

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 140, RULE 0008**

CONSTRUCTION CARVE-OUT PROGRAMS

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.

436-140-0008 Administrative Review

(1) If the director determines that a proposed construction carve-out program is not eligible, the director will issue a notice to the employer [and/]or collective bargaining representative.

(a) **Under ORS 656.704(2)**, [i]f the employer [and/]or collective bargaining representative disagrees with the notice, it may request a [contested case] hearing [before the director] by filing a [written] request **for hearing** [with the director] **as provided in OAR 436-001-0019** within 60 days of the [date of service] **mailing date** of the notice.

(b) [The contested case hearing will be conducted in accordance with ORS Chapter 183 and] OAR 436-001 **applies to the hearing.**

(2) If the director determines that the acts or omissions of a construction carve-out program justify suspension, the director may issue a notice of intent to suspend eligibility pursuant to OAR 436-140-0090 and schedule a hearing on the matter of suspension. The notice must be served upon the employer [and/]or collective bargaining representative as provided in OAR 436-140-0130.

(a) At a hearing on a notice of intent to suspend, the employer [and/]or collective bargaining representative must show cause why eligibility should not be suspended.

(A) If the director determines that the acts or omissions of the employer [and/]or collective bargaining representative justify suspension, the director may issue an order suspending eligibility. If the director determines that the acts or omissions of the employer [and/]or collective bargaining representative do not justify suspension, the director shall issue an order withdrawing the notice.

(B) The order must be served upon the employer [and/]or collective bargaining representative as provided in OAR 436-140-0130.

(C) If the employer [and/]or collective bargaining representative disagrees with the order, it may request a [contested case] hearing [before the director] by filing a [written] request **for hearing** [with the director] **as provided in OAR 436-001-0019** within 60 days of the **mailing** date of [service of] the order.

(D) [The contested case hearing will be conducted in accordance with ORS Chapter 183 and] OAR 436-001 **applies to the hearing.**

(3) If the director determines that the acts or omissions of a construction carve-out program justify revocation, the director may issue a notice of intent to revoke eligibility pursuant to OAR 436-140-0090. The notice must be served upon the employer [and/]or collective bargaining representative as provided in OAR 436-140-0130.

(a) The revocation shall become effective within 10 days after service of notice, unless within such period of time the employer [and/]or collective bargaining representative correct(s) the grounds for revocation to the satisfaction of the director or files a written request for hearing with the director.

(A) If the employer [and/]or collective bargaining representative request(s) a hearing, the director will set a date and time, and give at least 10 days' notice of the hearing. At hearing, the employer [and/]or collective bargaining representative must show cause why eligibility should not be revoked.

(B) Within 30 days after the hearing, the director shall issue an order affirming or withdrawing the revocation. The director shall serve a copy of the order upon the employer [and/]or collective bargaining representative as provided in OAR 436-140-0130.

(C) If the employer [and/]or collective bargaining representative disagrees with the order, it may request a [contested case] hearing [before the director] by filing a [written] request **for hearing** [with the director] **as provided in OAR 436-001-0019** within 60 days of the **mailing** date of [service of] the order.

(D) [The contested case hearing will be conducted in accordance ORS Chapter 183 and] OAR 436-001 **applies to the hearing.**

(b) An emergency revocation issued pursuant to OAR 436-140-0090(5), is effective immediately. To contest the revocation, the employer [and/]or collective bargaining representative must file a request for [contested case] hearing within 60 days of the **mailing** date of [service of] the order; the revocation shall remain in effect until the director orders otherwise. [The contested case hearing will be conducted in accordance with the ORS Chapter 183 and] OAR 436-001 **applies to the hearing.**

Stat. Auth.: ORS 656.726(4), 656.174

Stats. Implemented: ORS 656.170, 656.172, 656.174, 656.704

Hist: Adopted 12/11/00 as WCD Admin. Order 00-059, eff. 12/15/00

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	
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 F (basement, Labor & Industries Building)	
September 26, 2005	10:00 a.m.*	350 Winter Street NE, Salem, Oregon	Fred Bruyns
Hearing date	Time	Location	Hearings Officer

***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

Page 2

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

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