PLEASE NOTE: Thirteen temporary rules have been issued as administrative order 03-063. The entire division has been republished to provide all rules effective as of January 1, 2004.

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

In the Matter of the Amendment of Oregon Administrative Rules (OAR) Chapter 436, Division 030, Claims Evaluation, Determination, and Reconsideration	))))))	ORDER OF ADOPTION OF TEMPORARY RULES No. 03-063

The Director of the Department of Consumer and Business Services, pursuant to the rulemaking authority in ORS 656.726(4), and in accordance with the procedure provided by ORS 183.335(5), temporarily amends OAR Chapter 436, Division 030, "Claims Evaluation, Determination, and Reconsideration."

EXPLANATION

These temporary rules reflect changes in the law due to legislation passed by the 2003 Oregon Legislature.

Enrolled Senate Bill 233 (§9, ch. 170, OL 2003) changes the time frame for appeal of a proposed order or proposed assessment of civil penalty from 60 days following the party's receipt of notice to 60 days from the date the order is mailed by the department.

Enrolled Senate Bill 285 (ch. 429, OL 2003) allows an insurer or self-insured employer to contest its Notice of Closure if it disagrees with the findings used to rate impairment.

Enrolled House Bill 3669 (§3, ch. 811, OL 2003) gives additional authority to nurse practitioners to treat injured workers and authorize temporary disability payments.

FINDINGS

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

IT IS THEREFORE ORDERED:

(1) Temporary amendments to OAR Chapter 436, Division 030, Claims Evaluation, Determination, and Reconsideration, as set forth in Exhibit "A," attached hereto and incorporated by reference herein, are adopted on this 12th day of December, 2003 to be effective January 1, 2004 through June 28, 2004.

(2) The Statement of Need and Justification, attached hereto, is by this reference incorporated herein.

(3) The rules amended, the Certificate and Order for Filing, and the Statement of Need and Justification shall immediately be filed with the Secretary of State.

(4) The rules amended, with revision marks, shall be filed with Legislative Counsel, pursuant to ORS 183.715 within ten (10) days after filing with the Secretary of State.

Dated this 12th day of December, 2003.

DEPARTMENT OF CONSUMER
AND BUSINESS SERVICES

/s/ John L. Shilts

John L. Shilts, Administrator
Workers' Compensation Division

Pursuant to ADA Guidelines, alternate format copies of the rules will be made available to qualified individuals upon request.

If you have questions about these rules or need them in an alternate format, contact the Workers' Compensation Division at (503) 947-7810.

Attachments: Exhibit "A" (temporary rules)
Certificate & Order for Filing Temporary Administrative Rules
Statement of Need and Justification

Distribution: WCD-ID, S, T, U, AT, CE, EG, IA, LU, NM, CI, S0, S1

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 030

CLAIMS EVALUATION, DETERMINATION, & RECONSIDERATION

EFFECTIVE JANUARY 1, 2004

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EXHIBIT "A"
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 030

436-030-0001 Authority for Rules

These rules are promulgated under the director's authority contained in ORS 656.726(4) and ORS 656.268.

Stat. Auth.: ORS 656.268, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Stats. Implemented: ORS 656.268, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Hist: Filed 2/6/75 as WCB Admin. Order 5-1975, eff. 2/26/75.
Amended 6/30/78 as WCD Admin. Order 8-1978, eff. 7/10/78.
Amended 3/20/80 as WCD Admin. Order 4-1980, eff. 4/1/80.
Renumbered from OAR 436-65-000, May 1985.
Amended 12/17/87 as WCD Admin. Order 13-1987, eff. 1/1/88.
Amended 11/13/00 as WCD Admin. Order 00-058, eff. 01/01/01.

436-030-0002 Purpose of Rules

The purpose of these rules is to provide standards, conditions, procedures and reporting requirements for:

(1) requests for closure by the worker;

(2) claim closure in accordance with ORS 656.268(1);

(3) determining medically stationary status;

(4) determining temporary disability benefits;

(5) awards of permanent partial disability;

(6) review and determination of the disabling or nondisabling status of a claim;

(7) determining permanent total disability awards;

(8) review for reduction of permanent total disability awards;

(9) review and determination of prior unscheduled permanent partial disability awards; and

(10) reconsideration of notices of closure.

Stat. Auth.: ORS 656.268, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Stats. Implemented: ORS 656.206, ORS 656.210, ORS 656.212, ORS 656.262, ORS 656.268, ORS 273, ORS 277, ORS 656.325, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Hist: Amended 3/20/80 as WCD Admin. Order 4-1980, eff. 4/1/80
Renumbered from OAR 436-65-002, May 1985.
Amended 12/17/87 as WCD Admin. Order 13-1987, eff. 1/1/88.
Amended 6/18/90 as WCD Admin. Order 7-1990, eff. 7/1/90, (temp).
Amended 12/10/90 as WCD Admin. Order 33-1990, eff. 12/26/90.
Amended 11/18/94 as WCD Admin. Order 94-059, eff. 1/1/95.
Amended 2/14/96 as WCD Admin. Order 96-052, eff. 2/17/96.
Amended 11/13/00 as WCD Admin. Order 00-058, eff. 01/01/01.

436-030-0003 Applicability of Rules (Temporary Rule)

(1) Except as provided in section (3) of this rule, these rules apply to all accepted claims for workers' compensation benefits and all requests for reconsideration received by the department on or after the effective date of these rules.

(2) All orders issued by the division to carry out the statute and these rules are considered an order of the director.

(3) These rules take the place of the rules adopted on January 1, 2001, by Workers' Compensation Division Administrative Order 00-058, and carry out the provisions of ORS 656.005, 656.214, 656.262, 656.268, 656.273, 656.277, 656.278, 656.325, and section 22(3), chapter 865, Oregon Laws 2001.

(a) The provisions of OAR 436-030-0009, 030-0020, 030-0030, 030-0115 (except section (4)), 030-0125, 030-0135, 030-0145, 030-0155, 030-0165 (except subsection (9)(b)), 030-0175 and 030-0185 apply to all determinations or claims for workers who become medically stationary after July 1, 1990. For claims in which the worker became medically stationary prior to July 2, 1990 the provisions of OAR 436-030-0020, 030-0030, 030-0050 as contained in WCD Administrative Order 13-1987 shall apply.

(b) The provisions of OAR 436-030-0045 apply to requests for reclassification made on or after January 1, 2002.

(c) OAR 436-030-0017(1) applies to all requests for closure made on or after January 1, 2002.

(d) The provisions of OAR 436-030-0055(3)(c) and (4)(a) apply to all claims with dates of injury on or after [the effective date of these rules,] January 1, 2002.

(e) The provisions of OAR 436-030-0115(4) and 436-030-0165(9)(b) apply to all claims closed on or after [the effective date of these rules,] January 1, 2002.

(f) The changes to the following rules effective January 1, 2004, apply to all claims closed on or after January 1, 2004: OAR 436-030-0009, 030-0010, 030-0115, 030-0125, 030-0135, 030-0145, 030-0165, and 030-0185.

Stat. Auth.: ORS 656.268 **(ch. 429, OL 2003)**, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Stats. Implemented: ORS 656.206, ORS 656.210, ORS 656.212, ORS 656.262, ORS 656.268 **(ch. 429, OL 2003)**, ORS 656.273, ORS 656.277, ORS 656.325, ORS 656.726, 1995 OR Laws Chapter 332, 1999 OR Laws Chapter 313; chapters 349, 350, 377, and 865, Oregon Laws 2001
Hist: Filed 6/30/78 as WCD Admin. Order 8-1978, eff. 7/10/78.
Amended 3/20/80 as WCD Admin. Order 4-1980, eff. 4/1/80.
Renumbered from OAR 436-65-030, May 1985.
Amended 12/17/87 as WCD Admin. Order 13-1987, eff. 1/1/88.
Amended 6/18/90 as WCD Admin. Order 7-1990, eff. 7/1/90, (temp.).
Amended 12/10/90 as WCD Admin. Order 33-1990, eff. 12/26/90.
Amended 8/20/91 as WCD Admin. Order 6-1991, eff. 9/01/91 (temp.).
Amended 1/17/92 as WCD Admin. Order 5-1992, eff. 2/20/92.
Amended 11/18/94 as WCD Admin. Order 94-059, eff. 1/1/95.
Amended 2/14/96 as WCD Admin. Order 96-052, eff. 2/17/96.
Amended 12/22/97 as WCD Admin. Order 97-065, eff. 1/15/98.
Amended 11/13/00 as WCD Admin. Order 00-058 , eff. 01/01/01.
Amended 11/16/01 as WCD Admin. Order 01-060, eff. 1/1/02.
Amended 1/15/02 as WCD Admin. Order 02-051, eff. 1/15/02 (Temp.)
Amended 4/5/02 as WCD Admin. Order 02-054, eff. 4/8/02
Amended 12/12/03 as WCD Admin. Order 03-063, eff. 1/1/04 (Temp.)

436-030-0005 Definitions (Temporary Rule)

Except where the context requires otherwise, the construction of these rules is governed by the definitions given in the Workers' Compensation Law and as follows:

(1) "Administrator" means the Administrator of the Workers' Compensation Division, Department of Consumer and Business Services, or the administrator's delegate for the matter.

(2) **"Authorized Nurse Practitioner" means a nurse practitioner authorized to provide compensable medical services under ORS 656.245 (section 3, chapter 811, Oregon Laws 2003) and OAR 436-010.**

[(2)]**(3)** "Director" means the Director of the Department of Consumer and Business Services, or the director's delegate for the matter.

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

[(4)]**(5)** "Insurer" means the State Accident Insurance Fund, or an insurer authorized under ORS Chapter 731 to transact workers' compensation insurance in Oregon, a self-insured employer or a self-insured employer group.

[(5)]**(6)** "Mailed or Mailing Date," for the purposes of determining timeliness pursuant to these rules, means the date a document is postmarked. Requests submitted by electronic transmission (by facsimile or "fax") shall be considered mailed as of the date printed on the banner automatically produced by the transmitting fax machine. Hand-delivered requests shall be considered mailed as of the date stamped or punched in by the Workers' Compensation Division. Phone or in-person requests, where allowed under these rules, shall be considered mailed as of the date of the request.

[(6)]**(7)** "Notice of Classification" means the insurer's written response, to a worker's request, which notifies the worker of the insurer's decision regarding the nondisabling status of a claim.

[(7)]**(8)** "Notice of Closure" means a notice to the worker issued by the insurer to close an accepted disabling claim or to reduce permanent total disability to permanent partial disability.

[(8)]**(9)** "Reconsideration" means review by the director of an insurer's Notice of Closure .

[(9)]**(10)** "Statutory closure date" means the date the claim can be closed pursuant to ORS 656.268(1)(b) and (c).

[(10)]**(11)** "Statutory appeal period" means the time frame for appealing a Notice of Closure or Order on Reconsideration.

(a) For closures where the worker is medically stationary prior to June 7, 1995, the appeal period is 180 days from the mailing date of the order.

(b) For closures where the worker is medically stationary on or after June 7, 1995, the appeal period is 60 days from the date the order is mailed to the worker and to the worker's attorney if the worker is represented. The appeal period for an Order on Reconsideration is 30 days from the mailing date of the order.

(c) Former ORS 656.268(1)(a) and (b) became effective June 7, 1995. For workers whose claims are closed pursuant to that statute, the medically stationary date will be at some point in the future after June 7, 1995. Therefore, the appeal period for claims closed pursuant to former

ORS 656.268(1)(a) and (b) is 60 days from the date the order is mailed to the worker and to the worker's attorney if the worker is represented.

[(11)]**(12)** "Worksheet" means a summary of facts used to derive the awards stated in the Notice of Closure.

Stat. Auth.: ORS 656.268, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Stats. Implemented: ORS 656.005, ORS 656.268, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Hist: Filed 6/30/78 as WCD Admin. Order 8-1978, eff. 7/10/78.
Amended 3/20/80 as WCD Admin. Order 4-1980, eff. 4/1/80
Amended 12/30/81 as WCD Admin. Order 5-1981, eff. 1/1/82.
Renumbered from OAR 436-65-004, May 1985.
Amended 12/17/87 as WCD Admin. Order 13-1987, eff. 1/1/88.
Amended 6/18/90 as WCD Admin. Order 7-1990, eff. 7/1/90, (temp.).
Amended 12/10/90 as WCD Admin. Order 33-1990, eff. 12/26/90.
Amended 11/18/94 as WCD Admin. Order 94-059, eff. 1/1/95.
Amended 2/14/96 as WCD Admin. Order 96-052, eff. 2/17/96.
Amended 12/22/97 as WCD Admin. Order 97-065, eff. 1/15/98.
Amended 11/13/00 as WCD Admin. Order 00-058 eff. 01/01/01.
Amended 12/12/03 as WCD Admin. Order 03-063, eff. 1/1/04 (Temp.)

436-030-0007 Administrative Review (Temporary Rule)

(1) Dispute Resolution Before the director:

(a) Notices of Closure issued by insurers are appealed to the director and processed in accordance with the reconsideration procedures described in OAR 436-030-0115 through OAR 436-030-0185.

(b) Abating, withdrawing or amending an Order on Reconsideration: The director may abate, withdraw, and/or amend the Order on Reconsideration until a hearing is requested or the Order is final by operation of law.

(c) Notices of Classification issued by insurers are appealable by the worker to the director in accordance with ORS 656.273 and 656.277. A worker need not be represented in the administrative review process to make a request for review of the insurer's classification decision.

(A) The worker's request for review must be made to the director no later than the 60th day after the date the Notice of Classification is mailed.

(B) The insurer shall provide the director with the complete medical record used and all other relevant documents within 14 days of notification by the director of the request for review. The insurer may be subject to penalties under OAR 436-030-0580 for failure to provide the claim documents in a timely manner. The worker may also submit, within the same 14 days, any additional evidence the worker wishes the director to consider.

(C) When providing information to the director, the submitting party shall also provide copies to all other parties at the same time.

(D) After receiving the relevant documents, the director will issue an order. The parties will have 30 days from the date of the order to appeal to the Hearings Division of the Workers' Compensation Board.

(E) The director may reconsider, abate, or withdraw any order before a hearing on that order has been requested and before the order becomes final by operation of law.

(2) Cases brought before the Hearings Division of the Workers' Compensation Board:

(a) Orders on Reconsideration and Director's Review of Claim Classification are appealable to the Hearings Division of the Workers' Compensation Board as follows:

(A) The party must send the request for hearing in writing to the Hearings Division in accordance with ORS 656.283 and the rules of procedure adopted by the Workers' Compensation Board.

(B) Pursuant to OAR 436-030-0145(2) for claims medically stationary on or after June 7, 1995, for the purpose of filing such appeal, the time shall be 30 days from the mailing date of the Order.

(C) Pursuant to OAR 436-030-0145(1) for claims medically stationary before June 7, 1995, for the purpose of filing such appeal, the time required to complete the reconsideration proceeding shall not be included in the time limit. The request for hearing must be filed within the statutory appeal period.

(b) A party may request a hearing before the Hearings Division of the Workers' Compensation Board on any other action taken pursuant to these rules where a worker's right to compensation or the amount thereof is directly an issue in accordance with the provisions of ORS Chapter 656.

(3) Contested Case Hearings of Sanctions and Civil Penalties: Under ORS 656.7[04]**40 (§9, ch. 170, OL 2003)**, any party aggrieved by a proposed order or proposed assessment of a civil penalty issued by the director pursuant to ORS 656.254, 656.735, 656.745 or 656.750 may request a hearing by the Hearings Division as follows:

(a) The party must send the request for hearing in writing to the director within [20 calendar days] **60 days** after [service of] **the mailing date of** the **proposed** order or [notice of] assessment. The request must specify the grounds upon which the proposed order or assessment is contested.

(b) The Workers' Compensation Division shall forward the request and other pertinent information to the Hearings Division of the Workers' Compensation Board.

(c) An Administrative Law Judge from the Hearings Division, acting on behalf of the director, shall conduct the hearing in accordance with ORS 656.740 and ORS Chapter 183.

(4) Director's Administrative Review of other actions: Except as covered under sections (1) through (3) of this rule, any party seeking an action or decision by the director or aggrieved by an action taken by any other party pursuant to these rules, may request administrative review by the director as follows:

(a) The party must send the request in writing to the director within 90 days of the disputed action and must specify the grounds upon which the action is taken, unless the director determines that there was good cause for delay or that substantial injustice may result otherwise.

(b) The director may require and allow such evidence as it deems appropriate to complete the review.

(c) A director's order will be issued and will specify if the order is final or if it may be appealed.

Stat. Auth.: ORS 656.268, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Stats. Implemented: ORS 656.268, ORS 656.277, ORS 656.726, 1995 OR Laws Chapter 332, 1999 OR Laws Chapter 313, and chapter 350, Oregon Laws 2001
Hist: Filed 06/30/78 as WCD Admin. Order 8-1978, eff. 07/10/78.
Amended 03/20/80 as WCD Admin. Order 4-1980, eff. 04/01/80.
Renumbered from OAR 436-65-998, May 1985.
Amended 12/17/87 as WCD Admin. Order 13-1987, eff. 01/01/88.
Amended 6/18/90 as WCD Admin. Order 7-1990, eff. 7/1/90, (temp.).
Renumbered from OAR 436-030-0020.
Amended 12/10/90 as WCD Admin. Order 33-1990, eff. 12/26/90.
Amended 1/17/92 as WCD Admin. Order 5-1992, eff. 2/20/92.
Amended 11/18/94 as WCD Admin. Order 94-059, eff. 1/1/95.
Amended 2/14/96 as WCD Admin. Order 96-052, eff. 2/17/96.
Amended 12/22/97 as WCD Admin. Order 97-065, eff. 1/15/98.
Amended 11/13/00 as WCD Admin. Order 00-058, eff. 01/01/01.
Amended 11/16/01 as WCD Admin. Order 01-060, eff. 1/1/02.
Amended 12/12/03 as WCD Admin. Order 03-063, eff. 1/1/04 (Temp.)

436-030-0009 Appeals of Notices of Closure (Temporary Rule)

If [the] **a** worker **or insurer** disagrees with a Notice of Closure and the worker was determined medically stationary after July 1, 1990, or the worker is not medically stationary and the claim is closed pursuant to ORS 656.268(1)**(b) or (c)**, the worker **or insurer** must first request a reconsideration by the director pursuant to these rules. [An insurer may not request reconsideration of its own Notice of Closure.] If the worker was determined medically stationary on or before July 1, 1990, WCD Admin. Order 13-1987 rules apply.

Stat. Auth.: ORS 656.268, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Stats. Implemented: ORS 656.268, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Hist: Renumbered from OAR 436-030-0020.
Amended 12/10/90 as WCD Admin. Order 33-1990, eff. 12/26/90.
Amended 1/17/92 as WCD Admin. Order 5-1992, eff. 2/20/92.
Amended 11/18/94 as WCD Admin. Order 94-059, eff. 1/1/95.
Amended 2/14/96 as WCD Admin. Order 96-052, eff. 2/17/96.
Amended 11/13/00 as WCD Admin. Order 00-058, eff. 01/01/01.
Amended 12/12/03 as WCD Admin. Order 03-063, eff. 1/1/04 (Temp.)

436-030-0010 Director Responsibility (Temporary Rule)

(1) The director, when requested by a worker, is responsible for[:

(a)] reviewing the disabling/nondisabling status of a claim**.**[; and]

[(b)]**(2) The director, when requested by a worker or insurer, is responsible for** conducting the reconsideration proceeding when the worker **or insurer** is dissatisfied with a Notice of Closure, and assessing penalties and attorney fees where appropriate.

[(2)]**(3)** Applicable to these rules, the director may, unless otherwise obligated by statute, in the director's discretion waive any procedural rules as justice so requires.

Stat. Auth.: ORS 656.268, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Stats. Implemented: ORS 656.206, ORS 656.210, ORS 656.212, ORS 656.214, ORS 656.268, ORS 656.277, ORS 656.325, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Hist: Filed 2/6/75 as WCB Admin. Order 5-1975, eff. 2/26/75.
Amended 6/30/78 as WCD Admin. Order 8-1978, eff. 7/10/78.
Amended 3/20/80 as WCD Admin. Order 4-1980, eff. 4/1/80.
Amended 12/30/81 as WCD Admin. Order 5-1981, eff. 1/1/82.
Renumbered from OAR 436-65-005, May 1985.
Amended 12/17/87 as WCD Admin. Order 13-1987, eff. 1/1/88.
Amended 6/18/90 as WCD Admin. Order 7-1990, eff. 7/1/90, (temp.).
Amended 12/10/90 as WCD Admin. Order 33-1990, eff. 12/26/90.
Amended 11/18/94 as WCD Admin. Order 94-059, eff. 1/1/95.

Amended 2/14/96 as WCD Admin. Order 96-052, eff. 2/17/96.
Amended 12/22/97 as WCD Admin. Order 97-065, eff. 1/15/98.
Amended 11/13/00 as WCD Admin. Order 00-058, eff. 01/01/01.

Amended 12/12/03 as WCD Admin. Order 03-063, eff. 1/1/04 (Temp.)

436-030-0015 Insurer Responsibility

(1) When an insurer issues a Notice of Closure, the insurer is responsible for:

(a) Providing the director, the parties, and the worker's attorney if the worker is represented, a copy of the Notice of Closure, a copy of the worksheet upon which the Notice is based, a completed "Insurer Notice of Closure Summary" and an Updated Notice of Acceptance at Closure that specifies which conditions are compensable, as prescribed in section (2) of this rule;

(b) Maintaining a copy of the worksheet and records upon which the Notice of Closure is based in its claim file for audit purposes in accordance to OAR 436-050; and

(c) Providing the Updated Notice of Acceptance at Closure in a timely manner. For purposes of this rule, a timely Updated Notice of Acceptance at Closure shall be issued no sooner than the date the claim qualified for closure, or 30 days prior to claim closure (whichever occurs closer to actual closure), but not later than the mailing date of the closure. The Updated Notice of Acceptance at Closure shall contain the following title, information and language:

(A) title: "Updated Notice of Acceptance at Closure";

(B) information: all compensable conditions that have been accepted, even if the accepted condition was ordered by litigation and is under appeal; however, any conditions under appeal must be specifically identified;

(C) language, in bold print:

"Notice to Worker: This notice restates and includes all prior acceptances for the current claim opening only, but does not include conditions which have been denied. The insurer or self-insured employer is not required to pay any disability compensation for any condition specifically identified as under appeal unless and until the condition is found to be compensable after all litigation is complete. These are the only conditions considered at the time of claim closure. If you believe a condition has been incorrectly omitted from this notice, or this notice is otherwise deficient, you must communicate the specific objection to the insurer in writing.";

(d) The insurer or self-insured employer is not required to pay any disability compensation for any condition under appeal and specifically identified as such, unless and until the condition is found to be compensable after all litigation is complete.

(e) In the event an omission or error requires a corrected updated notice of acceptance at closure, the word "CORRECTED" shall appear in capital letters adjacent to the word "updated".

(f) In the event that the "initial notice of acceptance" is the same as the "updated notice of acceptance at closure," both titles shall appear near the top of the document.

(2) Copies of Notices of Refusal to Close shall be mailed to the director and the parties, and to the worker's attorney, if the worker is represented.

(3) In claims involving unscheduled injuries to, or disease of, body parts or conditions pursuant to OAR 436-035-0330 through 436-035-0450, the insurer shall consider the worker's work history and education including:

(a) The worker's level of education; and

(b) The worker's work history pursuant to OAR 436-035-0300 and 436-035-0310 including the job at injury and work history for five years preceding the Notice of Closure with dates or period of time spent at each position.

(4) The insurer shall consider any other records or information pertinent to claim determination prior to issuing a Notice of Closure.

(5) The insurer shall notify the worker and the worker's attorney, if the worker is represented, in writing, when the insurer receives information that the worker's claim qualifies for closure pursuant to these rules.

(a) The insurer must send the written notice within three working days from the date the insurer receives the information, unless the claim has already been closed.

(b) The notice must advise the worker of his or her impending claim closure and that any time loss disability payments will end soon.

(c) The insurer must, within 14 days, provide the worker's attorney the same documents relied upon for claim closure.

(6) The insurer shall not issue a Notice of Closure on an accepted nondisabling claim. Notices of Closure issued by the insurer in violation of this rule are void and without legal effect. Medically stationary status in nondisabling claims may be documented by the attending physician's statement of medically stationary status.

(7) Failure to meet the requirements and timeframes of this rule may result in civil penalties pursuant to OAR 436-030-0580.

(8) When a condition is accepted after a closure, the insurer shall issue a Notice of Closure, considering only the newly accepted condition.

(9) Denials issued pursuant to ORS 656.262(7)(b), must clearly identify the phrase "major contributing cause" in the text of the denial.

(10) When a claim is closed where a designation of paying agent order (ORS 656.307) has been issued and the responsibility issue is not final by operation of law, the insurer processing the claim at the time of closure shall send copies of the closure notice to the worker, the worker's attorney if the worker is represented, the director, and all parties involved in the responsibility issue.

Stat. Auth.: ORS 656.268, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Stats. Implemented: ORS 656.268, ORS 656.331, ORS 656.726, 1995 OR Laws Chapter 332, 1999 OR Laws Chapter 313, and chapter 377, Oregon Laws 2001
Hist: Amended and Renumbered 11/18/94 from 436-030-0020 and 030 as WCD Admin. Order 94-059, eff. 1/1/95.
Amended 2/14/96 as WCD Admin. Order 96-052, eff. 2/17/96.
Amended 12/22/97 as WCD Admin. Order 97-065, eff. 1/15/98.
Amended 11/13/00 as WCD Admin. Order 00-058, eff. 01/01/01.
Amended 11/16/01 as WCD Admin. Order 01-060, eff. 1/1/02.

436-030-0017 Requests for Claim Closure by the Worker

(1) A worker may request closure from the insurer. The insurer shall respond within 10 days of receipt of a written request.

(2) If an insurer issues a notice of refusal to close the claim, the notice shall be identified in capital letters as a "NOTICE OF REFUSAL TO CLOSE" and shall include the following information and appeal language:

(a) name of the worker;

(b) date of injury;

(c) insurer's claim number;

(d) mailing date of the notice;

(e) the accepted and denied conditions;

(f) rationale for the insurer's decision; and

(g) the following language, in bold print:

"If you disagree with this Notice of Refusal to Close your claim, you must file a letter of disagreement with the Workers' Compensation Board within sixty (60) days from the date of this notice. Your letter must state that you want a hearing, note your address and the date of your accident, if you know the date. You must mail your letter of disagreement to the Workers' Compensation Board, [INSURER: Insert current address of Workers' Compensation Board here]. If your claim qualifies and you request it, you may receive an expedited hearing (within 30 days). Your request cannot, by law, affect your employment. If you do not file your letter of disagreement within sixty (60) days from the date of this notice, your hearing will be denied as the appeal time has passed. You may be represented by an attorney if you so choose."

(3) If the worker disagrees with the Notice of Refusal to Close, the worker may request a hearing from the Workers' Compensation Board.

(4) Failure by the insurer to meet the requirements of this rule may result in civil penalties against the insurer pursuant to OAR 436-030-0580.

Stat. Auth.: ORS 656.268, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Stats. Implemented: ORS 656.268, ORS 656.319, ORS 656.726, ORS 656.745, 1995 OR Laws Chapter 332, 1999 OR Laws Chapter 313, and chapter 349, Oregon Laws 2001
Hist: Amended 11/18/94 as WCD Admin. Order 94-059, eff. 1/1/95.
Amended 2/14/96 as WCD Admin. Order 96-052, eff. 2/17/96.
Amended 12/22/97 as WCD Admin. Order 97-065, eff. 1/15/98.
Amended 11/13/00 as WCD Admin. Order 00-058, eff. 01/01/01.
Amended 11/16/01 as WCD Admin. Order 01-060, eff/ 1/1/02.

436-030-0020 Requirements for Claim Closure

(1) The insurer shall issue a Notice of Closure on an accepted disabling claim within 14 days when:

(a) medical information indicates the worker's compensable condition is medically stationary and there is sufficient information to determine the extent of permanent disability;

(b) the accepted injury/condition is no longer the major contributing cause of the worker's combined or consequential condition(s), a major contributing cause denial has been issued, there is sufficient information to determine the extent of permanent disability and the worker is not enrolled and actively engaged in training;

(c) the worker fails to seek medical treatment for 30 days for reasons within the worker's control and the worker has been notified of pending actions in accordance with these rules; or

(d) the worker fails to attend a mandatory closing examination for reasons within the worker's control and the worker has been notified of pending action(s) in accordance with these rules.

(2) For purposes of determining the extent of disability, "sufficient information" requires the following:

(a) a closing medical examination and report when there is a reasonable expectation of loss of use or function, changes in the worker's physical abilities, or permanent impairment attributable to the accepted condition(s) based on evidence in the record or the physician's opinion. The closing medical examination report shall describe in detail all measurements and findings regarding any permanent impairment, residuals or limitations attributable to the accepted condition(s) pursuant to OAR 436-010-280 and OAR 436-035; or

(b) a physician's written statement that clearly indicates there is no permanent impairment, residuals or limitations attributable to the accepted condition(s), and there is no reasonable expectation, based on evidence in the record, of loss of use or function, changes in the worker's physical abilities, or permanent impairment attributable to the accepted condition(s). If the physician indicates there is no impairment, but the record reveals otherwise, a closing examination and report pursuant to (a) of this section is required.

(3) When determining disability, the insurer shall:

(a) apply OAR 436-030-0034 regarding major contributing cause denials, worker's failure to seek treatment, and worker's failure to attend a mandatory examination;

(b) apply OAR 436-030-0035 regarding medically stationary status;

(c) apply OAR 436-030-0036 regarding temporary disability;

(d) apply OAR 436-030-0020, 436-030-0038, and 436-030-0066 regarding permanent partial disability;

(e) apply OAR 436-030-0055 and 436-030-0065 regarding permanent total disability and review of permanent total disability; and

(f) prepare a summary worksheet which contains all the information, and is in the form and format, prescribed by bulletin of the director.

(4) The Notice of Closure shall be effective the date it is mailed to the worker and to the worker's attorney if the worker is represented, regardless of the date on the Notice itself. The

notice shall be in the form and format that the director prescribes by bulletin. The notice shall include, but need not be limited to, the following:

(a) the appropriate dollar value of any permanent disability based on the statutory value for the degree;

(b) the body part(s) awarded disability, coded to the table of body part codes as prescribed by the director, the percentage of loss, and the number of degrees that loss represents;

(c) if there is no permanent disability award for this Notice of Closure, a statement to that effect;

(d) the duration of temporary total and temporary partial disability compensation;

(e) the date the Notice was mailed;

(f) the medically stationary date or the date the claim statutorily qualifies for closure pursuant to OAR 436-030-0035 or 436-030-0034, respectively;

(g) the worker's aggravation rights;

(h) the worker's appeal rights;

(i) the right of the worker to consult with the Ombudsman for Injured Workers;

(j) the rate schedule (dollars per degree) at which permanent disability, if any, will be paid based on date of injury; and

(k) the worker's return to work status.

(5) The Notice of Closure shall be accompanied by the following:

(a) the brochure "Understanding Claim Closure and Your Rights"; and

(b) a cover letter that:

(A) explains why the claim has been closed;

(B) lists and describes enclosed documents; and

(C) notifies the worker about the end of temporary disability benefits, if any, and the anticipated start of permanent disability benefits, if any.

(6) A copy of the Notice of Closure shall be mailed to each of the following persons at the same time, with each copy clearly identifying the intended recipient:

(a) the worker;

(b) the employer;

(c) the director; and

(d) the worker's attorney, if the worker is represented.

(7) The worker's copy of the Notice of Closure shall be mailed by both regular mail and certified mail return receipt requested.

(8) An insurer may use electronically produced Notice of Closure forms if consistent with the form and format prescribed by the director.

(9) An insurer who fails to comply with section (6) of this rule may be assessed a civil penalty pursuant to OAR 436-030-0580.

(10) These rules do not prohibit an insurer from rescinding or correcting its Notice of Closure or Notice of Refusal to Close prior to the expiration of the appeal period for that Notice and prior to receipt of a request for reconsideration of the Notice of Closure by the director. A Notice of Closure shall be corrected or rescinded when:

(a) the insurer has been instructed to correct or rescind a Notice of Closure in the course of a department audit of insurer claim files; or

(b) the director has instructed the insurer to correct a Notice of Closure because it did not contain the information required by section (4) of this rule.

(11) Requests for reconsideration of a corrected Notice of Closure must be received within the statutory appeal period for the Corrected Notice of Closure. Requests for reconsideration of a Corrected Notice of Closure must be limited to those areas changed by the corrected Notice.

(12) Insurers may allow adjustments of benefits awarded to the worker pursuant to the documentation requirements of OAR 436-060-0170 for the following purposes:

(a) To recover payments for permanent disability which were made prematurely;

(b) To recover overpayments for temporary disability; and

(c) To recover overpayments for other than temporary disability such as prepaid travel expenses where travel was not completed, prescription reimbursements or other benefits payable under ORS 656.001 to 656.794.

(13) The insurer may allow overpayments made on a claim with the same insurer to be deducted from compensation to which the worker is entitled but has not yet been paid.

(14) If after claim closure, the worker became enrolled and actively engaged in an approved training program pursuant to OAR 436-120:

(a) Unscheduled permanent disability shall be redetermined by the insurer when the worker has ended training and the worker's condition is medically stationary or the claim otherwise qualifies for closure in accordance with these rules.

(b) If the worker has remained medically stationary throughout training and the closing examination is six months or older, a current medical examination will be required for redetermination unless the worker's attending physician provides a written statement that there has been no change in the worker's accepted condition since the previous closing examination.

(c) No redetermination of permanent disability shall be made for a scheduled condition or a scheduled direct medical sequela if the worker became medically stationary on or after June 7, 1995. The scheduled permanent disability shall remain unchanged from the last award of compensation in that claim.

Stat. Auth.: ORS 656.268, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313

Stats. Implemented: ORS 656.210, ORS 656.212, ORS 656.214, ORS 656.268, ORS 656.270, ORS 656.726, ORS 656.745, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313

Hist: Amended 3/20/80 as WCD Admin. Order 4-1980, eff. 4/1/80.
Amended 12/30/81 as WCD Admin. Order 5-1981, eff. 1/1/82.
Renumbered from OAR 436-65-006, May 1985.
Amended 12/17/87 as WCD Admin. Order 13-1987, eff. 1/1/88.
Amended 6/18/90 as WCD Admin. Order 7-1990, eff. 7/1/90, (temp.).
Amended 12/10/90 as WCD Admin. Order 33-1990, eff. 12/26/90.
Amended 1/17/92 as WCD Admin. Order 5-1992, eff. 2/20/92.
Amended 11/18/94 as WCD Admin. Order 94-059, eff. 1/1/95.
Amended 2/14/96 as WCD Admin. Order 96-052, eff. 2/17/96.
Amended 12/22/97 as WCD Admin. Order 97-065, eff. 1/15/98.
Amended 11/13/00 as WCD Admin. Order 00-058, eff. 01/01/01.

436-030-0034 Claim Closure When the Worker is Not Medically Stationary (Temporary Rule)

(1) A claim may be closed by the insurer when the worker is not medically stationary and when the worker has not sought medical care for a period in excess of 30 days, without the instruction or approval of the attending physician **or authorized nurse practitioner**, for reasons within the worker's control; and

(a) The insurer has notified the worker after the close of that 30-day period, by certified letter, that claim closure may result for failure to seek medical treatment for a period of 30 days. The notification letter shall inform the worker of the worker's responsibility to seek medical treatment in a timely manner, and shall inform the worker of the consequences for failing to do so, including claim closure.

(b) Workers shall be given 14 days from the mailing date to respond to the notification letter before any further action is taken by the insurer towards claim closure.

(2) When a worker fails to seek treatment for a period in excess of 30 days, the date the claim qualifies for closure shall be the latest (most chronologically recent) of the following which occurs prior to the closure:

(a) 30 days from the last treatment provided or authorized by the attending physician **or authorized nurse practitioner**;

(b) the date the attending physician **or authorized nurse practitioner** recommended a follow-up visit and the worker failed to attend for reasons within the worker's control;

(c) the date the worker returns to or is released to regular work if it is after the last examination date; or

(d) the date the insurer receives, prior to the 14th day after the notification letter was sent by certified mail, a written response from the worker regarding the notification letter and failure to treat.

(3) A claim may be closed when the worker is not medically stationary, and the worker fails to attend a mandatory closing examination for reasons within the worker's control, and

(a) The insurer has notified the worker, by certified letter, at least 10 days prior to the mandatory examination, that claim closure may result for failure to attend a mandatory closing examination. The notification letter shall inform the worker of the worker's responsibility to attend the mandatory closing examination and of the consequences for failing to do so.

(b) Workers have 7 days from the date of exam to demonstrate good cause for failing to attend, before any further action is taken by the insurer toward claim closure.

(c) Where the worker fails to attend a mandatory closing examination for reasons within the worker's control, the date the claim qualifies for closure shall be the date of the failed mandatory closing examination.

(d) Where a closing exam has been scheduled between a worker and attending physician directly, insurers may close pursuant to (1) of this section.

(4) A claim may be closed when the worker is not medically stationary, and a major contributing cause denial has been issued.

(a) The major contributing cause denial shall inform the worker that claim closure may result from the issuance of the denial and other information required by these rules.

(b) When a "major contributing cause" denial has been issued, the date the claim qualifies for closure shall be the date the insurer receives sufficient information to determine the extent of any permanent disability pursuant to OAR 436-035-0007(5) and 436-030-0020(2) or the date of the denial, whichever is later.

(5) The attending physician **or authorized nurse practitioner** shall be copied on all notification and denial letters applicable to this rule.

(6) When (1), (2) or (3) occur concurrently, the earliest date the claim qualifies for closure shall be used to close the claim and noted on the notice.

(7) When a suspension order, pursuant to OAR 436-060-0095 and OAR 436-060-0105, has been issued by the Department, the date the claim qualifies for closure is the date of the suspension order.

(8) When a worker fails to seek treatment with an attending physician **or authorized nurse practitioner** as defined by ORS 656.005(12), the claim may be closed pursuant to sections (1) and (2) of this rule. All notices must clearly identify the reason for the closure is because of failure to treat with an attending physician **or authorized nurse practitioner**.

Stat. Auth.: ORS 656.262, ORS 656.268, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Stats. Implemented: ORS 656.268, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Hist: Filed 2/14/96 as WCD Admin. Order 96-052, eff. 2/17/96.
Amended 12/22/97 as WCD Admin. Order 97-065, eff. 1/15/98.
Amended 11/13/00 as WCD Admin. Order 00-058, eff. 01/01/01.
Amended 12/12/03 as WCD Admin. Order 03-063, eff. 1/1/04 (Temp.)

436-030-0035 Determining Medically Stationary Status (Temporary Rule)

(1) A worker's compensable condition shall be determined to be medically stationary when the attending physician**, authorized nurse practitioner,** or a preponderance of medical opinion declares the worker either "medically stationary," "medically stable," or uses other language meaning the same thing.

(2) When there is a conflict in the medical opinions as to whether or not a worker's compensable condition is medically stationary, more weight shall be given to medical opinions that are based on the most accurate history, on the most objective findings, on sound medical principles, and clear and concise reasoning.

(3) Where there is not a preponderance of medical opinion stating a worker's compensable condition is or is not medically stationary, deference shall generally be given to the opinion of the attending physician. However, in cases where expert analysis is important, deference shall be given to the opinion of the physician with the greatest expertise in, and understanding of, the worker's condition.

(4) When there is a conflict as to the date upon which a worker's compensable condition became medically stationary, the following conditions shall govern the determination of the medically stationary date. The date a worker is medically stationary is the earliest date that a preponderance is established pursuant to sections (1) and (2) of this rule. The date of the examination, not the date of the report, controls the medically stationary date.

(5) The insurer shall request the attending physician's concurrence or comments when the attending physician arranges, or refers the worker for, a closing examination with another physician to determine the extent of impairment, or when the insurer refers a worker for an insurer medical examination. A concurrence with another physician's report is an agreement in every particular, including the medically stationary impression and date, unless the physician expressly states to the contrary and explains the reasons for disagreement. Concurrence shall not be presumed in the absence of the attending physician's response.

(6) A worker is medically stationary on the date of the examination when so specified by a physician. When a specific date is not indicated, a worker is presumed medically stationary on the date of the last examination, prior to the date of the medically stationary opinion. Physician projected medically stationary dates cannot be used to establish a medically stationary date.

(7) If the worker is incarcerated or confined in some other manner and unable to freely seek medical treatment, the insurer shall arrange for medical examinations to be completed at the facility where the worker is located or at some other location accessible to the worker.

Stat. Auth.: ORS 656.268, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Stats. Implemented: ORS 656.268, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Hist: Filed 6/18/90 as WCD Admin. Order 7-1990, eff. 7/1/90 (temp.).
Amended 12/10/90 as WCD Admin. Order 33-1990, eff. 12/26/90.
Amended 1/17/92 as WCD Admin. Order 5-1992, eff. 2/20/92.
Amended 11/18/94 as WCD Admin. Order 94-059, eff. 1/1/95.
Amended 2/14/96 as WCD Admin. Order 96-052, eff. 2/17/96.
Amended 12/22/97 as WCD Admin. Order 97-065, eff. 1/15/98.
Amended 11/13/00 as WCD Admin. Order 00-058, eff. 01/01/01.
Amended 12/12/03 as WCD Admin. Order 03-063, eff. 1/1/04 (Temp.)

436-030-0036 Determining Temporary Disability

(1) Temporary disability shall be determined pursuant to ORS Chapter 656, OAR 436-060 and this rule, less time worked. Beginning and ending dates of each authorized period of temporary total disability and temporary partial disability shall be noted on the Notice of Closure, as well as the statements "Less time worked" and "Temporary disability was determined in accordance with the law."

(2) Except as provided for in section (3) of this rule and ORS 656.268(9), a worker is not entitled to any award for temporary disability for any period of time in which the worker is medically stationary.

(3) Awards of temporary disability shall include the day the worker is medically stationary or the date the claim otherwise qualifies for closure, unless temporary disability is not authorized for another reason at that time.

Stat. Auth.: ORS 656.268, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Stats. Implemented: ORS 656.005, ORS 656.160, ORS 656.210, ORS 656.212, ORS 656.236, ORS 656.245, ORS 656. 262, ORS 656.268, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Hist: Filed 6/18/90 as WCD Admin. Order 7-1990, eff. 7/1/90 (temp.).
Amended 12/10/90 as WCD Admin. Order 33-1990, eff. 12/26/90.
Amended 1/17/92 as WCD Admin. Order 5-1992, eff. 2/20/92.
Amended 11/18/94 as WCD Admin. Order 94-059, eff. 1/1/95.
Amended 2/14/96 as WCD Admin. Order 96-052, eff. 2/17/96.
Amended 12/22/97 as WCD Admin. Order 97-065, eff. 1/15/98.
Amended 11/13/00 as WCD Admin. Order 00-058, eff. 01/01/01.

436-030-0038 Permanent Partial Disability

The standards developed pursuant to ORS 656.726(4) and contained in OAR 436-035 shall be applied when evaluating a worker's permanent partial disability.

Stat. Auth.: ORS 656.268, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Stats. Implemented: ORS 656.214, ORS 656.268, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Hist: Filed 11/18/94 as WCD Admin. Order 94-059, eff. 1/1/95.
Amended 2/14/96 as WCD Admin. Order 96-052, eff. 2/17/96.
Amended 12/22/97 as WCD Admin. Order 97-065, eff. 1/15/98.
Amended 11/13/00 as WCD Admin. Order 00-058, eff. 01/01/01.

436-030-0045 Disabling/Nondisabling Reporting Requirements and Change in Status Determinations

(1) When the insurer determines that a nondisabling injury has become disabling, the insurer shall submit to the director an "Insurer's Report," Form 440-1502, indicating a change in status within 21 days from the date of the determination of classification. A notice of change of status to disabling and/or a Notice of Classification in accordance with subsection (2) of this rule shall be sent to the director, the worker, and to the worker's attorney if the worker is represented, explaining the change in status. If the claim qualifies for closure, the insurer shall close the claim in accordance with ORS 656.268(5).

(2) When a claim has been classified as nondisabling for less than one year after the date of acceptance, a worker who believes the claim was or has become disabling may request reclassification by the insurer.

(a) The worker may seek reclassification by submitting a written request for review to the insurer.

(b) Within 14 days of the worker's request, the insurer shall review the claim and notify the worker of the decision by mailing a Notice of Classification to the worker and the worker's attorney if the worker is represented.

(c) The insurer's Notice of Classification must include the following statement, in bold print:

"If you disagree with this Notice of Classification, you must appeal by contacting the Workers' Compensation Division within sixty (60) days of the mailing of this notice, or you will lose your right to appeal. The address and

telephone number of the Workers' Compensation Division are: [INSURER: Insert current address and telephone number of the Workers' Compensation Division, Appellate Review Unit, here.]."

(d) A worker dissatisfied with the decision in the Notice of Classification may appeal to the director within 60 days of the mailing date of the Notice.

(e) The appeal must be accompanied by copies of the worker's request for reclassification and the insurer's Notice of Classification in response.

(3) When a claim has been classified as nondisabling for at least one year after the date of acceptance, a worker who believes the claim was or has become disabling may submit a claim for aggravation.

(4) Failure of the insurer or self-insured employer to respond timely to a request may result in penalties pursuant to OAR 436-030-0580.

(5) A claim is disabling if any of the following conditions apply:

(a) temporary disability is due and payable;

(b) the worker is medically stationary within one year of the date of injury and the worker will be entitled to an award of permanent disability; or

(c) the worker is not medically stationary, but there is a reasonable expectation that the worker will be entitled to an award of permanent disability when the worker does become medically stationary.

(6) Examples of when temporary disability is due and payable as in subsection (5)(a) of this rule include:

(a) when the worker is released to and doing a modified job at reduced wages from the job at injury; or

(b) when the modified job the worker is released to and/or has been doing for the same wage as the job at injury no longer exists or a job offer is withdrawn for reasons including termination of temporary employment, layoff, or plant closure.

(7) For claims that are reclassified, the aggravation rights begin with the first valid closure. For claims that are not reclassified, the aggravation rights continue to run from the date of injury.

Stat. Auth.: ORS 656.268, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Stats. Implemented: ORS 656.210, ORS 656.212, ORS 656.214, ORS 656.262, ORS 656.268, ORS 656.273, ORS 656.277, ORS 656.745, ORS 656.726, 1995 OR Laws Chapter 332, 1999 OR Laws Chapter 313, and chapter 350, Oregon Laws 2001
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Amended 1/17/92 as WCD Admin. Order 5-1992, eff. 2/20/92.
Amended as WCD Admin. Order 6-1991, eff. 9/01/91 (temp.).
Amended 1/17/92 as WCD Admin. Order 5-1992, eff. 2/20/92.
Amended 11/18/94 as WCD Admin. Order 94-059, eff. 1/1/95.
Amended 2/14/96 as WCD Admin. Order 96-052, eff. 2/17/96.
Amended 12/22/97 as WCD Admin. Order 97-065, eff. 1/15/98.
Amended 11/13/00 as WCD Admin. Order 00-058, eff. 01/01/01.
Amended 11/16/01 as WCD Admin. Order 01-060, eff. 1/1/02.

436-030-0055 Determining Permanent Total Disability

(1) A worker is permanently and totally disabled if permanently incapacitated from regularly performing work in a suitable and gainful occupation. For the purpose of this rule and OAR 436-030-0065:

(a) "Incapacitated from regularly performing work" means that the worker does not have the necessary physical and mental capacity and the work skills to perform work.

(b) "Suitable occupation" means those occupations that exist in a theoretically normal labor market, within a reasonable geographic distance, for which a worker has the training or experience, and abilities to realistically perform the job duties, with or without rehabilitation.

(c) "Gainful occupation" means those types of general occupations that pay wages equivalent to, or greater than, the state mandated hourly minimum wage. Those types of general occupations that pay on a commission or piece-work basis, as opposed to a wage or salary basis, may not be "gainful employment" depending upon the facts of the individual situation.

(d) "Work skills" means those skills acquired through experience or training that are necessary to gain and adequately perform skilled, semi-skilled or unskilled occupations. Unskilled types of general occupations require no specific skills that would be acquired through experience or training to be able to gain and adequately perform the unskilled occupation. Every worker has the necessary work skills to gain and adequately perform unskilled types of general occupations with a reasonable period of orientation.

(e) A "reasonable geographic distance" means either of the following unless the worker is medically precluded from commuting:

(A) The area within a 50-mile radius of claimant's place of residence at the time of:

(i) the original injury;

(ii) claimant's last gainful employment;

(iii) insurer's determination; or

(iv) reconsideration by the director.

(B) The area in which a reasonable and prudent uninjured and unemployed person, possessing the same physical capacities, mental capacities, work skills and financial obligations as claimant does at the time of his rating of disability, would go to seek work.

(f) "Types of general occupations" means groups of jobs which exist in a theoretically normal labor market, and share similar vocational purpose, skills, duties, physical circumstances, goals, and mental aptitudes. It does not refer to any specific job or place of employment for which a job or job opening currently exists.

(g) "Theoretically normal labor market" means a labor market that is undistorted by such factors as local business booms and slumps or extremes of the normal cycle of economic activity or technology trends in the long-term labor market.

(2) Disability which existed before the injury shall be included in determining permanent total disability.

(3) In order for a worker to be determined permanently and totally disabled, a worker must:

(a) prove permanent and total disability;

(b) make reasonable effort to find work at a suitable and gainful occupation or actively participate in a vocational assistance program, unless medical or vocational findings, including the residuals of the compensable injury, make such efforts futile; and

(c) not have withdrawn from the workforce during the period for which benefits are being sought and be willing to seek regular and gainful employment.

(4) A worker retaining some residual functional capacity and not medically permanently and totally disabled must prove:

(a) the worker has not withdrawn from the workforce for the period for which benefits are being sought;

(b) inability to regularly perform work at a gainful and suitable occupation; and

(c) the futility of seeking work if claimant has not made reasonable work search efforts by competent written vocational testimony. Competent written vocational testimony is that which is available at the time of closure or reconsideration and comes from the opinions of persons fully certified by the State of Oregon to render vocational services. It does not include opinions by claimants, physicians or others not certified.

(5) Notices of Closure and Orders on Reconsideration which grant permanent total disability shall notify the worker that:

(a) The claim shall be reexamined by the insurer at least once every two years, and may be reviewed more often if the insurer chooses.

(b) The insurer may require the worker to provide a sworn statement of the worker's gross annual income for the preceding year. The worker shall make the statement on a form provided by the insurer in accordance with the requirements under section (6) of this rule.

(6) If asked to provide a statement under subsection (5)(b) of this rule, the worker is allowed 30 days to respond. Such statements are subject to the following:

(a) If the worker fails to provide the requested statement, the director may suspend the worker's permanent total disability benefits. Benefits shall be resumed when the statement is provided. Benefits not paid for the period the statement was withheld shall be recoverable for no more than one year from the date of suspension.

(b) If the worker provides a report which is false, incomplete or inaccurate, the insurer shall investigate. The investigation may result in suspension of permanent total disability benefits.

Stat. Auth.: ORS 656.268, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Stats. Implemented: ORS 656.005, ORS 656.206, ORS 656.268, ORS 656.726, 1995 OR Laws Chapter 332, 1999 OR Laws Chapter 313, and chapter 865, Oregon Laws 2001
Hist: Filed 12/17/87 as WCD Admin. Order 13-1987, eff. 1/1/88.
Amended 12/10/90 as WCD Admin. Order 33-1990, eff. 12/26/90.
Amended 11/18/94 as WCD Admin. Order 94-059, eff. 1/1/95.
Amended 2/14/96 as WCD Admin. Order 96-052, eff. 2/17/96.

Amended 12/22/97 as WCD Admin. Order 97-065, eff. 1/15/98.
Amended 11/13/00 as WCD Admin. Order 00-058, eff. 01/01/01.
Amended 11/16/01 as WCD Admin. Order 01-060, eff. 1/1/02.

436-030-0065 Review of Permanent Total Disability Awards

(1) The insurer shall reexamine each permanent total disability claim every two years or when requested to do so by the director to see if the worker is capable of regularly performing a suitable and gainful occupation. Reexamination of a PTD claim may be performed by the insurer whenever the insurer considers it necessary. The insurer shall notify the worker and the worker's attorney if the worker is represented whenever the insurer intends to reexamine the worker's PTD status. Once an insurer has obtained the statutory three medical examinations for an open period and wants an additional medical examination on a PTD claim more frequently than every two years, the insurer is required to notify and request authorization from the director for the additional medical examination. Workers who fail to cooperate with the reexamination may have benefits suspended until such time as the worker cooperates with the reexamination.

(2) Any decision by the insurer to reduce permanent total disability shall be communicated in writing to the worker, and to the worker's attorney if the worker is represented, and accompanied by documentation supporting the insurer's decision. That documentation shall include: medical reports, including sufficient information necessary to determine the extent of permanent partial disability, vocational and/or investigation reports (including visual records, if available) which demonstrate the worker's ability to regularly perform a suitable and gainful occupation, and all other applicable evidence.

(3) An award of permanent total disability for scheduled injuries before July 1, 1975, shall be considered for reduction only when the insurer has evidence that the medical condition has improved.

(4) Except for section (3) of this rule, an award of permanent total disability shall be considered for reduction only when the insurer has evidence that the worker is regularly working at a suitable and gainful occupation or is capable of doing so.

(5) When the insurer reduces a permanent total disability claim, the insurer shall, based upon sufficient information to determine the extent of permanent partial disability, issue a Notice of Closure which reduces the permanent total disability and awards permanent partial disability, if any.

(6) Any party to the claim who does not agree with the Notice of Closure may, within the statutory period, appeal the order pursuant to OAR 436-030-0007(1)(a).

Stat. Auth.: ORS 656.268, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Stats. Implemented: ORS 656.206, ORS 656.214, ORS 656.268, ORS 656.283, ORS 656.319, ORS 656.325, ORS 656.331, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
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Amended 1/17/92 as WCD Admin Order 5-1992, eff. 2/20/92.
Amended 11/18/94 as WCD Admin. Order 94-059, eff. 1/1/95.
Amended 2/14/96 as WCD Admin. Order 96-052, eff. 2/17/96.
Amended 12/22/97 as WCD Admin. Order 97-065, eff. 1/15/98.
Amended 11/13/00 as WCD Admin. Order 00-058, eff. 01/01/01.

436-030-0066 Review of Prior Unscheduled Permanent Partial Disability Awards

(1) An award for unscheduled permanent partial disability is subject to periodic examination and adjustment pursuant to ORS 656.268 and 656.325 and in accordance with the following conditions:

(a) Requests for review and adjustment shall be made in writing to the Workers' Compensation Division.

(b) The party requesting review of permanent disability shall send a copy of the request to all other affected parties at the time the request is made. The worker may submit any information in rebuttal.

(c) All pertinent medical, vocational, and other applicable evidence shall be submitted with the request, including sufficient information to determine the extent of permanent partial disability. The request must state the basis for the request and provide supporting evidence. If the director finds that the worker has failed to accept treatment as provided in this rule, the director shall make any necessary adjustments pursuant to OAR 436-035-0270 through 436-035-0450.

(d) The basis for the request for adjustment in the disability award shall be failure of the worker to make a reasonable effort to reduce the disability and be so stated in the request for adjustment.

Stat. Auth.: ORS 656.268, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Stats. Implemented: ORS 656.325, ORS 656.331, ORS 656.268, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Hist: Filed 6/18/90 as WCD Admin. Order 7-1990, eff. 7/1/90 (temp.).
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Amended 2/14/96 as WCD Admin. Order 96-052, eff. 2/17/96.
Amended 12/22/97 as WCD Admin. Order 97-065, eff. 1/15/98.
Amended 11/13/00 as WCD Admin. Order 00-058, eff. 01/01/01.

436-030-0115 Reconsideration of Notices of Closure (Temporary Rule)

(1) A worker **or insurer** may request reconsideration of a Notice of Closure by mailing or delivering the request to the director within the statutory appeal period as defined in OAR 436-030-0005[(5)]**(6)** and [(9)] **(11)**. The reconsideration proceeding begins [upon receipt of the request] **pursuant to OAR 436-030-0145(4).**

(2) For the purpose of these rules, "reconsideration proceeding" means the procedure established to reconsider a Notice of Closure and does not include personal appearances by any of the parties to the claim or their representatives, unless requested by the director. All information to correct or clarify the record and any medical evidence regarding the worker's condition as of the time of claim closure that should have been but was not submitted by the attending physician **or authorized nurse practitioner** at the time of claim closure and all supporting documentation must be presented during the reconsideration proceeding. When the reconsideration proceeding is postponed because the worker's condition is not medically stationary under OAR 436-030-0165(9), medical evidence submitted may address the worker's condition after claim closure as long as the evidence satisfies the conditions of OAR 436-030-0145[(3)]**(5)**.

(3) All parties have an opportunity to submit documents to the record regarding the worker's status at the time of claim closure. Other factual information and written argument may be submitted for incorporation into the record pursuant to ORS 656.268(6) within the time frames outlined in OAR 436-030-0145. Such information may include, but is not limited to, responses to the documentation and written arguments, written statements and sworn affidavits from the parties.

(4) The worker may submit a deposition to the reconsideration record subject to ORS 656.268(6) and the following:

(a) The deposition must be limited to the testimony and cross-examination of a worker about the worker's condition at the time of claim closure.

(b) The deposition must be arranged by the worker and held during the reconsideration proceeding time frame unless a good cause reason is established. If a good cause reason is established, the time frame for holding the deposition may be extended but shall not extend beyond 30 days from the date of the Order on Reconsideration. The deposition must be held at a time and place that permits the insurer or self-insured employer the opportunity to cross-examine the worker.

(c) The insurer or self-insured employer must, within 30 days of receiving a bill for the deposition, pay the fee of the court reporter and the costs for the original transcript and its copies. An original transcript of the deposition shall be sent to the department and each party shall be sent a copy of the transcript.

(d) If the transcript is not completed and presented to the department prior to the deadline for issuing an Order on Reconsideration, the Order on Reconsideration may not be postponed to receive a deposition under this rule and the order will be issued based on the evidence in the record. However, the transcript may be received as evidence at a hearing for an appeal of the Order on Reconsideration.

(5) Only one reconsideration proceeding may be completed on each Notice of Closure and the director will do a complete review of that notice. Once the reconsideration proceeding is initiated**,** [by the worker, the insurer must raise] any additional issues **must be raised and further evidence submitted** [and submit any evidence for review by the director] within the time frames allowed for processing the reconsideration request. When the director requires additional information to complete the record, the reconsideration proceeding may be postponed pursuant to ORS 656.268(6).

Stat. Auth.: ORS 656.726, 1999 OR Laws Chapter 313, and section 12 (6)(a)(A), chapter 865, Oregon Laws 2001
Stats. Implemented: ORS 656.268, 1999 OR Laws Chapter 313, and section 12 (6)(a)(A), chapter 865, Oregon Laws 2001
Hist: Filed 6/30/78 as WCD Admin. Order 8-1978, eff. 7/10/78.
Amended 3/20/80 as WCD Admin. Order 4-1980, eff. 4/1/80.
Renumbered from OAR 436-65-100, May 1985.
Amended 12/17/87 as WCD Admin. Order 13-1987, eff. 1/1/88.
Amended 6/18/90 as WCD Admin. Order 7-1990, eff. 7/1/90, (temp.).
Amended 12/10/90 as WCD Admin. Order 33-1990, eff. 12/26/90.
Amended 8/20/91 as WCD Admin. Order 6-1991, eff. 9/01/91 (temp.).
Amended 1/17/92 as WCD Admin. Order 5-1992, eff. 2/20/92
Amended and renumbered from OAR 436-030-0050, 11/18/94 as WCD Admin. Order 94-059, eff. 1/1/95.
Amended 8/23/95 as WCD Admin. Order 95-059, eff. 8/23/95 (temp).
Amended 2/14/96 as WCD Admin. Order 96-052, eff. 2/17/96.
Amended 12/22/97 as WCD Admin. Order 97-065, eff. 1/15/98.
Amended 11/13/00 as WCD Admin. Order 00-058, eff. 01/01/01.
Amended 11/16/01 as WCD Admin. Order 01-060, eff. 1/1/02.

Amended 12/12/03 as WCD Admin. Order 03-063, eff. 1/1/04 (Temp.)

436-030-0125 Reconsideration Form and Format (Temporary Rule)

(1) A request for reconsideration may be in the form and format the director provides by bulletin. A reconsideration request should include at least the following:

(a) worker's name;

(b) date of injury;

(c) date of the closure being appealed;

(d) any specific issues [the worker wishes to raise] regarding the Notice of Closure;

(e) the name of the worker's attorney;

(f) the name of the insurer's attorney;

(g) any special language needs;

(h) whether there is disagreement with the specific impairment findings used to determine permanent disability at the time of claim closure;

(i) any information and documentation deemed necessary to correct or clarify any part of the claim record [the worker] believe[s]**d** to be erroneous; and

(j) any medical evidence that should have been but was not submitted at the time of the claim closure including clarification or correction of the medical record based on the examination(s) at, before, or pertaining to claim closure**.**

(2) **Upon receipt of a request for reconsideration, the director will send an acknowledgement letter to the worker and insurer with the date the request was received and when the reconsideration proceeding will begin under OAR 436-030-0145(4).** [The reconsideration proceeding begins with the director's receipt of the request for reconsideration**.** The director will send a letter of acknowledgment to all parties notifying them a request has been received and the proceeding has begun.]

Stat. Auth.: ORS 656.726, and 1999 OR Laws Chapter 313
Stats. Implemented: ORS 656.268, and 1999 OR Laws Chapter 313
Hist: Filed 6/18/90 as WCD Admin. Order 7-1990, eff. 7/1/90, (temp.).
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Amended 8/20/91 as WCD Admin. Order 6-1991, eff. 9/01/91 (temp.).
Amended 1/17/92 as WCD Admin. Order 5-1992, eff. 2/20/92
Amended and renumbered from OAR 436-030-0050, 11/18/94 as WCD Admin. Order 94-059, eff. 1/1/95.
Amended 2/14/96 as WCD Admin. Order 96-052, eff. 2/17/96.
Amended 12/22/97 as WCD Admin. Order 97-065, eff. 1/15/98.
Amended 11/13/00 as WCD Admin. Order 00-058, eff. 01/01/01.
Amended 12/12/03 as WCD Admin. Order 03-063, eff. 1/1/04 (Temp.)

436-030-0135 Reconsideration Procedure (Temporary Rule)

(1) When requesting reconsideration of a Notice of Closure,

(a) A worker may ask the director for assistance in completing the request for reconsideration. The director will notify the worker the proceeding may result in an increase or a decrease in entitlement to benefits.

(b) [After receipt of the request] **Once the reconsideration proceeding is initiated**, the director will notify all parties of the **reconsideration start** date [of the request] and of the timelines

for submitting additional information to be included in the record. Th[e]**is** acknowledgment letter shall include a certification that the letter has been mailed to the listed parties. The acknowledgment letter will notify the parties of the last date an Order on Reconsideration can be issued or the proceeding postponed, and the status of the request if the director fails to issue an Order on Reconsideration or postponement pursuant to the time limits specified in ORS 656.268(6).

(c) The request for reconsideration and all other information submitted to the director by any party during the reconsideration process must be copied to all interested parties. Failure to comply with this requirement will result in the information not being included as part of the record on reconsideration. The director may assist a worker in meeting this requirement.

(d) When a party does not discover until after the reconsideration order has issued that additional documents were not provided by the opposing party in accordance with this rule, the Order on Reconsideration may be abated and withdrawn to give the party an opportunity to respond to the new information.

(2) The insurer shall furnish within 10 working days of the beginning of the reconsideration proceeding all documents pertaining to the claim that have not been previously submitted to the director and the worker or the worker's representative. The insurer may be subject to penalties under OAR 436-030-0175 for failure to provide the claim documents in a timely manner.

(3) When a worker has received a lump sum payment, pursuant to ORS 656.230, of an award granted by a Notice of Closure, the director shall not consider the adequacy of that award in a reconsideration proceeding.

(4) The director will issue an order rescinding the Notice of Closure when the director finds, upon reconsideration:

(a) the claim was closed prematurely because the worker's accepted condition was not medically stationary and the claim did not qualify for closure pursuant to ORS 656.268(1)(a); or

(b) the claim was not closed in accordance with the requirements of ORS 656.268(1)(b) and (c) and OAR 436-030-0020.

(5) When a new condition is accepted after a prior claim closure, and the newly accepted condition is subsequently closed, the director and the parties may mutually agree to consolidate requests for review of the closures into one reconsideration proceeding, provided the director has jurisdiction and neither of the closures have become final by operation of law.

(6) The reconsideration order shall address issues raised by the parties and shall address compensation as follows:

(a) Compensation reduced in a reconsideration order shall be "in lieu of" any compensation awarded by the Notice of Closure.

(b) Additional compensation awarded in a reconsideration order shall be "in addition to" any compensation awarded by the Notice of Closure. The reconsideration order may award total compensation due less any compensation previously ordered.

(c) Any compensation affirmed in a reconsideration order shall be so stated.

(d) The dollar rate per degree of disability shall be listed.

(7) A copy of the reconsideration order will be sent to the worker, employer(s), insurer(s), worker's attorney if the worker is represented, and the insurer's attorney(s), if the insurer is represented.

Stat. Auth.: ORS 656.726, and 1999 OR Laws Chapter 313
Stats. Implemented: ORS 656.268(6), and 1999 OR Laws Chapter 313
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Amended 12/17/87 as WCD Admin. Order 13-1987, eff. 1/1/88.
Amended 6/18/90 as WCD Admin. Order 7-1990, eff. 7/1/90, (temp.).
Amended 12/10/90 as WCD Admin. Order 33-1990, eff. 12/26/90.
Amended 8/20/91 as WCD Admin. Order 6-1991, eff. 9/01/91 (temp.).
Amended 1/17/92 as WCD Admin. Order 5-1992, eff. 2/20/92
Amended and renumbered from OAR 436-030-0050, 11/18/94 as WCD Admin. Order 94-059, eff. 1/1/95.
Amended 2/14/96 as WCD Admin. Order 96-052, eff. 2/17/96.
Amended 12/22/97 as WCD Admin. Order 97-065, eff. 1/15/98.
Amended 11/13/00 as WCD Admin. Order 00-058, eff. 01/01/01.
Amended 12/12/03 as WCD Admin. Order 03-063, eff. 1/1/04 (Temp.)

436-030-0145 Reconsideration Time Frames and Postponements (Temporary Rule)

(1) For claims with a medically stationary date prior to June 7, 1995, the time required to complete the reconsideration proceeding pursuant to this rule shall not be included in the 180 days from the mailing date of the Notice of Closure to request a hearing.

(a) The 180-day time limit will be tolled upon receipt of the request for reconsideration from the mailing date of the request for reconsideration until the reconsideration request is either dismissed or an Order on Reconsideration is issued.

(b) The 180-day time limit will not be tolled when a request for reconsideration is withdrawn pursuant to OAR 436-030-0185.

(2) For claims with a medically stationary date, or date the claim statutorily qualifies for closure, on or after June 7, 1995, a **worker's** request for reconsideration shall be mailed within 60 days of the mailing date of the Notice of Closure. A request for hearing must be made within 30 days of the mailing date of the Order on Reconsideration.

(3) For claims closed on or after January 1, 2004, the insurer's request for reconsideration is limited to the findings used to rate impairment and must be mailed within seven days of the mailing date of the Notice of Closure.

(4) The reconsideration proceeding begins upon;

(a) the director's receipt of the worker's request for reconsideration, if the insurer has not previously requested reconsideration consistent with section (3) of this rule; or

(b) the 61st day after the closure of the claim, if the insurer has requested reconsideration consistent with section (3) of this rule; unless the director receives, within the appeal time frames in sections (1) and (2) of this rule, a request for reconsideration or a statement by the worker instructing the director to start the reconsideration proceeding.

[(3)]**(5)** Ten working days after the date the reconsideration proceeding begins, the reconsideration request and all other appropriate information submitted by the parties shall

become part of the record used in the reconsideration proceeding. The insurer may be subject to penalties under OAR 436-030-0175 for failure to provide the claim documents within ten working days without good cause.

(a) Evidence received or issues raised subsequent to the tenth working day deadline will be considered in the reconsideration proceeding to the extent practicable.

(b) Upon review of the record the director may request, in accordance with ORS 656.268(6), any additional information deemed necessary for the reconsideration and set appropriate time frames for response.

(c) When the reconsideration proceeding has been postponed in accordance with OAR 436-030-0165(9) because the worker's condition is not medically stationary, interim medical information that may be helpful to the director and the medical arbiter in assessing and describing the impairment due to the compensable condition(s) may be submitted at the time the parties notify the director that the medical arbiter can be scheduled. The director will determine whether the interim medical information is consistent with the provisions of ORS 656.268(6) and (7).

(d) Except as provided in section [(4)]**(6)** of this rule, the director will either mail an Order on Reconsideration within 18 working days from the date the reconsideration proceeding begins or notify the parties that the reconsideration proceeding is postponed for not more than 60 additional days in accordance with the provisions of ORS 656.268(6).

[(4)]**(6)** Pursuant to ORS 656.268(7), when the director provides notice the worker failed to attend the medical arbiter examination without good cause or failed to cooperate with the arbiter examination and suspends benefits, the reconsideration proceeding will be postponed for up to 60 additional days from the date the director determines and provides notice, to allow completion of the arbiter process.

[(5)]**(7)** Pursuant to ORS 656.726(4)(f), the reconsideration proceeding may be stayed to determine whether temporary rules amending "the standards" are required to properly rate the worker's impairment. The director will notify the parties that the proceeding has been stayed for this purpose.

[(6)]**(8)** When a Claim Disposition Agreement (CDA) is filed with the Workers' Compensation Board, the reconsideration proceeding is stayed until the CDA is either approved by a final order of the Board or the Board sets aside the disposition. The director will notify the parties that the proceeding has been stayed for this purpose.

[(7)]**(9)** If the director fails to mail an Order on Reconsideration or a Notice of Postponement pursuant to the time frames specified in ORS 656.268(6), the reconsideration request is automatically deemed denied. The parties may immediately thereafter proceed as though the director had issued an Order on Reconsideration affirming the Notice of Closure. In accordance with section (1) of this rule, the counting of the 180-day time limit for requesting a hearing under former ORS 656.268(6)(b) shall resume on the date after the director should have issued an Order on Reconsideration.

[(8)]**(10)** Notwithstanding any other provision regarding the reconsideration proceeding, the director may extend nonstatutory time frames to allow the parties sufficient time to present evidence and address their issues and concerns.

Stat. Auth.: ORS 656.726, and 1999 OR Laws Chapter 313
Stats. Implemented: ORS 656.268 **(ch. 429, OL 2003)**, 656.726, and 1999 OR Laws Chapter 313
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Amended 6/18/90 as WCD Admin. Order 7-1990, eff. 7/1/90, (temp.).
Amended 12/10/90 as WCD Admin. Order 33-1990, eff. 12/26/90.
Amended 8/20/91 as WCD Admin. Order 6-1991, eff. 9/01/91 (temp.).
Amended 1/17/92 as WCD Admin. Order 5-1992, eff. 2/20/92
Amended and renumbered from OAR 436-030-0050, 11/18/94 as WCD Admin. Order 94-059, eff. 1/1/95.
Amended 2/14/96 as WCD Admin. Order 96-052, eff. 2/17/96.
Amended 12/22/97 as WCD Admin. Order 97-065, eff. 1/15/98.
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Amended 12/12/03 as WCD Admin. Order 03-063, eff. 1/1/04 (Temp.)

436-030-0155 Reconsideration Record

(1) The record for the reconsideration proceeding shall include all documents and other material relied upon in issuing the Order on Reconsideration as well as any additional material submitted by the parties, but not considered in the reconsideration proceeding. The record shall be maintained in the Workers' Compensation Division's claim file and shall consist of all documents and material received and date stamped by the director prior to the issuance of the Order on Reconsideration.

(2) Except as noted below, the medical record submitted by the director for arbiter review will consist of all medical documents and medical material produced by the claim under reconsideration, provided the information is allowable under ORS 656.268.

(a) The director will not submit non-medical information, handwritten nursing notes, or handwritten physical therapy treatment notes to the arbiter unless:

(A) a party requests the director to submit those specific materials to the arbiter;

(B) the party identifies and provides the director with specific dates of those materials requested to be submitted; and

(C) the materials otherwise meet the requirements of this rule.

(b) All medical documents and other medical materials not submitted by the director to the medical arbiter will be stamped in the lower right hand corner "not sent to arbiter".

(3) When reconsideration is requested, the insurer is required to provide the director and the other party(ies) with a copy of all documents contained in the record at claim closure. Any information the director adds to the record, such as the medical arbiter report, will be copied to all parties. Responses of the parties to the medical arbiter report shall be included in the record if received prior to completion of the reconsideration proceeding.

(4) Since all parties will have a complete copy of the record at reconsideration prior to the issuance of a reconsideration order, additional certified copies of the record will be made at a charge to the requesting party.

(5) When a hearing is scheduled following the appeal of a reconsideration order and the parties or the administrative law judge requests the director to provide the record at reconsideration, either the original claim file or a certified copy of the claim file will be delivered to the Hearings Division two days prior to the hearing. The original claim file shall be returned to the director within two days after the hearing.

Stat. Auth.: ORS 656.726, and 1999 OR Laws Chapter 313
Stats. Implemented: ORS 656.268(6), and 1999 OR Laws Chapter 313
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Amended 12/17/87 as WCD Admin. Order 13-1987, eff. 1/1/88.
Amended 6/18/90 as WCD Admin. Order 7-1990, eff. 7/1/90, (temp.).
Amended 12/10/90 as WCD Admin. Order 33-1990, eff. 12/26/90.
Amended 8/20/91 as WCD Admin. Order 6-1991, eff. 9/01/91 (temp.).
Amended 1/17/92 as WCD Admin. Order 5-1992, eff. 2/20/92
Amended and renumbered from OAR 436-030-0050, 11/18/94 as WCD Admin. Order 94-059, eff. 1/1/95.
Amended 2/14/96 as WCD Admin. Order 96-052, eff. 2/17/96.
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Amended 11/13/00 as WCD Admin. Order 00-058, eff. 01/01/01.

436-030-0165 Medical Arbiter Examination Process (Temporary Rule)

(1) When a worker **or insurer** requests reconsideration and disagrees with the impairment findings used in rating the worker's disability at the time of claim closure, the director shall refer the claim to a medical arbiter or panel of arbiters.

(a) When the director determines that sufficient medical information is not available to rate disability, the director may refer the claim to a medical arbiter or panel of arbiters.

(b) The director will notify the parties within 18 working days from the date the reconsideration proceeding begins that a medical arbiter review will be scheduled.

(c) The costs related to record review, examinations, tests and reports of the medical arbiter shall be paid pursuant to OAR 436-009-0015, 436-009-0040, and 436-009-0070.

(2) The director shall select a medical arbiter physician or a panel of physicians in accordance with ORS 656.268(7)(d). Arbiters or panel members shall not include any medical service providers whose examination or treatment is the subject of the review.

(a) Any party that objects to a physician on the basis that the physician is not qualified under ORS 656.005(12)(b) must notify the director prior to the examination of the specific objection. If the director determines that the physician is not qualified to be a medical arbiter on the specific case, an examination will be scheduled with a different physician. All costs related to the completion of the medical arbiter process in this rule shall be paid by the insurer.

(b) When the worker resides outside the state of Oregon, a medical arbiter examination may be scheduled out-of-state with a physician who is licensed within that state to provide medical services in the same manner as required by ORS 656.268(7).

(3) The medical arbiter or panel of medical arbiters shall perform a record review or examine the worker as requested by the director and perform such tests as may be reasonable and necessary to establish the worker's impairment. The director shall provide notice of the examination of the worker to all parties.

(a) Any issues the parties wish the medical arbiter or panel of medical arbiters to address must be submitted to the director within 10 working days after the date the reconsideration proceeding begins. Issues shall not be submitted to the medical arbiter or panel of medical arbiters directly by the parties. Only issues appropriate to the reconsideration proceeding will be submitted by the director to the medical arbiter or panel of medical arbiters.

(b) The medical arbiter or panel of medical arbiters shall address all questions raised by the director in the report.

(c) The director shall instruct the medical arbiter to provide copies of the arbiter report to the director, the worker or the worker's attorney, and the insurer(s) within five (5) working days after completion of the arbiter review. The cost of providing copies of such additional reports shall be reimbursed according to OAR 436-009-0070 and shall be paid by the insurer.

(4) The director shall notify the parties of the time and place of the medical arbiter examination. This notice shall also inform the worker that failure to attend the medical arbiter examination or to cooperate with the medical arbiter will result in suspension of all disability benefits effective on the date of the examination unless the worker establishes a "good cause" reason for missing the examination or for not cooperating with the arbiter. The appointment letter shall instruct the worker to call the director within 24 hours after failing to attend the examination to provide any "good cause" reason for missing the exam.

(a) Notice of the examination shall be considered adequate notice if the appointment letter is mailed to the last known address of the worker and to the worker's attorney if the worker is represented.

(b) For the purposes of this rule, non-cooperation includes, but is not limited to, refusal to complete any reasonable action necessary to evaluate the worker's impairment. However, it does not include circumstances such as a worker's inability to carry out any part of the examination due to excessive pain or when the physician reports the findings as medically invalid.

(c) Failure of the worker to respond within the time frames outlined in statute for completion of the reconsideration proceeding may be considered a failure to establish "good cause."

(5) If a worker misses the medical arbiter examination, the director shall determine whether or not there was a "good cause" reason for missing the examination.

(6) Upon determination that there was not a "good cause" reason for missing the examination, or that the worker failed to cooperate with the arbiter, the director will issue a notice to the worker that disability benefits are suspended and that the reconsideration proceeding is postponed up to an additional 60 days. A rescheduled examination will be made for the worker to complete the medical arbiter review within the additional 60-day postponement period.

(7) As addressed in the Order on Reconsideration, the suspension will be lifted if any of the following occurred during the additional 60-day postponement period:

(a) The worker established a "good cause" reason for missing or failing to cooperate with the examination;

(b) The request for reconsideration was withdrawn by the worker; or

(c) The worker attended and cooperated with a rescheduled arbiter examination.

(8) If none of the events which end the suspension pursuant to subsection (7) of this rule occurred prior to the expiration of the 60-day additional postponement, the director shall complete the reconsideration proceeding pursuant to ORS 656.268(7) and the Order on Reconsideration will order the suspension of benefits to remain in effect.

(9) When a medical arbiter examination is not medically appropriate because the worker's medical condition is not stationary and impairment cannot be accurately evaluated by the physician, the director will send a letter to the parties requesting consent to postpone the reconsideration proceeding.

(a) If the parties agree to the postponement, the reconsideration proceeding will be postponed until the worker's condition has medically resolved to allow for examination. The parties must notify the director when it is appropriate to schedule the medical arbiter examination.

(b) If the parties do not agree to the postponement, at the director's discretion either a medical arbiter examination or a medical arbiter record review may be obtained, or the director may issue an Order on Reconsideration based on the record available at claim closure and other evidence submitted in accordance with ORS 656.268(6).

Stat. Auth.: ORS 656.726, 1999 OR Laws Chapter 313
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Amended 12/10/90 as WCD Admin. Order 33-1990, eff. 12/26/90.
Amended 8/20/91 as WCD Admin. Order 6-1991, eff. 9/01/91 (temp.).
Amended 1/17/92 as WCD Admin. Order 5-1992, eff. 2/20/92
Amended and renumbered from OAR 436-030-0050, 11/18/94 as WCD Admin. Order 94-059, eff. 1/1/95.
Amended 8/23/95 as WCD Admin. Order 95-059, eff. 8/23/95 (temp).
Amended 2/14/96 as WCD Admin. Order 96-052, eff. 2/17/96.
Amended 12/22/97 as WCD Admin. Order 97-065, eff. 1/15/98.
Amended 11/13/00 as WCD Admin. Order 00-058, eff. 01/01/01.
Amended 11/16/01 as WCD Admin. Order 01-060, eff. 1/1/02.
Amended 12/12/03 as WCD Admin. Order 03-063, eff. 1/1/04 (Temp.)

436-030-0175 Fees and Penalties within the Reconsideration Proceeding

(1) An insurer failing to provide information or documentation as set forth in OAR 436-030-0135, 0145 and 0165 may be assessed civil penalties pursuant to OAR 436-030-0580. Failure to comply with the requirements set forth in OAR 436-030-0135, 0145 and 0165 may also be grounds for extending the reconsideration proceeding pursuant to ORS 656.268(6).

(2) If upon reconsideration of a Notice of Closure there is an increase of 25 percent or more in the amount of permanent disability compensation from that awarded by the Notice of Closure, and the worker is found to be at least 20 percent permanently disabled, the insurer shall be ordered to pay the worker a penalty equal to 25 percent of the increased amount of permanent disability compensation. If an increase in compensation results from the promulgation of a temporary emergency rule, penalties will not be assessed. For claims with medically stationary dates or statutory closure dates on or after June 7, 1995, if the increase in compensation results from new information obtained through a medical arbiter examination, the penalty shall not be assessed.

(3) For the purpose of section (2) of this rule, a worker who receives a total sum of 64 degrees of scheduled or unscheduled disability or a combination thereof, shall be found to be at least 20 percent disabled. As an illustration, a worker who receives 20 percent disability of a great toe (3.6 degrees) is not considered 20 percent permanently disabled because the great toe is only a portion of the whole person. A worker who is 100 percent permanently disabled is entitled to 320 degrees of disability. A worker who receives 64 degrees (20 percent of 320 degrees), whether scheduled, unscheduled or a combination thereof, shall be considered the equivalent of at least 20 percent permanently disabled for the purposes of this rule.

(4) Attorney fees may only be authorized when a Request for Reconsideration is submitted by an attorney representing a worker or the attorney provides documentation of representation, and a valid signed retainer agreement has been filed with the director. The reconsideration order shall order the insurer to pay the attorney 10 percent out of any additional compensation awarded but not more than the maximum attorney fee allowed in OAR 438-015-0040(1) and (2) and OAR 438-015-0045, effective February 1, 1999. "Additional compensation" includes an increase in a permanent or temporary disability award.

Stat. Auth.: ORS 656.726
Stats. Implemented: ORS 656.268
Hist: Filed 6/18/90 as WCD Admin. Order 7-1990, eff. 7/1/90, (temp.).
Amended 12/10/90 as WCD Admin. Order 33-1990, eff. 12/26/90.
Amended 8/20/91 as WCD Admin. Order 6-1991, eff. 9/01/91 (temp.).
Amended 1/17/92 as WCD Admin. Order 5-1992, eff. 2/20/92
Amended and renumbered from OAR 436-030-0050, 11/18/94 as WCD Admin. Order 94-059, eff. 1/1/95.
Amended 8/23/95 as WCD Admin. Order 95-059, eff. 8/23/95 (temp).
Amended 2/14/96 as WCD Admin. Order 96-052, eff. 2/17/96.
Amended 12/22/97 as WCD Admin. Order 97-065, eff. 1/15/98.
Amended 4/28/99 as WCD Admin. Order 99-054, eff. 4/28/99
Amended 11/13/00 as WCD Admin. Order 00-058, eff. 01/01/01.

436-030-0185 Reconsideration: Settlements and Withdrawals (Temporary Rule)

(1) Contested matters arising out of a claim closure may be resolved by mutual agreement of the parties at any time after the claim has been closed under ORS 656.268 but before that claim closure has become final by operation of law. If the parties have reached such an agreement prior to the completion of the reconsideration proceeding, the parties shall submit the stipulation agreement to the director for approval as part of the reconsideration proceeding. The Stipulation for review at the reconsideration proceeding must:

(a) [a]**A**ddress only issues that pertain to a claim closure and cannot include any issues of compensability;

(b) [l]**L**ist the body part(s) for which any award is made and shall recite all disability awarded in both degrees and percent of loss when permanent partial disability is part of the stipulated agreement. In the event there is any inconsistency between the stated degrees and percent of loss awarded in any stipulated agreement, the stated percent of loss shall be controlling.

(2) The director shall review the Stipulation and issue an order within 18 working days from receipt of the Stipulation by the director. Stipulations approved by the director are not appealable.

(3) When the stipulated agreement does not expressly resolve all issues relating to the claim closure, the Order on Reconsideration will include the Stipulation as well as a substantial determination of all remaining issues. In these claims, the 18 working day time frame may be postponed in the same manner as any reconsideration proceeding.

(4) If the Stipulation is not approved, the reconsideration proceeding will be postponed to allow the parties to:

(a) [a]**A**ddress the disapproval, and/or

(b) [t]**T**o request that the director issue an Order on Reconsideration addressing the substantive issues.

(5) When the parties desire to enter into a stipulated agreement to resolve disputed issues relating to the claim closure but are unable to reach an agreement, the parties may request the assistance of the director to mediate an agreement.

(6) When the parties desire to enter a stipulated agreement that addresses issues including all matters being reconsidered as well as issues not before the reconsideration proceeding, and the parties do not want a reconsideration on the merits of the claim closure, they may advise the director of their resolution and request the director enter an Order on Reconsideration affirming the Notice of Closure. The request for an affirming order must be made prior to the date an Order on Reconsideration is issued and in accordance with the following procedure:

(a) A written request for an affirming reconsideration order must be made by certified mail and be signed by both parties or their representatives. The written request must also state that the parties waive their right to an arbiter review, and that all matters subject to the mandatory reconsideration process have been resolved. A copy of the proposed stipulated agreement must accompany the request.

(b) After the affirming Order on Reconsideration has issued, the parties will submit their stipulation to a referee of the Hearings Division, Workers' Compensation Board, for approval in accordance with the provisions of ORS 656.289 and the Board's rules of practice and procedure.

(c) An Order on Reconsideration issued pursuant to this rule is final and is subject to review pursuant to ORS 656.283.

(d) This provision does not apply to Claims Disposition Agreements filed pursuant to ORS 656.236.

(7) A worker requesting a reconsideration may withdraw the request for reconsideration if no additional information has been submitted by the other party(ies)**,** [and] no medical arbiter exam has occurred**, and the insurer has not requested reconsideration pursuant to OAR 436-030-0145**. If additional information has been submitted by the other party(ies), [or] a medical arbiter exam has occurred, **or the insurer has requested reconsideration,** the reconsideration request will not be dismissed unless all parties agree. [When appropriate, an order dismissing the reconsideration will be issued.]

(8) If the insurer has requested reconsideration, either the worker or the insurer may initiate the withdrawal request but both must agree to the withdrawal.

(9) The director will issue an order dismissing the reconsideration under section (7) and (8) of this rule, when appropriate.

Stat. Auth.: ORS 656.726, and 1999 OR Laws Chapter 313
Stats. Implemented: ORS 656.268(6), and 1999 OR Laws Chapter 313
Hist: Filed 6/18/90 as WCD Admin. Order 7-1990, eff. 7/1/90, (temp.).
Amended 12/10/90 as WCD Admin. Order 33-1990, eff. 12/26/90.
Amended 8/20/91 as WCD Admin. Order 6-1991, eff. 9/01/91 (temp.).
Amended 1/17/92 as WCD Admin. Order 5-1992, eff. 2/20/92
Amended and renumbered from OAR 436-030-0050, 11/18/94 as WCD Admin. Order 94-059, eff. 1/1/95.
Amended 2/14/96 as WCD Admin. Order 96-052, eff. 2/17/96.
Amended 11/13/00 as WCD Admin. Order 00-058, eff. 01/01/01.
Amended 12/12/03 as WCD Admin. Order 03-063, eff. 1/1/04 (Temp.)

436-030-0575 Audits

(1) Notices of Closure issued by insurers and supporting documentation including, but not limited to, the worksheet upon which the Notice of Closure is based, shall be subject to periodic audit by the director. Supporting documentation and records shall be maintained in accordance with OAR 436-050.

(2) The director reserves the right to visit the worksite to determine compliance with these rules.

Stat. Auth.: ORS 656.268, ORS 656.726, and 1999 OR Laws Chapter 313
Stats. Implemented: ORS 656.268, ORS 656.455, ORS 656.726, ORS 656.750, and 1999 OR Laws Chapter 313
Hist: Filed 11/18/94 as WCD Admin. Order 94-059, eff. 1/1/95.
Amended 11/13/00 as WCD Admin. Order 00-058, eff. 01/01/01.

436-030-0580 Penalties and Sanctions

(1) Pursuant to ORS 656.745, the director or designee may assess a civil penalty against an employer or insurer who fails to comply with the rules and orders of the director regarding reports or other requirements necessary to carry out the purposes of the Workers' Compensation Law.

(2) An insurer or medical service provider failing to meet the requirements set forth in OAR 436-030-0015, 436-030-0017, 436-030-0020, 436-030-0038, 436-030-0045, and 436-030-0125 through 436-030-0185 may be assessed a civil penalty.

(3) Pursuant to OAR 436-010-0340, the director may impose sanctions for any medical service provider where the insurer can provide sufficient documentation to substantiate lack of cooperation. The medical service provider will be sent a warning letter about possible penalties and the reporting requirements. Failure by the medical service provider to submit the requested information within the specified period may result in civil penalties.

(4) Sufficient documentation to substantiate lack of cooperation by the medical service provider includes:

(a) copies of letters to the medical service provider;

(b) memos to the claim file of follow-up phone calls and/or the lack of response;

(c) letters from the medical service provider indicating a lack of cooperation; or

(d) medical reports received by the insurer, after adequate instruction by the insurer or the director, which do not supply the requested information or which supply information that is not consistent with the Disability Rating Standards in OAR 436-035.

(5) In arriving at the amount of penalty, the director or designee may assess a penalty of up to $2,000 for each violation or $10,000 in the aggregate for all violations in any three-month period.

Stat. Auth.: ORS 656.268, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Stats. Implemented: ORS 656.268, ORS 656.726, ORS 656.745, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Hist: Filed 12/17/87 as WCD Admin. Order 13-1987, eff. 1/1/88.
Amended 12/10/90 as WCD Admin. Order 33-1990, eff. 12/26/90.
Amended 1/17/92 as WCD Admin Order 5-1992, eff. 2/20/92.
Amended 11/18/94 as WCD Admin. Order 94-059, eff. 1/1/95.
Amended 2/14/96 as WCD Admin. Order 96-052, eff. 2/17/96.
Amended 12/22/97 as WCD Admin. Order 97-065, eff. 1/15/98.
Amended 11/13/00 as WCD Admin. Order 00-058, eff. 01/01/01.

436-030-0581 Issuance/Service of Penalty Orders

(1) When a penalty is assessed as provided in OAR 436-030-0580, the director or designee shall serve an order on the party with a notice of the party's appeal rights provided under ORS 656.704.

(2) The Order shall be served by:

(a) mailing a copy of the Order to the party by certified mail return receipt requested. If the employer is a corporation, the certified mail may be addressed to any one of the persons named in Rule 7 of Oregon Rules of Civil Procedure subsection (D)(3)(b)(i); or

(b) delivering a copy to the party in the manner provided by Rule 7 of Oregon Rules of Civil Procedure, subsection (D)(2).

(3) Orders issued in accordance with these rules shall contain the following notice in bold print:

"If you disagree with this Order, you are entitled to a hearing as provided by ORS 656.704(2), OAR 436-030-0007, and the contested case provisions of the Administrative Procedures Act (ORS Chapter 183). You must request a hearing in writing within sixty (60) days of the date you receive this notice. Your request must be mailed to the Department of Consumer and Business Services, Workers' Compensation Division, [INSERT CURRENT ADDRESS HERE]. You will be notified of the time and place of hearing. If you request a hearing, you will be given information on procedures, right of representation, and the rights of parties relating to the conduct of the hearing. If you fail to request a hearing within sixty (60) days, this Order will become final."

Stat. Auth.: ORS 656.268, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Stats. Implemented: ORS 656.268, ORS 656.704, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Hist: Filed 12/10/90 as WCD Admin. Order 33-1990, eff. 12/26/90.
Amended 1/17/92 as WCD Admin Order 5-1992, eff. 2/20/92.
Amended 2/14/96 as WCD Admin. Order 96-052, eff. 2/17/96.
Amended 12/22/97 as WCD Admin. Order 97-065, eff. 1/15/98.
Amended 11/13/00 as WCD Admin. Order 00-058, eff. 01/01/01.

Secretary of State
Certificate and Order for Filing
TEMPORARY ADMINISTRATIVE RULES
A Statement of Need and Justification accompanies this form

I certify that the attached copies* are true, full and correct copies of the TEMPORARY Rule(s) adopted on December 12, 2003 by the
Date prior to or same as filing date.

Department of Consumer and Business Services, Workers' Compensation Division — chapter 436
Agency and Division — Administrative Rules Chapter No.

Fred Bruyns — (503) 947-7717
Rules Coordinator — Telephone

350 Winter Street NE, Rm 27; Salem, OR 97301-3879; PO Box 14480, Salem OR 97309-0405
Address

to become effective January 1, 2004 through June 28, 2004
Date upon filing or later — A maximum of 180 days including the effective date.

RULEMAKING ACTION

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

AMEND: OAR

436-001-0265	436-010-0008	436-010-0270	436-015-0060	436-030-0010	436-030-0165
436-009-0008	436-010-0210	436-010-0275	436-015-0070	436-030-0034	436-030-0185
436-009-0015	436-010-0220	436-010-0280	436-015-0090	436-030-0035	436-120-0008
436-009-0060	436-010-0230	436-010-0340	436-030-0003	436-030-0115	
436-009-0070	436-010-0240	436-015-0008	436-030-0005	436-030-0125	
436-009-0080	436-010-0250	436-015-0030	436-030-0007	436-030-0135	
436-010-0005	436-010-0265	436-015-0050	436-030-0009	436-030-0145	

ORS 656.704, 656.726
Statutory Authority:

ORS 183.335; OAR 137; OAR 436-001
Other Authority:

ch. 86, OL 2003 (HB 2305); §9, ch. 170, OL 2003 (SB 233); ch. 429, OL 2003 (SB 285); §2, ch. 756, OL 2003 (SB620); §3, ch. 811, OL 2003 (HB 3669)
Statutes being Implemented

RULE SUMMARY

These temporary rules reflect changes in the law due to legislation passed by the 2003 Oregon Legislature:

- Senate Bill 233 changes the time frame for appeal of a proposed order or proposed assessment of civil penalty from 60 days following the party's receipt of notice to 60 days from the date the order is mailed by the department. This change has been incorporated into OAR 436-010, 436-015, 436-030, and 436-120.
- Senate Bill 285 allows an insurer or self-insured employer to contest its Notice of Closure in certain circumstances, and OAR 436-030 has been revised accordingly.
- Senate Bill 620 requires payment of fees to workers' attorneys when a claimant prevails at the administrative level in certain medical and vocational disputes or when the attorney is instrumental in obtaining a settlement. This fee provision has been included in OAR 436-001, 436-009, 436-010, and 436-120.
- House Bill 2305 addresses how medical records may be released, consistent with the federal Health Insurance Portability and Accountability Act, and OAR 436-010 has been revised to be consistent with chapter 429, OL 2003.
- House Bill 3669 gives additional authority to nurse practitioners to treat injured workers and authorize temporary disability payments. OAR 436-009, 436-010, 436-015, and 436-030 have been amended to reflect this change. This bill was a result of legislative action after development of the legislative concepts by nurse practitioners and the Management Labor Advisory Committee.

/s/ John L. Shilts — December 12, 2003
Authorized Signer — Date

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

*Copies include a photocopy of this certificate with paper and electronic copies of each rule listed in the Rulemaking Action.

Secretary of State

STATEMENT OF NEED AND JUSTIFICATION

A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Dept. of Consumer and Business Services, Workers' Compensation Division Agency and Division	OAR chapter 436 Administrative Rules Chapter Number

In the Matter of OAR 436-001, Procedural Rules Governing Rulemaking and Hearings OAR 436-009, Oregon Medical Fee and Payment Rules OAR 436-010, Medical Services OAR 436-015, Managed Care Organizations OAR 436-030, Claims Evaluation, Determination, and Reconsideration OAR 436-120, Vocational Assistance to Injured Workers	Statutory Authority, Statutes Implemented, Statement of Need, Principal Documents Relied Upon

Statutory Authority: ORS 656.704, ORS 656.726

Other Authority: ORS 183.335, OAR 137, OAR 436-001

Statutes Implemented: ch. 86, OL 2003 (HB 2305); §9, ch. 170, OL 2003 (SB 233); ch. 429, OL 2003 (SB 285); §2, ch. 756, OL 2003 (SB620); §3, ch. 811, OL 2003 (HB 3669)

Need for the Temporary Rules: These temporary rules are needed to implement changes in the law due to legislation passed by the 2003 Oregon Legislature:

- Senate Bill 233 changes the time frame for appeal of a proposed order or proposed assessment of civil penalty from 60 days following the party's receipt of notice to 60 days from the date the order is mailed by the department.
- Senate Bill 285 allows an insurer or self-insured employer to contest its Notice of Closure in certain circumstances.
- Senate Bill 620 requires payment of fees to workers' attorneys when a claimant prevails at the administrative review level in certain medical and vocational disputes or when the attorney is instrumental in obtaining a settlement.
- House Bill 2305 addresses how medical records may be released, consistent with the federal Health Insurance Portability and Accountability Act.
- House Bill 3669 gives additional authority to nurse practitioners to treat injured workers and authorize temporary disability payments.

Documents Relied Upon: Enrolled Senate Bills 233, 285, and 620. Enrolled House Bills 2305 and 3669. These documents are available for public review from the Administrator's Office, Department of Consumer and Business Services, Workers' Compensation Division, Labor and Industries Building, 350 Winter Street N.E., Salem, Oregon 97301-3879, during regular business hours, between 8:00 am and 5:00 pm, Monday through Friday.

Justification of Temporary Rule(s): Failure to act promptly will result in serious prejudice to the public interest or the interest of the parties concerned, primarily Oregon employers, insurers, self-insured employers, managed care organizations, nurse practitioners, other medical providers, injured workers, and attorneys representing injured workers. These temporary rules are needed to bring administrative rules into alignment with Oregon Laws 2003.

/s/ John L. Shilts December 12, 2003

Authorized Signer and Date

John L. Shilts, Administrator, Workers' Compensation Division

Printed name

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.