

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 055**

CERTIFICATION OF CLAIMS EXAMINERS

EFFECTIVE JANUARY 1, 2004

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NOTE: Bold bars in the right margins mark substantive revisions to the previously published rules.

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CERTIFICATION OF CLAIMS EXAMINERS**

**EXHIBIT "A"
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 055**

436-055-0001 Authority for Rules

These rules are promulgated under the director's authority pursuant to ORS 656.726 and 656.780.

Stat. Auth.: ORS 656.726(3)(a) and ORS 656.780(1)

Hist: Filed 11/30/90 as WCD Admin. Order 25-1990, eff. 1/1/91
Amended 7/14/94 as WCD Admin. Order 94-054, eff. 9/1/94

436-055-0002 Purpose of Rules

The purpose of these rules is to establish standards for the certification of workers' compensation claims examiners pursuant to ORS Chapter 656.

Stat. Auth.: ORS 656.780(1)

Hist: Filed 11/30/90 as WCD Admin. Order 25-1990, eff. 1/1/91
Amended 7/14/94 as WCD Admin. Order 94-054, eff. 9/1/94
Amended 12/21/99 As WCD Admin. Order 99-063, eff. 01/01/00

436-055-0003 Applicability of Rules

(1) These rules apply to the certification of all workers' compensation claims examiners on or after the effective date of these rules.

(2) The certification of any workers' compensation claims examiner valid on December 31, 1999 shall continue without expiration until December 31, 2000. However, this provision does not shorten any two year certification period.

(3) Any claims examiner certified on October 22, 1999, with a renewal date between October 23, 1999 and December 31, 1999, may present records to the insurer for renewal. The claims examiner's certification period shall be renewed for two years upon verification that the certified claims examiner met the continuing education requirements under the rules in effect on the date renewal was due, however no course taken after October 22, 1999 needs to be certified.

(4) 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 656.780

Hist: Filed 11/30/90 as WCD Admin. Order 25-1990, eff. 1/1/91
Amended 7/14/94 as WCD Admin. Order 94-054, eff. 9/1/94
Amended 12/21/99 As WCD Admin. Order 99-063, eff. 01/01/00

436-055-0005 Definitions

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

(1) "Claims examiner" means anyone who has primary responsibility for decision making or benefit determination in a claim. This includes those who decide compensability of new claims or aggravations, calculate benefits, authorize payments, or who represent employers by direct contact with the department or Board. This definition does not include attorneys representing employers before the department or Board, or those who primarily perform clerical functions.

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(2) "Claims Examiner Trainee" means a person hired by an insurance company, self-insured employer or third party administrator to decide compensability of new claims or aggravations, calculate benefits, or authorize payments, who works under the direct supervision of a certified claims examiner.

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

(4) "Insurer" means the State Accident Insurance Fund Corporation; an insurer authorized under ORS chapter 731 to transact workers' compensation insurance in this state ; an assigned claims agent selected by the director under ORS 656.054; an employer certified under ORS 656.430 that meets the qualifications of a self-insured employer under ORS 656.407; or a third party administrator.

(5) "Party" includes anyone listed in ORS 656.005(21) and a third party administrator.

(6) "Process Claims" means the receipt, review and payment of compensation for workers' claims.

(7) "Temporary Claims Examiner" means a person with at least two years of prior claims processing experience hired by an insurance company, self-insured employer or service company to decide compensability of new claims or aggravations, calculate benefits, or authorize payments in Oregon workers' compensation claims, who works under the direct supervision of a certified claims examiner.

(8) "Third party administrator" means a service company who processes claims for an insurer or self-insurer under the conditions prescribed in ORS 731.475(3) and ORS 656.455(1).

Stat. Auth.: ORS 656.726(3)(a)

Hist: Filed 11/30/90 as WCD Admin. Order 25-1990, eff. 1/1/91
Amended 7/14/94 as WCD Admin. Order 94-054, eff. 9/1/94
Amended 12/21/99 As WCD Admin. Order 99-063, eff. 01/01/00

436-055-0008 Administrative Review

(1) Any party aggrieved by a proposed order or proposed assessment of civil penalty of the director issued pursuant to ORS 656.745 may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with ORS 656.740 (section 9, chapter 170, Oregon Laws 2003). The request for hearing must be mailed or delivered to the Administrator of the Workers' Compensation Division by the aggrieved person within 60 days after the mailing date of the proposed order or assessment. The request must specify the grounds upon which the proposed order or assessment is contested.

(2) Any party aggrieved by an action or order of the director pursuant to these rules, other than as described in section (1), where such action or order qualifies for review by hearing 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). Any party may request a contested case hearing as follows:

(a) The request for hearing must be mailed or delivered to the Administrator of the Workers' Compensation Division within 60 days of the action, the date of mailing, or other service of an order. The request must specify the grounds upon which the action or order is

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contested.

(b) The hearing shall 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.

(3) Any person aggrieved by an action taken pursuant to these rules by another person, except as described in sections (1) and (2), may request administrative review by the director as follows:

(a) The request for administrative review must be mailed or delivered to the Administrator of the Workers' Compensation Division within 90 days of the action. The request must specify the grounds upon which the action is contested.

(b) The review will be conducted by the director.

(c) The director will review the relevant information submitted by all parties.

(d) The director will issue an administrative order that specifies whether the determination constitutes a final order or whether an aggrieved party may request a contested case hearing before an Administrative Law Judge of the Office of Administrative Hearings pursuant to ORS 183.310 and the procedures provided in section (2).

Stat. Auth.: ORS 656.735(5) through (7); ORS 656.745(4); ORS 656.726(4)

Stats. Implemented: ORS 656.740 (section 9, chapter 170, Oregon Laws 2003), ORS 183.310 through 183.550, ORS 656.726

Hist: Filed 11/30/90 as WCD Admin. Order 25-1990, eff. 1/1/91
Amended 12/21/99 As WCD Admin. Order 99-063, eff. 01/01/00
Amended 12/3/03 as WCD Admin. Order 03-073, eff. 1/1/04

436-055-0070 Certification of Claims Examiners

(1) Claims examiners shall be certified by the insurer upon satisfactor[il]y completion of an examination which demonstrates the individual's familiarity with the workers' compensation statutes, ability to navigate the administrative rules found in this chapter, and capability to perform claim processing activities.

(a) Any person taking an examination may use a copy of ORS Chapter 656 and the Oregon Administrative Rules during the examination.

(b) A passing score on an examination shall be 80 percent or greater.

(c) Any examination completed through dishonest or fraudulent means shall be considered invalid.

(2) Certification will be for a three-year period. The certification date shall be the date of the examination.

(3) A certification shall be renewed at any time during the certification period by providing verification that 24 hours of training has been completed within the current certification period. At least 4 of the 24 hours of training shall be related to changes in workers' compensation statutes, administrative rules, and case law since the last certification.

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(4) Training may be provided in the form of a seminar, workshop, association meeting, forum, correspondence, video or similar course. It may include any of the following subjects:

(a) Medical case management including, but not be limited to, medical terminology, basic human anatomy and interpreting medical reports.

(b) Communication skills including, but not be limited to, courses in ethics, mediation, negotiation and dealing with angry people.

(c) Instruction dealing specifically with the processing of Oregon workers' compensation claims.

Stat. Auth.: ORS 656.780(1)

Hist: Filed 11/30/90 as WCD Admin. Order 25-1990, eff. 1/1/91
Amended 7/14/94 as WCD Admin. Order 94-054, eff. 9/1/94
Amended 12/21/99 as WCD Admin. Order 99-063, eff. 01/01/00

436-055-0100 Insurer Duties

(1) Insurers shall only employ claims examiners who are certified or that qualify as a claims examiner trainee or a temporary claims examiner.

(a) A claims examiner trainee must work under the direct supervision of a certified claims examiner, and may work for up to 12 months in this status. An individual is limited to one 12-month period as a claims examiner trainee.

(b) A temporary claims examiner must have at least two years prior claims processing experience and work under the direct supervision of a certified claims examiner. An individual may work for up to 90 days in any 12-month period as a temporary claims examiner.

(2) Insurers shall maintain a list of certified claims examiners who are employed by the insurer or who process claims for the insurer, claims examiner trainees and temporary claims examiners, and keep records sufficient to verify their certification and training. The list and records shall be subject to inspection by the director. The director may require submission of such lists and records in lieu of on-site inspection.

(3) The insurer may issue an initial certification or renewal for any individual pursuant to the standards set in OAR 436-055-0070.

(a) The insurer shall accept verification by the director of an individual's certification and continuing education hours accrued as of October 22, 1999, and any acknowledgment of current certification issued by an insurer.

(b) The insurer shall verify from their own records and those presented by the claims examiner that the requirements for initial certification or renewal have been met. The insurer shall issue an acknowledgment of current certification which states that the claims examiner has met the certification or renewal standards, and renewing the certification for three years.

(4) The insurer shall not misrepresent any information to a worker, employer or the director related to the certifications of its employees.

(5) Within 14 days of the termination of employment or upon receipt of a written request of a certified claims examiner, the insurer shall provide the certified claims examiner a complete

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copy of all records verifying the most recent acknowledgment of certification and any subsequent training.

(6) The insurer shall retain records verifying the certification and renewal of certified claims examiners who are employed by the insurer or who process claims for the insurer for six years from its most recent acknowledgment of current certification.

Stat. Auth.: ORS 656.780(1) and (2)
Hist: Filed 11/30/90 as WCD Admin. Order 25-1990, eff. 1/1/91
Amended 12/21/99 as WCD Admin. Order 99-063, eff. 01/01/00

436-055-0110 Assessment of Civil Penalties

(1) Pursuant to ORS 656.745 the director may assess a civil penalty against an insurer which fails to comply with these rules.

(2) Pursuant to ORS 656.447 the director may suspend or revoke the authorization of an insurer to issue guaranty contracts if the insurer repeatedly or intentionally fails to comply with these rules or orders of the director issued pursuant to ORS Chapter 656 and these rules.

(3) Pursuant to ORS 656.780 the director may assess a civil penalty against an insurer that fails to maintain or produce certification and training records or that employs anyone other than certified workers' compensation claims examiner to process workers' compensation claims. The insurer shall be subject to a penalty of not more than \$2000 per violation. Each violation, or each day a violation continues, shall be considered a separate violation.

Stat. Auth.: ORS 656.447(1)(a); ORS 656.745(2)(b); ORS 656.780(3)
Hist: Filed 11/30/90 as WCD Admin. Order 25-1990, eff. 1/1/91
Amended 7/14/94 as WCD Admin. Order 94-054, eff. 9/1/94
Amended 12/21/99 as WCD Admin. Order 99-063, eff. 01/01/00

436-055-0120 Service of Orders

(1) When the director imposes a sanction or assesses a penalty under the provisions of OAR 436-055-0110, the order, including a notice of the party's appeal rights, shall be served on the party.

(2) The director shall serve the order by delivering a copy to the party in the manner provided by Oregon Rules of Civil Procedure 7D, or by sending a copy to the party by certified mail with return receipt.

Stat. Auth.: ORS 656.740
Stats. Implemented:
Hist: Filed 11/30/90 as WCD Admin. Order 25-1990, eff. 1/1/91
Amended 7/14/94 as WCD Admin. Order 94-054, eff. 9/1/94
Amended 12/21/99 as WCD Admin. Order 99-063, eff. 01/01/00

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.

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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 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."

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.