) Following a show-cause hearing, the director may rescind the proposed order if the insurer establishes to the director's satisfaction its ability and commitment to comply with ORS Chapter 656 and these rules.

(6) A suspension may be in effect for a period of up to 18 months. A suspended insurer may continue to serve existing accounts and renew any existing policy, unless the policy lapses or is canceled during the period of suspension.

(7) After 12 months of the suspension has elapsed, the Division may audit the performance of the insurer. If the insurer is in compliance, the administrator may request the director to lift the suspension before the 18 months has elapsed. If the insurer is not in compliance, the administrator may request the director revoke the insurer's authority to issue guaranty contracts.

(8) When an insurer's authority to issue guaranty contracts has been revoked, the insurer may serve an existing account only until the policy lapses, is canceled or until the next renewal date, whichever first occurs.

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
HANDICAPPED WORKERS RESERVE**

(9) After a revocation of an insurer's authority to issue guaranty contracts has been in effect for five (5) years or longer, it may petition the director to restore its authority by submitting a plan in the form prescribed by the director, demonstrating its ability and commitment to comply with the workers' compensation law, these rules and orders of the director.

(10) Appeal of proposed and final orders of suspension and revocation issued under this rule may be made as provided in OAR 436-040-0008.

(11) Any order of suspension or revocation issued by a referee or other person pursuant to ORS 656.447 and this rule is a preliminary order subject to revision by the director.

Stat. Auth.:

Stats. Implemented:

Hist: Filed 11-29-90 as WCD Admin. Order 21-1990, effective 12-26-90