

BEFORE THE DIRECTOR
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION

In the Matter of the Amendment of	
Oregon Administrative Rules (OAR) Chapter 436,	ORDERS OF ADOPTION
Division 045, Reopened Claims Program.....	No. 03-072
Division 055, Certification of Claims Examiners.....	No. 03-073
Division 060, Claims Administration	No. 03-074
Division 070, Workers' Benefit Fund.....	No. 03-075
Division 075, Retroactive Program.....	No. 03-076
Division 085, Premium Assessments:	
Assessments/Contributions	No. 03-077
Division 150, Workers' Benefit Fund Claims Program.....	No. 03-078

The Director of the Department of Consumer and Business Services, pursuant to the general rulemaking authority under ORS 656.726(4), and in accordance with the procedure provided by ORS 183.335, amends OAR chapter 436, Divisions 045, 055, 060, 070, 075, 085, and 150.

On September 12, 2003, the Workers' Compensation Division filed the *Notice of Proposed Rulemaking/Hearing* with the Secretary of State to amend these rules. A Notice of Periodic Review of Rules was contained in the *Notice*. The *Statement of Need and Fiscal Impact* accompanied the *Notice*. Copies of the *Notice* and *Statement* were mailed to interested persons and legislators in accordance with ORS 183.335(1) and OAR 436-001-0000 and posted to the Workers' Compensation Division's web site. The notice was published in the October, 2003 *Oregon Bulletin*.

On October 22, 2003, a public hearing was held as announced. In addition, the record was held open for written testimony through 5:00 p.m. October 27, 2003. A written summary of testimony received and agency responses thereto, as well as principal documents relied upon, will be on file and available for public inspection upon request during regular business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, in the Administrator's Office, Workers' Compensation Division, Labor & Industries Building, 350 Winter Street NE, Salem, Oregon 97301-3879.

RULE SUMMARY:

These rules have been amended to reflect Senate Bill 233's changes to ORS chapter 656.740. The time frame for appeal of a proposed order or proposed assessment of civil penalty will no longer be 60 days following the party's receipt of notice, but instead 60 days from the date the order is mailed by the department. In addition, a number of "housekeeping" amendments have been made.

FINDINGS:

Having reviewed and considered the record and being fully informed, I make the following findings:

- (a) The applicable rulemaking procedures have been followed.
- (b) These 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.

IT IS THEREFORE ORDERED THAT:

- 1) Amendments to OAR Chapter 436, as set forth in Exhibit "A", attached hereto and incorporated by reference herein, **are adopted on this 3rd day of December 2003 to be effective January 1, 2004.**
- 2) A certified copy of the amended rules adopted herein shall be filed with the Secretary of State.
- 3) A copy of the amended rules with revision marks shall be filed with the Legislative Counsel pursuant to ORS 183.715 within ten (10) days after filing with the Secretary of State.

DATED this 3rd day of December, 2003.

DEPARTMENT OF CONSUMER
AND BUSINESS SERVICES

/s/ John L. Shilts

John L. Shilts, Administrator
Workers' Compensation Division

Pursuant to the Americans with Disabilities Act guidelines, alternative format copies of the rules will be made available to qualified individuals upon request.

If you have questions about these rules or need them in an alternate format, contact the Workers' Compensation Division at (503) 947-7810.

Attachments

Distribution: WCD-ID, S0, S1, S2, S3, NM

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 150**

WORKERS' BENEFIT FUND CLAIMS PROGRAM

EFFECTIVE JANUARY 1, 2002

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NOTE: Bold bars in the right margins mark substantive revisions to the previously published rules. Only Rule 0008 was revised under Administrative Order No. 03-078.

**OREGON DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
WORKERS' BENEFIT FUND CLAIMS PROGRAM**

**EXHIBIT "A"
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 150**

436-150-0001 Authority for Rules

These rules are promulgated under the director's authority contained in ORS 656.726(4) and section 6, chapter 974, Oregon Laws 2001.

Stat. Auth.: Section 6, chapter 974, Oregon Laws 2001, ORS 656.726(4)
Stats. Implemented: Section 6, chapter 974, Oregon Laws 2001
Hist: Adopted 12/6/01 as WCD Admin. Order 01-063, eff. 1/1/02

436-150-0002 Purpose

The purpose of these rules is to establish guidelines for regulating, managing, and disbursing moneys in the Workers' Benefit Fund for the purpose of advancing funds to injured workers who have not received payment of compensation due from an insurer in default.

Stat. Auth.: Section 6, chapter 974, Oregon Laws 2001, ORS 656.726(4)
Stats. Implemented: Section 6, chapter 974, Oregon Laws 2001
Hist: Adopted 12/6/01 as WCD Admin. Order 01-063, eff. 1/1/02

436-150-0003 Applicability of Rules

(1) These rules carry out the provisions of section 6, chapter 974, Oregon Laws 2001.

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

Stat. Auth.: Section 6, chapter 974, Oregon Laws 2001, ORS 656.726(4)
Stats. Implemented: Section 6, chapter 974, Oregon Laws 2001
Hist: Adopted 12/6/01 as WCD Admin. Order 01-063, eff. 1/1/02

436-150-0005 Definitions

As used in OAR 436-150-0001 through 436-150-0040, unless the context requires otherwise:

(1) "Compensation," for the purposes of this program, means temporary and permanent disability due injured workers pursuant to ORS chapter 656, and out-of-pocket expenses for injured workers in accordance with OAR 436-009-0025, such as prescription and mileage reimbursements. Compensation does not include amounts payable to providers, or benefits payable pursuant to claim settlements or claim disposition agreements.

(2) "Default" means an insurer has failed to make payments of compensation due injured workers pursuant to ORS chapter 656 for which there is no dispute over the right of the worker to receive such compensation or the amount therein.

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

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

(5) "Insurer" means a guaranty contract insurer authorized under ORS chapter 731 to transact workers' compensation insurance in this state.

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(6) "Oregon Insurance Guaranty Association" or "OIGA" means the association created by ORS 734.550.

(7) "Paying Agency" means the insurer, or the insurer's authorized representative, responsible for paying compensation due under ORS chapter 656.

Stat. Auth.: Section 6, chapter 974, Oregon Laws 2001, ORS 656.726(4)

Stats. Implemented: Section 6, chapter 974, Oregon Laws 2001

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

436-150-0006 Administration of Rules

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

Stat. Auth.: Section 6, chapter 974, Oregon Laws 2001, ORS 656.726(4)

Stats. Implemented: Section 6, chapter 974, Oregon Laws 2001

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

436-150-0008 Administrative Review

(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) Any party as described in section (1) of this rule, aggrieved by an action or order of the director or division pursuant to 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 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 within 30 days of the 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.

(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.

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WORKERS' COMPENSATION DIVISION
WORKERS' BENEFIT FUND CLAIMS PROGRAM

Stat. Auth.: Section 6, chapter 974, Oregon Laws 2001, ORS 656.726(4)
Stats. Implemented: ORS 656.445, ORS 656.740 (section 9, chapter 170, Oregon Laws 2003),
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

436-150-0010 Criteria for Eligibility

(1) In order for the director to authorize expenditures from the Workers' Benefit Fund Claims Program there must be:

(a) Verification from an authority from the insurer's state of domicile that the insurer responsible for payment of compensation is in default, such as a notice of voluntary or involuntary rehabilitation, conservatorship, or other information indicating the insurer cannot or will not make payments of compensation; and

(b) An order of the director authorizing disbursements to injured workers from the Workers' Benefit Fund Claims Program. The order shall specify the qualifying claims, duration of payment obligation, and maximum expenditure limitation. The maximum expenditure limitation may not exceed the amount of securities on deposit for the insurer pursuant to ORS 731.628.

(2) When expenditures are authorized pursuant to section (1) of this rule, the paying agency shall provide the director with sufficient information, as specified in OAR 436-150-0030(2), to enable the director to advance funds to eligible injured workers.

(3) To be eligible for payment under the program:

(a) Compensation must be due and payable pursuant to ORS chapter 656; and

(b) There must be an effective guaranty contract or record of insurance policy on file with the director by the insurer covering the employer on the date of injury.

(4) Payments to eligible injured workers in accordance with these rules shall be applied toward the insurer's payment obligations under ORS chapter 656 and will be deducted from compensation due, pursuant to ORS 734.570.

Stat. Auth.: Section 6, chapter 974, Oregon Laws 2001, ORS 656.726(4)
Stats. Implemented: Section 6, chapter 974, Oregon Laws 2001
Hist: Adopted 12/6/01 as WCD Admin. Order 01-063, eff. 1/1/02

436-150-0020 Limitation of Program

(1) Payment of compensation shall be limited to the amount of securities on deposit for the insurer pursuant to ORS 731.628 and only to the extent the monies are available in the Workers' Benefit Fund.

(2) Payments for individual claims shall be limited to compensation that becomes due and payable during the period of default.

(3) Notwithstanding any other provision of these rules, the director may, in the director's discretion, authorize additional benefits for specific claims in cases of extreme hardship.

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

Stat. Auth.: Section 6, chapter 974, Oregon Laws 2001, ORS 656.726(4)

OREGON DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
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WORKERS' BENEFIT FUND CLAIMS PROGRAM

Stat. Implemented: Section 6, chapter 974, Oregon Laws 2001
Hist: Adopted 12/6/01 as WCD Admin. Order 01-063, eff. 1/1/02

436-150-0030 Payment of Benefits

(1) Payment of compensation may be made by the director after receipt of documentation that compensation is due and payable.

(2) Documentation to support payment from the Workers' Benefit Fund Claims Program shall be submitted by the paying agent to include, but not be limited to:

- (a) Insurer name, address, and policy number;
- (b) Injured worker name, address, insurer claim number, Workers' Compensation Division claim number, and date of injury;
- (c) Employer name and address;
- (d) Amount, duration, and purpose of compensation due;
- (e) Amounts payable for support pursuant to ORS 656.236, along with supporting documentation; and
- (f) Any other information deemed necessary by the director.

Stat. Auth.: Section 6, chapter 974, Oregon Laws 2001, ORS 656.726(4)
Stats. Implemented: Section 6, chapter 974, Oregon Laws 2001
Hist: Adopted 12/6/01 as WCD Admin. Order 01-063, eff. 1/1/02

436-150-0040 Accounting and Repayment of Payment of Benefits

(1) The director shall establish an account of record to monitor all expenditures and transactions relating to the Workers' Benefit Fund Claims Program and these rules. The accounting shall provide a detailed record of payments to each injured worker and the respective insurer responsible for the claim to include, but not be limited to, information as specified in OAR 436-150-0030(2).

(2) When the obligation to make payment of compensation is assumed by the Oregon Insurance Guaranty Association (OIGA) due to the insolvency of an insurer, the OIGA shall reimburse the Workers' Benefit Fund for all moneys advanced to injured workers for covered claims, as specified by OAR 734.510(4) and these rules. The OIGA shall reimburse the director within 60 days of receipt of sufficient information necessary to support the covered claims. All moneys received from the OIGA by the director shall be placed into the Workers' Benefit Fund.

(3) If an insurer defaults in its payments to injured workers, but later resumes its obligation to make payments, the insurer shall reimburse the director for any moneys paid to the injured worker. Such payment shall be in such amounts and at such intervals as prescribed by an order of the director. Failure of the insurer to comply with the order of the director may result in civil penalty pursuant to ORS 656.745.

(4) Any dispute over an amount owing the director in accordance with these rules shall be resolved pursuant to OAR 436-150-0008(2).

Stat. Auth.: Section 6, chapter 974, Oregon Laws 2001, ORS 656.726(4)
Stats. Implemented: Section 6, chapter 974, Oregon Laws 2001
Hist: Adopted 12/6/01 as WCD Admin. Order 01-063, eff. 1/1/02

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the
PERMANENT Rule(s) adopted on

December 3, 2003 by the
Date prior to or same as filing date

Department of Consumer and Business Services
Workers' Compensation Division
Agency and Division

OAR chapter 436
Administrative Rules Chapter No.

Fred Bruyns (503) 947-7717
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to become effective January 1, 2004 was published in the October 2003 Oregon Bulletin.**
Date upon filing or later Month and Year

Rulemaking Notice

RULEMAKING ACTION

List each rule number separately, 000-000-0000.

ADOPT: OAR 436-050-0165, 436-050-0480

AMEND: OAR

436-045-0008	436-050-0080	436-050-0180	436-050-0290	436-080-0003	436-080-0070
436-050-0003	436-050-0090	436-050-0185	436-050-0400	436-080-0005	436-080-0080
436-050-0005	436-050-0100	436-050-0190	436-050-0440	436-080-0006	436-085-0008
436-050-0006	436-050-0110	436-050-0195	436-055-0008	436-080-0010	436-150-0008
436-050-0008	436-050-0120	436-050-0200	436-060-0008	436-080-0020	436-160-0003
436-050-0040	436-050-0150	436-050-0210	436-070-0008	436-080-0030	436-160-0310
436-050-0050	436-050-0160	436-050-0220	436-075-0008	436-080-0040	436-160-0320
436-050-0055	436-050-0170	436-050-0260	436-080-0001	436-080-0060	436-160-0340
436-050-0060	436-050-0175	436-050-0270	436-080-0002	436-080-0065	436-160-0350
		436-050-0280			436-160-0360

REPEAL: OAR 436-050-0020, 436-050-0150T, 436-050-0160T 436-050-0165T, OAR 436-080-0050

ORS 656.704, 656.726(4)

Statutory Authority

ORS 183.335; OAR 137-001; OAR 436-001-0000 and 436-001-0005

Other Authority

ORS chapter 656

Statutes being Implemented

RULE SUMMARY

These rules have been amended in part to reflect Senate Bill 233's changes to ORS 656. The time frame for appeal of a proposed order or proposed assessment of civil penalty will no longer be 60 days following the party's receipt of notice, but instead 60 days from the date the order is mailed by the department. SB 233 also eliminated claim closure penalties for non-complying employers and changed the notification requirements for termination of guaranty contracts. In addition, these rules include a number of "housekeeping" amendments and supersede temporary OAR 436-050 rules indicated above after "REPEAL."

Certificate and Order for Filing Permanent Administrative Rules
Page 2

These rules:

- Repeal specific requirements affecting service of orders by the director.
- Reduce data reporting requirements for industry codes.
- Eliminate certain requirements to report coverage elections and cancellation of elections.
- Explain the notice and reporting requirements regarding the insurer's termination of guaranty contracts.
- State that active self-insurance certification remains in effect if a guaranty contract has been filed.
- Require notification of workers and other parties at least 10 days prior to changing claims processing locations.
- Require insurers and self-insured employers to keep documentation of dates payments are mailed.
- Require submission of audited financial statements by self-insured employers under certain conditions.
- Provide that an irrevocable standby letter of credit may be accepted by the director as an alternative to a surety bond as a security deposit. This provision has been in effect under authority of temporary rules effective 7/18/03.
- Provide that government securities, certificates of deposit, or time deposit accounts will not be accepted as new or replacement security deposits by self-insured employers effective January 1, 2004; require self-insured employers with existing securities of this type to complete a "Security Agreement and Notice to Intermediary," Form 440-4023, granting the department a security interest in and control over those financial assets.
- Provide that excess insurance coverage must be specific on a per occurrence basis, and that such coverage may include aggregate excess insurance.
- Incorporate annual reporting requirements for self-insured employers formerly published only in Bulletin 209.
- Require that future claim liability estimates or annual incurred losses include losses incurred but not reported.
- Require that a new self-insured employer's deposit is not less than the amount of the approved self-insured employer retention level for the employer's excess workers' compensation insurance.
- Require that each entity included under a self-insurance certification enter into an agreement making the entity jointly and severally liable for payment of compensation and moneys due.
- Require that self-insured employer groups maintain coverage records relating to each member.
- Prohibit a worker leasing company from providing workers' compensation coverage to another leasing company.
- Provide for assessment of civil penalties against worker leasing companies or prospective leasing companies that fail to meet the requirements of relevant rules. Provide penalty matrixes for worker leasing companies that violate these rules and for companies that operate as worker leasing companies without a license

Direct questions to: Fred Bruyns, Rules Coordinator; phone 503-947-7717; fax 503-947-7581; or e-mail fred.h.bruyns@state.or.us. Rules are available on the internet: <http://www.oregonwcd.org/policy/rules/rules.html#permrules>

For a copy of the rules, contact Publications at 503-947-7627, Fax 503-947-7630.

/s/ John L. Shilts

Authorized Signer

December 3, 2003

Date

John L. Shilts, Administrator, Workers' Compensation Division

Printed name

*Copies include a photocopy of this certificate with paper and electronic copies of each rule listed in the Rulemaking Action.

**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 p.m. 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 p.m. the preceding workday.