Exhibit "3"

saif Work. Life. Oregon.

June 25, 2018

Fred Bruyns, Rules Coordinator
Workers' Compensation Division
P.O. Box 14480
Salem, OR 97309-0405

RE: SAIF Corporation Testimony on proposed rules:
OAR 436-060, Claims Administration
OAR 436-120, Vocational Assistance to Injured Workers

Dear Fred:

SAIF Corporation thanks the Workers' Compensation Division for the opportunity to provide advice and testimony on the administrative rules mentioned above. SAIF reiterates it advice provide during the administrative advisory process. In addition, SAIF would like to emphasize a couple of points.

1) OAR 436-060, (Average Weekly Wage) Though SAIF would have WCD adopted changes it suggested when the temporary rule was being considered, SAIF is comfortable with the proposed rule. SAIF appreciates WCD's decision to convene a technical advisory group to assist it with an industry bulletin on the rule.

2) OAR 436-120, (Vocational Assistance to Injured Workers) SAIF has significant concerns with the proposed rules. SAIF has filed a petition for review with the Oregon Supreme Court on *Chu v. SAIF*. SAIF expressed multiple concerns during the advisory committee for the Division 120 rules, but will focus on a few especially troubling concerns:

   (a) 436-120-0003(2)(b), seems to suggest that an insurer can make an appropriate and legally defensible decision, yet once the decision is appealed, the standard may be different. SAIF urges WCD adjust the rule so the standards are consistent.
   (b) 436-120-0147(3) *requires* insurers to contact all worker employers for wage information. First, it is unclear how the insurer will know about any employer other than the employer-at-injury. Then, if a worker tells an insurer about a supplemental employer, but does not claim supplemental disability, the current rules still requires the insurer to contact that employer. In so doing, the insurer will be forced to disclose the worker's claim to another employer. The supplemental disability rules place the burden on the worker to decide to seek supplemental disability, and to obtain wage information for that piece of the claim. This allows the worker to determine if he or she wishes to disclose the claim to the supplemental employer. SAIF urges WCD to mimic the supplemental disability process in the vocational assistance rule. The right to file a claim belongs to the injured worker; the proposed rules put the insurer in the awkward spot of disclosing a worker's claim to an employer who is not the employer-at-injury, who may otherwise, not know about the worker's claim. These rules should give the worker the choice to pursue his second employer's earning in his

or her claim. In addition to disclosing the claim to an employer who is not part of the claim, insurers may inadvertently impact an employment relationship.

In summary, this rule, as written, requires insurers to contact parties who are not involved in any way in the claim and have no right to any claim information. Then, after contacting these employers, an insurer may or may not get the information it seeks; there is no nexus between the insurer and the secondary employer and not obligation for that employer to provide the information to the insurer.

(c) 436-120-0147(3)(a)(A): SAIF is unclear why it would calculate anything differently if the secondary jobs were temporary or seasonal?

(d) 436-120-0147 (3)(a)(C): Earned income can include income from occupations such as on-call work, Uber driving, Avon sales, babysitting, etc. How does an insurer determine how many weeks someone worked as a substitute teacher, for example, when they are always on call but were only called to work three to five times per month. This rule is likewise silent on intent wages. If the secondary job was lost due to the injury, how does an insurer calculate wages? Apparently insurers must consider work beyond subject work, we would consider work under-the-table jobs, jobs available in the gig economy, and other non-traditional types of work. For example, an Avon Lady makes small sales here and there so has monthly "income" but perhaps just $50-200 per month. SAIF is uncertain how that work is "counted." Is it one day of work or as a full month of work? This could reduce earned income, leading to more ineligibilities.

(e) The rules as written are silent about how a worker who denies secondary work during their initial statement, yet produces secondary income during the vocational eligibility evaluation should be handled.

(f) Nor do the rules discuss a worker who works the secondary job through the claims or returns to the secondary job. The proposed rules seem to require that wages from the secondary job be considered in determining vocational eligibility even if the worker is not limited in performing that work.

(g) 436-120-0147(4) (a) and (b): The proposed rule requires insurers to adjust the entire weekly wage for COLAs. SAIF suggests wages should be modified individually. For example: a worker works as a machinist for $1000, but was hurt as a bouncer for $80/week for a combined total of $1080/week. If the bar provides a 5% COLA (for example), increasing the machinist wages by 5% as well is a windfall unless the machinist employer also gave a 5% COLA. This also works both ways. During the most recent economic downturn, many employers decreased wages. In this instance, it be unfair to the worker to reduce his $1080/week by 10% just because the bar gave everyone a 10% reduction in pay.

Please let me know if you have questions about SAIF's testimony.

Sincerely,

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