

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
WORKERS' COMPENSATION DIVISION  
OREGON ADMINISTRATIVE RULES  
CHAPTER 436, DIVISION 075, RULE 0008**

**RETROACTIVE PROGRAM  
ADMINISTRATIVE REVIEW**

**PROPOSED 8/12/05**

**The Workers' Compensation Division received no public testimony regarding the proposed amendment of this rule. The [Notice of Proposed Rulemaking Hearing](#) and [Statement of Need and Fiscal Impact](#) follow this rule.**

**436-075-0008 Administrative Review**

(1) Any party as defined by ORS 656.005 aggrieved by a proposed order or proposed assessment of civil penalty of the director or division issued pursuant to ORS 656.745 or 656.750 may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with ORS 656.740 [section 9, chapter 170, Oregon Laws 2003].

(a)The request for hearing must be sent in writing to the Administrator of the Workers' Compensation Division. No hearing will be granted unless the request specifies the grounds upon which the person requesting the hearing contests the proposed order or assessment.

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

(2) **Under ORS 656.704(2)**, [A]any party [as defined by ORS 656.005 aggrieved by] **that disagrees with** an action or order of the director [or division pursuant to] **under** these rules, other than as described in section (1), [where such action or order qualifies for review as a contested case.] **may request** [review pursuant to ORS 183.310 through 183.550 as modified by these rules pursuant to ORS 183.315(1). When the matter qualifies for review as a contested case, the process for review will be as follows:

(a)The request for hearing must be sent in writing to the Administrator of the Workers' Compensation Division. No hearing will be granted unless the request specifies the grounds upon which the action or order is contested and is mailed or delivered to the administrator] **a hearing by filing a request for hearing as provided in OAR 436-001-0019** within 30 days of the **mailing date of the order or notice of action** [or from the date of mailing or other service of an order].

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

(c)Any proposed order issued by the administrative law judge is subject to revision by the director. The director may allow objections to the proposed order to be filed for the director's consideration within 30 days of issuance of the proposed order.] **OAR 436-001 applies to the hearing.**

Stat. Auth.: ORS 656.740, 656.745, 656.750, and 183.310 thru 183.550  
Stats. Implemented: ORS 656.704, 656.740, 656.745, 656.750, and 183.310 thru 183.550  
Hist: Filed 12-22-89 as WCD Admin. Order 6-1989, eff. 1-1-90  
Amended 6-18-90 as WCD Admin. Order 11-1990, eff. 7-1-90 (Temp)  
Amended 11-29-90 as WCD Admin. Order 23-1990, eff. 12-26-90  
Amended 12/4/97 as WCD Admin. Order 97-062, eff. 1/1/98  
Amended 12/3/03 as WCD Admin. Order 03-076, eff. 1/1/04  
**Amended XX/XX/XX as WCD Admin. Order 05-XXX, eff. XX/XX/XX**

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	
<b>Agency and Division</b>		<b>Administrative Rules Chapter Number</b>	
Fred Bruyns		(503) 947- 7717 Fax (503) 947-7581	
<b>Rules Coordinator</b>		<b>Telephone</b>	
PO Box 14480, Salem, OR 97309-0405; 350 Winter Street NE, Rm 27, Salem, OR 97301-3879			
<b>Address</b>			
September 26, 2005		Room F (basement, Labor & Industries Building) 350 Winter Street NE, Salem, Oregon	Fred Bruyns
<b>Hearing date</b>	<b>Time</b>	<b>Location</b>	<b>Hearings Officer</b>

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

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

**RULEMAKING ACTION**

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

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

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

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

ORS 656.726(4)  
Stat. Auth.

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

**RULE SUMMARY**

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

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

Notice of Proposed Rulemaking Hearing

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

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

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

Address questions to:

Fred Bruyns, Rules Coordinator; phone 503-947-7717; fax 503-947-7581; e-mail [fred.h.bruyns@state.or.us](mailto:fred.h.bruyns@state.or.us)

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

September 30, 2005  
Last Day for Public Comment

/s/ John L Shilts  
Authorized Signer and Date

8/12/05

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

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

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

Secretary of State  
**STATEMENT OF NEED AND FISCAL IMPACT**

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

Department of Consumer and Business Services,  
Workers' Compensation Division

OAR CHAPTER 436

Agency and Division

Administrative Rules Chapter Number

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

**Statutory Authority:** ORS 656.726(4)

**Other Authority:**

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

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

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

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

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

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

*/s/ John L. Shilts*

8/12/05

Signature and Date

John L. Shilts, Administrator, Workers' Compensation Division

Printed name