

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
OREGON ADMINISTRATIVE RULES**

CHAPTER 436, DIVISION 050

EMPLOYER/INSURER COVERAGE RESPONSIBILITY

PROPOSED

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The proposed amendment to the rules was announced in the Secretary of State's *Oregon Bulletin* dated October 1, 2005. On November 1, 2005, a public rulemaking hearing was held as announced at 10:30 a.m. in Room 260 of the Labor and Industries Building, 350 Winter Street NE, Salem, Oregon 97301-3879. Fred Bruyns, from the Workers' Compensation Division, acted as hearing officer. Business Support Services audio-recorded the hearing and created a written transcript. The record was held open for written comment through November 7, 2005.

The division received no public testimony on the proposed changes to OAR 436-050.

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 260 (2 nd Floor, Labor & Industries Building)		
November 1, 2005	10:30 a.m.*	350 Winter Street NE, Salem, Oregon	Fred Bruyns
Hearing date	Time	Location	Hearings Officer

***NOTE: The hearing will begin at 10:30 a.m. and end when all present who wish to testify have done so. Written testimony will be accepted through November 7, 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 436-055-0085, 436-060-0137, 436-060-0510, 436-120-0755

AMEND: OAR 436-010; OAR 436-060; and

436-015-0008	436-030-0023	436-035-0008	436-035-0360	436-050-0170	436-110-0337
436-015-0030	436-030-0034	436-035-0009	436-035-0380	436-050-0220	436-110-0345
436-015-0040	436-030-0055	436-035-0011	436-035-0390	436-050-0230	436-120-0003
436-015-0070	436-030-0065	436-035-0012	436-035-0395	436-055-0070	436-120-0008
436-015-0080	436-030-0115	436-035-0016	436-035-0400	436-055-0100	436-120-0320
436-015-0110	436-030-0155	436-035-0017	436-035-0410	436-105-0003	436-120-0900
436-030-0002	436-030-0165	436-035-0019	436-035-0420	436-105-0500	436-160-0003
436-030-0003	436-030-0175	436-035-0110	436-035-0430	436-110-0002	436-160-0005
436-030-0005	436-030-0185	436-035-0190	436-035-0500	436-110-0005	
436-030-0007	436-030-0575	436-035-0230	436-050-0003	436-110-0310	
436-030-0009	436-030-0580	436-035-0330	436-050-0008	436-110-0326	
436-030-0015	436-035-0005	436-035-0340	436-050-0100	436-110-0327	
436-030-0020	436-035-0007	436-035-0350	436-050-0110	436-110-0335	

REPEAL: None

ORS 656.726(4)
 Stat. Auth.

Other Authority
 ORS chapter 656, primarily: ORS 656.704, Enrolled House Bill (HB) 2091 – Oregon Laws (OL) 2005, ch. 26; ORS 656.268, Enrolled HB 2404 – OL 2005, ch. 569; ORS 656.273, Enrolled HB 2405 – OL 2005, ch. 50; ORS 656.726, Enrolled HB 2408 – OL 2005, ch. 653; ORS 656.262, Enrolled HB 2718 – OL 2005, ch. 189; Enrolled HB 3318 – OL 2005, ch. 511; ORS 656.262, 656.313, 656.605, 656.622, Enrolled Senate Bill (SB) 119 – OL 2005, ch. 588; ORS 656.268, 656.745, Enrolled SB 172 – OL 2005, ch. 221; ORS 656.325, Enrolled SB 311 – OL 2005, ch. 675; ORS 656.206, .656.268, 656.319, 656.605, 656.319, Enrolled SB 386 – OL 2005, ch.461; ORS 656.260, Enrolled SB 670 – OL 2005, ch. 364

Stats. Implemented

Notice of Proposed Rulemaking Hearing

RULE SUMMARY

Proposed amendment of workers' compensation rules affecting injured workers, employers, medical providers, insurers, and others.

Changes directly related to 2005 legislation are marked with asterisks *. Some changes apply only to injuries that occur on or after 1/1/2006. Proposed substantive amendments affect:

- *Hearings on workers' compensation matters currently processed by the Office of Administrative Hearings – moved to the Workers' Compensation Board, for all hearings held on or after January 2, 2006.
- *Independent medical examinations (IME)s – including a worker's right to contest the location of the exam and associated increase to 90 days for the insurer to accept or deny the claim if the worker prevails; penalty to worker for failure to attend; penalty to medical provider for failure to forward diagnostic records to the IME provider; requirement (effective 7/1/2006) for the director to develop a list of medical providers who are authorized to perform IMEs and for all IMEs to be scheduled with a physician on the list.
- *The reporting and processing of aggravation claims;
- Elective surgery notification;
- Types of care that are reimbursable after the worker becomes medically stationary (clarification only);
- *Requirements that managed care organizations submit copies of their treatment standards and protocols to the director for review and approval;
- Closure notice requirements in fatal claims;
- Reduced insurer reporting requirements for claims in which workers have no permanent impairment;
- *Permanent total disability – including limitations on benefits if the worker incurs a new injury; criteria for re-examination or reduction; required vocational evaluations and suspension of benefits for failure to attend or non-cooperation; appeals of termination; automatic eligibility for vocational assistance upon termination of permanent total disability (by final order);
- The reconsideration record – video recordings, duplicate records;
- *Penalties upon reconsideration – limitations;
- *Insurer data reporting necessary for the Workers' Compensation Division to assess the impact of legislative changes on permanent partial disability awards;
- *The effect of a regular work release on awards of work disability and social/vocational factors;
- Requirements to round percentages of impairment – hearing and vision no longer taken to the 100th of a percent;
- Rating of impairment for skin disorders – signs and symptoms need not be present upon examination;
- Insurer's notice to employer of policy cancellation to include a statement that the guaranty contract will terminate;
- Insurers' reporting of names or positions of key contacts to the Workers' Compensation Division;
- *The right of self-insured public utilities with assets in excess of \$500 million to obtain excess workers' compensation insurance coverage from an eligible surplus lines insurer;
- *Required training for certified claims examiners on interactions with independent medical exam providers;
- Adjustments – up and down – of insurer claims processing compliance thresholds (affecting penalties);
- *The dollar amount employers can pay for medical services on non-disabling claims;
- *Requirement (effective 7/1/2006) that Worker Requested Medical Examinations be conducted by a medical provider on the list of authorized independent medical examination providers maintained by the director;
- Increase of certain maximum penalty amounts to the \$2,000 statutory maximum;
- Eligibility for Preferred Worker Program benefits – workers must be authorized to work in the United States;
- *Reimbursement from the Workers' Benefit Fund of permanent total disability (PTD) payments made by the insurer during an appeal of termination of PTD – if the insurer prevails;
- For the purposes of reimbursement of wage subsidies under the Employer-at-Injury Program, allowance for supplemental documentation to clarify information not fully explained by the payroll record;
- *Provision for direct assistance to workers under ORS 656.622 to promote re-employment;

Notice of Proposed Rulemaking Hearing

- *Reimbursement from the Workers' Benefit Fund of the insurer's vocational assistance costs incurred after the insurer appeals an administrative order to provide such assistance (if the insurer prevails);
- Deletion of the penalty matrix for three types of violations of the vocational assistance rules;
- Requirement that insurers submit the legal name of the employer (not a "doing business as" name, etc.), whether reporting by paper or electronically;
- Provision for the director to impose a civil penalty for violation of ORS chapter 656, in addition to violation of rules and orders of the director.

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.

November 7, 2005
Last Day for Public Comment

/s/ John L. Shilts 9/15/05
Authorized Signer and Date

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.

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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

OADR CHAPTER 436

Agency and Division

Administrative Rules Chapter Number

In the Matter of)	
The Amendment of OAR:)	
436-010, Medical Services)	
436-015, Managed Care Organizations)	
436-030, Claim Closure and Reconsideration)	Statutory Authority,
436-035, Disability Rating Standards)	Statutes Implemented,
436-050, Employer/Insurer Coverage Responsibility)	Statement of Need,
436-055, Claims Examiner Certification)	Principal Documents Relied Upon,
436-060, Claims Administration)	Statement of Fiscal Impact
436-105, Employer-at-Injury Program)	
436-110, Preferred Worker Program)	
436-120, Vocational Assistance to Injured Workers)	
436-160, Electronic Data Interchange)	

Statutory Authority: ORS 656.726(4)

Other Authority:

Statutes Implemented: ORS chapter 656, primarily: ORS 656.704, Enrolled House Bill (HB) 2091 – Oregon Laws (OL) 2005, ch. 26; ORS 656.268, Enrolled HB 2404 – OL 2005, ch. 569; ORS 656.273, Enrolled HB 2405 – OL 2005, ch. 50; ORS 656.726, Enrolled HB 2408 – OL 2005, ch. 653; ORS 656.262, Enrolled HB 2718 – OL 2005, ch. 189; Enrolled HB 3318 – OL 2005, ch. 511; ORS 656.262, 656.313, 656.605, 656.622, Enrolled Senate Bill (SB) 119 – OL 2005, ch. 588; ORS 656.268, 656.745, Enrolled SB 172 – OL 2005, ch. 221; ORS 656.325, Enrolled SB 311 – OL 2005, ch. 675; ORS 656.206, .656.268, 656.319, 656.605, 656.319, Enrolled SB 386 – OL 2005, ch.461; ORS 656.260, Enrolled SB 670 – OL 2005, ch. 364

Need for the Rule(s): These proposed rule changes implement changes to Oregon laws. Some additional changes are proposed to clarify and simplify existing rules.

Documents Relied Upon: Enrolled House and Senate Bills listed next to “Statutes Implemented”; rulemaking advisory committee meeting records. 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: This statement of fiscal impact does not address those impacts associated with the House and Senate Bills implemented by these rules, except to the extent proposed rule changes may modify the impact of the law, as when the law gives the director the discretion to set penalty amounts.

Regarding: Transfer of hearings from the Office of Administrative Hearings to the Workers’ Compensation Board: Proposed rules related to passage of HB 2091 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.

Regarding: Penalties to insurer upon reconsideration of the claim closure: Proposed rules related to passage of HB 2404 should have no effect in addition to any effect caused by the law change.

Regarding: Reporting and processing of aggravation claims: Proposed rules related to passage of HB 2405 should have no effect in addition to any effect caused by the law change.

Regarding: Regular work release and the relevance of social vocational factors and impact on awards for work disability: Proposed rules related to passage of HB 2408 should have no effect in addition to any effect caused by the law change.

Statement of Need and Fiscal Impact

Regarding: Allowing self-insured public utilities to obtain excess workers' compensation insurance coverage from eligible surplus lines insurers: Proposed rules related to passage of HB 2718 should have no effect in addition to any effect caused by the law change.

Regarding: Allowing employers to pay up to \$1500 for medical services on non-disabling claims (for dates of injury on or after 1/1/2006): Proposed rules related to passage of HB 3318 should have no effect in addition to any effect caused by the law change.

Regarding: Providing direct assistance to workers under ORS 656.622 to promote re-employment; and reimbursement from the Workers' Benefit Fund of the insurer's vocational assistance costs during an appeal of an administrative order to provide such assistance (if the insurer prevails): Proposed rules related to passage of SB 119 should have no effect in addition to any effect caused by the law change.

Regarding: The director's authority to impose a civil penalty for violation of ORS chapter 656 (not just violations related to rules and orders of the director): Proposed rules related to passage of SB 172 have no immediate effect, but should facilitate a reduction in future rulemaking and elimination of some rules that repeat statutory wording.

Regarding: Changes to requirements for independent medical examinations (IME)s –

1) The penalty amount to the worker for failure to attend an IME was not set by statute. The rules propose \$100. Independent medical examination firms have indicated a 10% to 20% no-show rate, though these may include non-workers' compensation cases, where failure to attend has fewer consequences. We estimate a 15% no-show rate: 15% times 15,000 (estimated annual IMEs) = 2,250 no-shows. The \$100 penalty may only be applied if the worker is not receiving time-loss payments. We have no data on the percentage of no-shows who are receiving time-loss. However, if we assume as many as 50% are not, the potential fiscal impact would be $2,250/2 \times \$100 = \$112,500$. This is a theoretical impact on injured workers, as the penalty may only be recovered from future benefits, if any. It is probable that no more than \$50,000 per year will be recovered. This would be a negative fiscal impact to affected workers and a positive impact for insurers, though insurers would have associated administrative costs in recovering this money. The purpose of the penalty is improved attendance at the IMEs. To the extent this is achieved, claim processing will be expedited, IME providers will lose fewer dollars due to no-shows, and overall system costs will be lowered.

2) The penalty amount to a medical provider for failure to forward diagnostic records to the IME provider was not set by statute. The rules propose \$100. We do not have data on the number of providers who unreasonably fail to provide diagnostic records. We estimate a maximum of 5%. 5% of 15,000 IMEs annually $\times \$100 = \$75,000$. This would be a negative fiscal impact to affected medical providers. Again, to the extent the penalty promotes compliance, IME examinations will be more effective and certain diagnostic procedures will not be repeated. To the extent this is achieved, overall system costs will be lowered.

3) In order to implement SB 311 and the recommendations of the Management-Labor Advisory Committee, the rules require some new notices and forms. We estimate that the IME notice and related materials the insurer sends to the worker will rise to greater than 1 oz (but less than 2 oz). This would raise the cost of each mail piece by \$0.23. $15,000 \text{ IMEs} \times \$0.23 = \$3,450$. Paperwork requirements for medical providers may add about \$1 per appointment to providers' costs, or about \$15,000 per year system wide.

4) Additional Proposed rules related to passage of SB 311 should have no effect in addition to any effect caused by the law change.

Regarding: Permanent total disability: Proposed rules related to passage of SB 386 should have no effect in addition to any effect caused by the law change.

Regarding: Requirements that managed care organizations submit copies of their treatment standards and protocols to the director for review and approval: Proposed rules related to passage of SB 670 should have no effect in addition to any effect caused by the law change.

Regarding: Reporting and notice requirements

1) Reduced reporting requirements at closure for workers who have no permanent impairment and reduced notification requirements for elective surgery: These changes should have a small positive impact on insurers and medical providers.

2) Requiring insurers to remove duplicates from the record submitted for reconsideration of claim closures: This change will increase labor costs for insurers to review their files. The exact dollar amount cannot be estimated, because insurers have very different record management systems. If the average insurer cost was \$5 per claim, the overall cost to insurers would be somewhat less than \$25,000 per year. However, insurers and the Workers' Compensation Division should gain processing efficiency by having a more compact file, so the system as a whole

Statement of Need and Fiscal Impact

may see a net cost reduction; requiring insurers to include guaranty contract termination language on their policy cancellation letters will raise costs for those insurers who do not do this currently. Because this is an Oregon-specific requirement, this affects national carriers who may have standard letters for many states. The set-up costs will be significant; however, insurers who fail to include proper notice of termination can be held liable for future claims by the “covered” employer, and we estimate that such claims costs would be greater than the costs of modifying policy cancellation letters.

Regarding: Changes to penalty amounts and compliance thresholds: Increasing the maximum penalty to the statutory maximum allows the director to address particularly egregious or frequent violations. The net effect on the parties in the workers’ compensation system should be minor or possibly zero. The purpose of penalties is to encourage compliance with the law. To the extent this is achieved, penalties may decline and the net effect would be positive. The same can be said of thresholds. The Workers’ Compensation Division published an industry notice dated June 1, 2006 announcing that the thresholds would change, thus allowing insurers time to adjust processes to meet certain time frames. The focus is on timely acceptance or denial of claims and payment of benefits, so these thresholds will be 90% (effectively an increase – the 95% threshold in OAR 436-060-0140 was not applied), while reporting of claim information to the division will be held to a lower standard, 80% (a decrease). We cannot project the net fiscal impact because we cannot anticipate the compliance rate, but it is likely that insurers will see some increased penalties in the near term.

Regarding: Additional proposed changes: We estimate that additional changes will not have any significant economic impact on any persons or businesses, including small businesses.

Administrative Rule Advisory Committee consulted: Yes, 8/25/05, 8/26/05, 8/30/05 (two meetings), & 8/31/05

/s/ John L. Shilts

9/15/05

Signature and Date

John L. Shilts, Administrator, Workers’ Compensation Division

Printed name

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
PROPOSED EMPLOYER/INSURER COVERAGE RESPONSIBILITY**

**EXHIBIT "A"
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 050**

436-050-0003 Applicability of Rules

- (1) These rules are effective [June 1, 2005]**January 1, 2006**, to carry out the provisions of:
- (a) ORS 656.017 - Employer required to pay compensation and perform other duties.
 - (b) ORS 656.029 - Independent contractor status.
 - (c) ORS 656.126 - Coverage while temporarily in or out of state.
 - (d) ORS 656.407 - Qualifications of insured employers.
 - (e) ORS 656.419 - Guaranty contracts.
 - (f) ORS 656.423 - Cancellation of coverage by employer.
 - (g) ORS 656.427 - Termination of guaranty contract or surety bond liability by insurer.
 - (h) ORS 656.430 - Certification of self-insured employer.
 - (i) ORS 656.434 - Certification effective until canceled or revoked; revocation of certificate.
 - (j) ORS 656.443 - Procedure upon default by employer.
 - (k) ORS 656.447 - Sanctions against insurer for failure to comply with contracts, orders or rules.
 - (l) ORS 656.455 - Records location and inspection.
 - (m) ORS 656.745 - Civil penalties.
 - (n) ORS 656.850 and 656.855 - Worker-leasing companies.
 - (o) ORS 731.475 - Insurer's in-state location.
- (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: ORS 656.017, 656.029, 656.126, 656.407, 656.419, 656.423, 656.427, 656.430, 656.434, 656.443, 656.447, 656.455, 656.745, 656.850, 656.855, and 731.475

Stats. Implemented: ORS 656.704 and 656.726(4)

Hist: Filed 12/19/75 as WCB Admin. Order 18-1975, eff. 1/1/76, as Rule 436-51-001
Amended 4/12/76 as WCB Admin. Order 2-1976, eff. 4/12/76 (Temporary as Rule 436-51-130)
Amended 6/15/76 as WCB Admin. Order 3-1976
Amended 4/2/80 as WCD Admin. Order 3-1980, eff. 4/2/80
Amended 2/10/82 as WCD Admin. Order 4-1982, eff. 2/15/82
Amended 12/22/83 as WCD Admin. Order 7-1983, eff. 12/27/83
Renumbered from OAR 436-51-008, January 1, 1986
Amended 12/12/85 as WCD Admin. Order 9-1985, eff. 1/1/86
Amended 12/18/87 as WCD Admin. Order 9-1987, eff. 1/1/88
Amended 12/22/89 as WCD Admin. Order 5-1989, eff. 1/1/90
Amended 11/29/90 as WCD Admin. Order 27-1990, eff. 12/26/90
Amended 4/1/94 as WCD Admin. Order 94-052, eff. 5/1/94
Amended 3/8/96 as WCD Admin. Order 96-057, eff. 4/1/96
Amended 1/9/98 as WCD Admin. Order 98-050, eff. 1/23/98

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Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01
Amended 8/28/03 as WCD Admin. Order 03-056, eff. 9/15/03
Amended 12/3/03 as WCD Admin. Order 03-062, eff. 1/1/04
Amended 5/25/05 as WCD Admin Order 05-055, eff. 6/1/05
Amended xx/xx/xx as WCD Admin. Order xx-xxx, eff. xx/xx/xx

436-050-0008 Administrative Review and Contested Cases

(1) Any party as defined by ORS 656.005, including an Assigned Claims Agent pursuant to ORS 656.054, aggrieved by an action taken pursuant to these rules in which a worker's right to compensation or the amount thereof is directly in issue may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with ORS Chapter 656 and the Board's Rules of Practice and Procedure for Contested Cases under the Workers' Compensation Law except where otherwise provided in ORS Chapter 656.

(2) Any party as described in section (1) aggrieved by a proposed order or proposed assessment of civil penalty of the director or division issued pursuant to ORS 656.254, 656.735, 656.745 or 656.750 may request a hearing by sending a written request to the Workers' Compensation Division's administrator within 60 days after the order was mailed.

(3) A hearing will not be granted if the request:

(a) fails to state the specific grounds for which the party contests the proposed order or assessment; or

(b) is mailed or delivered to the administrator more than 60 days after the order was mailed.

(4) Under ORS 656.704(2), [A]ny party [as described in section (1) 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 (2), [where such action or order qualifies for review by hearing before the director 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(l). When the matter qualifies for review as a contested case, the process for review shall be as follows:

(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 action or order is contested and is received by 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 shall be conducted by the Office of Administrative Hearings.

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

(5) Any party described in section (1) aggrieved by an action taken pursuant to these rules by another person except as described in sections (1) through (3) above may request administrative review by the division on behalf of the director. The process for administrative review of such matters shall be as follows:

(a) The request for administrative review shall be made in writing to the administrator of the Workers' Compensation Division within 90 days of the action. No administrative review shall be granted unless the request specifies the grounds upon which the action is contested and

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
PROPOSED EMPLOYER/INSURER COVERAGE RESPONSIBILITY**

is received by the administrator within 90 days of the contested action unless the director or his designee determines that there was good cause for delay or that substantial injustice may otherwise result.

(b) The review, including whether the request is timely and appropriate, may be conducted by the administrator, or the administrator's designee, on behalf of the director.

(c) In the course of said review, the person conducting the review may request or allow such input or information from the parties as he or she deems to be helpful.

(d) The determination by the person conducting the review will specify whether the determination constitutes a final order or whether an aggrieved party may request a [contested case] hearing **under section (4)** [before the director pursuant to ORS Chapter 183].

[e) Any request for a contested case hearing before the director regarding a review determination made pursuant to this section must comply with the procedures provided in section (4) above.]

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

Stats. Implemented: ORS 656.254, 656.735, 656.740 (section 9, chapter 170, Oregon Laws 2003), 656.745, and 656.750

Hist: Filed 12/19/75 as WCB Admin. Order 1-1975, eff. 1/1/76 as Rule 436-58-055

Amended 4/2/80 as WCD Admin. Order 3-1980, eff. 4/2/80

Amended 2/10/82 as WCD Admin. Order 4-1982, eff. 2/15/82

Amended 12/22/83 as WCD Admin. Order 7-1983, eff. 12/27/83

Renumbered from OAR 436-51-998, January 1, 1986

Amended 12/12/85 as WCD Admin. Order 9-1985, eff. 1/1/86

Amended 12/18/87 as WCD Admin. Order 9-1987, eff. 1/1/88

Amended 11/29/90 as WCD Admin. Order 27-1990, eff. 12/26/90

Amended 1/9/98 as WCD Admin. Order 98-050, eff. 1/23/98

Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01

Amended 12/3/03 as WCD Admin. Order 03-062, eff. 1/1/04

Amended xx/xx/xx as WCD Admin. Order xx-xxx, eff. xx/xx/xx

436-050-0100 Cancellation of Coverage by Employer; Reinstatement of Guaranty Contract; Carrier Liability

(1) An employer may cancel coverage with an insurer pursuant to ORS 656.423. An employer's cancellation of coverage with an insurer does not terminate a guaranty contract. Liability of an insurer under a guaranty contract under this chapter is terminated by an insurer taking action pursuant to ORS 656.427.

(2) An insurer may terminate liability on its guaranty contract or surety bond by giving the employer and director notice of termination in accordance with ORS 656.427 and this rule.

(3) Notice to the employer for terminating an insurer's guaranty contract filed with the director must be in writing, **must include a statement that the filing with the director will terminate**, and must state the effective date of termination. The termination is effective:

(a) if terminated for reasons other than in subsection (b) of this section, not less than 30 days after the insurer mails notice to the employer; or

(b) if terminated because the insurer decides not to offer insurance to employers within a specific premium category, not sooner than 90 days after the insurer mails notice to the employer.

(4) The insurer bears the burden of proof establishing that a termination notice was

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mailed to an employer. The notice and proof of mailing must be made available in Oregon upon request.

(5) Notice to the director of termination of a guaranty contract can be provided separately under OAR 436-160 or under this rule; or in a list if filing by hard copy submission under this rule. The notice under this rule must:

(a) Be in writing;

(b) Clearly identify the insurer;

(c) Include the employer(s) legal name; Federal Employer Identification Number (FEIN) or other tax reporting number; and the effective date of termination; and

(d) Be mailed or delivered to the director within [seven]~~ten~~ calendar days after the effective date of the termination.

(6) Failure to provide timely notice to the director of termination of an insurer's guaranty contract may result in civil penalties pursuant to ORS 656.745.

(7) A guaranty contract termination notice may be rescinded and the guaranty contract reinstated if there will not be a lapse in the employer's coverage. If there is a lapse in the employer's coverage and the insurer reestablishes a policy for the employer, the insurer must file a new guaranty contract which reports the effective date of the new coverage.

(8) Pursuant to ORS 656.427(5), an employer may give notice to the insurer seeking continued coverage. The notice must be given before the effective date of the insurer guaranty contract termination and must be in writing. The notice must at least include a statement that other coverage has not been obtained and that the employer intends to become insured under the plan as established in ORS 656.730. Further application by the employer is not required. Pursuant to ORS 656.427(5), the insurer so notified must then insure continuing coverage and may take the additional steps to transfer the risk to the plan.

(9) If two or more guaranty contracts are in effect for one employer for the same time period, the insurer filing the employer's most recent arrangement for coverage shall have responsibility for processing claims occurring during the time period.

(10) If a guaranty contract is in effect and an active self insurance certification is on file with the director for the same employer for the same time period, the self insured employer shall have the responsibility of processing claims occurring during the time period as arranged under the self insurance certification.

Stat. Auth: ORS 656.704 and 656.726(4)

Stats. Implemented: ORS 656.423 and 656.427 (sections 3 & 5, chapter 170, Oregon Laws 2003)

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436-050-0110 Notice of Insurer's Place of Business in State; Coverage Records Insurer Must Keep in Oregon

(1) Every insurer that is authorized to issue workers' compensation coverage to subject employers as required by ORS Chapter 656 shall give the director notice of the location, mailing address, telephone number, and any other contact information in this state where the insurer processes claims and keeps written records of claims and guaranty contracts as required by ORS 731.475. **The insurer must provide the director contact information for a designated person or position within the company who will assure payment of penalties and resolution of collections issues resulting from orders issued by the director.** While the insurer may have more than one location in this state, the information provided to the director must reasonably lead an inquirer to a person who can respond to inquiries as to guaranty contract information and to access an in-state Oregon certified claims examiner who can respond within a reasonable time to specific claims processing inquiries. A response time of forty-eight (48) hours or less not including weekends or legal holidays would satisfy a reasonable expectation.

(2) Notice under section (1) of this rule shall be filed with the director within 30 days after the insurer becomes authorized and starts writing workers' compensation insurance policies for Oregon subject employers.

(3) If an insurer elects to use a service company to satisfy the purposes of ORS 731.475 with respect to all or any portion of its business, the insurer shall, prior to its effective date, file with the division a copy of the agreement between the insurer and each company, and shall give the division notice of the location and mailing address of each service company.

(4) For the purpose of this section, those activities conducted at designated in-state location(s) and by the authorized representative(s) of the insurer shall include, but not be limited to:

- (a) Processing claims and responding to specific claims processing inquiries;
- (b) Keeping of records in a written form, not necessarily original form, and making those records available upon request;
- (c) Accommodating in-state periodic audits of the director; and
- (d) Providing copies of guaranty contracts, related information, and responding to inquiries to resolve coverage issues.

(5) If its place of business or that of a service company elected in lieu of an in-state place of business is changed, the insurer shall notify the director of the new location, mailing address, telephone number, and any other contact information of the place of business at least 30 days prior to the effective date of the change.

(6) When an insurer changes claims processing locations, service companies, or self-administration, the insurer must provide at least 10 days prior notice to workers with open or active claims, their attorneys, and attending physicians. The notice must provide the name of a contact person, telephone number, and mailing address of the new claim processor. The insurer must also notify the director of which claims will be transferred. The notice to the director must include:

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(a) Contact information for both the sending processor and receiving processor of the claims to include a contact person, telephone number, mailing address, and physical address where the claims are to be processed; and

(b) A listing of the claims being transferred which identifies the sending processor's claim number, claimant name, claimant's social security number, and date of injury. The list should also include the employer's WCD number and WCD's claim number, if known.

(7) Records every insurer is required to keep in this state include all the written records of the insurer that show its insured employers have complied with ORS 656.017, including the records described by OAR 436-050-0120.

Stat. Auth: ORS 731.475, 656.704, and 656.726(4)

Stats. Implemented: ORS 731.475

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Amended xx/xx/xx as WCD Admin. Order xx-xxx, eff. xx/xx/xx

436-050-0170 Excess Insurance Requirements

(1) A self-insured employer must have excess workers' compensation insurance coverage appropriate for the employer's potential liability under ORS 656.001 to 656.990 with an insurer authorized to do business in the state. The policy providing such coverage and any endorsements thereto must be filed with the director not later than 30 days after the date the coverage is effective. **A self-insured public utility with assets in excess of \$500 million as reflected by the employer's audited financial statement submitted in accordance with OAR 436-050-0160 or 436-050-0175, may obtain the required excess workers' compensation insurance coverage from an eligible surplus lines insurer.**

(2) The excess insurance:

(a) Must include a provision for reimbursement to the director of all expenses paid by the director on behalf of the employer pursuant to ORS 656.614 and 656.443 in the same manner as if the director were the insured employer, subject to the policy limitations or amounts and limits of liability to the insured employer; and

(b) Coverage must be continuous and remain in effect from the date of certification until the certification is revoked or canceled; and

(c) Coverage must be specific on a per occurrence basis; and

(d) Coverage may include aggregate excess insurance.

(3) When an excess insurance policy is canceled by the excess insurer or the employer, a copy of such notice shall be filed with the director 30 days prior to the effective date of cancellation.

(4) Changes in the self-insured retention level and policy limits of the excess insurance

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require prior approval of the director. The director may require a reduction in the self-insured retention level or an increase in the policy limits. Those items considered in determining and approving the retention and limitation levels of the excess insurance will be the employer's:

- (a) Financial status;
- (b) Risk and exposure;
- (c) Claim history; and
- (d) The amount of the required security deposit.

(5) A self-insured employer will be allowed a period, not to exceed 30 days, within which to comply with an order of the director to the employer to reduce the self-insured retention level or increase the policy limitation or amounts and limits of liability of the excess insurance.

(6) Excess insurance obtained under this section does not relieve any self-insured employer from full responsibility for claims processing and the payment of compensation required under ORS 656 and these rules. Regardless of the types and amounts of excess coverage a self-insured employer shall not transfer claims to the excess insurer(s) for processing.

(7) If a self-insured employer fails to comply with the requirements of this section, the employer's certification as a self-insured will be revoked. The employer will be given written notice of such revocation which will be effective 30 days from receipt of such notice. If the required excess insurance is obtained within the 30 days, the revocation is canceled and certification remains in effect.

Stat. Auth: ORS 656.430, 656.704, and 656.726(4)

Stats. Implemented: ORS 656.430

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436-050-0220 Records Self-Insured Employer Must Keep in Oregon; Period to be Retained, Removal and Disposition

(1) The written records self-insured employers are required to keep in this state to ensure compliance with ORS 656.506, 656.612, 656.614, and 656.622 include:

- (a) A record of payroll by National Council on Compensation Insurance classification; and
- (b) Complete records of all assessments, employer and employee contributions, and all such money due the director.

(2) The self-insured employer must maintain at a place of business in this state, those written records relating to their safety and health program as required by ORS 656.430(10) and in accordance with OAR 437-001.

(3) The records of claims for compensation that each self-insured employer is required to

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keep in this state include, but are not limited to:

- (a) Written records used and relied upon in processing claims; and
- (b) A written record of all payments made as a result of any claim including documentation of the date the payment was mailed. Documentation may be the actual mailing date, or an explanation of the time period between the date of issuance and mailing.
- (c) A summary sheet for each claim showing all payments made, separated into disability, medical, and vocational assistance payments with cumulative totals. The record of disability payments should be limited to statutory benefits and not include any additional employer obligations. Expenses must not be included in any of the three columns required on the summary sheet. "Expenses" are defined in National Council on Compensation Insurance, Workers' Compensation Statistical Plan, Part IV.**
- (4) Records of a denied claim may be removed from this state after all the appellate procedures have been exhausted and the denial has been affirmed by operation of law.
- (5) Records of any claim for a compensable injury may be removed from this state after the expiration of the aggravation rights or not less than one year following the final payment of compensation, whichever is the last to occur.
- (6) Notwithstanding sections (4) and (5) of this rule, if administrative or judicial review is requested, the claim records may not be removed from this state or disposed of until after either the review is concluded and the time for an appeal from such review has expired or at least one year after final payment of compensation has been made, whichever is the last to occur.
- (7) During administrative or judicial review, if a denied claim is found to be compensable the records of such claim are thereafter subject to section (5) of this rule.
- (8) Claim records may be destroyed when all potential for benefits to the injured worker is gone.
- (9) Records retained as required by section (1) of this rule may be removed from the state or destroyed at the end of three full calendar years after the calendar year in which the money was remitted.

Stat. Auth: ORS 656.455, 656.704 and 656.726(4)

Stats. Implemented: ORS 656.455

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436-050-0230 Out-of-State Recordkeeping and Claims Processing by Self-Insured Employer; Conditions and Procedure for Permit; Revocation

(1) Notwithstanding OAR 436-050-0220, if a self-insured employer wishes to keep the claims records and process claims at a location outside this state, the employer may apply to the director for permission to do so. The application shall contain the reasons for the request and the

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location, mailing address, telephone number, and any other contact information where the records will be kept and the claims processed. **The application must provide the director contact information for a designated person or position within the company who will assure payment of penalties and resolution of collections issues resulting from orders issued by the director.** Upon receipt, the director will review the application and notify the employer that the request has been denied and the reason therefor; or, that the employer will be allowed to process claims from outside this state.

(2) The director may grant permission to the self-insured employer unless the employer has committed acts or engaged in a course of conduct that would be grounds for revocation of permission or that are contrary to any of the provisions of section (3) of this rule.

(3) A self-insured employer that keeps claims records and processes claims at a location outside this state shall:

- (a) Process claims in an accurate and timely manner;
- (b) Make reports to the director promptly as required by ORS Chapter 656 and the director's administrative rules;
- (c) Pay to the director promptly all assessments and other money as it becomes due;
- (d) Increase or decrease its security deposit promptly when directed to do so by the director pursuant to ORS 656.407(2); and
- (e) Comply with the rules and orders of the director in processing and paying claims for compensation.

(4) After notice given as required by ORS 656.455(2), permission granted under this section will be revoked by the director if the employer has committed acts or engaged in a course of conduct that are in violation of any provisions of section (3) of this rule.

(5) A self-insured employer shall provide written records which have been removed from this state to the director as requested within a reasonable time not to exceed 14 days or as otherwise negotiated.

Stat. Auth: ORS 656.455, 656.704 and 656.726(4)

Stats. Implemented: ORS 656.455

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