

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
CERTIFICATION OF CLAIMS EXAMINERS**

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[Bracketed 8 point text is deleted]; **bold/underlined text is added**

EFFECTIVE JANUARY 1, 2000

**OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 055**

NOTE: Only adopted, amended, and repealed rules are included in this document:

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436-055-0002 Purpose of Rules

The purpose of these rules is to establish [the requirements] **standards** for the certification of workers' compensation claims examiners [and continuing education programs] pursuant to ORS Chapter 656.

Stat. Auth.: ORS 656.780(1)

Hist: Filed 11/30/90 as WCD Admin. Order 25-1990, eff. 1/1/91
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436-055-0003 Applicability of Rules

(1) These rules apply to **the certification of all workers' compensation** claims examiners[, initial certification programs and continuing education programs] on or after the effective date of these rules.

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(2) [OAR 436-055-0030(2) applies to all applications for certification of continuing education submitted on or after the effective date of these rules.

(3) OAR 436-055-0040(4) applies to all initial certification programs and continuing education programs receiving certification on or after the effective date of these rules.

(4) These rules carry out the provisions of ORS 656.780.] **The certification of any workers' compensation claims examiner valid on December 31, 1999 shall continue without expiration until December 31, 2000. However, this provision does not shorten any two year certification period.**

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

(4) Applicable to this chapter, the director may, unless otherwise obligated by statute, in the director's discretion waive any procedural rules as justice so requires.

Stat. Auth.: ORS 656.780

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436-055-0005 Definitions

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

(1) ["Board" means the Workers' Compensation Board of the Department of Consumer and Business Services].

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

(3) **(2)** "Claims Examiner Trainee" means a person hired by an insurance company, self-insured employer or [claims adjusting service company] **third party administrator** to decide compensability of new claims or aggravations, calculate benefits, or authorize payments, who [does not have a current certification as a claims examiner. Such a person may have no previous experience as an Oregon Workers' Compensation claims examiner, or have experience as an Oregon Workers' Compensation claims examiner but not within the last 12 months. A claims examiner trainee must] **works** under the direct supervision of a certified claims examiner.

(4) "Department" means the Department of Consumer and Business Services.

(5) **(3)** "Director" means the director of the Department of Consumer and Business Services or the director's [delegate] **designee**.

(6) ["Division" means the Workers' Compensation Division of the Department of Consumer and Business Services.]

(7) **(4)** "Insurer" means [a guaranty contract] **the State Accident Insurance Fund**

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Corporation; an insurer authorized under ORS chapter 731 to transact workers' compensation insurance in this state[.]; an assigned claims agent selected by the director under ORS 656.054; an employer [that has been] certified under ORS 656.430 that meets the qualifications of a self-insured employer under ORS 656.407 [who directly administers claims, or a service company who administers claims for a guaranty contract insurer or an employer who has been certified under ORS 656.430]; or a third party administrator.

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

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

[(9)] **(7) "Temporary Claims Examiner" means a person with at least two years of prior claims processing experience hired by an insurance company, self-insured employer or service company to decide compensability of new claims or aggravations, calculate benefits, or authorize payments in Oregon workers' compensation claims, [for up to 90 days in any 12-month period, and] who works under the direct supervision of a certified claims examiner.**

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

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

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436-055-0008 Administrative Review

(1) Any party [as defined by ORS 656.005(20)] aggrieved by a proposed order or proposed assessment of civil penalty of the director [or division] issued pursuant to ORS 656.745 [or 656.750] may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with ORS 656.740.

[(a)] The request for hearing must be [sent in writing] **mailed** to the administrator of the Workers' Compensation Division **within 60 days of receipt by the aggrieved party of notice of the proposed order or assessment.** [No hearing shall be granted unless t] **The request must specify the grounds upon which [the person requesting said hearing contests] the proposed order or assessment is contested.**

[(b)] The request for hearing must be filed with the administrator of the Workers' Compensation Division. No hearing shall be granted unless the request is received by the administrator within said twenty (20) days of receipt of notice.]

(2) Any party [as described in section (1)] aggrieved by an action or order of the director [or division] pursuant to these rules, other than as described in section (1), where such action or order qualifies for review by hearing before the director as a contested case, may request review pursuant to ORS 183.310 through 183.550 as modified by these rules pursuant to ORS 183.315(1). [When the matter qualifies for review as a contested case, the process for review shall be] **Any party may request a contested case before the director** as follows:

(a) The request for hearing must be [sent in writing] **mailed** to the administrator of the

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Workers' Compensation Division **within 60 days of the action, the date of mailing, or other service of an order** . [No hearing shall be granted unless t] **The request must specify** the grounds upon which the action or order is contested[and is received by the administrator within 30 days of the action or from the date of mailing or other service of an order].

(b) The hearing shall be conducted by the director [or the director's designee].

(c) Any order in a contested case issued by [another person on behalf] **a designee** of the director is a proposed order subject to revision by the director. The director may allow objections to the proposed order to be filed for the director's consideration within 30 days of issuance of the proposed order.

(3) Any [party described in section (1)] **person** aggrieved by an action taken pursuant to these rules by another person, except as described in sections (1) and (2) [above], may request administrative review by the [division on behalf of the] director[. The process for administrative review of such matters shall be] as follows:

(a) The request for administrative review [shall be made in writing] **must be mailed** to the administrator of the Workers' Compensation Division within 90 days of the action. [No administrative review shall be granted unless t]**The request must specify** the grounds upon which the action is contested [and is received by the administrator within 90 days of the contested action unless the director or his designee determines that there was good cause for delay or that substantial injustice may otherwise result].

(b) The review[, including whether the request is timely and appropriate may,] **shall** be conducted by [the administrator, or the administrator's designee, on behalf of] the director.

(c) [In the course of said review, the person conducting the review may request or allow such input or information from the parties as he or she deems to be helpful.] **The director shall review the relevant information submitted by all parties.**

(d) The **director will issue an administrative order that** [determination by the person conducting the review will] **specify** **ies** whether the determination constitutes a final order or whether an aggrieved party may request a contested case hearing before the director pursuant to ORS 183.310[.

(e) Any request for a contested case hearing before the director regarding a review determination made pursuant to this section must comply with] **and** the procedures provided in section (2) [above].

Stat. Auth.: ORS 656.735(5) through (7); ORS 656.745(4); ORS 656.726(3)

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436-055-0010 Access to Division Certification Records

[(1) The Department rules on Access of Public Records, Fees for Record Search and Copies of Public Records are found in OAR 440-05.

(2) Any person has a right to inspect non-exempt public records. The statutory right to "inspect" encompasses a right to examine original records. It does not include a right to request blind searches for records not known to exist.

(3) Pursuant to ORS 192.430 and OAR 440-05-015(1) the director, as custodian of public records, makes the following restrictions and precautions to protect the integrity of certification records and prevent interference with the regular discharge of the Department's duties. A request to inspect or obtain copies of certification records or information from certification records shall be in writing or in person, and shall include:

(a) The name, address and telephone number of the requestor, unless the director prescribes otherwise;

(b) A specific identification of the needed public record, or the type and format of the needed information; and

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(c) The number of copies required.

(4) For employment purposes, any party trying to determine whether a person is certified to process workers' compensation claims pursuant to these rules is exempt from making a written request.

(5) Payment of fees shall be made in advance unless later payment is approved by the director.]

Stat. Auth.: ORS 192.430

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436-055-0020 Initial Certification Program Requirements

[(1) To become and remain a certified program, any course of training to prepare persons to process workers' compensation claims must provide instruction on the requirements of ORS Chapter 656 and the Oregon Administrative Rules promulgated by the director pursuant to that chapter.

(2) Each program shall provide, or require each person in the program to obtain, a copy of ORS Chapter 656 and the Oregon Administrative Rules promulgated by the director pursuant to that chapter.

(3) Within 30 days of completion of a training program, the trainer shall submit to the division a list of persons with their social security numbers, who satisfactorily completed the program as defined in the course outline.]

Stat. Auth.: ORS 656.780(1)

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436-055-0030 Continuing Education Programs

[(1) Any party may provide continuing education in the form of a seminar, workshop, association meeting, forum, correspondence, video or similar course, if it meets the requirements of these rules and has been approved for certification.

(2) Applications for certification of continuing education shall be in the form and format prescribed by the director and shall indicate the number of hours that will be dedicated to providing training as described in OAR 436-055-0020 and OAR 436-055-0070(4) and (5). Credit for continuing education will only be given for the number of hours specified for training purposes.

(3) Within 30 days of completion of continuing education, the trainer shall submit a list of persons with their social security numbers, who satisfactorily completed the continuing education.]

Stat. Auth.: ORS 656.780(1)

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436-055-0040 Application for Certification of Program and/or Continuing Education

[(1) Any person, including insurers, may provide a certified training program to instruct persons in ORS Chapter 656 and the rules promulgated by the director pursuant to that chapter, if the program meets all of the requirements in these rules.

(2) Applications for certification shall be in the form and format prescribed by the director.

(3) Programs shall be certified for a period of two years. Whenever the legislature amends ORS Chapter 656, or the director promulgates rules, amended curriculae may be required to be submitted to ensure they correctly reflect the changes in the law and rules. Failure to submit amended curriculae when required may result in suspension of program certification pursuant to OAR 436-055-0050.

(4) Except in the case of employer-provided "in-house training, all material announcing or advertising a certified initial certification program or continuing education program shall also specify the objectives of the program, including but not limited to the skills and knowledge the student will learn.

(5) If an application for certification is disapproved, it may be resubmitted to Compliance Section at any time within one year after the initial rejection. If rejected a third time, a new application for certification may not be made until after one year has passed from the date of the third rejection.

(6) The division is not required to consider any information beyond that submitted with the application.

(7) An application will be reviewed promptly by the division, and the applicant notified of the results of the review within 30 days. If the application is incomplete, it will not be reviewed and will be returned. If the application is not complete when resubmitted, the application will be rejected.

(8) If any application is found to contain any material misrepresentation, it will be rejected. Any further applications will be rejected without review.

(9) Any misrepresentation of an instructor's relevant education or experience or of course content may result in loss of certification in accordance with OAR 436-055-0050(2).]

Stat. Auth.: ORS 656.780(1)

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436-055-0050 Loss of Certification of Program and/or Continuing Education

[(1) A program certification may be suspended for a period of up to 90 days when:
(a) Amended curriculum is not submitted pursuant to OAR 436-055-0040(3).
(b) Curriculum described in the application upon which certification was granted is not maintained.
(c) A list of persons who have satisfactorily completed a program is not submitted within 30 days.
(d) A copy of ORS Chapter 656 and the Oregon Administrative Rules promulgated by the director pursuant to that chapter, as required by OAR 436-055-0020(2), is not obtained by each person.

(2) A program certification may be revoked for a period prescribed by the director when:
(a) Problems which led to a suspension under subsection (1) are not corrected.
(b) The program is found to be misrepresented to any person.]
Stat. Auth.: ORS 656.780(1)

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436-055-0060 Fees

[The fee for issuing the claims examiner certification shall be as follows:
(1) The initial claims examiner certification fee shall be \$25.00.
(2) The claims examiner certification renewal fee shall be \$15.00.
(3) The examination fee will be \$15.00.]

Stat. Auth.: ORS 656.780(4)

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436-055-0070 Certification of Claims Examiners

(1) Claims examiners shall be certified by the insurer upon [after] satisfactor[i]y completion[g] [a certified initial certification course or passing] of an examination [prescribed by the director pursuant to 436-055-0080. An application for certification shall be filed with the division within 45 days of completing an initial certification course or passing the examination administered pursuant to OAR 436-055-0080, accompanied by a fee pursuant to 436-055-0060 (1).] which demonstrates the individual's familiarity with the workers' compensation statutes, ability to navigate the administrative rules found in this chapter, and capability to perform claim processing activities.

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

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

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

(2) [Claims Examiner Trainees, as defined in OAR 436-055-0005, may work without certification for a period not exceeding 12 months.

(3) Certification will be for a [two] three-year period. The certification date shall be the date of the examination.

[(4) (3) A certification shall be renewed at any time during the certification period by providing verification that 24 hours of [certified continuing education] training has been [accrued] completed within the [two-year] current certification period[, and submitting a fee pursuant to OAR 436-055-0060(2)]. At least 4 of the 24 hours of [continuing education] training shall [provide instruction in] be related to

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changes in workers' compensation statutes, [and] **administrative** rules, **and case law** [which have changed] since the last certification[, unless otherwise prescribed by the director].

[(5)] **(4)** [Unless otherwise prescribed by the director, the 24 hours of continuing education] **Training** may be **provided in the form of a seminar, workshop, association meeting, forum, correspondence, video or similar course. It may include any of the following subjects** [maximum of]:

(a) [Four hours of instruction in m] **M**edical case management [which may] includ[e] **ing**, but not be limited to, medical terminology, basic human anatomy and interpreting medical reports.

(b) [Four hours of training in developing interpersonal] **C**ommunication skills [which may include] **including**, but not be limited to, courses in **ethics**, mediation, negotiation and dealing with angry people.

(c) [Four hours of i] **I**nstruction dealing specifically with the processing of Oregon workers' compensation claims.

[(6) An individual who plans and conducts a certified continuing education training, will be considered to have completed that same training for the purpose of meeting the continuing education requirements. An individual may apply a maximum of 12 hours of training functions toward the 24-hour continuing education requirement during each certification period.]

Stat. Auth.: ORS656.780(1)

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436-055-0080 Examinations

(1) Certification examinations for claims examiners will be developed and administered by the Workers' Compensation Division.

(2) Any person desiring to receive a claims examiner certification by examination shall make application to the division. The application shall include name, address, social security number, date of birth and a statement verifying that the applicant has a copy of ORS Chapter 656 and the Oregon Administrative Rules promulgated by the director pursuant to that chapter. The fee pursuant to OAR 436-055-0060 is due at the time of examination.

(3) The director shall give examinations at such times and places within the state as the director deems necessary to reasonably serve the interests of all concerned. The examination shall be given at least once every six months in Salem, if applications for examination are pending.

(4) Any person taking an examination may use a copy of ORS Chapter 656 and the Oregon Administrative Rules promulgated by the director pursuant to that chapter during the examination.

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

(6) Certification will be denied if it is determined that a person used dishonest or fraudulent means to complete an examination.]

Stat. Auth.: ORS656.780(1)

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436-055-0090 Loss of Individual Certification

[The director may suspend or revoke a person's certification if the director finds the person misrepresented the any of the requirements of OAR 436-055-0070.]

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436-055-0100 Insurer [Requirements] Duties

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

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

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

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

(3) **The insurer may issue an initial certification or renewal for any individual pursuant to the standards set in OAR 436-055-0070.** [Insurers may be subject to civil penalty under OAR 436-055-0110 in the following circumstances:]

(a) [Failing to maintain the list required by this rule.]

[(b) Failing to report as may be required pursuant to this rule.] **The insurer shall accept verification by the director of an individual's certification and continuing education hours accrued as of October 22, 1999, and any acknowledgment of current certification issued by an insurer.**

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

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

(d) Hiring claims examiners who are not certified or do not qualify as a claims examiner trainee or a temporary claims examiner.]

(5) Within 14 days of the termination of employment or upon receipt of a written request of a certified claims examiner, the insurer shall provide the certified claims examiner a complete copy of all records verifying the most recent acknowledgment of certification and any subsequent training.

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

Stat. Auth.: ORS 656.780(1) and (2)

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436-055-0110 Assessment of Civil Penalties

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

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

(3) Pursuant to ORS 656.780 the director may assess a civil penalty against an insurer that fails to maintain or produce certification and training records or that employs anyone other than certified workers' compensation claims examiner to process workers' compensation claims. [(3)] **The insurer shall be subject to a [following] penalty [schedule shall be applied when the director finds the insurer has failed to comply with these rules] of not more than \$2000 per violation.[:] Each violation, or each day a violation continues, shall be considered a separate violation.**

[(a) \$2,000 per claims examiner who is not certified or does not qualify as a claims examiner trainee or a temporary claims examiner.

(b) \$1,000 per incident for misrepresenting any information to a worker, employer or the director related to the certifications of employees. Subsequent incidents within a one year period will result in a \$2,000 penalty. Subsequent incidents within a one year period will result in a \$2,000 penalty.

(4) The following penalty schedule may be applied when the director finds the insurer has failed to comply with these rules:

(a) Up to \$500 for failing to maintain the list required by this rule.

(b) Up to \$500 for failing to report as required pursuant to this rule.]

Stat. Auth.: ORS 656.447(1)(a); ORS 656.745(2)(b); ORS 656.780(3)

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436-055-0120 [Suspension and Revocation of Authorization to Issue Guaranty Contracts] Service of Orders

(1) [Pursuant to ORS 656.447, the director may suspend or revoke the insurer's authority to issue guaranty contracts upon a determination that the insurer has failed to comply with its obligations under such contract or that it has failed to comply with the rules or orders of the director.

(2) For the purpose of this rule:

(a) "Suspension" and its variations means a stopping by the director of the insurer's authority to issue new guaranty contracts for a specified period of time.

(b) "Revocation" and its variations means a permanent revocation by the director of an insurer's authority to issue guaranty contracts.

(c) "Show-cause hearing" means an informal meeting with the director or designee in which the insurer shall be provided an opportunity to be heard and present evidence regarding any proposed orders by the director to suspend or revoke an insurer's authority to issue guaranty contracts.

(3) Suspension or revocation under this rule will not be made until the insurer has been given notice and the opportunity to be heard through a show- cause hearing before the director and "show cause" why it should be permitted to continue to issue guaranty contracts.

(4) A show-cause hearing may be held at any time the director finds that an insurer has failed to comply with its obligations under a guaranty contract or that it failed to comply with rules or orders of the director.

(5) Following a show-cause hearing, the director may rescind the proposed order if the insurer establishes to the director's satisfaction its ability and commitment to comply with ORS Chapter 656 and these rules.

(6) A suspension may be in effect for a period of up to 18 months. A suspended insurer may continue to serve existing accounts and renew any existing policy, unless the policy lapses or is canceled during the period of suspension.

(7) After 12 months of the suspension has elapsed, the division may audit the performance of the insurer. If the insurer is in compliance, the administrator may request the director to lift the suspension before the 18 months have elapsed. If the insurer is not in

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compliance, the administrator may request the director revoke the insurer's authority to issue guaranty contracts.

(8) When an insurer's authority to issue guaranty contracts has been revoked, the insurer may serve an existing account only until the policy lapses, is canceled or until the next renewal date, whichever first occurs.

(9) After a revocation of an insurer's authority to issue guaranty contracts has been in effect for five (5) years or longer, it may petition the director to restore its authority by submitting a plan in the form prescribed by the director, demonstrating its ability and commitment to comply with the workers' compensation law, these rules and orders of the director.

(10) Appeal of proposed and final orders of suspension and revocation issued under this rule may be made as provided in OAR 436-055-0008.

(11) Any order of suspension or revocation issued by a referee or other person pursuant to ORS 656.447 and this rule is a preliminary order subject to revision by the director.] **When the director imposes a sanction or assesses a penalty under the provisions of OAR 436-055-0110, the order, including a notice of the party's appeal rights, shall be served on the party.**

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

Stat. Auth.: ORS 656.740

Stats. Implemented:

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

Amended 12/21/99 as WCD Admin. Order 99-063, eff. 01/01/00