

**BEFORE THE DIRECTOR OF THE
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
OF THE STATE OF OREGON**

**In the Matter of the Amendment of)
OAR Chapter 436, Workers' Compensation)
Division, Division 035, Disability Ratings)
Standards, 436-035-0500, Temporary Rule)
Promulgation for Individual Claims,)
Subsections AAP6549)
)**

**ORDER OF ADOPTION
OF TEMPORARY RULES**

The Director of the Department of Consumer and Business Services, pursuant to the rulemaking authority in ORS 656.726(4), and in accordance with the procedure provided by ORS 183.335(5), temporarily amends OAR Chapter 436 (Workers' Compensation Division), Division 035, Disability Ratings Standards.

These rules are being adopted as Temporary Rules, as provided by ORS 183.335(5) and (6), without prior notice, and ORS 656.726(4)(f)(D) which provides for adoption of a temporary rule to rate a worker's disability which is not adequately addressed by the standards.

EXPLANATION

In Workers' Compensation Division (WCD) Claim in WCD No. AAP-6549, the worker suffered an injury to the chest causing bilateral costochondritis with resulting permanent work restrictions which necessitate a reduction in the strength/lifting category of the job at the time of injury. The Standards do not address how to value this disability. OAR 436-035-0500, AAP-6549, as adopted in this Order of Adoption of Temporary Rules, addresses this worker's impairment and provides benefits for permanent disability resulting from the accepted condition.

FINDINGS

Failure to act promptly will result in serious prejudice to the public interest.

IT IS THEREFORE ORDERED:

- (1) Temporary amendments to OAR Chapter 436, Division 035, Disability Rating Standards, are attached as Exhibit "A," incorporated by reference, and adopted on this 27th day of June, 2007, to be effective **June 27, 2007 through December 23, 2007.**
- (2) The attached Statement of Need and Justification is incorporated by reference.
- (3) The amended rules, the Certificate and Order for Filing, and the Statement of Need and Justification will be filed with the Secretary of State.

Order of Adoption, OAR 436-035-0500, Disability Ratings Standards

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- (4) The amended rules, with marked revisions, will be filed with Legislative Counsel, pursuant to ORS 183.715 within ten days after filing with the Secretary of State.

Dated this 27th day of June 2007.

DEPARTMENT OF CONSUMER
AND BUSINESS SERVICES

/s/ John L. Shilts

John L. Shilts, Administrator
Workers' Compensation Division

Pursuant to ADA Guidelines, alternate 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: TS, TT, Affected Claimants, Insurers, and Representatives

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
DISABILITY RATING STANDARDS
TEMPORARY RULE PROMULGATION FOR INDIVIDUAL CLAIMS**

**EXHIBIT "A"
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 035**

436-035-0500 Temporary Rule Promulgation for Individual Claims

(1) This rule applies to the rating of permanent disability under Chapter 656 in individual cases under ORS 656.726(4)(f) which requires the director to stay the reconsideration proceeding and adopt temporary rules in cases where the director finds that the worker's impairment is not addressed in the disability standards.

(2) Temporary rules promulgated under ORS 656.726(4)(f) will be incorporated by reference to the Workers' Compensation Division claim file number and will be applicable solely to the rating of that claim. The temporary rule will be effective upon filing with the Secretary of State and elapse 180 days thereafter under ORS 183.335(6)(a).

(3) Notice of adoption of temporary rules will be given by mailing a copy of the temporary rule to the affected parties and to others as provided in OAR 436-001-0000(3).

AAP-6549 As a result of the accepted bilateral costochondritis the worker experiences a loss of function due to permanent damage to the chest with work restrictions which necessitate a reduction in the strength/lifting category of the job at the time of injury. The standards do not address this loss of function in the chest. The Director finds this loss of function similar to the loss experienced with permanent damage to the abdominal wall and resulting work restrictions which necessitate a reduction in the strength/lifting category of the job at the time of injury and assigns an impairment value of 5% of the chest. See OAR 436-035-0375. This value shall be combined with any other applicable impairment values. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. AAP-6549.

Stat Auth: ORS 656.726(4)
Stat Impltd: ORS 656.268(6); ORS 656.726(4)(f)(C)
Hist: Filed 12/31/92 as Admin. Order 18-1992, eff. 12/31/92 (Temp) (A58-7576) (D60-5352)
Amended 4/28/93 as WCD Admin. Order 93-051, eff. 4/28/93 (Temp) (A58-2159) (B59-4533) (E61-4228) (I59-2031)
Filed 6/29/93 as Admin. Order 93-053, eff. 6/29/93
Amended 9/2/93 as WCD Admin. Order 93-054, eff. 9/2/93 (Temp) (I64-3064)
Amended 10/22/93 as WCD Admin. Order 93-055, eff. 10/22/93 (Temp) (A61-7196) (F60-7468)
Amended 5/26/94 as WCD Admin. Order 94-053, eff. 5/26/94 (Temp) (A64-0903) (B33-4465) (B52-7039) (B63-9980) (C64-7847) (D50-0623) (D60-2551) (G45-4281) (I59-4285)
Amended 7/15/94 as WCD Admin. Order 94-056, eff. 7/15/94 (Temp) (C43-2644) (C50-4886) (D61-6586) (E38-6617) (E51-8953) (G37-3015)
Amended 8/31/94 as WCD Admin. Order 94-057, eff. 8/31/94 (Temp) (A66-7148) (C66-9882) (F67-9790) (G37-9847) (G66-0945) (G68-2891) (I66-9214) (I67-8572)
Amended 11/14/94 as WCD Admin. Order 94-061, eff. 11/14/94 (Temp) (A56-6922) (A68-8532) (B67-0517) (B69-2864) (C66-4016) (D69-1873) (D71-7397) (G68-3895)
Amended 01/26/95 as WCD Admin. Order 95-050, eff. 01/26/95 (Temp) (C51-2235) (C51-9086) (D59-9600) (D69-3198) (E74-0161) (F68-5951) (G55-5440) (G69-3682) (I75-8738)
Amended 03/02/95 as WCD Admin. Order 95-051, eff. 03/02/95 (Temp) (A69-9328) (I73-9896)
Amended 04/13/95 as WCD Admin. Order 95-052, eff. 04/13/95 (Temp) (A32-5947) (C54-7329) (F62-2845)
Amended 05/31/95 as WCD Admin. Order 95-053, eff. 05/31/95 (Temp) (A66-7308) (H69-9099)
Amended 07/11/95 as WCD Admin. Order 95-055, eff. 07/11/95 (Temp) (A55-1299) (A68-5802) (B75-0788) (C72-7919) (E47-5755) (F72-6107) (G52-8324)

Amended 10/05/95 as WCD Admin. Order 95-064, eff. 10/05/95 (Temp) (A72-7487) (B67-2012) (B75-5795) (G55-8472) (H77-3065)
Amended 11/02/95 as WCD Admin. Order 95-067, eff. 11/02/95 (Temp) (C77-9244) (F74-8492) (G72-5640) (I59-0763)
Amended 12/07/95 as WCD Admin. Order 95-072, eff. 12/07/95 (Temp) (A79-2845) (B78-6344) (D67-0149) (D75-7661) (F72-4844) (H75-1172)
Amended 02/01/96 as WCD Admin. Order 96-054, eff. 02/01/96 (Temp) (A74-3939) (A79-7277) (C76-4285) (E71-9980) (E74-3188) (F54-7926) (F69-1607) (F70-0225) (F77-9704) (I75-7201)
Amended 03/20/96 as WCD Admin. Order 96-058, eff. 03/20/96 (Temp) (A76-0401) (B74-7423) (B76-5803) (E73-6324) (F72-3750) (G41-0094) (G71-9125)
Amended 07/03/96 as WCD Admin. Order 96-063, eff. 07/03/96 (Temp) (B72-2366) (C69-5254) (C75-2485) (C75-4352) (D58-5410) (E60-2070) (E67-3492) (E75-7774) (E76-8051) (E78-0741) (F41-3719) (F71-5463) (G79-8212) (H66-7437) (H67-5437) (H74-6802) (I58-7732)
Amended 08/07/96 as WCD Admin. Order 96-067, eff. 08/07/96 (Temp) (B81-6992) (E73-5763) (F77-1642) (F78-3857) (F79-7581) (G77-2943) (I77-7807)
Amended 10/31/96 as WCD Admin. Order 96-071, eff. 10/31/96 (Temp) (A75-6135) (A81-4630) (B70-9869) (C78-2717) (D75-4912) (D79-9425) (E76-7631) (E80-1282) (F74-8492) (G72-8281) (I61-2741) (I79-2365) (I80-9262)
Amended 01/15/97 as WCD Admin. Order 97-050, eff. 01/15/97 (Temp) (A82-2866) (B77-8377) (D81-7448) (I82-0858)
Amended 01/08/97 as WCD Admin. Order 96-072, eff. 02/15/97
Amended 03/12/97 as WCD Admin. Order 97-052, eff. 03/13/97 (Temp) (C84-3004) (D82-9639) (G83-6389)
Amended 05/14/97 as WCD Admin. Order 97-054, eff. 05/14/97 (Temp) (D29-9140)
Amended 09/09/97 as WCD Admin. Order 97-060, eff. 09/09/97 (Temp) (B85-1508) (E84-8454) (H78-6911) (I43-6347) (I82-6879)
Amended 03/31/98 as WCD Admin. Order 98-054, eff. 03/31/98 (Temp) (A83-5359) (A85-2018) (C81-9952) (E55-9496) (E72-7758) (F61-8155) (F83-7544) (F86-6621)

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
DISABILITY RATING STANDARDS
TEMPORARY RULE PROMULGATION FOR INDIVIDUAL CLAIMS**

(G32-9876) (G60-2516) (G74-2871) (G81-2430) (G83-2249) (G85-5641) (H81-4914) (I86-3008) (I86-9133)
 Amended 7/13/98 as WCD Admin. Order 98-056, eff. 7/15/98 (Temp) (A83-5562) (A86-1481) (B86-5204) (E84-8500) (E85-7684) (F79-5346) (G69-1876) (G86-8605) (G87-7426) (G88-7067) (H87-5177) (I82-2391)
 Amended 10/15/98 as WCD Admin. Order 98-058, eff. 10/15/98 (Temp) (A83-2469) (A83-2921) (A85-8493) (A86-6157) (A86-7591) (A86-7963) (A87-9961) (B89-7196) (D75-3984) (D83-4235) (F87-2368) (I86-0887)
 Amended 01/11/99 as WCD Admin. Order 99-050, eff. 01/15/99 (Temp) (A81-8005) (A84-0262) (A85-3518) (A86-8939) (B88-3694) (D88-4287) (D89-0679) (F83-8609) (F85-3096) (H91-0152) (I84-4190)
 Amended 04/13/99 as WCD Admin. Order 99-053, eff. 04/15/99 (Temp) (B82-5920) (B83-1332) (D87-5966) (D90-9018) (D91-3299) (E89-7114) (F45-1513) (H86-4536) (H91-8266) (I86-3678) (I86-6219)
 Amended 07/15/99 as WCD Admin. Order 99-058, eff. 07/15/99 (Temp) (A88-7382) (A89-0780) (A91-0674) (C91-0512) (D81-0814) (D87-3420) (E90-7599) (F87-8389) (G76-8267) (G81-2920) (G89-0989) (I87-8203) (I90-5353) (I90-9959)
 Amended 10/15/99 as WCD Admin. Order 99-060, eff. 10/15/99 (Temp) (A84-7550) (A89-0685) (A89-6055) (B61-4705) (C87-7555) (C92-3595) (F77-3561) (G84-8924) (G90-0827)
 Amended 01/14/00 as WCD Admin. Order 00-050, eff. 01/14/00 (Temp) (A92-9513) (B92-8683) (G91-7494) (G91-9214) (H86-8025)
 Amended 04/13/00 as WCD Admin. Order 00-054, eff. 04/14/00 (Temp) (A92-0994) (B84-4216) (D54-6838) (D84-6587) (D87-4580) (E91-0653) (F89-4935) (G85-3029) (G87-5149) (G93-3700) (H88-4596) (H93-6091)
 Amended 07/13/00 as WCD Admin. Order 00-056, eff. 7/14/00 (Temp) (A87-9693) (A91-6214) (A94-0992) (B87-3845) (B94-3184) (D87-6070) (D91-9673) (F91-6225) (H87-1056) (H93-2234) (H93-3196) (I41-4835) (I95-6917)
 Amended 10/13/00 as WCD Admin. Order 00-057, eff. 10/13/00 (Temp) (A95-0778) (A95-1645) (C92-4439) (C93-6258) (E91-8135) (E94-2036) (F93-6308) (H75-6914) (H92-7893) (H95-0015) (H95-3028)
 Amended 01/12/01 as WCD Admin. Order 01-050, eff. 01/12/01 (Temp) (A51-3646) (A94-8686) (A96-7137) (E38-6617) (E91-1129) (E97-6899) (F95-1474) (G89-1516) (G91-0652) (H83-2574) (H96-0745) (H97-8463) (I94-6278) (I95-9534)
 Amended 04/13/01 as WCD Admin. Order 01-052, eff. 04/13/01 (Temp) (A89-1510) (D98-5601) (E91-8215) (H94-8094) (I82-8270) (I95-4862)
 Amended 07/13/01 as WCD Admin. Order 01-055, eff. 07/13/01 (Temp) (A95-9779) (A97-6962) (A99-7375) (C82-7198) (D78-1251) (D92-8385) (E94-4832) (E95-3421) (G95-9549) (G98-5992) (I94-6363) (I95-4150)
 Amended 10/12/01 as WCD Admin. Order 01-059, eff. 10/12/01 (Temp) (A88-3505) (A94-7875) (D96-5976) (H27-1040)
 Amended 1/14/02 as WCD Admin. Order 02-050, eff. 1/15/02 (Temp) (A86-5186) (A92-1955) (B92-5284) (B94-5965) (B99-2810) (C94-4437) (C94-6417) (D99-4441) (F91-6956) (F99-6321) (G88-7374) (G90-8668) (G98-7613) (H99-2218) (I90-2482)
 Amended 4/12/02 as WCD Admin. Order 02-055, eff. 4/15/02 (Temp) (B98-4396) (C94-4084) (GAB-8958) (H99-4180) (H99-7843) (I95-8643)
 Amended 7/12/02 as WCD Admin. Order 02-058, eff. 7/15/02 (Temp) (A98-3699) (A99-4990) (AA-A-3578) (BAA-5736) (C98-7653) (CAB-4735) (D95-5595) (FAA-6263) (F98-7538) (HAA-2339) (I98-6486) (IAA-3456)
 Amended 10/11/02 as WCD Admin. Order 02-062, eff. 10/15/02 (Temp) (A94-9455) (A98-1082) (BAA-4505) (EAA-6555) (G97-5865) (H98-7207) (I92-7557) (I95-6917)
 Amended 1/14/03 as WCD Admin. Order 03-051, eff. 1/15/03 (Temp) (BAD-0991) (DAC-2018) (EAE-0535) (FAA-9983) (G93-5860) (IAC-5199)
 Amended 1/14/03 as WCD Admin. Order 03-050, eff. 2-1-03; Amended 4/11/03 as WCD Admin. Order 03-054, eff. 4/15/03 (Temp) (AAB-9871) (BAD-2834) (BAD-5597) (E82-3081) (EAB-6007) (EAD-0843) (F98-7114) (FAA-9841) (G92-9449) (G94-9409) (HAC-1026) (HAD-6042)
 Amended 7/14/03 as WCD Admin. Order 03-059, eff. 7/15/03 (Temp) (D90-4836) (FAC-7333)
 Amended 1/21/04 as WCD Admin. Order 04-050, eff. 1/21/04 (Temp) (BAC-1977) (GAD-9630) (HAE-2463)
 Amended 4/19/04 as WCD Admin. Order 04-058, eff. 4/19/04 (Temp) (AAG-7056) (EAG-5154)
 Amended 7/15/04 as WCD Admin. Order 04-061, eff. 7/15/04 (Temp) (GAH-6929) (HAG-9396)
 Amended 5/16/05 as WCD Admin. Order 05-060, eff. 5/16/05 (Temp) (CAG-0633) (CAJ-3451) (FAE-4316)
 Amended 7/14/06 as WCD Admin. Order 06-058, eff. 7/17/06 (Temp) (AAP-4748) (H99-0974)
 Amended 6/27/07 as WCD Admin. Order 07-054, eff. 6/27/07 (Temp) (AAP-6549)

Secretary of State
Certificate and Order for Filing
TEMPORARY ADMINISTRATIVE RULES

A Statement of Need and Justification accompanies this form

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

June 27, 2007 by the
Date prior to or same as filing date.

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

OAR 436-035
Administrative Rules Chapter No.

Fred Bruyns
Rules Coordinator

(503) 947-7717
Telephone

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Address

to become effective June 27, 2007 through December 23, 2007
Date upon filing or later A maximum of 180 days including the effective date.

RULE CAPTION:

Promulgation of temporary disability standards to address the impairment of individual injured workers

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

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

AMEND: 436-035-0500

ORS 656.726(4)
Statutory Authority:

ORS 183.335; OAR 137
Other Authority:

ORS 656.268(6); ORS 656.726(4)(f)(D)
Statutes being Implemented

RULE SUMMARY

Promulgation of temporary disability standards to address the impairment of an individual
injured worker in

WCD files AAP-6549.

/s/ John L. Shilts
Authorized Signer

6/27/07
Date

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

*With this original and Statement of Need, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.

Secretary of State
STATEMENT OF NEED AND JUSTIFICATION
A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Dept. of Consumer and Business Services, Workers' Compensation Division
Agency and Division

OAR CHAPTER 436
Administrative Rules Chapter Number

In the Matter of OAR 436-035-0500, subsections AAP-6549)	Statutory Authority,
)	Statutes Implemented,
Disability Rating Standards)	Statement of Need,
Temporary Rule Promulgation)	Principal Documents Relied Upon
For Individual Claims)	

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

Promulgation of temporary disability standards to address the impairment of individual injured workers

Statutory Authority: ORS 656.726(4)

Other Authority: Oregon Administrative Rules, Chapter 137

Statutes Implemented: ORS 656.268(6); ORS 656.726(4)(f)(D)

Need for the Temporary Rule(s): The amendment is being adopted by temporary rule as provided by ORS 183.335(5) and (6). ORS 656.726(4)(f)(D) provides for the adoption of temporary rules to rate a worker's disability that is not addressed by the Standards. This rule is required to allow a worker's disability to be rated and thus provide the appropriate level of benefits.

In Workers' Compensation Division Claim (WCD) No. AAP-6549, the Standards do not address injury to the chest causing bilateral costochondritis resulting in work restrictions which necessitate a reduction in the strength/lifting category of the job at the time of injury. OAR 436-035-0500, as adopted in this Order of Adoption of Temporary Rules, addresses the worker's disability found in this case and provides benefits for permanent disability resulting from the accepted condition.

Documents Relied Upon:

In WCD No. AAP-6549, the request to Promulgate Temporary Rule to Standards Review Committee memo dated December 29, 2006, and the Standards Review Committee recommendation dated June 21, 2007.

These documents are available for public review from the Administrator's Office, Department of Consumer and Business Services, Workers' Compensation Division, Labor and Industries Building, 350 Winter Street N.E., Salem, Oregon 97301-3879, during regular business hours, between 8:00 am and 5:00 pm, Monday through Friday.

Justification of Temporary Rule(s): This temporary rule is necessary due to the provisions of the statute, ORS 656.726(4)(f)(D), which require the Director to promulgate a rule when the worker's disability is not addressed by the standards. The rating of a worker's disability is an immediate problem which cannot await the adoption of a permanent rule. Substantial research and time is required to draft standards that would address all workers' disability. The Legislature determined that in order to address a worker's disability in a timely manner when the disability is not covered by the standards, a temporary rule would be promulgated. Failure to promulgate this temporary rule would prevent the Director from awarding benefits commensurate with each worker's disability.

/s/ John L. Shilts

6/27/07

Authorized Signer and Date

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