

Agenda

Rulemaking Advisory Committee

Workers' Compensation Division Rules,

- OAR 436-100, Workers' Compensation Benefits Offset

Type of meeting:	Rulemaking advisory committee
Date, time, & place:	July 7, 2026, 2-4 p.m. Join us in person in the Labor & Industries Building: 350 Winter St NE, Salem – Room F (basement) or virtually. Microsoft Teams Information Join: https://teams.microsoft.com/meet/25509450272958?p=1fZQGZoSZsNSsvqUpl Meeting ID: 255 094 502 729 58 Passcode: 7Fp7vK26 Dial in by phone +1 503-446-4951,,295075045# Phone conference ID: 295 075 045#
Facilitators:	Marie Rogers , Mary MacKie, Workers' Compensation Division
2:00 to 2:10	Welcome and introductions; meeting objectives
2:10 to 3:50	Discussion of issues – see attachment.
3:50 to 4:00	Summing up – next steps – thank you!

Attached: OAR 436-100 issues document

Oregon Administrative Rule Revision Chapter 436, Division 100

Issues Document

Stakeholder Rulemaking Advisory Committee Meeting
July 7, 2026

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Note on Terminology

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There are several changes to terminology proposed in this issues document.

[Issue 7](#) describes changes to the term “paying agent,” which the division proposes replacing with the term “insurer” throughout OAR 436-100.

Additionally, [Housekeeping Issue #3](#) outlines changes to terms used to refer to the Workers’ Compensation Division (WCD). Currently, OAR 436-100 uses “department,” “division,” “director,” and “performance section” interchangeably. These terms will generally be replaced with “director,” except in rules requiring that an item be sent to WCD, in which case “division” will be used.

The issues document will use the new terms from this point on, except when necessary to refer to an old term for the sake of clarity. Draft rule language in subsequent issues will include these changes.

Issue 1

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Rule: OAR 436-100-####, Insurer Responsibilities

Issue: When the division authorizes a social security disability offset under ORS 656.209 for a worker receiving permanent total disability (PTD) benefits, there are a number of requirements for the insurer that are not currently outlined in the rules.

Background:

Under ORS 656.209(2), an injured worker's PTD benefits may only be offset by their federal social security disability benefits if authorized by the division. OAR 436-100-0030(1) provides that the division's authorization is directed to the insurer, with a copy sent to the injured worker.

When authorizing the offset, the division currently sends an order to the insurer. The order specifies requirements that are not currently included in the administrative rules. Specifically, the order requires the insurer to:

1. Apply the offset to the statutory portion of the benefits, and then apply any remaining offset to the retroactive program portion of the benefits; and
2. Send a notice of explanation to the injured worker with a copy sent to the division. The notice must:
 - a. Be sent within 15 days of the date the order authorizing the offset is issued;
 - b. Explain how the injured worker's benefits will be affected by the authorization; and
 - c. Include the effective dates, the benefit amounts before and after the offset, and any other information to help the worker understand their benefits.

While these requirements are not currently included in rule, they are not new requirements. The process outlined in the order is the current process. There have not been compliance challenges with this process to date. The division is considering updating the rules to codify current practice, ensuring consistency and clear expectations. Additionally, to clarify what is meant by "statutory benefits," the division is considering revising OAR 436-100-0005 to add this term, as defined in OAR 436-075-0005.

Options:

1. Make the following changes:
 - a. Add new rule language to OAR 436-100 as follows:

OAR 436-100-XXXX Insurer Responsibilities

(1) An insurer authorized to offset a worker's permanent total disability benefits must first apply the offset to the statutory portion of the permanent total disability benefits. Any

amount of the offset that exceeds the statutory benefit must be applied against the Retroactive Program portion of the benefits, if any. For more information about applying the offset, see OAR 436-075-0030(4)).

(2) An insurer authorized to offset a worker's permanent total disability benefits must send a notice of explanation to the injured worker and their attorney if represented, with a copy sent to the division. The notice must:

- (a) Be sent within 15 business days of the date the offset authorization is issued;
- (b) State the effective dates;
- (c) Explain how the worker's benefits will be affected by the authorization including the benefit amounts before and after the offset; and
- (d) Include any additional information to help the worker understand their benefits.

b. Revise OAR 436-100-0005 as follows:

(11) "Statutory benefit" means any benefit payable to or on behalf of the injured worker under the law in effect at the time of the worker's injury, as modified by marital and dependency status changes.

2. Other?

Fiscal Impacts, including cost of compliance for small business:

No impact is expected, as these changes align the rule with current practices without altering them. The division invites input from advisory committee members about costs, including costs to be borne by small businesses.

How will adoption of this rule affect racial equity in Oregon?

The division does not collect data about race or ethnicity related to workplace injuries and illness in Oregon, but the United States Bureau of Labor Statistics publishes lists of occupations and numbers of Americans employed broken down by race. Black/African Americans and Hispanic/Latino workers are represented in some of the more dangerous occupations in higher numbers than their respective shares of the U.S. workforce. To the extent Oregon workers in these racial groups suffer more on-the-job injuries and illnesses, changes in workers' compensation processes may impact these racial groups more than others. The agency does not have sufficient data needed to estimate specific effects on racial equity in Oregon, but invites public input.

Issue 2

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Rule: OAR 436-100-0030, Authorization of Offset; Effective Date

Issue: There is no rule that states when an authorization to offset a worker's PTD benefits terminates.

Background: Under ORS 656.209 and OAR 436-100-0030, the division authorizes the offset of a worker's PTD benefits based on the amount that the worker receives in federal social security disability benefits. After an offset has been authorized and applied, there are certain situations which will later terminate that authorization. These situations include:

1. The worker begins receiving social security retirement benefits, either because they:
 - a) Reach full retirement age; or
 - b) Choose to receive social security retirement benefits early.
2. The worker dies;
3. The worker is no longer eligible for social security disability benefits; or
4. The worker stops receiving PTD benefits.

Each situation and the current process are detailed below.

1. **Retirement:** Most workers receiving PTD choose to retire at their full retirement age. When a worker receiving PTD benefits reaches full retirement age, they stop receiving social security disability benefits and begin receiving social security retirement benefits. The authorization to offset their benefits terminates at this time. This is stated in the order that is sent to the insurer when the offset is initially authorized. However, the initial authorization may be sent many years before the worker retires. The division sends an additional order to the insurer only if they have not removed the offset in a timely fashion after the worker reaches their full retirement age. The requirement is not currently included in rule. In some situations, a worker may also choose to begin receiving social security retirement benefits before their full retirement age. In this case, they would stop receiving social security disability benefits, and the offset of their PTD benefits would also terminate. This situation is also not included in rule.
2. **Death:** When a worker receiving PTD benefits dies, benefits for the worker end per ORS 656.204 and ORS 656.208, and authorization to offset the worker's benefits terminates. Currently, the insurer stops paying the worker's PTD benefits, and therefore also removes the offset. The division does not send an order when this happens. The requirement for insurers to remove the offset when a worker dies is currently included in the initial authorization and in OAR 436-100-0030(5), which states in part that the insurer must, "immediately upon the death of a worker, terminate payment of previously authorized permanent total disability benefits offset." However, OAR 436-100-0030 does not explicitly state that an authorization terminates when the worker is deceased.

3. **Worker no longer eligible for social security:** While rare, the Social Security Administration (SSA) may reverse a previous decision to approve social security disability benefits for a worker. The authorization that is initially sent to the insurer states that the authorization terminates when the worker no longer receives social security disability benefits, but this situation is not stated in rule.
4. **Worker no longer eligible for PTD benefits:** Lastly, a worker may become ineligible for PTD benefits. They may be able to return to regular work, and therefore no longer qualify for PTD benefits under ORS 656.206(1)(d). In this case, PTD payments will end, and the authorization to offset those benefits terminates. This situation is not included in rule.

The division invites feedback on amending OAR 436-100-0030 to explain when an authorization to offset a worker's PTD benefits terminates.

Options:

1. Amend OAR 436-100-0030 as follows:

OAR 436-100-0030 Authorization, Amendment, and Termination of Offset; Effective Dates

(5) Authorization terminates:

- (a) When the worker dies;
- (b) When the worker reaches full retirement age;
- (c) If the worker chooses to begin receiving social security retirement benefits before their full retirement age;
- (d) If the Social Security Administration determines that the worker is no longer eligible for social security disability benefits; or
- (e) If the worker is no longer eligible for permanent total disability benefits.

(6) When an authorization terminates under section (5) of this rule:

- (a) When the worker dies, the termination date is immediately upon the worker's death.
- (b) When the worker reaches full retirement age, the termination date is the first day of the month that the worker is no longer receiving social security disability benefits.
- (c) If the worker chooses to begin receiving social security retirement benefits before their full retirement age, the termination date is the first day of the month that the worker is no longer receiving social security disability benefits.
- (d) If the worker is no longer eligible for social security disability benefits, the termination date is the first day of the month that the worker is no longer receiving social security disability benefits.
- (e) If the worker is no longer eligible for permanent total disability benefits, the termination date is the date that the worker stops receiving permanent total disability benefits.

2. Other?

Fiscal Impacts, including cost of compliance for small business:

No impact is expected, as these changes align the rule with current practices without altering them. The division invites input from advisory committee members about costs, including costs to be borne by small businesses.

How will adoption of this rule affect racial equity in Oregon?

The division does not collect data about race or ethnicity related to workplace injuries and illness in Oregon, but the United States Bureau of Labor Statistics publishes lists of occupations and numbers of Americans employed broken down by race. Black/African Americans and Hispanic/Latino workers are represented in some of the more dangerous occupations in higher numbers than their respective shares of the U.S. workforce. To the extent Oregon workers in these racial groups suffer more on-the-job injuries and illnesses, changes in workers' compensation processes may impact these racial groups more than others. The agency does not have sufficient data needed to estimate specific effects on racial equity in Oregon, but invites public input.

Issue 3

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Rule: OAR 436-100-0030(3), Authorization of Offset; Effective Date

Issue: Currently, OAR 436-100-0030(3) states that the division will review an offset calculation when notified of a change in the status of a worker and will issue an amended authorization if necessary. However, rule language does not specify what qualifies as a status change.

Background: Under ORS 656.209 and OAR 436-100-0030, the division authorizes social security disability offsets for workers receiving PTD benefits. After an offset has been authorized and applied, it may be necessary for the division to issue an amended authorization. This may be required in the following scenarios:

1. **Change to a worker's beneficiaries:** A change in the number or eligibility of the worker's beneficiaries may result in a change to the worker's social security disability benefit amount. The division would then review their social security offset calculation and issue an amended authorization. To address this scenario, the division is considering revising OAR 436-100-0030(3) to specify that a change in the number or eligibility of the worker's beneficiaries may trigger an amended authorization.
2. **Change to a worker's social security benefit amount:** The SSA may change a worker's social security disability benefit amount to correct an error. When this happens, the division reviews the worker's social security disability benefit calculation and determines whether an amended authorization offset is needed to comply with ORS 656.209. The division is considering adding rule language to OAR 436-100-0030 specifying that an amended authorization may be issued when there is a change to the worker's social security disability benefit amount.

Options:

1. Amend OAR 436-100-0030 to revise rule language in section (3) as follows:

OAR 436-100-0030 Authorization of Offset; Effective Date

(3) The ~~department director~~ will review the social security offset calculation, and issue an amended authorization if necessary, when notified of a change to:

(a) The number of beneficiaries of a worker;

(b) The eligibility of any of the worker's beneficiaries; or

(c) The worker's social security disability benefit amount. ~~in the status of a worker subject to social security offset. An amended authorization will be issued, if necessary.~~

2. Other?

Fiscal Impacts, including cost of compliance for small business:

No impact is expected, as these changes align the rule with current practices without altering them. The division invites input from advisory committee members about costs, including costs to be borne by small businesses.

How will adoption of this rule affect racial equity in Oregon?

The division does not collect data about race or ethnicity related to workplace injuries and illness in Oregon, but the United States Bureau of Labor Statistics publishes lists of occupations and numbers of Americans employed broken down by race. Black/African Americans and Hispanic/Latino workers are represented in some of the more dangerous occupations in higher numbers than their respective shares of the U.S. workforce. To the extent Oregon workers in these racial groups suffer more on-the-job injuries and illnesses, changes in workers' compensation processes may impact these racial groups more than others. The agency does not have sufficient data needed to estimate specific effects on racial equity in Oregon, but invites public input.

Issue 4

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Rule: OAR 436-100-####, Insurer Responsibilities

Issue: There are multiple situations that require an insurer to remove or amend a social security disability offset that the division has previously authorized under ORS 656.209. Insurer responsibilities in these situations are not included in rule.

Background:

The following situations, described in [Issue 2](#), require an insurer to remove a social security disability offset that they have previously applied:

1. The worker begins receiving social security retirement benefits;
2. The worker dies;
3. The worker is no longer eligible for social security; or
4. The worker stops receiving PTD benefits.

Additionally, the following situations, described in [Issue 3](#), require an insurer to amend a social security disability offset that they have previously applied:

5. The number or eligibility of a worker's beneficiaries change; or
6. The worker's social security disability benefit amount changes.

The responsibilities for insurers in each situation are outlined below.

1. **Retirement:** The insurer is required to remove the offset on the first day of the month that the worker reaches full retirement age and is no longer receiving social security disability benefits. This requirement is stated in the order that is sent to the insurer when the offset is initially authorized. Additionally, if an insurer continues to apply an offset after the worker has retired, the division sends an order directing them to remove the offset. The order also directs the insurer to pay the worker any underpaid amounts due, if applicable. These requirements are not included in rule. If a worker decides to begin receiving social security retirement benefits before their full retirement age, the insurer must remove the offset. They should also notify the division if they learn that a worker is planning to take early retirement benefits. These requirements are not included in rule.
2. **Death:** Under OAR 436-100-0030(5), the insurer must terminate payment of the previously authorized offset and begin payment of other compensation due under ORS chapter 656, if any. The initial authorization sent to the insurer states that the authorization is no longer in effect if the worker is deceased. Under OAR 436-060-0075(7)(b)(A), PTD benefits continue through the date of death, and other benefits begin to accrue the following calendar day. The insurer must then begin payments as specified under OAR 436-060-0075(7). The division is considering moving the requirement for the

insurer in this situation to a new rule on insurer requirements for consistency and ease of reference. Additionally, it may be useful to add a reference to OAR 436-060-0075(7).

3. **Worker no longer eligible for social security:** Under OAR 436-100-0030(4), the insurer is required to notify the division of a change in a worker's eligibility status for social security disability benefits. The division is considering moving the requirement for insurers to notify the division of a change in worker eligibility into a new rule on insurer requirements for consistency and ease of reference.
4. **Worker no longer eligible for PTD benefits:** If PTD payments end, the authorization to offset those benefits terminates. The insurer will stop paying permanent total disability benefits, and should therefore also remove the offset.
5. **Change to worker's beneficiaries:** The insurer must notify the division if they learn about any change to the number of a worker's beneficiaries in the eligibility of any of their beneficiaries. The division is considering revising OAR 436-100-0030(4) to clarify this requirement. Note that OAR 436-100-0020(3) also requires the worker to notify the division about this change.
6. **Change to worker's social security disability benefit amount:** The division may issue, terminate, or amend an authorization if the SSA adjusts the worker's social security disability benefit amount. In these situations, the insurer must follow the division's order to either apply, remove, or amend the offset depending on the specific situation. To address this and other possible scenarios, the division is considering clarifying that insurers may only apply an offset when authorized by the division, and they must remove or amend an offset when ordered by the division.

The division invites feedback on adopting new rule language clearly outlining these insurer responsibilities.

Options:

1. Make the following changes to OAR 436-100-XXXX, Insurer Responsibilities:

- a. Add a requirement for insurers to remove a social security disability offset to new rule as follows:

(3) An insurer must remove the offset on the first day of the month that the worker reaches full retirement age and is no longer receiving social security disability benefits. If the offset is not removed on the first day of the month that the worker reaches full retirement age, the insurer must pay the worker any amount that was offset.

- b. Add a requirement for the insurer to remove the offset and notify the division if the worker takes early retirement benefits:

(4) If notified that a worker plans to begin receiving social security retirement benefits before their full retirement age, the insurer must:

(a) Remove the offset on the first day of the month that the worker stops receiving social security disability benefits; and

(b) Notify the director in writing within 15 business days of this change.

c. Move OAR 436-100-0030(5) to new rule and add reference to applicable rule as follows:

(5) ~~The An insurer paying agent~~ must, immediately upon the death of a worker, terminate payment of ~~the~~ previously authorized permanent total disability benefits offset and begin payment of other compensation due under ORS chapter 656, if any. For more information on payment requirements, see OAR 436-060-0075(7).

d. Add new rule language specifying insurer requirements when a worker is no longer eligible for PTD:

(6) If notified that a worker is no longer eligible for permanent total disability benefits, the insurer must terminate payment of the previously authorized permanent total disability benefits offset and begin payment of other compensation due under ORS chapter 656, if any.

e. Move OAR 436-100-0030(4) to new rule and add clarifying details as follows:

(7) ~~(4) An insurer must notify the director in writing within 15 business days if they are notified of any change. Whenever there is a change in the eligibility status of the worker or in the number or eligibility of any one of the worker's beneficiaries, receiving benefits for permanent total disability subject to offset, the paying agent must notify the Performance Section.~~

f. Add new rule language to specify insurer requirements to apply, remove, or amend an offset as follows:

(8) An insurer may apply an offset under OAR 436-100-0030 only when authorized by the director. An insurer must remove or amend an offset under OAR 436-100-0030 or OAR 436-100-xxxx when ordered by the director.

2. Other?

Fiscal Impacts, including cost of compliance for small business:

No impact is expected. The division invites input from advisory committee members about costs, including costs to be borne by small businesses.

How will adoption of this rule affect racial equity in Oregon?

The division does not collect data about race or ethnicity related to workplace injuries and illness in Oregon, but the United States Bureau of Labor Statistics publishes lists of occupations and numbers of Americans employed broken down by race. Black/African Americans and

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Hispanic/Latino workers are represented in some of the more dangerous occupations in higher numbers than their respective shares of the U.S. workforce. To the extent Oregon workers in these racial groups suffer more on-the-job injuries and illnesses, changes in workers' compensation processes may impact these racial groups more than others. The agency does not have sufficient data needed to estimate specific effects on racial equity in Oregon, but invites public input.

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Rule: OAR 436-100-0040, Sanctions Against Worker for Failure to Cooperate With the Department

Issue: The rule does not specify that insurers who fail to comply with the requirements outlined in OAR 436-100 may face civil penalties.

Background:

OAR 436-100-0040 currently outlines when workers who are receiving PTD and fail to comply with the rules are subject to sanctions. However, OAR 436-100 also includes various requirements for insurers. If an insurer fails to comply with a requirement in OAR 436-100, they may be subject to a civil penalty under statute. Specifically, under ORS 656.745(2)(a)(B), the director has authority to assess a civil penalty against insurers who do not “comply with statutes, rules or orders of the director regarding reports or other requirements necessary to carry out the purposes of this chapter.” For increased transparency and clarity, the division is considering specifying in rule that insurers may face civil penalties for violating OAR 436-100.

Options:

1. Make the following changes:
 - a. Revise the title of OAR 436-100-0040:

OAR 436-100-0040 Civil Penalties and Sanctions Against Worker for Failure to Cooperate With Department

- b. Add new rule language to OAR 436-100-0040:

(1) The director may assess a civil penalty under ORS 656.745(2) against an insurer that violates ORS chapter 656, OAR 436-100, or an order of the director.

2. Other?

Fiscal Impacts, including cost of compliance for small business:

No impact is expected, as these changes align the rule with current practices without altering them. The division invites input from advisory committee members about costs, including costs to be borne by small businesses.

How will adoption of this rule affect racial equity in Oregon?

The division does not collect data about race or ethnicity related to workplace injuries and illness in Oregon, but the United States Bureau of Labor Statistics publishes lists of occupations and numbers of Americans employed broken down by race. Black/African Americans and Hispanic/Latino workers are represented in some of the more dangerous occupations in higher numbers than their respective shares of the U.S. workforce. To the extent Oregon workers in these racial groups suffer more on-the-job injuries and illnesses, changes in workers' compensation processes may impact these racial groups more than others. The agency does not have sufficient data needed to estimate specific effects on racial equity in Oregon, but invites public input.

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Rule: OAR 436-100-0020, Requirements of Workers

Issue: OAR 436-100-0020 outlines requirements for workers entitled to receive PTD benefits relating to the social security disability offset, but it does not include any timeframes for the workers to complete these requirements. It also does not include the requirement to notify the division if they choose to begin receiving social security retirement benefits before their full retirement age.

Background:

OAR 436-100-0020 outlines requirements for workers receiving PTD and their eligible beneficiaries. These requirements include:

1. Applying for federal social security disability benefits;
2. Authorizing the SSA to release information to the division;
3. Notifying the division about any change to their social security beneficiary eligibility; and
4. Providing additional information requested by the division.

None of these requirements include timeframes in rule. OAR 436-100-0040(2) provides that the director may send a demand to the worker if they do not comply with the rules. If the worker fails to comply within 20 days of the demand, their benefits may be terminated. However, since there are no timeframes included in the rule, it is not clear when the director may send a demand. The division is considering establishing timeframes based on current practice to set clear expectations and provide transparency for workers receiving PTD benefits. The division invites input to establish reasonable timeframes in rule.

Additionally, [Issue 4](#) discusses the requirement for an insurer to notify the division if they learn that a worker plans to begin receiving social security retirement benefits before their full retirement age. However, the insurer may not be notified by the worker. In order to ensure that the offset is terminated in a timely fashion, the worker should notify the division directly if they decide to begin receiving social security retirement benefits before their full retirement age. The division is considering adding this requirement into the rule.

Options:

1. Amend OAR 436-100-0020 as follows:

(1) ~~Workers~~ When notified by the director that they are entitled to receive permanent total disability benefits, a worker must make application for federal social security disability benefits within 30 calendar days.

(2) ~~A W~~ workers and their eligible beneficiaries must, ~~upon department request,~~ execute a release form authorizing the Social Security Administration to make disclosure to the director ~~department~~ of such information regarding the injured workers as will enable the department director to carry out the provisions of ORS 656.209 and these rules, within 30 calendar days upon request from the director.

(3) ~~Whenever there is a change in the federal social security beneficiary eligibility, the A~~ worker must notify the Performance Section director within 30 calendar days of any change in their federal social security eligibility or in the number or eligibility of their beneficiaries.

(4) If a worker plans to begin receiving social security retirement benefits before their full retirement age, they must notify the director at least 30 calendar days before the date that they plan to begin receiving social security retirement benefits.

2. Other?

Fiscal Impacts, including cost of compliance for small business:

No impact is expected, but the division invites input from advisory committee members about costs, including costs to be borne by small businesses.

How will adoption of this rule affect racial equity in Oregon?

The division does not collect data about race or ethnicity related to workplace injuries and illness in Oregon, but the United States Bureau of Labor Statistics publishes lists of occupations and numbers of Americans employed broken down by race. Black/African Americans and Hispanic/Latino workers are represented in some of the more dangerous occupations in higher numbers than their respective shares of the U.S. workforce. To the extent Oregon workers in these racial groups suffer more on-the-job injuries and illnesses, changes in workers' compensation processes may impact these racial groups more than others. The agency does not have sufficient data needed to estimate specific effects on racial equity in Oregon, but invites public input.

Issue 7

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Rule: OAR 436-100-0008, Administrative Review

Issue: The rule does not specify the process for reconsideration of an authorization.

Background:

OAR 436-100-0008 outlines the options for administrative review of a social security offset authorization. A worker who disagrees with an offset authorization may apply for reconsideration from the division. Additionally, any party may request a hearing with the Worker's Compensation Board at any time, per ORS 656.283. However, rule does not specify any details about the reconsideration process.

To provide additional clarity and transparency, the division is considering outlining the process that occurs when a worker requests reconsideration by the division. Proposed details include the timeframe to request reconsideration, what to include in the request, and that the decision will be communicated to affected parties. The division invites feedback on including this process in rule.

Options:

1. Amend OAR 436-100-0008(2) as follows:

OAR 436-100-0008, ~~Administrative Review~~**Reconsideration; Hearings**

(1) Any worker ~~who disagrees~~ aggrieved by any ~~with their~~ offset authorization ~~of the division~~ may apply to the Workers' Compensation Division for a request reconsideration of that authorization from the director before requesting a hearing.

(a) The request must be submitted in writing no later than 60 days after the date the authorization was issued.

(b) The request must specify the reasons why the worker disagrees with the authorization and may include additional documentation.

(c) The director will reconsider the authorization and notify all directly affected parties of its decision upon review.

(2) Any party ~~aggrieved~~ who disagrees with an offset authorization may request a hearing under ORS 656.283.

2. Other?

Fiscal Impacts, including cost of compliance for small business:

No impact is expected, as these changes align the rule with current practices without altering them. The division invites input from advisory committee members about costs, including costs to be borne by small businesses.

How will adoption of this rule affect racial equity in Oregon?

The division does not collect data about race or ethnicity related to workplace injuries and illness in Oregon, but the United States Bureau of Labor Statistics publishes lists of occupations and numbers of Americans employed broken down by race. Black/African Americans and Hispanic/Latino workers are represented in some of the more dangerous occupations in higher numbers than their respective shares of the U.S. workforce. To the extent Oregon workers in these racial groups suffer more on-the-job injuries and illnesses, changes in workers' compensation processes may impact these racial groups more than others. The agency does not have sufficient data needed to estimate specific effects on racial equity in Oregon, but invites public input.

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Rule: OAR 436-100-####, Insurer Responsibilities

Issue: The division's authorization to the insurer is copied to the injured worker and includes a statement that the worker may request reconsideration of the authorization from the division. However, neither the rules nor the authorization specifies that the insurer must include this language in their notice of explanation to the worker once the offset is applied.

Background:

OAR 436-100-0008(1) allows workers to request reconsideration from the division of an authorization. When the division sends the authorization to the insurer, it is copied to the injured worker, and includes a note to injured workers at the bottom. The note states that if they are aggrieved by the authorization, they may request reconsideration and the division will review the amount of offset.

To ensure that workers are aware of their ability to request reconsideration, the division is considering adding a requirement for insurers to include similar language in the notice of explanation that they must send workers when they apply an offset, including contact information for the division.

Options:

1. Add new rule language to OAR 436-100-XXXX, Insurer Responsibilities:

(2) An insurer authorized to offset a worker's permanent total disability benefits must send a notice of explanation to the injured worker and their attorney if represented, with a copy sent to the division. The notice must:

- (a) Be sent within 15 business days of the date the offset authorization is issued;
- (b) State the effective dates;
- (c) Explain how the worker's benefits will be affected by the authorization including the benefit amounts before and after the offset; ~~and~~
- (d) Include any additional information to help the worker understand their benefits; ~~and~~;
- (e) [Include the following notice in bold:](#)

Notice to worker:

If you disagree with the offset applied to your benefits, you may ask the Workers' Compensation Division for reconsideration. The director will review the amount of the offset and determine if it is correct.

[Send, email, or fax written requests to:](#)

[Workers' Compensation Division](#)
[Reimbursements Team](#)
[PO Box 14480](#)
[Salem OR 97309-0405](#)

[Email: wcd.sirr-reimbursements@dcbs.oregon.gov](mailto:wcd.sirr-reimbursements@dcbs.oregon.gov)
[Fax: 503-947-7725](tel:503-947-7725)

[If you have any questions, you may call the Workers' Compensation Division at 800-452-0288 \(toll-free\) or 503-947-7189.](#)

2. Other?

Fiscal Impacts, including cost of compliance for small business:

No impact is expected, but the division invites input from advisory committee members about costs, including costs to be borne by small businesses.

How will adoption of this rule affect racial equity in Oregon?

The division does not collect data about race or ethnicity related to workplace injuries and illness in Oregon, but the United States Bureau of Labor Statistics publishes lists of occupations and numbers of Americans employed broken down by race. Black/African Americans and Hispanic/Latino workers are represented in some of the more dangerous occupations in higher numbers than their respective shares of the U.S. workforce. To the extent Oregon workers in these racial groups suffer more on-the-job injuries and illnesses, changes in workers' compensation processes may impact these racial groups more than others. The agency does not have sufficient data needed to estimate specific effects on racial equity in Oregon, but invites public input.

Issue 9

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Rule: OAR 436-100-0040(2), Sanctions Against Worker for Failure to Cooperate With the Department

Issue: The rule specifies that the director may make a written demand on a worker who fails to comply with the rules by personal service or registered mail. Similar rules in other divisions relating to suspension of benefits include the option to send demands via certified mail.

Background:

If a worker fails to comply with the rules, they will be subject to suspension of their benefits until they comply. OAR 436-100-0040(1). Under OAR 436-100-0040(2), the director will make a written demand to the worker if they fail to comply with the rules. Under the current rule, this demand must be made by personal service or registered mail. In similar rules, such as OAR 436-060-0095(6) and OAR 436-060-0137(5), there is an option to send demands via certified mail as well. The division is considering adding the option to send written demands to suspend workers' benefits via certified mail.

Options:

1. Amend OAR 436-100-0040(2) as follows:

(2) If a worker fails to comply with these rules, the director will make a written demand upon the worker by personal service or [by registered or certified](#) mail. If the worker fails to comply within 20 days of receipt of the demand, the director may authorize suspension of benefits until the worker complies.

2. Other?

Fiscal Impacts, including cost of compliance for small business:

No impact is expected. The division invites input from advisory committee members about costs, including costs to be borne by small businesses.

How will adoption of this rule affect racial equity in Oregon?

The division does not collect data about race or ethnicity related to workplace injuries and illness in Oregon, but the United States Bureau of Labor Statistics publishes lists of occupations and numbers of Americans employed broken down by race. Black/African Americans and Hispanic/Latino workers are represented in some of the more dangerous occupations in higher numbers than their respective shares of the U.S. workforce. To the extent Oregon workers in these racial groups suffer more on-the-job injuries and illnesses, changes in workers' compensation processes may impact these racial groups more than others. The agency does not

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have sufficient data needed to estimate specific effects on racial equity in Oregon, but invites public input.

Issue 10

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Rule: OAR 436-100-0020(4), Requirements of Workers

Issue: Rule requires workers to provide information regarding social security disability benefits. However, the division may require additional information.

Background:

OAR 436-100-0020(4) requires workers to furnish information “regarding social security disability benefits.” However, the division often requires additional information that is unrelated to the worker’s social security disability benefits such as their weekly wage or changes to their beneficiaries. Therefore, the division is considering amending the rule to clarify that workers may need to provide additional information related to this division of rules.

Options:

1. Revise OAR 436-100-0005 as follows:

(4) Upon [director](#) request ~~of the department~~, the worker may be required at any time to ~~provide~~ [furnish](#) additional information [necessary to carry out OAR 436-100.](#) ~~regarding social security disability benefits.~~

2. Other?

Fiscal Impacts, including cost of compliance for small business:

No impact is expected, as these changes align the rule with current practices without altering them. The division invites input from advisory committee members about costs, including costs to be borne by small businesses.

How will adoption of this rule affect racial equity in Oregon?

The division does not collect data about race or ethnicity related to workplace injuries and illness in Oregon, but the United States Bureau of Labor Statistics publishes lists of occupations and numbers of Americans employed broken down by race. Black/African Americans and Hispanic/Latino workers are represented in some of the more dangerous occupations in higher numbers than their respective shares of the U.S. workforce. To the extent Oregon workers in these racial groups suffer more on-the-job injuries and illnesses, changes in workers’ compensation processes may impact these racial groups more than others. The agency does not have sufficient data needed to estimate specific effects on racial equity in Oregon, but invites public input.

Issue 11

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Rule: OAR 436-100-0005, Definitions
OAR 436-100-0010, Criteria for Eligibility
OAR 436-100-0030, Authorization of Offset; Effective Date

Issue: OAR 436-100 incorrectly uses the term “paying agent” instead of “insurer” when referring to insurers and self-insured employers who pay benefits to workers.

Background:

OAR 436-100-0005 defines “paying agent” as the self-insured employer or insurer paying benefits to the worker or beneficiaries. The term paying agent is defined and used differently in other divisions of OAR chapter 436 and ORS 656.307, which may cause confusion. In OAR 436-060, the term “paying agent” is used to describe an insurer temporarily ordered responsible to pay a claim for a compensable injury under ORS 656.307.

Alternatively, the term “insurer” is used throughout OAR chapter 436 to refer to insurers more broadly. In OAR 436-100, the term paying agent is used in a similar context to how insurer is used in other divisions of OAR chapter 436. To avoid confusion and improve clarity, the division is considering using the term “insurer” instead of “paying agent” and adding a definition of insurer consistent with other divisions of OAR chapter 436.

Options:

1. Make the following changes:
 - a. Revise OAR 436-100-0005 as follows:

OAR 436-100-0005 Definitions

(1) "Authorization" means an order issued by the Workers' Compensation Division directing the ~~insurer paying agent~~ to offset the worker's permanent total disability benefits by the amount specified in the order.

(7) “Insurer” means the State Accident Insurance Fund Corporation; an insurer authorized under ORS chapter 731 to transact workers’ compensation insurance in the state; or, an employer or employer group that has been certified under ORS 656.430 that meets the qualifications of a self-insured employer under ORS 656.407.

~~(8) "Paying agency" or "paying agent" means the self-insured employer or insurer paying benefits to the worker or beneficiaries.~~

- b. Revise OAR 436-100-0010 as follows:

OAR 436-100-0010 Criteria for Eligibility

(3) Permanent total disability benefits must not be paid by the ~~insurer paying agent~~ in an amount greater than authorized by ORS Chapter 656.

(4) Offset of permanent total disability benefits must be made by an ~~insurer paying agent~~ only in an amount and as authorized by the director.

c. Revise OAR 436-100-0030 as follows:

OAR 436-100-0030 Authorization of Offset; Effective Date

(1) Authorization issued by the ~~director department~~ will be directed to the ~~insurer paying agent~~ with a copy to the injured worker.

(2) An ~~insurer paying agent~~ making payment of permanent total disability benefits will be entitled to social security disability offset only as authorized by the ~~director department~~.

(4) Whenever there is a change in eligibility status of the worker or any one of the worker's beneficiaries receiving benefits for permanent total disability subject to offset, the ~~insurer paying agent~~ must notify the ~~Performance Section~~ ~~director~~.

(5) The ~~insurer paying agent~~ must, immediately upon the death of a worker, terminate payment of previously authorized permanent total disability benefits offset and begin payment of other compensation due under ORS chapter 656, if any.

2. Other?

Fiscal Impacts, including cost of compliance for small business:

No impact is expected, as these changes do not change current practices. The division invites input from advisory committee members about costs, including costs to be borne by small businesses.

How will adoption of this rule affect racial equity in Oregon?

The division does not collect data about race or ethnicity related to workplace injuries and illness in Oregon, but the United States Bureau of Labor Statistics publishes lists of occupations and numbers of Americans employed broken down by race. Black/African Americans and Hispanic/Latino workers are represented in some of the more dangerous occupations in higher numbers than their respective shares of the U.S. workforce. To the extent Oregon workers in these racial groups suffer more on-the-job injuries and illnesses, changes in workers' compensation processes may impact these racial groups more than others. The agency does not have sufficient data needed to estimate specific effects on racial equity in Oregon, but invites public input.

Issue 12

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Rule: OAR 436-100-0005, Definitions
OAR 436-100-0040, Sanctions Against Worker for Failure to Cooperate With the Department

Issue: It is unclear if references in the rule to “days” mean calendar or business days, which may result in unclear deadlines. Additionally, business days is not defined in rule.

Background:

The term “days” is currently used in OAR 436-100-0040, specifying that worker benefits may be suspended if they fail to comply within 20 days of receipt of a written demand from the director. For clarification, the division is considering specifying that this means “calendar days.”

Additionally, new rule language on insurer requirements have been proposed in this rulemaking, which would codify a current requirement to send the worker a notice within 15 business days of when their offset authorization is issued. For clarification and transparency, the division is considering adding a definition specifying that “business days” means Monday through Friday, excluding holidays.

Options:

1. Make the following changes:

a. Revise OAR 436-100-0040(2) as follows:

OAR 436-100-0040

(2) If a worker fails to comply with these rules, the director will make a written demand upon the worker by personal service or registered mail. If the worker fails to comply within 20 [calendar](#) days of receipt of the demand, the director may authorize suspension of benefits until the worker complies.

b. Revise 436-100-0005 as follows:

OAR 436-100-0005 Definitions

[\(3\) “Business days” means Monday through Friday, excluding legal holidays. Legal holidays are those listed in ORS 187.010 and 187.020.](#)

2. Other?

Fiscal Impacts, including cost of compliance for small business:

No impact is expected, as these changes align the rule with current practices without altering them. The division invites input from advisory committee members about costs, including costs to be borne by small businesses.

How will adoption of this rule affect racial equity in Oregon?

The division does not collect data about race or ethnicity related to workplace injuries and illness in Oregon, but the United States Bureau of Labor Statistics publishes lists of occupations and numbers of Americans employed broken down by race. Black/African Americans and Hispanic/Latino workers are represented in some of the more dangerous occupations in higher numbers than their respective shares of the U.S. workforce. To the extent Oregon workers in these racial groups suffer more on-the-job injuries and illnesses, changes in workers' compensation processes may impact these racial groups more than others. The agency does not have sufficient data needed to estimate specific effects on racial equity in Oregon, but invites public input.

Issue 13

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Rule: OAR 436-100-0005, Definitions

Issue: An insurer who has previously applied a social security disability offset under ORS 656.209 and OAR 436-100-0030 must remove the offset when the worker reaches full retirement age. The definition of “full retirement age” is not included in rule.

Background:

When a social security offset is initially authorized, the division sends the insurer an order stating that the authorization remains in effect until the worker no longer receives social security disability benefits. Currently, insurers are responsible for tracking worker retirement ages and removing the offset on the first day of the month that the worker reaches full retirement age.

A worker’s full retirement age depends on the year they were born. Under current federal law, workers born between 1943 and 1954 have a full retirement age of 66. Workers born in 1960 or later have a full retirement age of 67. Those born from 1955 through 1959 must determine their full retirement age by consulting [this chart](#) from the SSA.

As described in [Issue 2](#), the division is considering specifying that an authorization terminates when the worker reaches full retirement age in rule. Additionally, [Issue 4](#) discusses specifying when insurers must remove a social security disability offset. To provide additional clarity, the division is proposing to add “full retirement age” to the definitions section.

Options:

1. Revise OAR 436-100-0005 as follows:

OAR 436-100-0005 Definitions

[\(7\) “Full retirement age” means “retirement age,” as defined in 42 USC § 416\(l\)\(1\).](#)

2. Other?

Fiscal Impacts, including cost of compliance for small business:

No impact is expected. The division invites input from advisory committee members about costs, including costs to be borne by small businesses.

How will adoption of this rule affect racial equity in Oregon?

The division does not collect data about race or ethnicity related to workplace injuries and illness in Oregon, but the United States Bureau of Labor Statistics publishes lists of occupations and numbers of Americans employed broken down by race. Black/African Americans and

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Hispanic/Latino workers are represented in some of the more dangerous occupations in higher numbers than their respective shares of the U.S. workforce. To the extent Oregon workers in these racial groups suffer more on-the-job injuries and illnesses, changes in workers' compensation processes may impact these racial groups more than others. The agency does not have sufficient data needed to estimate specific effects on racial equity in Oregon, but invites public input.

Issue 14

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Rule: OAR 436-100-0005(2)

Issue: The definition of beneficiary in OAR 436-100-0005(2) is not consistent with the use of the term throughout OAR 436-100.

Background:

OAR 436-100-0005(2) defines beneficiary as “an injured worker, and the spouse, child or dependent of a worker, who is entitled to receive payments under ORS 656.001 through 656.794.” However, the term “beneficiary” or “beneficiaries” is used differently throughout OAR 436-100. A beneficiary may include a relative who is eligible for social security disability benefits. OAR 436-100-0020(3), for example, refers to the worker’s “federal social security beneficiary eligibility.” Additionally, the current definition creates redundancy. Several rules refer to the worker and their beneficiaries, but the definition of beneficiary already includes the worker themselves. The division is considering defining beneficiaries as those receiving PTD or federal social security benefits, to improve clarity for workers and their families.

Options:

1. Revise OAR 436-100-0005(2) as follows:

OAR 436-100-0005 Definitions

(2) "Beneficiary" means ~~an injured worker, and~~ the spouse, child or dependent of a worker who is entitled to receive permanent total disability benefits or federal social security disability benefits. ~~payments under ORS 656.001 through 656.794.~~

2. Other?

Fiscal Impacts, including cost of compliance for small business:

No impact is expected. The division invites input from advisory committee members about costs, including costs to be borne by small businesses.

How will adoption of this rule affect racial equity in Oregon?

The division does not collect data about race or ethnicity related to workplace injuries and illness in Oregon, but the United States Bureau of Labor Statistics publishes lists of occupations and numbers of Americans employed broken down by race. Black/African Americans and Hispanic/Latino workers are represented in some of the more dangerous occupations in higher numbers than their respective shares of the U.S. workforce. To the extent Oregon workers in these racial groups suffer more on-the-job injuries and illnesses, changes in workers' compensation processes may impact these racial groups more than others. The agency does not

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have sufficient data needed to estimate specific effects on racial equity in Oregon, but invites public input.

Issue 15

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Rule: OAR 436-100-0003(2), Applicability of Rules

Issue: OAR 436-100-0003(2)(a) states that OAR 436-100 applies to those workers who are receiving awards for PTD and who are eligible for and receiving federal social security benefits. However, the rules include requirements that apply to all workers receiving PTD who are eligible for social security, but who may not currently be receiving it.

Background:

OAR 436-100-0020(1) requires workers entitled to receive PTD to make application for federal social security disability benefits. Additionally, these workers must execute a release form if requested, notify the division about changes in their eligibility, and provide additional information as requested. OAR 436-100-0020(2) - (4). Lastly, OAR 436-100-0040(1) provides for sanctions against any worker entitled to receive PTD who fails to comply with the rules. These rules apply to all workers who are receiving PTD and who are eligible for social security. Therefore, the division is considering revising OAR 436-100-0003(2)(a) to remove the requirement that a worker is receiving social security disability benefits, and to combine subsections (a) and (b) for clarity.

Additionally, the current applicability rule does not include insurers or beneficiaries. There are rules that apply to insurers and beneficiaries in this division of rules. Therefore, the division is considering adding both groups to the applicability section.

Options:

1. Amend OAR 436-100-0003(2) as follows:

(2) These rules apply to:

- (a) ~~Those w~~Workers receiving awards for permanent total disability and eligible for ~~and receiving~~ federal social security disability benefits; ~~and whose period of disability under the Social Security Administration began on or after June 1, 1965.~~
- ~~(b) Injured workers whose period of disability under the Social Security Administration began on or after June 1, 1965.~~
- (b) Beneficiaries, as defined in OAR 436-100-0005.
- (c) Insurers authorized to offset a worker's permanent total disability benefits.

2. Other?

Fiscal Impacts, including cost of compliance for small business:

No impact is expected. The division invites input from advisory committee members about costs, including costs to be borne by small businesses.

How will adoption of this rule affect racial equity in Oregon?

The division does not collect data about race or ethnicity related to workplace injuries and illness in Oregon, but the United States Bureau of Labor Statistics publishes lists of occupations and numbers of Americans employed broken down by race. Black/African Americans and Hispanic/Latino workers are represented in some of the more dangerous occupations in higher numbers than their respective shares of the U.S. workforce. To the extent Oregon workers in these racial groups suffer more on-the-job injuries and illnesses, changes in workers' compensation processes may impact these racial groups more than others. The agency does not have sufficient data needed to estimate specific effects on racial equity in Oregon, but invites public input.

Housekeeping

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1) Definition of “division”:

OAR 436-100-0005

Updating the definition of “division” as follows:

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

2) Combining purpose and applicability rules:

OAR 436-100-0001

OAR 436-100-0002

OAR 436-100-0003

Combining rules 0001 through 0003 into one rule, changing the title to "Purpose and Applicability of these Rules," and removing provisions regarding the director's authority as follows:

~~OAR 436-100-0001, Authority for Rules~~

~~(1) These rules are promulgated under the director's authority contained in ORS 656.726 and 656.727~~

~~OAR 436-100-0002 Purpose~~

~~The purpose of these rules is to establish requirements and procedures for offsetting permanent total disability benefits against social security disability benefits.~~

OAR 436-100-0003, [Purpose and Applicability of these Rules](#)

(1) Purpose.

The purpose of these rules is to establish requirements and procedures for offsetting permanent total disability benefits against social security disability benefits.

(1)(2) Applicability.

(a) These rules [apply on or after the effective date](#) ~~are effective January 1, 2016,~~ to carry out the provisions of ORS 656.209 and 656.727.

(2)(b) These rules apply to:

(Aa) Those workers receiving awards for permanent total disability and eligible for and receiving federal social security disability benefits; and

(Bb) Injured workers whose period of disability under the Social Security Administration began on or after June 1, 1965.

~~(c)(3)~~ The director may waive procedural rules as justice requires, unless otherwise obligated by statute.

3) Updates to terminology for consistency:

OAR 436-100-0005

OAR 436-100-0020

OAR 436-100-0030

Currently, the rules use the terms “department,” “division,” “director,” and “performance section.” These terms will generally be replaced with “director,” except in rules requiring that an item be sent to WCD, in which case “division” will be used, as follows:

OAR 436-100-0005, Definitions

~~(3) "Department" means the Department of Consumer and Business Services.~~

~~(9) "Performance Section" means the Performance Section of the Workers' Compensation Division.~~

OAR 436-100-0020, Requirements of Workers

(2) Workers and eligible beneficiaries must, upon ~~department~~ director request, execute a release form authorizing the Social Security Administration to make disclosure to the ~~director department~~ of such information regarding the injured workers as will enable the ~~director department~~ to carry out the provisions of ORS 656.209 and these rules.

(3) Whenever there is a change in the federal social security beneficiary eligibility, the worker must notify the ~~director. Performance Section.~~

(4) Upon request of the ~~director, department,~~ the worker may be required at any time to furnish additional information regarding social security disability benefits.

OAR 436-100-0030, Authorization of Offset; Effective Date

(1) Authorization issued by the ~~director department~~ will be directed to the ~~insurer paying agent~~ with a copy to the injured worker.

(2) An ~~insurer paying agent~~ making payment of permanent total disability benefits will be entitled to social security disability offset only as authorized by the ~~director. department.~~

(3) The ~~director department~~ will review the social security offset calculation when notified of a change in the status of a worker subject to social security offset. An amended authorization will be issued, if necessary.

(4) Whenever there is a change in eligibility status of the worker or any one of the worker's beneficiaries receiving benefits for permanent total disability subject to offset, the insurer paying agent must notify the director, Performance Section.