BEFORE THE DIRECTOR OF THE
DEPARTMENT OF INSURANCE AND FINANCE
OF THE STATE OF OREGON

In the Matter of the Amendment of OAR Chapter 436, Workers' Compensation Division, Division 35, Standards for Rating Disability	))))	ORDER OF ADOPTION OF TEMPORARY RULE

The Director of the Department of Insurance and Finance, pursuant to the rule making authority in ORS 656.726(3); and in accordance with the procedure provided by ORS 183.335, amends OAR 436, Workers' Compensation Division, Division 35 Standards for Rating Disability.

The amendment(s) are being adopted by Temporary Rules, as provided by ORS 183.335(5) and (6), without prior notice. Statement of Findings: I conclude that failure to act promptly will result in serious prejudice to the public interest.

On May 7, 1990, during a Special Session the Legislature enacted Senate Bills 1197 and 1198 which made several changes in the Workers' Compensation Law. Some of the major changes in the law relate to or effect matters concerning: safety and health, employer coverage, compensability, claims processing procedures, medical services, disability determination, dispute resolutions, disbursements from the Retroactive, Reopened Claims, Handicapped Workers and Reemployment Assistance Reserves. The changes also create new provisions relating to the disposition of claims, employer responsibility, certification of claims examiners and the formation of Managed Care Organizations.

These changes in the law became effective on either May 7, 1990 or July 1, 1990 and, where applicable, apply to all claims which exist or arise on or after July 1, 1990. Immediate action is necessary to permit timely implementation of the programs or program modifications prescribed in the legislation, specifically modifying the Standards for the evaluation of permanent disability.

IT IS THEREFORE ORDERED:

(1) OAR Chapter 436, Division 35, as set forth in Exhibit "A", attached hereto, certified a true copy and hereby made a part of this Order, is temporarily adopted effective October 1, 1990. To 3/29/91

(2) A certified true copy of Order of adoption and these Rules, Exhibit "A", with Exhibit "B" consisting of the Citation of Statutory Authority, Statement of Need and Documents Relied Upon, hereby made a part of this Order, be filed with the Secretary of State.

(3) A copy of the Rules and the attached Exhibit "B" be filed with the Legislative Counsel, pursuant to the provision of ORS 183.715 within 10 days after filing with the Secretary of State.

Dated this 14 day of September, 1990.

DEPARTMENT OF INSURANCE AND FINANCE

for Mary Alice Hammond
Theodore R. Kulongoski, Director

Distribution: A through N
Y through AA

EXHIBIT "A"

CHAPTER 436
DEPARTMENT OF INSURANCE AND FINANCE
WORKERS' COMPENSATION DIVISION
DIVISION 35

DISABILITY RATING STANDARDS

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CHAPTER 436

DEPARTMENT OF INSURANCE AND FINANCE
WORKERS' COMPENSATION DIVISION

DIVISION 35

DISABILITY RATING STANDARDS

AUTHORITY FOR RULES

436-35-001 These rules are promulgated under the Director's authority contained in ORS 656.726(3).

History: Formerly OAR 436-30-001; Filed 6-3-87 as WCD Admin. Order 3-1988, effective 7-1-88; Amended 12-21-88 as WCD Admin. Order 6-1988, effective 1-1-89; Amended 9-14-90 (temp) as WCD Admin. Order 15-1990, effective 10-1-90

PURPOSE OF RULES

436-35-002 These rules establish standards for rating permanent disability under the Workers' Compensation Act. These standards are written to reflect the criteria for rating outlined in legislation adopted by the 1987 and 1990 Legislature, and assign values for disabilities that shall be applied consistently at all levels of the Workers' Compensation award and appeal process.

History: Formerly OAR 436-30-002; Filed 6-3-87 as WCD Admin. Order 3-1988, effective 7-1-88; Amended 12-21-88 as WCD Admin. Order 6-1988, effective 1-1-89; Amended 9-14-90 (temp) as WCD Admin. Order 15-1990, effective 10-1-90

APPLICABILITY OF RULES

436-35-003 [These rules apply to the rating of permanent disability pursuant to ORS Chapter 656 and shall be applied to all claims closed on or after July 1, 1988. These rules are effective July 1, 1988.]

(1) Except as provided by section (2) of this rule, these rules govern all evaluations of a worker's disability made pursuant to ORS Chapter 656 on or after October 1, 1990.

(2) These rules do not apply to any matter regarding a claim in litigation under ORS Chapter 656 and regarding which matter a request for hearing was filed before May 1, 1990, and a hearing was convened before July 1, 1990, unless said claim became medically stationary after July 1, 1990.

History: Formerly OAR 436-30-003; Filed 6-3-87 as WCD Admin. Order 3-1988, effective 7-1-88; Amended 12-21-88 as WCD Admin. Order 6-1988, effective 1-1-89; Amended 9-14-90 (temp) as WCD Admin. Order 15-1990, effective 10-1-90

DEFINITIONS

436-35-005 As used in rules 436-35-001 through 436-35-440, unless the context requires otherwise:

(1) "Attending physician" means a doctor or physician who is primarily responsible for the treatment of a worker's compensable injury or illness and who is:

(a) A medical doctor or doctor of osteopathy licensed under ORS 677.100 to 677.228 by the Board of Medical Examiners for the State of Oregon or a board certified oral surgeon licensed by the Oregon Board of Dentistry; or

(b) For a period of thirty (30) days from the date of first chiropractic visit on the initial claim or for twelve (12) chiropractic visits during that thirty (30) day period, whichever first occurs, a doctor or physician licensed by the State Board of Chiropractic Examiners for the State of Oregon; or

(c) As otherwise provided for, in accordance with a managed care organization contract.

(2) [(1)] "Impairment" means a decrease in the function of a body part or system as measured by a physician according to the methods described in the American Medical Association Guides to the Rating of Permanent Impairment, 2nd Edition, copyright 1984.

(3) "Medical arbiter" means a physician pursuant to 656.005(12)(b)(A) selected by the director pursuant to 436-Division 10; after consultation with the Board of Medical Examiners for the State of Oregon and consultation with the labor/management advisory committee by the department.

(4) [(2)] "Scheduled disability" means a permanent loss of use or function which results from injuries to those body parts listed in ORS 656.214(2)(a) through (4).

(5) [(3)] "Unscheduled disability" means the permanent loss of earning capacity due to the compensable on the job injury or disease as described in these rules; arising from those losses contemplated by ORS 656.214(5) and not to body parts or functions listed in ORS 656.214(2)(a) through (4).

(6) (7) "Combine" describes the way any two percentages of impairment are put together. Unless the standard specifically calls for them to be added values are combined. The values are derived from the formula A+B (1-A) = Combined value of A and B, where A+B are the decimal equivalents of the impairment ratings. [This method is expressed as A% + B% (100% - A%) where A and B are written as decimals.] If A and B are not whole numbers the number(s) are rounded to the nearest whole number (i.e., 3.5 and above round up; 3.4 and below round down). Refer [also] to Appendix A: combined values chart.

(7) "Preponderance of medical opinion" means the greater weight of medical evidence. Medical evidence when weighed with that opposed to it has more convincing force and is more probably true and accurate.

(8) "Time of Determination" is the mailing date of the Determination Order or Notice of Closure issued pursuant to ORS Chapter 656.268.

History: Formerly OAR 436-30-005; Filed 6-3-87 as WCD Admin. Order 3-1988, effective 7-1-88; Amended 12-21-88 as WCD Admin. Order 6-1988, effective 1-1-89; Amended 9-14-90 (temp) as WCD Admin. Order 15-1990, effective 10-1-90

General Principles for Rating Disability

436-35-007 (1) A worker is entitled to a value under these rules only for those findings of impairment that are proven to be due to the accepted injury and/or its accepted conditions. Other unrelated or noncompensable impairment findings shall be excluded and shall not be valued under these rules to determine the worker's total impairment.

(2) Where a worker's impairment findings are due to the accepted injury or accepted conditions and the findings are also due to other unrelated and/or noncompensable causes, the combined findings are rated and valued under these rules. After the total amount of disability has been determined, that portion or percentage of the permanent disability that is attributable to the noncompensable or unrelated causes by a preponderance of medical opinion shall be deleted from the total amount and the worker shall receive an award for the remainder of the disability. However, where a worker has an asymptomatic and nondisabling preexisting condition(s) or other physical defect(s), and the preponderance of medical opinion establishes that the injury caused the preexisting condition or defect to become symptomatic and disabling, the percentage of disability attributable to the increased symptoms from the preexisting conditions(s) or defect(s) is not deleted from the worker's award.

(3) Where a worker has a prior award of permanent disability under Oregon Workers' Compensation Law, the prior award of permanent disability shall be subtracted from the amount of disability determined under these rules on a degree-for-degree basis.

(4) Only impairment findings based upon the measurements and methods described in the AMA guide to the Evaluation of Permanent Impairment, 2nd edition, copyright 1984, shall be used to describe impairment under these rules. Impairment findings describing lost ranges of motion shall be converted to retained ranges of motion by subtracting the measured loss from the normal ranges established in these rules.

(5) A worker is entitled to a redetermination of permanent disability under these rules when a claim has been reopened pursuant to ORS 656.273 and the worker's condition has permanently worsened. If a claim has multiple accepted conditions, only those conditions which have permanently worsened shall be redetermined.

(6) A worker is entitled to a redetermination of permanent disability subsequent to the last arrangement of compensation if a worker ceases to be enrolled and actively engaged in training pursuant to ORS 656.268(8) or if a new condition, not previously evaluated and determined at the last arrangement of compensation, becomes an accepted portion of the claim. If the redetermination is for a new condition, only the new condition shall be redetermined.

(7) Except as provided under ORS 656.325 and 656.268(8), where a redetermination of permanent disability under these rules results in an award that is less than the cumulative total of the worker's prior awards, the award shall not be reduced on redetermination. Nothing in this section precludes a reduction by Evaluation, the Appellate Unit, Hearings Division, Board or Court due to an incorrect application of the standards.

(8) Impairment findings made by an attending physician other than the worker's attending physician at the time of claim closure shall be used to determine impairment if the worker's attending physician concurs with the findings.

(9) Where the medical arbiter and attending physician have different impairment findings for an injured worker, the findings of the arbiter shall be used to determine impairment under these rules.

(10) Where there is a conflict in the medical opinion regarding a worker's physical capacities for the purpose of determining the adaptability factor under OAR 436-35-310, a preponderance of medical opinion shall control. Where the medical opinions are equally persuasive, deference shall be given to the opinion of the attending physician, unless an actual Physical Capacities Evaluation has been performed, in which case the capacities of the PCE shall control. Where a worker fails to cooperate or use maximal effort in the PCE, the worker's physical capacities shall be determined based upon the expertise of the PCE evaluators as to the worker's likely physical capacities had the worker cooperated and used maximal effort.

History: Filed 9-14-90 (temp) as WCD Admin. Order 15-1990, effective 10-1-90.

STANDARDS FOR RATING SCHEDULED PERMANENT DISABILITY

436-35-010 (1) Rules 436-35-010 through 436-35-260 describe the rating of scheduled disability. All physical disability ratings in these rules shall be established on the basis of objective medical evidence that is supported by objective findings from the attending physician or as provided in OAR 436-35-007(8) and (9).

(2) [(a)] Disability is rated on the permanent loss of use or function of a body part due to an on-the-job injury. These losses, as defined and used in these standards, shall be the sole criteria for the rating of permanent disability in the scheduled body parts under these rules.

(3) [(b)] Pain is considered in these rules to the extent it results in objective measurable impairment. If there is no [measurable] impairment under these rules, no award of scheduled permanent partial disability is allowed.

(4) [(3)] The movement in a joint is measured in active degrees of motion. It is first compared to the degrees of motion possible in the contralateral joint if the contralateral joint [is normal] has no history of injury or disease. Any loss of motion of the joint shall result in [disability] impairment proportionately to the full motion in the contralateral joint. Where the contralateral joint [is not normal,] has a history of injury, the joint being rated shall be compared to the normal [it is compared to the] ranges of motion established under these rules.

(5) [(4)] [The maximum value is] ORS 656.214 provides the maximum values to be given for a complete loss of use or function of a body part. A percentage of that figure shall be given for less than complete loss. A value of $305 per degree shall be allowed only for injuries sustained on or after May 1, 1990.

(6) [(5)] The total disability rating for a body part cannot be more than is allowed for amputation of the part.

(7) [(6)] Scheduled disability is awarded in 1% steps rounding to the next higher 1% step. This does not apply to loss of sight or hearing, which is rounded to the next higher hundredth of 1%.

(8) [(7)] [Chronic conditions limiting repetitive use of a scheduled body part shall be rated at 5% of the affected body part]. A worker may be entitled to scheduled chronic condition impairment when a preponderance of medical opinion establishes that the worker is unable to repetitively use a body part due to a chronic and permanent medical condition as follows. "Body part" means the foot/ankle, knee, leg, hand/wrist, elbow, and arm.

(a) Scheduled chronic condition impairment is considered after all other scheduled impairment, if any, has been rated under these rules and converted, pursuant to OAR 436-35-120 and/or 436-35-240 to the appropriate body part proximal to the body. Where a worker suffers an injury to only the fingers or toes, the worker is not entitled to any scheduled chronic condition impairment. Where impairment in a body part is equal to or in excess of 5%, the worker is not entitled to any scheduled chronic condition impairment.

(b) Where the worker has rateable impairment of less than 5% in a body part, the worker is entitled to 5% scheduled chronic condition impairment in lieu of all other rateable impairment for that body part.

(c) Where scheduled chronic condition impairments exist for more than one body part in the same extremity, the worker shall receive only one 5% chronic condition impairment for the body part which results in the larger dollar amount of compensation to the worker. In no event is a worker entitled to more than one 5% scheduled chronic condition impairment in each injured extremity, regardless of how many body parts within that extremity are injured or have chronic conditions.

History: Formerly OAR 436-30-120; Filed 6-3-87 as WCD Admin. Order 3-1988, effective 7-1-88; Amended 12-21-88 as WCD Admin. Order 6-1988, effective 1-1-89; Renumbered from 436-30-050, Amended 9-14-90 (temp) as WCD Admin. Order 15-1990, effective 10-1-90

STANDARDS FOR THE RATING OF UNSCHEDULED PERMANENT DISABILITY

436-35-270 (1) Rules 436-35-270 through 436-35-440 apply to the rating of unscheduled permanent partial disability under the Workers' Compensation Act.

(2) The criteria for rating unscheduled permanent partial disability shall be impairment as modified by age, education (including formal education, [training,] and skills), and adaptability to perform a given job. If there is no [measurable] impairment under these rules, no award of unscheduled permanent partial disability shall be allowed. These factors, as defined and used in these standards, shall be the sole criteria for the rating of lost earning capacity under these rules.

(3) Definitions used in OAR 436-35-[290]270 through 436-35-[310]440:

(a) ["Usual and customary work"] "Regular Work": as used in OAR 436-35-290 through 436-35-310 means substantially the same job held at the time of injury, or substantially the same job for a different employer.

(b) "Modified work": as used in OAR 436-35-290 through 436-35-310 means some job other than the job held at the time of injury, or the job held at the time of injury with any substantial modification of duties or the conditions under which those duties are performed. Any lifting or carrying restriction imposed by the attending physician that modifies the job-at-injury is "substantial".

(c) "Physician's release": as used in OAR 436-35-290 through 436-35-310 means written notification provided by the attending physician to the worker and the worker's employer releasing the worker to work and describing any limitations the worker has. This term also means the doctor has agreed that the worker is physically capable of performing a job that the employer has offered to the worker.

(d) "Work offer:" as used in OAR 436-35-290 through 436-35-310 means [delivery in person or by certified mail, return receipt requested, of] a written offer of [work] employment by the employer, [to which there is a] that in the attending physician's [release] medical opinion is within the worker's capabilities.

(e) "Heavy work" means exerting up to 100 pounds of force occasionally, and/or up to 50 pounds of force frequently, and/or up to 20 pounds of force constantly to move objects.

(f) "Medium work" means exerting up to 50 pounds of force occasionally, and/or up to 20 pounds of force frequently, and/or up to 10 pounds of force constantly to move objects.

(g) "Light work" means exerting up to 20 pounds of force occasionally, and/or up to 10 pounds of force frequently, and/or a negligible amount of force constantly to move objects. Light work also means a job with sedentary work exertions but with physical demand requirements that are in excess of those for sedentary work. Light work usually requires walking or standing to a significant degree. However, if the use of arm and/or leg controls requires exertion of forces greater than that for sedentary work and the worker sits most of the time, the job is rated for light work.

(h) "Sedentary work" means exerting up to 10 pounds of force occasionally and/or a negligible amount of force frequently or constantly to lift, carry, push, pull, or otherwise move objects, including the human body. Sedentary work involves sitting most of the time, but may involve walking or standing for brief periods of time. Jobs are sedentary if walking and standing are required only occasionally and all other sedentary criteria are met.

(i) "Frequently" means the activity or condition exists from 1/3 to 2/3 of the time.

(j) "Occasionally" means the activity or condition exists up to 1/3 of the time.

History: Formerly OAR 436-30-380; Filed 6-3-87 as WCD Admin. Order 3-1988, effective 7-1-88; Amended 12-21-88 as WCD Admin. Order 6-1988, effective 1-1-89; Amended 8-__-90 as WCD Admin. Order 15-1990. Amended 9-14-90 (temp) as WCD Admin. Order 15-1990, effective 10-1-90.

AGE

436-35-290 (1) The range of impact for the age factor is from 0 to +1. The impact is based on the worker's age at the time of [disability rating] determination.

(2) (a) For workers who have returned to their [usual and customary] regular work or accepted a work offer for [usual and customary] regular work, the factor of age shall be given [no] a value of 0.

(b) If the worker refuses or does not respond to a work offer, for [usual and customary] regular work, within [five] seven working days after receipt of the offer, the factor of age shall be given [no] a value of 0.

(3) For workers who are 39 years old or less, [there shall be no] a value of 0 shall be allowed.

(4) For workers 40 and above, a value of +1 shall be allowed.

History: Formerly OAR 436-30-400; Filed 6-3-87 as WCD Admin. Order 3-1988, effective 7-1-88; Amended 12-21-88 as WCD Admin. Order 6-1988, effective 1-1-89; Amended 9-14-90 (temp) as WCD Admin. Order 15-1990, effective 10-1-90.

EDUCATION

436-35-300 (1) The range of impact for this factor shall be from 0 to +[6.] 5.

(2) (a) For workers who have returned to their [usual and customary] regular work [or accepted a work offer for usual and customary work], the factor of education shall be given [no] a value of 0.

(b) If the worker refuses or does not respond to a work offer, for [usual and customary] regular work, within [five] seven working days after receipt of the offer, the factor of education shall be given [no value] a value of 0.

(3) Formal education:

(a) For workers [with] who have earned or acquired a high school diploma or GED certificate by the time of determination, [there] a value of 0 shall be [no value] allowed.

(b) For workers who [do] have not [have] earned or acquired a high school diploma or a GED certificate, a value of +1 shall be allowed.

[(4) Skills shall be measured by reviewing the jobs a worker has successfully performed during the ten years preceding the date of determination. Successful performance is defined as remaining on the job the length of time necessary to meet the specific vocational preparation time

requirement for that job. All jobs require a specific vocational preparation (SVP) time which is found in the Dictionary of Occupational Titles (DOT) produced by the U. S. Department of Labor. Specific information regarding SVP and strength, as well as the educational development required to perform the job can be found in a document titled "Index to Occupational Characteristics" produced by the Department of Insurance and Finance. The appropriate value for the highest SVP level demonstrated by the worker is found in the following table:]

[SVP	Value
1-2	+4
3-4	+3
5-6	+2
7-9	+1]

(4) Workers shall receive a value for their skills based on the jobs the worker has performed during the ten years preceding the time of determination as follows:

(a) Each job shall be identified by the DOT (Dictionary of Occupational Titles) code which most accurately describes its duties.

(b) All jobs identified by the DOT require a Specific Vocational Preparation (SVP) time needed to learn the techniques, acquire information and develop the facility necessary for the average performance in a specific job-worker situation. SVP's range from 1 (lowest) to 9.

(c) An individual has met the SVP for an occupation after remaining in the field long enough to meet the training/skill requirements of that occupation through on-the-job, vocational or apprentice training. A worker has also met the SVP by successfully performing the duties and tasks in other jobs which lead to a higher grade job.

(d) A worker is presumed to have met the SVP for an occupation with a SVP of 5 or higher after performing six months or more with one employer in that job. A worker performing a job with a SVP of 1-4 is presumed to meet the SVP after completing employment with one or more employers in that job classification for the maximum period specified in the table below.

(e) The SVP for each job can be obtained from the Selected Characteristics of Occupations Defined in the Dictionary of Occupational Titles (SCODDOT), published by the U.S. Department of Labor, 1981. Determine the highest SVP met by the worker in a given occupation and assign a value according to the following table:

SVP	VALUE	TRAINING TIME
1	+4	Short demonstration
2	+4	Short demonstration up to 30 days
3	+3	30+ days - 3 months
4	+3	3+ months - 6 months
5	+2	6+ months - 1 year
6	+2	1+ year - 2 years
7	+1	2+ years - 4 years
8	+1	4+ years - 10 years
9	+1	10+ years

[(5) Training: (a) For workers who do not have competence in some specific vocational pursuit, a value of plus one shall be allowed.

(b) For workers who do have competence in some specific vocational pursuit, no value shall be allowed.]

(6)(5) The values from steps 2 through [5] 4 shall be added to arrive at a value for the education factor.

History: Formerly OAR 436-30-410; Filed 6-3-87 as WCD Admin. Order 3-1988, effective 7-1-88; Amended 12-21-88 as WCD Admin. Order 6-1988, effective 1-1-89; Amended 9-14-90 (temp) as WCD Admin. Order 15-1990, effective 10-1-90.

ADAPTABILITY TO PERFORM A GIVEN JOB

436-35-310 (1)(a) The range of impact for [this] the factor of adaptability is from zero to +10. The impact is based upon the worker's work status at and before the time of determination and upon the worker's physical abilities. The adaptability factor for workers who have been offered or who have returned to regular work is determined in section (2) of this rule. The adaptability factor for workers who have been offered or returned to modified work, is made pursuant to section (3) of this rule. Where a worker has been offered or returned to both modified and regular work, the provisions of section (2) control over the provisions of section (3).

(b) For the purposes of evaluating return-to-work status for seasonal workers, "return to work" means a worker has returned to work when the worker is employed in a position that is of the same duration or of longer duration than the job at the time of injury. If the job at the time of injury was a permanent duration job, a worker has returned to work when he or she is employed in another permanent duration job.

(2) (a) For workers who [have returned to their usual and customary work or accepted a work offer for usual and customary work,] are working at their regular work at the time of determination or notice of closure, the factor of adaptability [shall be given no value] is +0.

(b) [If the worker refuses or does not respond to a work offer, for usual and customary work, within five working days after receipt of the offer, the factor of adaptability shall be given no value.] For workers who are not working at the time of determination, but who have been released for regular work, the factor of adaptability is +0.

(c) For workers who are not working at the time of determination, but who have previously returned to regular work, the factor of adaptability is +0 if the preponderance of medical opinion is that the worker is capable of performing regular work at the time of determination. If the preponderance of medical opinion does not establish that the worker is capable of performing regular work at the time of determination, then the worker's adaptability factor is made pursuant to sections (3) or (4) of this rule, depending on whether or not the worker was offered or returned to modified employment after the regular work ended.

(3)(a) For workers who [have received a work offer for, or who have returned to modified work,] are working at modified work at the time of determination, the factor of adaptability [value for this factor] shall be based on the difference between the physical capacity necessary to perform the [usual and customary] regular work and the physical capacity necessary [required] to perform the modified job according to the [following] table in this section. [:]

(b) For workers who are not working at the time of determination, but who have been offered modified work, the factor of adaptability shall be based on the difference between the physical capacity necessary to perform the regular work and the physical capacity necessary to perform the modified job according to the table in this section.

(c) For workers who are not working on the date of determination for reasons unrelated to the claim, but who have previously returned to physically appropriate modified work, the factor of adaptability is based on the difference between the physical capacity necessary to perform the regular work and the physical capacity necessary to perform the modified work according to the table in this section, if the preponderance of medical opinion is that the worker is capable of performing the level of work required by the modified job at the time of determination. If the preponderance of medical opinion does not establish that the worker is capable of performing the level of work required by the modified job at the time of determination, the worker's adaptability factor is determined as provided by section (4) of this rule.

(d) Strength factors, for prior strength, are derived from the Selected Characteristics of Occupations Defined in the Dictionary of Occupational Titles (SCODDOT), published by the U.S. Department of Labor, 1981. The SCODDOT describes the specific physical demands for each occupation listed in the Dictionary of Occupational Titles.

		NEW STRENGTH						
		S	S/L	L	[L/M]M/L	M	M/H	H
PRIOR STRENGTH	S	1	1	1	1	1	1	1
	S/L	1	1	1	1	1	1	1
	L	2	1.5	1	1	1	1	1
	[L/M]M/L	2	1.5	1	1	1	1	1
	M	2.5	2.5	2	1.5	1	1	1
	M/H	2.5	2.5	2	1.5	1	1	1
	H	3	3	2.5	2.5	1	1	1

(4) If[, as a result of the injury,] the worker is not working at the time of determination and the conditions of sections (2) and (3) of this rule do not apply, [and no employment has been offered, the value of this factor

shall be based on physical capacity] the factor of adaptability is based upon the worker's residual physical capacity, according to the following table[.]:

Heavy work	+1
Heavy work with restrictions	+1
Medium-Heavy work	+1
Medium-Heavy work with restrictions	+1
Medium work	+1
Medium work with restrictions	+2.5
Medium-Light work	+2.5
Medium-Light work with restrictions	+3.5
Light work	+4
Light work with restrictions	+6
Light-Sedentary work	+6
Light-Sedentary work with restrictions	+8
Sedentary work	+8
Sedentary work with restrictions	+10

(5) As used in this rule, a worker has restrictions when the preponderance of medical opinion establishes that the worker is limited to sitting, standing or walking less than 2 hours at a time or where the worker is permanently precluded from working more than four hours per day. A worker is also considered to be restricted where the preponderance of medical opinion establishes that the worker is permanently precluded from frequently performing at least three of the following activities: stooping, crouching, kneeling, twisting, climbing, pushing or pulling.

[For those workers with the physical capacity to do more than the requirements of one category, but not the full range of requirements for the next higher category, the value shall be the average of the values for the two categories.]

[When a worker qualifies in one of the following categories but has limited ability to sit, stand, walk, carry, stoop, crouch, kneel, or twist, the value shall be the average of the value for the category for which they qualify and the value for the next lower category.]

[When a worker can perform above the requirements of one category but has limited ability to sit, stand, etc., the value shall be the average of the category their strength qualifies them for plus the values of the categories immediately above and below.]

[(a) Heavy or very heavy for a value of +1: Heavy is defined as the ability to lift over 50 pounds occasionally or up to 50 pounds frequently. 100% of the jobs available in Oregon fall at or below the very heavy category. Heavy and very heavy are grouped because so few jobs are very heavy.]

[(b) Medium for a value of +1: Medium is defined as the ability to lift up to 50 pounds occasionally or up to 25 pounds frequently. 91% of all jobs in Oregon fall at or below the medium category.]

[(c) Light for a value of +4: Light is defined as the ability to lift up to 20 pounds occasionally or up to 10 pounds frequently 62% of all jobs in Oregon fall at or below the light category.]

[(d) Sedentary for a value of +8: Sedentary is defined as the ability to lift up to 10 pounds occasionally or up to 5 pounds frequently. 20% of all jobs in Oregon fall into the sedentary category. For workers unable to perform the full range of sedentary activities because of restricted abilities to sit, stand, walk, carry, stoop, crouch, kneel, or twist a maximum of +10 may be allowed for this factor.]

History: Formerly OAR 436-30-430; Filed 6-3-87 as WCD Admin. Order 3-1988, effective 7-1-88; Amended 12-21-88 as WCD Admin. Order 6-1988, effective 1-1-89; Amended 9-14-90 (temp) as WCD Admin. Order 15-1990, effective 10-1-90.

IMPAIRMENTS RATED AS UNSCHEDULED DISABILITY

436-35-320 (1) Rules 436-35-320 through 436-35-440 give standards for rating physical impairments which might lead to an award for loss of earning capacity. All physical impairment ratings in these rules shall be established on the basis of objective medical evidence that is supported by the objective findings from the attending physician or as provided in 436-35-007 (8) and (9).

(2) Pain is considered in these rules to the extent that it results in measurable impairment. If there is no [measurable] impairment under these rules, no award of unscheduled permanent partial disability shall be allowed. To the extent that pain results in disability greater than that evidenced by the measurable impairment, including the disability due to expected [periodic exacerbations] waxing and waning of the worker's condition, this loss of earning capacity is considered and rated under OAR 436-35-310 and is included in the adaptability factor.

(3) [(2)] If the impairment results from injury to more than one body part or system listed in these sections, the values should be combined (not added) to arrive at a final impairment [figure] value.

(4) [(3)] The maximum impairment value is given for a complete loss of use or function. A percentage of that figure shall be given for less than complete loss.

(5) [(4)] [Chronic conditions limiting repetitive use of an unscheduled body part shall be rated at 5% impairment of that part.] A worker may be entitled to unscheduled chronic condition impairment where a preponderance of medical opinion establishes that the worker is unable to repetitively use a body area due to a chronic and permanent medical condition. "Body area" means the cervical/upperback/shoulders area and the lowback/hips area. Chronic conditions in the middleback are considered a part of the lowback/hips body area.

(a) Unscheduled chronic condition impairment is considered after all other unscheduled impairment within a body area, if any, has been rated and combined under these rules. Where the total unscheduled impairment within a body area is equal to or in excess of 5%, the worker is not entitled to any unscheduled chronic condition impairment.

(b) Where the worker has less than 5% total unscheduled rateable impairment in a body area, the worker is entitled to 5% unscheduled chronic condition impairment in lieu of all other unscheduled impairment in that body area.

(c) A worker may receive unscheduled chronic condition impairment to more than one body area. Unscheduled chronic condition impairments are combined, not added.

History: Formerly OAR 436-30-470; Filed 6-3-87 as WCD Admin. Order 3-1988, effective 7-1-88; Amended 12-21-88 as WCD Admin. Order 6-1988, effective 1-1-89; Amended 9-14-90 (temp) as WCD Admin. Order 15-1990, effective 10-1-90.

GENERAL SPINAL FINDINGS

436-35-350 (1) The following ratings are for fractured vertebrae:

(a) For a compression fracture in the body of a single vertebra:

25% compression.....	3%
50% compression.....	6%
more than 50% compression.....	10%

Any percent of compression between or below those listed are rated as a proportionate amount of the impairment value.

(b) For a compression fracture in two or more vertebrae, find the ratings for each vertebra, then combine (do not add) them to arrive at a final figure.

(c) A fracture of one or more of the posterior elements of a vertebra, including spinous process, is given a value of 3% whether united or not.

(2) The following ratings are for intervertebral [disc lesions or] surgical procedures:

laminectomy or laminotomy with single discectomy.	5%
laminectomy or laminotomy without discectomy.....	1%
total removal of the posterior elements.....	10%
removal of the spinous process and lamina.....	5%
(complete per side) facetectomy.....	3%
removal or destruction of any single disc by whatever clinical means	4%
[any unoperated rupture bulge or other disc derangement	4%]

(3) The following ratings are for ankylosis in the spine (spinal fusion). They are figured with ankylosis in the position of 0o (called the "favorable position" or "neutral position"). If the ankylosis is in any other position, it is considered "unfavorable." Unless the physician states the ankylosis is in unfavorable position, it shall be assumed to be in favorable position. The rating for favorable or unfavorable positions are given in the table below:

Favorable	Unfavorable
any 2 cervical.....2%	any 2 cervical.....4%
any 3 cervical.....5%	any 3 cervical.....10%
any 4 cervical.....7%	any 4 cervical.....14%
any 5 cervical.....9%	any 5 cervical.....18%
any 6 cervical.....12%	any 6 cervical.....24%
any 7 cervical.....14%	any 7 cervical.....28%

Favorable	Unfavorable
C7 and T1.....2%	C7 and T1.....4%
any 2 thoracic.....1%	any 2 thoracic.....2%
any 3 thoracic.....2%	any 3 thoracic.....4%
any 4 thoracic.....3%	any 4 thoracic.....5%
any 5 thoracic.....4%	any 5 thoracic.....7%
any 6 thoracic.....5%	any 6 thoracic.....9%
any 7 thoracic.....5%	any 7 thoracic.....11%
any 8 thoracic.....6%	any 8 thoracic.....13%
any 9 thoracic.....7%	any 9 thoracic.....15%
any 10 thoracic.....8%	any 10 thoracic.....16%
any 11 thoracic.....9%	any 11 thoracic.....18%
any 12 thoracic.....12%	any 12 thoracic.....20%
T12 and L1 .....3%	T12 and L1 .....6%
any 2 lumbar.....3%	any 2 lumbar.....6%
any 3 lumbar.....6%	any 3 lumbar.....12%
any 4 lumbar.....9%	any 4 lumbar.....18%
any 5 lumbar.....12%	any 5 lumbar.....24%
L5 and S1.....5%	L5 and S1 .....10%
C1-C7.....14%	C1-C7.....28%
T1-T12.....12%	T1-T12.....20%
L1-L5.....12%	L1-L5.....24%
C1-T12.....23%	C1-T12.....28%
T1-L5.....21%	T1-L5.....39%
C1-L5.....32%	C1-L5.....56%

(4) This rating is for unilateral application for injuries to spinal nerve plexus with resultant loss of strength shall be rated according to the following table:

NERVE	Maximum loss of Function due to Loss of strength UNSCHEDULED
Brachial Plexus	60%
Upper Trunk (C-5, C-6)	42%
Middle Trunk (C-7)	21%
Lower Trunk (C-8, T-1)	42%
Lumbosacral Plexus	[30%] 50%

History: Formerly OAR 436-30-490; Filed 6-3-87 as WCD Admin. Order 3-1988, effective 7-1-88; Amended 8-19-88 as WCD Admin. Order 5-1988 (Temp.), effective 8-19-88; Amended 12-21-88 as WCD Admin. Order 6-1988, effective 1-1-89; **Amended 9-14-90 (temp) as WCD Admin. Order 15-1990, effective 10-1-90.**

[HEART] CARDIOVASCULAR SYSTEM

436-35-380 Impairments of the cardiovascular system [will] shall be rated based on [whether there is work related] objective findings which establish that the job was the major contributor to: valvular heart disease, coronary heart disease, hypertensive cardiovascular disease, cardiomyopathies, pericardial disease, or cardiac arrhythmias. Each of these conditions will be described in terms of the following functional classifications based on exercise testing:

Class 1: The worker has cardiac disease but no resulting limitation of physical activity. Ordinary physical activity does not cause undue fatigue, palpitation, dyspnea, or anginal pain.

Class 2: The worker has cardiac disease resulting in slight limitation of physical activity. The worker is comfortable at rest and in the performance of ordinary, light, daily activities. Greater than ordinary physical activity, such as heavy physical exertion, results in fatigue, palpitation, dyspnea, or anginal pain.

Class 3: The worker has cardiac disease resulting in marked limitation of physical activity. The worker is comfortable at rest. Ordinary physical activity results in fatigue, palpitation, dyspnea, or anginal pain.

Class 4: The worker has cardiac disease resulting in inability to carry on any physical activity without discomfort. Symptoms of inadequate cardiac output, pulmonary congestion, systemic congestion, or of the anginal syndrome may be present, even at rest. If any physical activity is undertaken, discomfort is increased.

(1) Impairment resulting from work related valvular heart disease shall be rated according to the following classifications:

Class 1
([0-10] 5% Impairment)

The worker has evidence by physical examination or laboratory studies of valvular heart disease, but no symptoms in the performance of ordinary daily activities or even upon moderately heavy exertion (functional class 1); AND

The worker does not require continuous treatment, although prophylactic antibiotics may be recommended at the time of a surgical procedure to reduce the risk of bacterial endocarditis; AND

The worker remains free of signs of congestive heart failure; AND

There are no signs of ventricular hypertrophy or dilation, and the severity of the stenosis or regurgitation is estimated to be mild; OR

In the worker who has recovered from valvular heart surgery, all of the above criteria are met.

Class 2
([15-25] 20% Impairment)

The worker has evidence by physical examination or laboratory studies of valvular heart disease, and there are no symptoms in the performance of ordinary daily activities, but symptoms develop on moderately heavy physical exertion (functional class 2); OR

The worker requires moderate dietary adjustment or drugs to prevent symptoms or to remain free of the signs of congestive heart failure or other consequences of valvular heart disease, such as syncope, chest pain and emboli; OR

The worker has signs or laboratory evidence of cardiac chamber hypertrophy and/or dilation, and the severity of the stenosis or regurgitation is estimated to be moderate, and surgical correction is not feasible or advisable; OR

The worker has recovered from valvular heart surgery and meets the above criteria.

Class 3
([30-50] 40% Impairment)

The worker has signs of valvular heart disease and has slight to moderate symptomatic discomfort during the performance of ordinary daily activities (functional class 3); AND

Dietary therapy or drugs do not completely control symptoms or prevent congestive heart failure; AND

The worker has signs or laboratory evidence of cardiac chamber hypertrophy or dilation, the severity of the stenosis or regurgitation is estimated to be moderate or severe, and surgical correction is not feasible; OR

The worker has recovered from heart valve surgery but continues to have symptoms and signs of congestive heart failure including cardiomegaly.

Class 4
([55-100] 78% Impairment)

The worker has signs by physical examination of valvular heart disease, and symptoms at rest or in the performance of less than ordinary daily activities (functional class 4); AND

Dietary therapy and drugs cannot control symptoms or prevent signs of congestive heart failure; AND

The worker has signs or laboratory evidence of cardiac chamber hypertrophy and/or dilation; and the severity of the stenosis or regurgitation is estimated to be moderate or severe, and surgical correction is not feasible; OR

The worker has recovered from valvular heart surgery but continues to have symptoms or signs of congestive heart failure.

(2) Impairment resulting from work related coronary heart disease shall be rated according to the following classifications:

Class 1
([0-10] 5% Impairment)

Because of the serious implications of reduced coronary blood flow, it is not reasonable to classify the degree of impairment as 0% to 10% in any worker who has symptoms of coronary heart disease corroborated by physical examination or laboratory tests. This class of impairment should be reserved for the worker with an equivocal history of angina pectoris on whom coronary angiography is performed, or for a worker on whom coronary angiography is performed for other reasons and in whom is found less than 50% reduction in the cross sectional area of a coronary artery.

Class 2
([15-25] 20% Impairment)

The worker has history of a myocardial infarction or angina pectoris that is documented by appropriate laboratory studies, but at the time of evaluation the worker has no symptoms while performing ordinary daily activities or even moderately heavy physical exertion (functional class 1); AND

The worker may require moderate dietary adjustment and/or medication to prevent angina or to remain free of signs and symptoms of congestive heart failure; AND

The worker is able to walk on the treadmill or bicycle ergometer and obtain a heart rate of 90% of his or her predicted maximum heart rate without developing significant ST segment shift, ventricular tachycardia, or hypotension; OR

The worker has recovered from coronary artery surgery or angioplasty, remains asymptomatic during ordinary daily activities, and is able to exercise as outlined above. If the worker is taking a beta adrenergic blocking agent, he or she should be able to walk on the treadmill to a level estimated to cause an energy expenditure of at least 10 METS* as a substitute for the heart rate target.

*METS is a term that represents the multiples of resting metabolic energy utilized for any given activity. One MET is 3.5ml/(kg x min).

Class 3
([30-50] 40% Impairment)

The worker has a history of myocardial infarction that is documented by appropriate laboratory studies, and/or angina pectoris that is documented by changes on a resting or exercise ECG or radioisotope study that are suggestive of ischemia; OR

The worker has either a fixed or dynamic focal obstruction of at least 50% of a coronary artery, demonstrated by angiography; AND

The worker requires moderate dietary adjustment or drugs to prevent frequent angina or to remain free of symptoms and signs of congestive heart failure, but may develop angina pectoris or symptoms of congestive heart failure after moderately heavy physical exertion (functional class 2); OR

The worker has recovered from coronary artery surgery or angioplasty, continues to require treatment, and has the symptoms described above.

Class 4
([55-100] 88% Impairment)

The worker has history of a myocardial infarction that is documented by appropriate laboratory studies or angina pectoris that has been documented by changes of a resting ECG or radioisotope study that are highly suggestive of myocardial ischemia; OR

The worker has either fixed or dynamic focal obstruction of at least 50% of one or more coronary arteries, demonstrated by angiography; AND

Moderate dietary adjustments or drugs are required to prevent angina or to remain free of symptoms and signs of congestive heart failure, but the worker continues to develop symptoms of angina pectoris or congestive heart failure during ordinary daily activities (functional class 3 or 4); OR

There are signs or laboratory evidence of cardiac enlargement and abnormal ventricular function; OR

The worker has recovered from coronary artery bypass surgery or angioplasty and continues to require treatment and have symptoms as described above.

(3) Impairment resulting from work related hypertensive cardiovascular disease shall be rated according to the following classifications:

Class 1
([0-10] 5% Impairment)

The worker has no symptoms and the diastolic pressures are repeatedly in excess of 90 mm Hg; AND

The worker is taking antihypertensive medications but has none of the following abnormalities: (1) abnormal urinalysis or renal function tests; (2) history of hypertensive cerebrovascular disease; (3) evidence of left ventricular hypertrophy; (4) hypertensive vascular abnormalities of the optic fundus, except minimal narrowing of arterioles.

Class 2
([15-25] 20% Impairment)

The worker has no symptoms and the diastolic pressures are repeatedly in excess of 90 mm Hg; AND

The worker is taking antihypertensive medication and has any of the following abnormalities: (1) proteinuria and abnormalities of the urinary sediment, but no impairment of renal function as measured by blood urea nitrogen (BUN) and serum creatinine determinations; (2) history of hypertensive cerebrovascular damage; (3) definite hypertensive changes in the retinal arterioles, including crossing defects and/or old exudates.

Class 3
([30-50] 40% Impairment)

The worker has no symptoms and the diastolic pressure readings are consistently in excess of 90 mm Hg; AND

The worker is taking antihypertensive medication and has any of the following abnormalities: (1) diastolic pressure readings usually in excess of 120 mm Hg; (2) proteinuria or abnormalities in the urinary sediment, with evidence of impaired renal function as measured by elevated BUN and serum creatinine, or by creatinine clearance below 50%; (3) hypertensive cerebrovascular damage with permanent neurological residual; (4) left ventricular hypertrophy according to findings of physical examination, ECG, or chest radiograph, but no symptoms, signs or evidence by chest radiograph of congestive heart failure; or (5) retinopathy, with definite hypertensive changes in the arterioles, such as "copper" or "silver wiring," or A-V crossing changes, with or without hemorrhages and exudates.

Class 4
([55-100] 88% Impairment)

The worker has a diastolic pressure consistently in excess of 90 mm Hg; AND

The worker is taking antihypertensive medication and has any two of the following abnormalities; (1) diastolic pressure readings usually in excess of 120 mm Hg; (2) proteinuria and abnormalities in the urinary sediment, with impaired renal function and evidence of nitrogen retention as measured by elevated BUN and serum creatinine or by creatinine clearance below 50%; (3) hypertensive cerebrovascular damage with permanent neurological deficits; (4) left ventricular hypertrophy; (5) retinopathy as manifested by hypertensive changes in the arterioles, retina, or optic nerve; (6) history of congestive heart failure; OR

The worker has left ventricular hypertrophy with the persistence of congestive heart failure despite digitalis and diuretics.

(4) Impairment resulting from work related cardiomyopathies shall be rated according to the following classifications:

Class 1
([0-10] 5% Impairment)

The worker is asymptomatic and there is evidence of impaired left ventricular function from physical examination or laboratory studies; AND

There is no evidence of congestive heart failure or cardiomegaly from physical examination or laboratory studies.

Class 2
([15-25] 20% Impairment)

The worker is asymptomatic and there is evidence of impaired left ventricular function from physical examination or laboratory studies; AND

Moderate dietary adjustment or drug therapy is necessary for the worker to be free of symptoms and signs of congestive heart failure; OR

The worker has recovered from surgery for the treatment of hypertrophic cardiomyopathy and meets the above criteria.

Class 3
([30-50] 40% Impairment)

The worker develops symptoms of congestive heart failure on greater than ordinary daily activities (functional class 3) and there is evidence of abnormal ventricular function from physical examination or laboratory studies; AND

Moderate dietary restriction or the use of drugs is necessary to minimize the worker's symptoms, or to prevent the appearance of signs of congestive heart failure or evidence of it by laboratory study; OR

The worker has recovered from surgery for the treatment of hypertrophic cardiomyopathy and meets the criteria described above.

Class 4
([55-100] 88% Impairment)

The worker is symptomatic during ordinary daily activities despite the appropriate use of dietary adjustment and drugs, and there is evidence of abnormal ventricular function from physical examination or laboratory studies; OR

There are persistent signs of congestive heart failure despite the use of dietary adjustment and drugs; OR

The worker has recovered from surgery for the treatment of hypertrophic cardiomyopathy and meets the above criteria.

(5) Impairment resulting from work related pericardial disease shall be rated according to the following classifications:

Class 1
([0-10] 5% Impairment)

The worker has no symptoms in the performance of ordinary daily activities or moderately heavy physical exertion, but does have evidence from either physical examination or laboratory studies of pericardial heart disease; AND

Continuous treatment is not required, and there are no signs of cardiac enlargement, or of congestion of lungs or other organs; OR

In the worker who has had surgical removal of the pericardium, there are no adverse consequences of the surgical removal and the worker meets the criteria above.

Class 2
([15-25] 20% Impairment)

The worker has no symptoms in the performance of ordinary daily activities, but does have evidence from either physical examination or laboratory studies of pericardial heart disease; BUT

Moderate dietary adjustment or drugs are required to keep the worker free from symptoms and signs of congestive heart failure; OR

The worker has signs or laboratory evidence of cardiac chamber hypertrophy or dilation; OR

The worker has recovered from surgery to remove the pericardium and meets the criteria above.

Class 3
([30-50] 40% Impairment)

The worker has symptoms on performance of greater than ordinary daily activities (functional class 2) despite dietary or drug therapy, and the worker has evidence from physical examination or laboratory studies, of pericardial heart disease; AND

Physical signs are present, or there is laboratory evidence of cardiac chamber enlargement or there is evidence of significant pericardial thickening and calcification; OR

The worker has recovered from surgery to remove the pericardium but continues to have the symptoms, signs and laboratory evidence described above.

Class 4
([55-100] 88% Impairment)

The worker has symptoms on performance of ordinary daily activities (functional class 3 or 4) in spite of using appropriate dietary restrictions or drugs, and the worker has evidence from physical examination or laboratory studies, of pericardial heart disease; AND

The worker has signs or laboratory evidence of congestion of the lungs or other organs; OR

The worker has recovered from surgery to remove the pericardium and continues to have symptoms, signs, and laboratory evidence described above.

(6) Impairment resulting from work related cardiac arrhythmias* shall be rated according to the following classifications:

Class 1
([0-10] 5% Impairment)

The worker is asymptomatic during ordinary activities and a cardiac arrhythmia is documented by ECG; AND

There is no documentation of three or more consecutive ectopic beats or periods of asystole greater than 1.5 seconds, and both the atrial and ventricular rates are maintained between 50 and 100 beats per minute; AND

There is no evidence of organic heart disease.

* If an arrhythmia is a result of organic heart disease, the arrhythmia should be rated separately and combined with the impairment rating for the organic heart disease.

Class 2
([15-25] 20% Impairment)

The worker is asymptomatic during ordinary daily activities and a cardiac arrhythmia is documented by ECG; AND

Moderate dietary adjustment, or the use of drugs, or an artificial pacemaker, is required to prevent symptoms related to the cardiac arrhythmia; OR

The arrhythmia persists and there is organic heart disease.

Class 3
([30-50] 40% Impairment)

The worker has symptoms despite the use of dietary therapy or drugs or of an artificial pacemaker and a cardiac arrhythmia is documented with ECG; BUT

The worker is able to lead an active life and the symptoms due to the arrhythmia are limited to infrequent palpitations and episodes of light-headedness, or other symptoms of temporarily inadequate cardiac output.

Class 4
([55-100] 88% Impairment)

The worker has symptoms due to documented cardiac arrhythmia that are constant and interfere with ordinary daily activities (functional class 3 or 4); OR

The worker has frequent symptoms of inadequate cardiac output documented by ECG to be due to frequent episodes of cardiac arrhythmia; OR

The worker continues to have episodes of syncope that are either due to, or have a high probability of being related to, the arrhythmia. To fit into this category of impairment, the symptoms must be present despite the use of dietary therapy, drugs, or artificial pacemakers.

(7) For heart transplants a basic impairment value of 50% of the heart shall be allowed. This value shall be combined with any other findings of impairment of the heart.

History: Formerly OAR 436-30-520; Filed 6-3-87 as WCD Admin. Order 3-1988, effective 7-1-88; Amended 8-19-88 as WCD Admin. Order 5-1988 (Temp.), effective 8-19-88; Amended 12-21-88 as WCD Admin. Order 6-1988, effective 1-1-89; **Amended 9-14-90 (temp) as WCD Admin. Order 15-1990, effective 10-1-90.**

RESPIRATORY SYSTEM

436-35-385 (1) Work related respiratory impairment shall be rated according to the following classifications. [and] **This impairment shall be** combined with any other findings for the lungs:

Class 1 (0% Impairment)

The worker may or may not have dyspnea. If dyspnea is present, it is for non-respiratory reasons or it is consistent with the circumstances of activity; OR

Tests of ventilatory function* FVC, FEV1, FEV1/FVC ratio (as percent) are above the lower limit of normal for the predicted value as defined by the 95% confidence interval; OR

Oxygen consumption per minute is greater than 25 ml/(kg.min)

*FVC is Forced Vital Capacity. FEV1 is Forced Expiratory Volume in the first second. At least one of the three tests should be abnormal to the degree described for Classes 2, 3, and 4.

Class 2 ([10-25] **18%** Impairment)

Dyspnea with fast walking on level ground or when walking up a hill; worker can keep pace with person of same age and body build on level ground but not on hills or stairs; OR

Tests of ventilatory function FVC, FEV1, FEV1/FVC ratio (as percent) are below the 95% confidence interval but greater than 60% predicted for FVC, FEV1 and FEV1/FVC ratio.

Oxygen consumption per minute is between 20-25 ml/(kg.min)

Class 3 ([30-45] 38% Impairment)

Dyspnea while walking on level ground or walking up one flight of stairs. Worker can walk a mile at own pace without dyspnea, but cannot keep pace on level ground with others of same age and body build; OR

Tests of ventilatory function FVC, FEV1, FEV1/FVC ratio (as percent) are less than 60% predicted, but greater than: 50% predicted for FVC 40% predicted for FEV1 40% actual value for FEV1/FVC ratio; OR

Oxygen consumption per minute is between 15-20 ml/(kg.min)

Class 4** ([50-100] 75% Impairment)

Dyspnea after walking more than 100 meters at own pace on level ground. Worker sometimes is dyspneic with less exertion or even at rest; OR

Tests of ventilatory function FVC, FEV1, FEV1/FVC ratio (as percent) are less than: 50% predicted for FVC 40% predicted for FEV1 40% actual value for FEV1/FVC ratio 40% predicted for Dco.

Oxygen consumption per minute is less than 15 ml/(kg.min)

**An asthmatic who, despite optimum medical therapy, has had attacks of severe bronchospasm requiring emergency room or hospital care on the average of six times per year is considered to be in class 4.

Dco refers to diffusing capacity of carbon monoxide.

(2) Impairment resulting from occupationally induced lung cancer shall be rated according to the following:

Worker is able to carry on normal activity and to work. There are no complaints and no evidence of disease. 0% impairment

Worker is able to carry on normal activity, minor signs or symptoms of disease. 10% impairment

Worker is able to carry on normal activity with effort, some signs or symptoms of disease. 20% impairment

Worker cares for self. Unable to carry on normal activity or to do active work. 30% impairment

Worker requires occasional assistance but is able to care for most of his or her needs. 40% impairment

Worker requires considerable assistance and frequent medical care.	50% impairment
Worker requires special care and assistance.	60% impairment
Hospitalization is indicated.	70% impairment
Hospitalization and active support treatment necessary.	80% impairment
Worker is moribund.	90% impairment

(3) Impairment from air passage defects shall be rated according to the following classifications:

Class 1 ([0-10] 5% Impairment)

A recognized air passage defect exists.

Dyspnea does NOT occur at rest.

Dyspnea is NOT produced by walking or climbing stairs freely, performance of other usual activities of daily living, stress, prolonged exertion, hurrying, hill climbing, recreation* requiring intensive effort or similar activity.

Examination reveals ONE or more of the following: partial obstruction of oropharynx, larynogopharynx, larynx, upper trachea (to 4th ring), lower trachea, bronchi, or complete obstruction of the nose (bilateral), or nasopharynx.

Class 2 ([15-25] 20% Impairment)

A recognized air passage defect exists.

Dyspnea does NOT occur at rest.

Dyspnea is NOT produced by walking freely on the level, climbing at least one flight of ordinary stairs or the performance of other usual activities of daily living.

Dyspnea IS produced by stress, prolonged exertion, hurrying, hill-climbing, recreation except sedentary forms, or similar activity.

Examination reveals ONE or more of the following: partial obstruction of oropharynx, laryngopharynx, larynx, upper trachea (to 4th ring), lower trachea, bronchi; or complete obstruction of the nose (bilateral), or nasopharynx.

*Prophylactic restriction of activity such as strenuous competitive sport does not mean a worker will be in class 2.

Class 3 ([30-50] 40% Impairment)

A recognized air passage defect exists.

Dyspnea does NOT occur at rest.

Dyspnea IS produced by walking more than one or two blocks on the level or climbing one flight of ordinary stairs even with periods of rest; performance of other usual activities of daily living, stress, hurrying, hill-climbing, recreation or similar activity.

Examination reveals ONE or more of the following: partial obstruction of oropharynx, laryngopharynx, larynx, upper trachea (to 4th ring) lower trachea or bronchi.

Class 4 ([55-100] 88% Impairment)

A recognized air passage defect exists.

Dyspnea occurs at rest, although worker is not necessarily bedridden.

Dyspnea is aggravated by the performance of any of the usual activities of daily living beyond personal cleansing, dressing, grooming or its equivalent.

Examination reveals ONE or more of the following: partial obstruction of oropharynx, laryngopharynx, larynx, upper trachea (to 4th ring), lower trachea or bronchi.

(4) For the complete removal of a lung, three lobes right or two lobes left, 60% impairment will be allowed.

(5) For the partial removal of a lung on one side, 30% impairment will be allowed for either the top or bottom lobe. For the partial removal of both lungs, 50% impairment will be allowed for two lobes, either both top, both bottom, or one top with one bottom lobes. This value does not change with either inclusion or exclusion of the middle lobe on the right.

(6) For injuries which result in impaired ability to speak, the following table will rate the worker's ability to speak in relation to: Audibility, ability to speak loudly enough to be heard; Intelligibility, ability to articulate well enough to be understood; and Functional Efficiency, ability toproduce a serviceably fast rate of speech and to sustain it over a useful period of time.

(a) Class 1, [0 - 15] 8% impairment: speech capacity is sufficient to meet everyday needs.

(b) Class 2, [20 - 40] 30% impairment: speech capacity is sufficient for many everyday needs.

(c) Class 3, [45 - 65] 55% impairment: speech capacity is sufficient for some everyday needs.

(d) Class 4, [70 - 85] 78% impairment: speech capacity is sufficient for only some everyday needs.

(e) Class 5, [90 - 95] 93% impairment: speech capacity will not meet any everyday need.

NOTE: Workers with successful permanent tracheostomy or stoma should be rated at 25% impairment of the respiratory system.

For workers who have developed an allergic respiratory response to physical or chemical agents refer to OAR 436-35-430 (8).

History: Filed 8-19-88 as WCD Admin. Order 5-1988 (Temp.), effective 8-19-88;Amended 12-21-88 as WCD Admin. Order 6-1988, effective 1-1-89; **Amended 9-14-90 (temp) as WCD Admin. Order 15-1990, effective 10-1-90.**

CRANIAL NERVES

436-35-390 (1) Impairment of the First Cranial Nerve (Olfactory) resulting in either complete inability to detect odors or perversion of the sense of smell is 3% unscheduled impairment.

(2) Ratings given for impairment of the Second Cranial Nerve (Optic) are figured according to their effects on vision[, Consult rule] **pursuant to** 436-35-260.

(3) Ratings given for impairment in the Third Cranial Nerve (Oculomotor), Fourth Cranial Nerve (Trochlear), and Sixth Cranial Nerve (Abducens) are figured according to their effects on ocular motility[, Consult] **pursuant to** 436-35-260.

(a) Other effects of impairment in these nerves include too much or too little tearing, or photophobia. The combined effects are rated as follows:

mild (in the opinion of a doctor)..... 0%
moderate (in the opinion of a doctor)..... 5%
severe (in the opinion of a doctor)..... 10%

(4) Ratings given for impairment of the Fifth Cranial Nerve (Trigeminal) are as follows:

(a) For loss of sensation in the Trigeminal distribution on one side: 10%; on both sides: 35%

(b) The rating given for complete loss of motor function of one Trigeminal Nerve is 5%.

(c) The rating given for complete loss of motor function of both Trigeminal Nerves is as follows:

mild difficulty in speech and swallowing..... 30%
moderate difficulty in speech and swallowing..... 38%
severe difficulty in speech and swallowing..... 45%

(5) Ratings given for impairment of the Sixth Cranial Nerve (Abducens) are described in section (3) [above] of this rule.

(6) Ratings given for impairment of the Seventh Cranial Nerve (Facial) are as follows:

(a) No rating is given for loss of sensation from impairment of one or both Facial Nerves.

(b) If impairment of one or both Facial Nerves results in loss of the sense of taste, the rating is 3%.

(c) Complete motor loss on one side of the face due to impairment of the Facial Nerve is rated at 15%.

(d) Complete motor loss on both sides of the face due to impairment of the Facial Nerve is rated at 45%.

(7) Ratings given for impairment of the Eighth Cranial Nerve (Auditory) are figured according to their effects on hearing[, Consult] pursuant to 436-35-250. Other ratings for loss in this nerve include the following:

(a) For permanent disturbances of the vestibular mechanism resulting in vestibular disequilibrium which limits activities the impairment shall be rated according to the following:

(A) [5-10] 8% when signs of vestibular disequilibrium are present with supporting objective findings and the usual activities of daily living are performed without assistance, except for complex activities such as bike riding or walking on girders or scaffolds.

(B) [15-30] 23% when signs of vestibular disequilibrium are present with supporting objective findings and the usual activities of daily living can[not] be performed without assistance, [except such simple activities as self care, walking on the street], and [riding in] the worker is unable to operate a motor vehicle [operated by another person].

(C) [35-60] 48% when signs of vestibular disequilibrium are present with supporting objective findings and the usual activities of daily living cannot be performed without assistance [except self care].

(D) [65-95] 80% when signs of vestibular disequilibrium are present with supporting objective findings and the usual activities of daily living cannot be performed without assistance, [except self care not requiring ambulation] and confinement to the home or other facility is necessary.

(b) Tinnitus which interferes with a worker's ability to perform regular work is rated at 5%.

(8) Ratings given for impairment of the Ninth Cranial Nerve (Glossopharyngeal), Tenth Cranial Nerve (Vagus), and Eleventh Cranial Nerve (Cranial Accessory) are as follows:

(a) For impairment of swallowing due to damage to the Ninth, Tenth, and/or Eleventh Cranial Nerves:

tube feeding or gastrostomy feeding only..... 50%
diet restricted to liquid foods..... 25%
diet restricted to semi-solid or soft foods..... 15%

(b) Speech impairment due to damage to the Ninth, Tenth, and/or Eleventh Cranial Nerves shall be rated according to the classifications in OAR 436-35-385(6).

(9) Ratings given for impairment of the Twelfth Cranial Nerve (Hypoglossal) are as follows:

(a) No rating is allowed for loss on one side.

(b) Bilateral loss is rated as in (8) above.

History: Formerly OAR 436-30-530; Filed 6-3-87 as WCD Admin. Order 3-1988, effective 7-1-88; Amended 12-21-88 as WCD Admin. Order 6-1988, effective 1-1-89; Amended 9-14-90 (temp) as WCD Admin. Order 15-1990, effective 10-1-90.

BRAIN OR SPINAL CORD

436-35-395 (1) Injuries that result in damage to the brain or spinal cord shall be rated based on the following classification table:

Class 1
([0-15] 8% Impairment)

The worker has organic brain or spinal cord damage but is able to carry out most of the activities of daily living as well as before the injury.

Class 2
([20-45] 33% Impairment)

The worker has organic brain or spinal cord damage and is able to carry out most of the activities of daily living though some supervision is needed.

Class 3
([50-90] 70% Impairment)

The worker has organic brain or spinal cord damage and can only carry out some of the activities of daily living without continuous supervision.

Class 4
(95% Impairment)

The worker has organic brain or spinal cord damage and cannot carry out any of the activities of daily living without assistance.

(2) For brain or spinal cord damage that has resulted in paralysis of one or more extremities, (para or quadriplegia), a scheduled value shall be allowed for the affected part. Refer to the appropriate body part in the scheduled area of the standard for ratings.

(3) For brain or spinal cord damage that results in episodic neurological disorders such as seizures impairment shall be rated according to the following criteria:

(a) ([0-15] 8%) Episodic neurological disorder has been diagnosed and is under control to the extent that most activities of daily living can be performed.

(b) ([20-45] 33%) Episodic neurological disorder has been diagnosed and is under control to the extent that most activities of daily living can be performed with interference.

(c) ([50-90] 70%) Episodic neurological disorder has been diagnosed and is not under control, to the extent that activities are limited to supervised, protected care or confinement.

(d) (95%) Episodic neurological disorder has been diagnosed and totally incapacitates the worker from performing activities of daily living.

History: Filed 6-3-87 as WCD Admin. Order 3-1988, effective 7-1-88; Amended 12-21-88 as WCD Admin. Order 6-1988, effective 1-1-89; **Amended 9-14-90 (temp) as WCD Admin. Order 15-1990, effective 10-1-90.**

MENTAL ILLNESS

436-35-400 (1) A permanent state of mental disorder must be diagnosed [by a psychiatrist or psychologist].

(2) Diagnoses for this section should follow the guidelines of the Third Edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM-III) [or the mental disorders chapters of the ninth revision of The International Classification of Diseases (ICD-9)].

(3) Impairment ratings for mental disorders shall be based on objective findings which support medical evidence that the worker's job was the major contributing cause of the disability.

(4)[(3)] Ratings for permanent personality disorders arising from the job:

(a) A permanent personality disorder must be diagnosed by a psychiatrist or psychologist.

(b) A personality disorder may be stated as a disability only if it interferes with the worker's long-term ability to adapt to the ordinary activities and stresses of daily living.

(c) Permanent personality disorders are rated as two classes with gradations within each class based on severity :

(A) Class 1: [0-19%] minimal (0[-5]%), mild (6[-10]%), or moderate (11[-19]%)) A worker belongs in class 1 when:

(i) The worker shows little self-understanding or awareness of the mental illness;

(ii) Has some problems with judgment;

(iii) Has some problems with controlling personal behavior;

(iv) Has some ability to avoid serious problems with social and personal relationships; and

(v) Has some ability to avoid self-harm.

(B) Class 2: [20-45%](minimal (20[-28]%), mild (29[-37]%), or moderate (38[-45%])) A worker belongs in class 2 when:

(i) The worker shows a considerable loss of self control;

(ii) Has an inability to learn from experience;

(iii) Causes harm to the community or to the self; and

(iv) Continues to have problems in these areas.

(5)[(4)] A permanent state of psychoneurosis (commonly known as neurosis) must be diagnosed [by a psychiatrist or psychologist]. Loss of function due to psychoneurosis is rated based on anxiety reactions, depressive reactions, phobic reactions, psychophysiological reactions, obsessive-compulsive reactions, and conversion or hysterical reactions. Permanent changes in these reactions shall be rated according to the following classes with gradations within each class based on severity:

(a) Class 1: 0[-5]% A worker belongs in Class 1 when **medical evidence establishes** one or more of the following residual reactions [is noted by a psychiatrist or psychologist]:

(A) Anxiety Reactions: Require little or no treatment, are inresponse to a particular stress situation, produce unpleasant tension while the stress lasts, and might limit some activities.

(B) Depressive Reactions: The activities of daily living can be carried out, but the worker might lack ambition, energy, and enthusiasm. There may be such depression related mentally-caused physical problems as mild loss of appetite and a general feeling of being unwell.

(C) Phobic Reactions: Phobias the worker already suffers from may come into play, or new phobias may appear in a mild form.

(D) Psychophysiological Reactions: Are temporary, and in reaction to specific stress. Digestive problems are typical. Any treatment is for a short time, and is not connected with any ongoing treatment for maladjustment. Any physical pathology is temporary and reversible.

(E) Obsessive-Compulsive Reactions: Only slightly interfere with work or the activities of daily living. They do not arise from a specific instance, but are part of a pattern which may include working too much, ritual behavior, dogmatic attitudes, or being too fastidious.

(F) Conversion or Hysterical Reactions: Are brief and do not occur very often. They might include some slight and limited physical problems (such as weakness or hoarseness) which quickly respond to treatment.

(b) Class 2: [6-49%](minimal (6[-22]%), mild (23[-34]%), or moderate (35[-49]%)). A worker belongs in Class 2 when **medical evidence establishes** one or more of the following residual reactions [is noted by a psychiatrist or psychologist]:

(A) Anxiety Reactions: May require extended treatment. Specific reactions may include (but are not limited to) startle reactions, indecision due to fear, fear of being alone and insomnia. There is no loss of intellect or disturbance in thinking, concentration, or memory.

(B) Depressive Reactions: Last for several weeks. There are disturbances in eating and sleeping patterns, loss of interest in usual activities, and moderate retardation of physical activity. There may be thoughts of suicide. Self-care activities and personal hygiene remain good.

(C) Phobic Reactions: Interfere with normal activities to a mild to moderate degree. Typical reactions include (but are not limited to) a desire to remain at home, a refusal to use elevators, a refusal to go into closed rooms, and an obvious reaction of fear when confronted with a situation which involves a superstition.

(D) Psychophysiological Reactions: Require substantial treatment. Frequent and recurring problems with the organs get in the way of common activities. The problems may include (but are not limited to) diarrhea; chest pains; muscle spasms in the arms, legs, or along the backbone; a feeling of being smothered; and hyperventilation. There is not actual pathology in the organs or tissues.

(E) Obsessive-Compulsive Reactions: Include rigidity and highly-controlled thoughts and actions which interfere with activities of daily living. The worker appears to be selfish, dogmatic, and demanding, and is not able to work well with others. Inability to accept change is common.

(F) Conversion or Hysterical Reactions: Include periods of loss of physical function which occur more than twice a year, last for several weeks, and need treatment. These may include (but are not limited to) temporary hoarseness, temporary blindness, temporary weakness in the arms and/or the legs. These problems keep coming back.

(c) Class 3: [50-95%](minimal (50[-65]%), mild (66[-80]%), or moderate (81[-95]%)) A worker belongs in Class 3 when **medical evidence establishes** one or more of the following reactions [is noted by a psychiatrist or psychologist]:

(A) Anxiety Reactions: Fear, tension, and apprehension interfere with the activities of daily living. Memory and concentration decrease or become unreliable. Long-lasting periods of anxiety keep coming back and interfere with personal relationships. The worker needs constant reassurance and comfort from family, friends, and coworkers.

(B) Depressive Reactions: Include an obvious loss of interest in the usual activities of daily living, including eating and self-care. These problems are long-lasting and result in loss of weight and an unkempt appearance. There may be retardation of physical activity, a preoccupation with suicide, and actual attempts at suicide. The worker may be extremely agitated on a frequent or constant basis.

(C) Phobic Reactions: Existing phobias are intensified. In addition, new phobias develop. This results in bizarre and disruptive behavior. In the most serious cases, the worker may become home-bound, or even room-bound. Persons in this state often carry out strange rituals which require them to be isolated or protected.

(D) Psychophysiological Reactions: Include tissue changes in one or more body systems or organs. These may not be reversible. Typical reactions include (but are not limited to) changes in the wall of the intestine, which results in constant digestive and elimination problems.

(E) Obsessive-Compulsive Reactions: Become so overwhelming they take over the normal activities of daily living. Channeled thinking and ritualistic behavior may require constant supervision of the worker. If not helped, the worker may take hours to dress or eat.

(F) Conversion or Hysterical Reactions: Including loss of physical function occur often and last for weeks or longer. Evidence of physical change follows such events. A long reaction (18 months of more) is associated with advanced negative changes in the tissues and organs. This includes (but is not limited to) atrophy of muscles in the legs and arms. A common symptom is general flabbiness.

6 [(5)] A state of psychosis must be diagnosed [by a psychiatrist or psychologist]. By its nature, a psychosis creates a serious disturbance in mental function, resulting in various degrees of impairment. States of psychosis are rated based on perception, thinking process, social behavior, and emotional control. Variations in these aspects of mental function shall be rated according to the following classifications with gradations within each class based on severity:

(a) Class 1: [0-19%] (minimal (0[-5]%), mild (6[-10]%), or moderate (11[-19]%)) A worker belongs in Class 1 when [a psychiatrist or psychologist] **medical evidence** establishes the following:

(A) Perception: The worker misinterprets conversations orevents. It is common for persons with this problem to think others are talking about them or laughing at them.

(B) Thinking Process: The worker is absent-minded, forgetful, daydreams too much, thinks slowly, has unusual thoughts which keep coming back, or suffers from an obsession. The worker is aware of these problems, and may also show mild problems with judgment. It is also possible that the worker may have little self-understanding or understanding of the problem.

(C) Social Behavior: Small problems appear in general behavior, but do not get in the way of social or living activities. Others are not disturbed by them. The worker may be over-reactive or depressed, or may neglect self-care and personal hygiene.

(D) Emotional Control: The worker may be depressed and have little interest in work or life. The worker may have an extreme feeling of well-being without reason. Controlled and productive activities are possible, but the worker is likely to be irritable and unpredictable.

(b) Class 2: [20-49%](minimal (20[-28]%), mild (29[-37]%), or moderate (38[-49]%)) A worker belongs in Class 2 when [a psychiatrist or psychologist] **medical evidence** establishes the following:

(A) Perception: Workers in this state have fairly serious problems in understanding their personal surroundings. They cannot be counted on to understand the difference between daydreams, imagination, and reality. They may have fantasies involving money or power, but they recognize them as fantasies. Since persons in this state are likely to be overly excited or suffering from paranoia, they are also likely to be domineering, peremptory, irritable, or suspicious.

(B) Thinking Process: The thinking process is so disturbed that persons in this state might not realize they are having mental problems. The problems might include (but are not limited to) obsessions, blocking, memory loss serious enough to affect work and personal life, confusion, powerful daydreams, or long periods of being deeply lost in thought to no set purpose.

(C) Social Behavior: Persons in this state can control their social behavior if they are asked to. But if they are left on their own, their behavior is so bizarre others may be concerned. Such behavior might include (but is not limited to) over-activity, disarranged clothing, talk and/or gestures which neither make sense nor fit the situation.

(D) Emotional Control: Persons in this state suffer a serious loss of control over their emotions. They may become extremely angry for little or no reason, they may cry easily, or they may have an extreme feeling of well-being, causing them to talk too much and to little purpose. These behaviors interfere with living and work and cause concern in others.

(c) Class 3: [50-89%](minimal (50[-62]%), mild (63[-74]%), or moderate (75[-89]%)) A worker belongs in Class 3 when [a psychiatrist or psychologist] **medical evidence** establishes the following:

(A) Perception: Workers in this state suffer from frequent illusions and hallucinations. Following the demands of these illusions and hallucinations leads to bizarre and disruptive behavior.

(B) Thinking Process: Workers in this state suffer from disturbances in thought which are obvious even to a casual observer. These include an inability to communicate clearly due to slurred speech, rambling speech, primitive language, and an absence of the ability to understand the self or the nature of the problem. Such workers also show poor judgment and openly talk about delusions without recognizing them as such.

(C) Social Behavior: Persons in this state are a nuisance or a danger to others. Actions might include interfering with work and other activities, shouting, sudden inappropriate bursts of profanity, carelessness about excretory functions, threatening others, and endangering others.

(D) Emotional Control: Workers in this state cannot control their personal behavior. They might be very irritable and overactive, or so depressed they become suicidal.

(d) Class 4: 90[-95]% A worker belongs in Class 4 when [a psychiatrist or psychologist] **medical evidence** establishes the following:

(A) Perception: Workers become so obsessed with hallucinations, illusions, and delusions that normal self-care is not possible. Bursts of violence may occur.

(B) Thinking Process: Communication is either very difficult or impossible. The worker is responding almost entirely to delusions, illusions, and hallucinations. Several forms of behavior are common as a result,

including (but not limited to) severe confusion, refusal to speak, the creation of new words or using existing words in a new manner, incoherence, or irrelevance.

(C) Social Behavior: The worker's personal behavior endangers both the worker and others. Poor perceptions, confused thinking, lack of emotional control, and obsessive reaction to hallucinations, illusions, and delusions produce behavior which can result in the worker being inaccessible, suicidal, openly aggressive and assaultive, or even homicidal.

(D) Emotional Control: The worker may have either a severe emotional disturbance in which the worker is delirious and uncontrolled or extreme depression in which the worker is silent, hostile, and self-destructive. In either case, lack of control over anger and rage might result in homicidal behavior.

NOTE: Workers who belong in Class 4 usually need to be placed in a hospital or institution. Medication may help them to a certain extent.

History: Formerly OAR 436-30-540; Filed 6-3-87 as WCD Admin. Order 3-1988, effective 7-1-88; Amended 12-21-88 as WCD Admin. Order 6-1988, effective 1-1-89; **Amended 9-14-90 (temp) as WCD Admin. Order 15-1990, effective 10-1-90.**

HEMATOPOIETIC SYSTEM

436-35-410 (1) Anemia can be impairing when the cardiovascular system cannot compensate for the effects of the anemia. When a worker becomes anemic as a result of an injury or occupational disease, the following values are allowed:

(a) 0% when there are no complaints or evidence of disease and the usual activities of daily living can be performed; no blood transfusion is required; and the hemoglobin level is 10-12gm/100ml.

(b) 30% when there are complaints or evidence of disease and the usual activities of daily living can be performed with some difficulty; no blood transfusion is required; and the hemoglobin level is 8-10gm/100ml.

(c) 70% when there are signs and symptoms of disease and the usual activities of daily living can be performed with difficulty and with varying amounts of assistance from others; blood transfusion of 2 to 3 units is required every 4 to 6 weeks; and the hemoglobin level is 5-8gm/100ml before transfusion.

(d) [70-100] **85%** when there are signs and symptoms of disease and the usual activities of daily living cannot be performed without assistance from others; blood transfusion of 2 to 3 units is required every 2 weeks, implying hemolysis of transfused blood; and the hemoglobin level is 5-8gm/100ml before transfusion.

(2) Polycythemia may involve an enlarged spleen, elevation of the white cell and platelet counts, increased leukocyte alkaline phosphatase, weight loss, fever, perspiration, increasing serum lactic dehydrogenase, and increased reticulin and fibroblasts seen in bone marrow biopsy. Impairment for polycythemia resulting from injury or occupational disease shall be rated according to the following:

(a) 0% when the disease is in remission.

(b) 70% when there are signs and symptoms of disease and the usual activities of daily living can be performed with difficulty and with varying amounts of assistance from others;

(c) [70-100] 85% when there are signs and symptoms of disease and the usual activities of daily living cannot be performed without assistance from others.

(3) White Blood Cell System impairments resulting from injury or occupational disease shall be rated according to the following classification system:

(a) Class 1: [0-10]5% impairment when there are symptoms or signs of leukocyte abnormality and no or infrequent treatment is needed and all or most of the activities of daily living can be performed. An impairment value of 5% shall be allowed for splenectomy.

(b) Class 2: [15-25]20% impairment when there are symptoms and signs of leukocyte abnormality and continuous treatment is needed but most of the activities of daily living can be performed.

(c) Class 3: [30-50]40% impairment when there are symptoms and signs of leukocyte abnormality and continuous treatment is needed and the activities of daily living can be performed with occasional assistance from others.

(d) Class 4: [55-90]73% impairment when there are symptoms and signs of leukocyte abnormality and continuous treatment is needed and continuous care is required for activities of daily living.

(4) Hemorrhagic Disorders acquired as a result of an injury or occupational disease may result in 0-10% impairment if many activities must be avoided and constant endocrine therapy is needed, or anticoagulant treatment with a vitamin K antagonist. Hemorrhagic disorders that stem from damage to other organs or body systems shall not be rated under this section but shall be rated according to the impairment of the other organ or body system.

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GASTROINTESTINAL AND GENITOURINARY [DIGESTIVE] SYSTEMS

436-35-420 [This section also covers the urinary system.]

(1) Impairment of the upper digestive tract (esophagus, stomach and duodenum, small intestine, pancreas) shall be rated according to the following table:

Class 1
([0-5]3% Impairment)

Symptoms or signs of upper digestive tract disease are present or there is anatomic loss or alteration; AND

Continuous treatment is not required; AND

Weight can be maintained at the desirable level; OR

There are no sequelae after surgical procedures.

Class 2
([10-20]15% Impairment)

Symptoms and signs of organic upper digestive tract disease are present or there is anatomic loss or alteration; AND

Appropriate dietary restrictions and drugs are required for control of symptoms, signs and/or nutritional deficiency; AND

Loss of weight below the "desirable weight"* does not exceed 10%.

*See Desirable Weight Table.

Class 3
([25-45]35% Impairment)

Symptoms and signs of organic upper digestive tract disease are present or there is anatomic loss or alteration; AND

Appropriate dietary restrictions and drugs do not completely control symptoms, signs, and/or nutritional state; OR

There is 10-20% loss of weight below the "desirable weight" which is ascribable to a disorder of the upper digestive tract.

Class 4
([50-75]63% Impairment)

Symptoms and signs of organic upper digestive tract disease are present or there is anatomic loss or alteration; AND

Symptoms are not controlled by treatment; OR

There is greater than a 20% loss of weight below the "desirable weight" which is ascribable to a disorder of the upper digestive tract.

Desirable weight Table:

DESIRABLE WEIGHTS BY SEX, HEIGHT AND BODY BUILD
(5LB CLOTHES FOR MEN, 3LB FOR WOMEN, SHOES WITH 1 IN HEELS)

MEN

HEIGHT	WEIGHT		
	SMALL FRAME	MEDIUM FRAME	LARGE FRAME
62	128-134	131-141	138-150
63	130-136	133-143	140-153
64	132-138	135-145	142-156
65	134-140	137-148	144-160
66	136-142	139-151	146-164
67	138-145	142-154	149-168
68	140-148	145-157	152-172
69	142-151	148-160	155-176
70	144-154	151-163	158-180
71	146-157	154-166	161-184
72	149-160	157-170	164-188
73	152-164	160-174	168-192
74	155-168	164-178	172-197
75	158-172	167-182	176-202
76	162-176	171-187	181-207

WOMEN

HEIGHT	WEIGHT		
	SMALL FRAME	MEDIUM FRAME	LARGE FRAME
58	102-111	109-121	118-131
59	103-113	111-123	120-134
60	104-115	113-126	122-137
61	106-118	115-129	125-140
62	108-121	118-132	128-143
63	111-124	121-135	131-147
64	114-127	124-138	134-151
65	117-130	127-141	137-155
66	120-133	130-144	140-159
67	123-136	133-147	143-163
68	126-139	136-150	146-167
69	129-142	139-153	149-170
70	132-145	142-156	152-173
71	135-148	145-159	155-176
72	138-151	148-162	158-179

(2) Colonic and rectal impairment shall be rated according to the following table:

Class 1
([0-5]3% Impairment)

Signs and symptoms of colonic or rectal disease are infrequent and of brief duration; AND

Limitation of activities, special diet or medication is not required; AND

No systemic manifestations are present and weight and nutritional state can be maintained at a desirable level; OR

There are no sequelae after surgical procedures.

Class 2
([10-20]15% Impairment)

There is objective evidence of colonic or rectal disease or anatomic loss or alteration; AND

There are mild gastrointestinal symptoms with occasional disturbances of bowel function, accompanied by moderate pain; AND

Minimal restriction of diet or mild symptomatic therapy may be necessary; AND

No impairment of nutrition results.

Class 3
([25-35]30% Impairment)

There is objective evidence of colonic or rectal disease or anatomic loss or alteration; AND

There are moderate to severe exacerbations with disturbance of bowel habit, accompanied by periodic or continual pain; AND

Restriction of activity, special diet and drugs are required during attacks; AND

There are constitutional manifestations (fever, anemia, or weight loss).

Class 4
([40-60]50% Impairment)

There is objective evidence of colonic and rectal disease or anatomic loss or alteration; AND

There are persistent disturbances of bowel function present at rest with severe persistent pain; AND

Complete limitation of activity, continued restriction of diet, and medication do not entirely control the symptoms; AND

There are constitutional manifestations (fever, weight loss, and/or anemia) present.

(3) Anal impairment shall be rated based on the following table:

Class 1
([0-5]3% Impairment)

Signs of organic anal disease are present or there is anatomic loss or alteration; OR

There is mild incontinence involving gas and/or liquid stool; OR

Anal symptoms are mild, intermittent, and controlled by treatment.

Class 2
([10-15]13% Impairment)

Signs of organic anal disease are present or there is anatomic loss or alteration; AND

Moderate but partial fecal incontinence is present requiring continual treatment; OR

Continual anal symptoms are present and incompletely controlled by treatment.

Class 3
([20-25]23% Impairment)

Signs of organic anal disease are present and there is anatomic loss or alteration; AND

Complete fecal incontinence is present; OR

Signs of organic anal disease are present and severe anal symptoms unresponsive or not amenable to therapy are present.

(4) Liver and biliary tract impairment shall be rated based on the following table:

Liver Impairment

Class 1
([0-10]5% Impairment)

There is objective evidence of persistent liver disease even though no symptoms of liver disease are present; and no history of ascites, jaundice, or bleeding esophageal varices within three years; AND

Nutrition and strength are good;

Biochemical studies indicate minimal disturbance in liver function; OR

Primary disorders of bilirubin metabolism are present.

Class 2
([15-25]20% Impairment)

There is objective evidence of chronic liver disease even though no symptoms of liver disease are present; and no history of ascites, jaundice, or bleeding esophageal varices within three years; AND

Nutrition and strength are good; AND

Biochemical studies indicate more severe liver damage than Class 1.

Class 3
([30-50]40% Impairment)

There is objective evidence of progressive chronic liver disease, or history of jaundice, ascites, or bleeding esophageal or gastric varices within the past year; AND

Nutrition and strength may be affected; OR

There is intermittent hepatic encephalopathy.

Class 4
(Greater than [50]75% Impairment)

There is objective evidence of progressive chronic liver disease, or persistent ascites or persistent jaundice or bleeding esophageal or gastric varices, with central nervous system manifestations of hepatic insufficiency; AND

Nutritional state is poor.

NOTE: for successful liver transplants a basic impairment value of 50% of the digestive system shall be allowed. This shall be combined with any other impairments of the digestive system.

Biliary Tract Impairment

Class 1
([0-10]5% impairment)

There is an occasional episode of biliary tract dysfunction.

Class 2
([15-25]20% impairment)

There is recurrent biliary tract impairment irrespective of treatment.

Class 3
([30-50]40% impairment)

There is irreparable obstruction of the bile tract with recurrent cholangitis.

Class 4
(greater than [50]75% impairment)

There is persistent jaundice and progressive liver disease due to obstruction of the common bile duct.

(5) Impairment of the Upper Urinary Tract shall be rated according to the following table:

Class 1
([0-10]5% Impairment)

Diminution of upper urinary tract function is present as evidenced by creatinine clearance of 75 to 90 liters/ 24 hr (52 to 62.5 ml/min), or PSP excretion of 15% to 20% in 15 minutes; OR

Intermittent symptoms and signs of upper urinary tract dysfunction are present that do not require continuous treatment or surveillance.

Class 2
([15-30]23% Impairment)

Diminution of upper urinary tract function is present as evidenced by creatinine clearance of 60 to 75 liters/24 hr (42 to 52 ml/min), or PSP excretion of 10% to 15% in 15 minutes; OR

Although creatinine clearance is greater than 75 liters/24 hr (52 ml/min), or PSP excretion is more than 15% in 15 minutes, symptoms and signs of upper urinary tract disease or dysfunction necessitate continuous surveillance and frequent treatment.

Class 3
([35-60]48% Impairment)

Diminution of upper urinary tract function is present as evidenced by creatinine clearance of 40 to 60 liters/24 hr (28 to 42 ml/min), or PSP excretion of 5% to 10% in 15 minutes; OR

Although creatine clearance is 60 to 75 liters/24 hr (42 to 52 ml/min), or PSP excretion is 10% to 15% in 15 minutes, symptoms and signs of upper urinary tract disease or dysfunction are incompletely controlled by surgical or continuous medical treatment.

Class 4
([65-90]78% Impairment)

Diminution of upper urinary tract function is present as evidenced by creatinine clearance below 40 liters/24 hr (28 ml/min), or PSP excretion below 5% in 15 minutes; OR

Although creatinine clearance is 40 to 60 liters/24 hr (28 to 42 ml/min), or PSP excretion is 5% to 10% in 15 minutes, symptoms and signs of upper urinary tract disease or dysfunction persists despite surgical or continuous medical treatment.

*NOTE: The individual with a [solitary kidney] nephrectomy, [regardless of cause] as a result of an occupational injury or disease, should be rated as having 10% impairment. This value is to be combined with any other permanent impairment (including any impairment in the remaining kidney) pertinent to the case under consideration. The normal ranges of creatinine clearance are: Males: 130 to 200 liters/24 hr (90 to 139 ml/min). Females: 115 to 180 liters/24 hr (80 to 125 ml/min). The normal PSP excretion is 25% or more in urine in 15 minutes.

Permanent, surgically-created forms of urinary diversion usually are provided to compensate for anatomic loss and to allow for egress of urine. They are evaluated as a part of, and in conjunction with, the assessment of the involved portion of the urinary tract.

Irrespective of how well these diversions function in the preservation of renal integrity and the disposition of urine, the following values for the diversions should be combined with those determined under the criteria previously given for the portion of the urinary tract involved:

Type of Diversion	% Impairment
Uretero-Intestinal.....	10
Cutaneous Ureterostomy Without Intubation.....	10
Nephrostomy or Intubated Ureterostomy.....	15

(6) Impairment of the Bladder: When evaluating permanent impairment of the bladder, the status of the upper urinary tract must also be considered. The appropriate impairment values for both shall be combined using the Combined Values Chart in order to determine the extent of impairment. Impairment of the bladder shall be [rated] **determined** according to the following classifications **and medical evidence**:

Class 1
([0-10]**5%** Impairment)

A patient belongs in Class 1 when the patient has symptoms and signs of bladder disorder requiring intermittent treatment with normal function between episodes of malfunction.

Class 2
([15-20]**18%** Impairment)

A patient belongs in Class 2 when (a) there are symptoms and/or signs of bladder disorder requiring continuous treatment; OR (b) there is good bladder reflex activity, but no voluntary control.

Class 3
([25-35]**30%** Impairment)

A patient belongs in Class 3 when the bladder has poor reflex activity, that is, there is intermittent dribbling, and no voluntary control.

Class 4
([40-60]**50%** Impairment)

A patient belongs in Class 4 when there is no reflex or voluntary control of the bladder, that is, there is continuous dribbling.

(7) Urethra: When evaluating permanent impairment of the urethra, one must also consider the status of the upper urinary tract and bladder. The values for all parts of the urinary system shall be combined using the Combined Values Chart to determine the extent of impairment.

Class 1
([0-5]3% Impairment)

A patient belongs in Class 1 when symptoms and signs of urethral disorder are present that require intermittent therapy for control.

Class 2
([10-20]15% Impairment)

A patient belongs in Class 2 when there are symptoms and signs of a urethral disorder that cannot be effectively controlled by treatment.

(8) Impairments in mastication (chewing) and deglutition (swallowing) shall be rated based on the following:

(a) Diet limited to semi-solid or soft foods .....[0-5]3%
(b) Diet limited to liquid foods .....[5-10]8%
(c) Eating requires tube feeding or gastrostomy .....[10-15]13%

History: Filed 6-3-87 as WCD Admin. Order 3-1988, effective 7-1-88; Amended 8-19-88 as WCD Admin. Order 5-1988 (Temp.), effective 8-19-88; Amended 12-21-88 as WCD Admin. Order 6-1988, effective 1-1-89; Amended 9-14-90 (temp) as WCD Admin. Order 15-1990, effective 10-1-90.

ENDOCRINE SYSTEM

436-35-430(1) The assessment of permanent impairment from disorders of the hypothalamic-pituitary axis requires evaluation of (1) primary abnormalities related to growth hormone, prolactin, or ADH; (2) secondary abnormalities in other endocrine glands, such as thyroid, adrenal, and gonads, and; (3) structural and functional disorders of the central nervous system caused by anatomic abnormalities of the pituitary. Each disorder must be evaluated separately, using the standards for rating the nervous system, visual system, and mental and behavioral disorders, and the impairments combined according to the Combined Values Chart.

Impairment of the hypothalamic-pituitary axis shall be rated according to the following classifications:

Class 1 - [0-10]5%: hypothalamic-pituitary disease controlled effectively with continuous treatment.

Class 2 - [15-20]18%: hypothalamic-pituitary disease inadequately controlled by treatment.

Class 3 - [25-50]38%: hypothalamic-pituitary disease with severe symptoms and signs despite treatment.

(2) Impairment of Thyroid function results in either hyperthyroidism or hypothyroidism. Hyperthyroidism is not considered to be a cause of permanent impairment, because the hypermetabolic state in practically all patients can be corrected permanently by treatment. After remission of hyperthyroidism, there may be permanent impairment of the visual or cardiovascular systems, which should be evaluated using the appropriate standards for those systems.

Hypothyroidism in most instances can be satisfactorily controlled by the administration of thyroid medication. Occasionally, because of associated disease in other organ systems, full hormone replacement may not be possible. Impairment of thyroid function shall be rated according to the following classifications:

Class 1 - [0-10]5%: (a) continuous thyroid therapy is required for correction of the thyroid insufficiency or for maintenance of normal thyroid anatomy; AND (b) the replacement therapy appears adequate based on objective physical or laboratory evidence.

Class 2 - [15-20]18%: (a) symptoms and signs of thyroid disease are present, or there is anatomic loss or alteration; AND (b) continuous thyroid hormone replacement therapy is required for correction of the confirmed thyroid insufficiency; BUT (c) the presence of a disease process in another body system or systems permits only partial replacement of the thyroid hormone.

(3) Impairment of Parathyroid function results in either hyperparathyroidism or hypoparathyroidism. In most cases of hyperparathyroidism, surgical treatment results in correction of the primary abnormality, although secondary symptoms and signs may persist, such as renal calculi or renal failure, which should be evaluated according to the appropriate standards. If surgery fails, or cannot be done, the patient may require long-term therapy, in which case the permanent impairment may be classified according to the following:

Severity of Hyperparathyroidism	% Impairment
Symptoms and signs are controlled with medical therapy.....	[0-10]5%
There is persistent mild hypercalcemia, with mild nausea and polyuria.....	[15-20] 18%
There is severe hypercalcemia, with nausea and lethargy.....	[55-100]78%

Hypoparathyroidism is a chronic condition of variable severity that requires long-term medical therapy in most cases. The severity determines the degree of permanent impairment according to the following:

Severity of Hypoparathyroidism	% Impairment
Symptoms and signs controlled by medical therapy.....	[0-5]**3%**
Intermittent hypercalcemia and/or hypocalcemia, and more frequent symptoms in spite of careful medical attention.....	[10-20]**15%**

(4) Impairment of the Adrenal Cortex results in either hypoadrenalism or hyperadrenocorticism.

(a) Hypoadrenalism is a lifelong condition that requires long-term replacement therapy with glucocorticoids and/or mineralocorticoids for proven hormonal deficiencies. Impairments shall be rated as follows:

Severity of Hypoadrenalism	% Impairment
Symptoms and signs controlled with medical therapy.....	[0-10]**5%**
Symptoms and signs controlled inadequately, usually during the course of acute illnesses.....	[15-50]**33%**
Severe symptoms of adrenal crisis during major illness, usually due to severe glucocortocoid deficiency and/or sodium depletion.....	[55-100]**78%**

(b) Hyperadrenocorticism due to the chronic side effects of nonphysiologic doses of glucocorticoids (iatrogenic Cushing's syndrome) is elated to dosage and duration of treatment and includes osteoporosis, hypertension, diabetes mellitus and the effects involving catabolism that result in protein myopathy, striae, and easy bruising. Permanent impairment ranges from 0% to [100%] **78%**, depending on the severity and chronicity of the disease process for which the steroids are given. On the other hand, with diseases of the pituitary-adrenal axis, impairment may be classified as:

Severity of Hyperadrenocorticism	% Impairment
Minimal, as with hyperadrenocorticism that is surgically correctable by removal of a pituitary or adrenal adenoma.....	[0-10]**5%**
Moderate, as with bilateral hyperplasia that is treated with medical therapy or adrenalectomy.....	[15-50]**33%**
Severe, as with aggressively metastasizing adrenal carcinoma.....	[55-100]**78%**

(5) Impairment of the Adrenal Medulla results from pheochromocytoma and shall be classified using the following table:

Severity of Pheochromocytoma	% Impairment
The duration of hypertension has not led to cardiovascular disease and a benign tumor can be removed surgically.....	[0-10]5%
Inoperable malignant pheochromocytomas, if signs and symptoms of catecholamine excess can be controlled with blocking agents.....	[15-50]33%
Widely metastatic malignant pheochromocytomas, in which symptoms of catecholamine excess cannot be controlled.....	[55-100]78%

(6) Impairment of the pancreas results in either diabetes mellitus or in hypoglycemia.

(a) Diabetes mellitus shall be rated according to the following classifications:

Class 1 - [0-5]3%: non-insulin dependent (Type II) diabetes mellitus that can be controlled by diet; there may or may not be evidence of diabetic microangiopathy, as indicated by the presence of retinopathy and/or albuminuria greater than 30 mg/100 ml.

Class 2 - [5-10]8%: non-insulin dependent (Type II) diabetes mellitus; and when satisfactory control of the plasma glucose requires both a restricted diet and hypoglycemic medication, either an oral agent or insulin. Evidence of microangiopathy, as indicated by retinopathy or by albuminuria of greater than 30 mg/100 ml, may or may not be present.

Class 3 - [15-20]18%: insulin dependent (Type I) diabetes mellitus is present with or without evidence of microangiopathy.

Class 4 - [25-40]33%: insulin dependent (Type I) diabetes mellitus, and hyperglycemic and/or hypoglycemic episodes occur frequently in spite of conscientious efforts of both the patient and his or her physician.

(b) Hypoglycemia shall be rated according to the following classifications:

Class 1 - 0%: surgical removal of an islet-cell adenoma results in complete remission of the symptoms and signs of hypoglycemia, and there are no post-operative sequelae.

Class 2 - [5-50]28%: signs and symptoms of hypoglycemia are present, the degree of impairment is determined by the degree of control obtained with diet and medications and on how the condition affects activities of daily living.

(7) A patient with anatomic loss or alteration of the gonads that results in an absence, or abnormally high level, of gonadal hormones would have [0-5]3% impairment **for unilateral loss or alteration and 5% for bilateral loss or alteration**.

(8) When exposure to physical or chemical agents has resulted in the development of an allergic response, impairment of the endocrine system shall be rated as follows:

(a) [0-5]3% when the reaction is a nuisance but does not prevent most work related activities; OR,

(b) [5-10]8% when the reaction prevents some work related activities; OR,

(c) [10-15]13% when the reaction prevents most work related activities.

History: Filed 6-3-87 as WCD Admin. Order 3-1988, effective 7-1-88; Amended 12-21-88 as WCD Admin. Order 6-1988, effective 1-1-89; **Amended 9-14-90 (temp) as WCD Admin. Order 15-1990, effective 10-1-90.**

SKIN OR INTEGUMENTARY SYSTEM

436-35-440 Impairments of the integumentary system shall be rated according to the following classifications:

Class 1
([0-5]3% Impairment)

Signs or symptoms of skin disorder are present; AND

With treatment, there is no limitation, or minimal limitation, in the performance of the activities of daily living, although exposure to certain physical or chemical agents might increase limitation temporarily.

Contact dermatitis may fall into this class. If the worker has developed an allergic reaction to the physical or chemical agents, impairment will also involve the endocrine system; refer to OAR 436-35-430 (8).

Class 2
([10-20]15% Impairment)

Signs and symptoms of skin disorder are present; AND

Intermittent treatment is required; AND

There is limitation in the performance of some of the activities of daily living.

Class 3
([25-50]38% Impairment)

Signs and symptoms of skin disorder are present; AND

Continuous treatment is required; AND

There is limitation in the performance of many activities of daily living.

Class 4
([55-80]68% Impairment)

Signs and symptoms of skin disorder are present; AND

Continuous treatment is required, which may include periodic confinement at home or other domicile; AND

There is limitation in the performance of many of the activities daily living.

Class 5
([85-95]90% Impairment)

Signs and symptoms of skin disorder are present; AND

Continuous treatment is required, which necessitates confinement at home or other domicile; AND

There is severe limitation in the performance of activities of daily living.

History: Filed 6-3-87 as WCD Admin. Order 3-1988, effective 7-1-88; **Amended 9-14-90 (temp) as WCD Admin. Order 15-1990, effective 10-1-90.**

0268E/thl

EXHIBIT "B"

BEFORE THE DIRECTOR OF THE
DEPARTMENT OF INSURANCE AND FINANCE
OF THE STATE OF OREGON

In the Matter of the Amendment of OAR Chapter 436, Workers' Compensation Division, Division 35, Disability Rating Standards	))))	CITATION OF STATUTORY AUTHORITY; STATEMENT OF NEED; PRINCIPAL DOCUMENTS RELIED UPON; FISCAL AND ECONOMIC IMPACT

1. Citation of Statutory Authority: The statutory authority for promulgation of these rules are ORS 656.726(3) and 656.268.

2. Statement of Need: Legislation enacted May 7, 1990 in Chapter 2, Oregon Laws 1990, Special Session, made significant changes in the Workers' Compensation Law. These changes in the law became effective upon passage of Senate Bills 1197 and 1198 on May 7, 1990, or on July 1, 1990; and, where applicable, apply to all injured workers' claims existing on or arising after July 1, 1990.

   Immediate action is necessary to ensure timely implementation of programs, program modifications in order to carry out the letter and intent of the law. Immediate adoption of temporary rules will assure consistent application of standards for rating disability, assure implementation of those changes intended to lower the cost of workers' compensation insurance to Oregon employers, and minimize confusion and misunderstanding among all parties affected by this legislation.

   The scale of the changes caused by this legislation requires that all parties and the department have a period of time to work through the inevitable problems inherent in the implementation of such complex legislation, to assure that the permanent rules will be as consistent with the intent and letter of the law, and as administratively practical as possible. These temporary rules will afford the public that opportunity.

3. Principal Documents Relied Upon:

   a. ORS Chapter 656.

   b. Chapter 2, Oregon Laws 1990, Special Session.

   c. ORS Chapter 183 and the Oregon Attorney General's Administrative Law Manual, March, 1990.

4. Economic Impact:

The following entities are economically affected: (a) Oregon subject workers; (b) Oregon subject employers; (c) workers' compensation insurers, self-insured employers and service companies.

Dated this 14 of September, 1990, at Salem, Oregon.

DEPARTMENT OF INSURANCE AND FINANCE

for Mary Alice Hammond
Theodore R. Kulongoski, Director

0326E/mlv