

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
WORKERS' COMPENSATION DIVISION



**Retroactive Program**  
**Oregon Administrative Rules**  
**Chapter 436, Division 075**

Effective January 2, 2006

**TABLE OF CONTENTS**

<b>Rule</b>	<b>Page</b>
ORDER OF ADOPTION .....	iii
436-075-0001 Authority for Rules .....	1
436-075-0002 Purpose.....	1
436-075-0003 Applicability of Rules .....	1
436-075-0005 Definitions .....	1
436-075-0006 Administration of Rules .....	2
436-075-0008 Administrative Review .....	2
436-075-0010 Criteria for Eligibility .....	3
436-075-0020 Death Benefit .....	4
436-075-0030 Permanent Total Disability Benefit .....	4
436-075-0040 Death during Permanent Total Disability .....	4
436-075-0050 Temporary Total Disability.....	5
436-075-0065 Dispositions .....	5
436-075-0070 Reimbursement .....	6
436-075-0090 Third Party Recovery .....	6
436-075-0100 Assessment of Civil Penalties .....	7
436-075-0110 Suspension and Revocation of Authorization to Issue Guaranty Contracts.....	7
Certificate and Order for Filing.....	9

**NOTE:** Verical bars in the right margins mark substantive revisions to the previously published rules.

**Blank page for two-sided printing**

**BEFORE THE DIRECTOR  
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
WORKERS' COMPENSATION DIVISION**

In the Matter of the Amendment of Oregon Administrative Rules )  
(OAR) chapter 436, division: )  
001, Procedural Rules Governing )  
Rulemaking and Hearings.....05-061 )  
009-0008, Oregon Medical Fee and Payment.....05-062 )  
045-0008, Reopened Claims Program .....05-063 )  
070-0008, Workers' Benefit Fund Assessment .....05-064 )  
075-0008, Retroactive Program .....05-065 )  
080-0070, Noncomplying employers.....05-066 )  
085-0008, Premium Assessment.....05-067 )  
140-0008, Construction Carve-Out Programs .....05-069 )  
150-0008, Workers' Benefit Fund Claims Program..05-070 )  
) )  
In the Matter of the Repeal of Oregon Administrative )  
Rules (OAR) chapter 436, division: )  
130, Rehabilitation Facilities .....05-068 )

**ORDER OF  
ADOPTION**

The Director of the Department of Consumer and Business Services, under the general rulemaking authority in ORS 656.726(4), and in accordance with the procedure provided by ORS 183.335, amends OAR chapter 436.

On August 12, 2005, the Workers' Compensation Division filed with the Secretary of State a *Notice of Proposed Rulemaking/Hearing* and *Statement of Need and Fiscal Impact*. The division mailed copies of the *Notice* and *Statement* to interested persons and legislators in accordance with ORS 183.335 and OAR 436-001-0000, and posted copies to its Web site. The Secretary of State included notice of the public hearing in its September 2005 *Oregon Bulletin*.

On September 26, 2005, a public hearing was held as announced. In addition, the record was held open for written testimony through September 30, 2005. The Workers' Compensation Division received written testimony about proposed revisions to this rule. A summary of this testimony and the agency's responses are on file and available for public inspection upon request during regular business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, in the Administrator's Office, Workers' Compensation Division, Labor & Industries Building, 350 Winter Street NE, PO Box 14480, Salem, Oregon 97309-0405.

**RULE SUMMARY**

The Workers' Compensation Division has amended OAR chapter 436, division 001, "Procedural Rules Governing Rulemaking and Hearings," and several related rules in divisions 009, 045, 070, 075, 080, 085, 140, and 150. Most of the changes are related to passage of House Bill 2091 (Oregon Laws 2005, chapter 26), which moves hearings on workers' compensation matters currently processed by the Office of Administrative Hearings to the Workers' Compensation Board, for all hearings held on or after January 2, 2006. The division has repealed several rules

**Order of Adoption  
OAR 436-075**

in OAR 436-001 because the Workers' Compensation Board already has rules in place that govern the conduct of hearings. In addition, OAR 436-001 has been reorganized to place rules in a sequence more aligned with the sequence of appeals and hearings.

The Workers' Compensation Division has repealed OAR chapter 436, division 130, "Rehabilitation Facilities," in its entirety. ORS 656.530, the statute implemented by OAR 436-130, was repealed by Oregon Laws 1999, chapter 273, section 1.

**FINDINGS**

Having reviewed and considered the record and being fully informed, I make the following findings:

- a) The applicable rulemaking procedures have been followed.
- b) These rules are within the director's authority.
- c) The rules being adopted are a reasonable administrative interpretation of the statutes and are required to carry out statutory responsibilities.

**IT IS THEREFORE ORDERED THAT**

- 1) Amendments to OAR chapter 436, as set forth in Exhibit "A", are attached, incorporated by reference, and **adopted on this 19<sup>th</sup> day of October 2005, to be effective January 2, 2006.**
- 2) A certified copy of the adopted rules will be filed with the Secretary of State.
- 3) A copy of the amended rules with revision marks will be filed with the Legislative Counsel under ORS 183.715 within ten days after filing with the Secretary of State.

**DATED this 19th day of October 2005.**

DEPARTMENT OF CONSUMER  
AND BUSINESS SERVICES

*/s/ John L Shilts*

---

John L. Shilts, Administrator  
Workers' Compensation Division

**Under the Americans with Disabilities Act guidelines, alternative 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.**

Distribution: WCD-ID, NM, ML, S0, S1, S2, S3, S4, S5, S6, S7, S8

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
WORKERS' COMPENSATION DIVISION  
RETROACTIVE PROGRAM**

---

**EXHIBIT "A"  
OREGON ADMINISTRATIVE RULES  
CHAPTER 436, DIVISION 075**

**436-075-0001 Authority for Rules**

These rules are promulgated under the director's authority contained in ORS 656.726 and 656.506.

Stat. Auth.: ORS 656.506 and ORS 656.726  
Stats. Implemented: ORS 656.506  
Hist: Filed 12-22-89 as WCD Admin. Order 6-1989, eff. 1-1-1990

**436-075-0002 Purpose**

The purpose of these rules is to establish guidelines for administering disbursements made from the Retroactive Program.

Stat. Auth.: ORS 656.506  
Stats. Implemented: ORS 656.506  
Hist: Filed 12-22-89 as WCD Admin. Order 6-1989, eff. 1-1-90  
Amended 12/4/97 as WCD Admin. Order 97-062, eff. 1/1/98

**436-075-0003 Applicability of Rules**

(1) These rules are effective January 1, 1998, and shall apply to all requests for reimbursement from the Retroactive Program involving benefits payable pursuant to:

- (a) ORS 656.204 Death
- (b) ORS 656.206 Permanent Total Disability
- (c) ORS 656.208 Death During Permanent Total Disability
- (d) ORS 656.210 Temporary Total Disability for injuries prior to April 1, 1974.

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

Stat. Auth.: ORS 656.209, ORS 656.206, ORS 656.208, ORS 656.210, ORS 656.236, ORS 656.289 and ORS 656.506  
Stats. Implemented: ORS 656.204, ORS 656.206, ORS 656.208, ORS 656.210, ORS 656.276, ORS 656.289 and ORS 656.506  
Hist: Filed 12-22-89 as WCD Admin. Order 6-1989, eff. 1-1-90  
Amended 6-18-90 as WCD Admin. Order 11-1990, eff. 7-1-90 (Temp)  
Amended 11-29-90 as WCD Admin. Order 23-1990, eff. 12-26-90  
Amended 12/4/97 as WCD Admin. Order 97-062, eff. 1/1/98

**436-075-0005 Definitions**

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

- (1) "Average Weekly Wage" is that wage defined in ORS 656.005.
- (2) "Child" is as defined in the laws applicable at the worker's date of injury.
- (3) "Compliance" means the Compliance Section of the Workers' Compensation Division of the Department of Consumer and Business Services.
- (4) "Department" means the Department of Consumer and Business Services.

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
WORKERS' COMPENSATION DIVISION  
RETROACTIVE PROGRAM**

---

(5) "Director" means the director of the Department of Consumer and Business Services.

(6) "Disposition" or "claim disposition" means the written agreement executed by all parties in which a claimant agrees to release rights, or agrees to release an insurer or self-insured employer from obligations, under ORS 656.001 to 656.794, except for medical services, in an accepted claim.

(7) "Expiration of Benefits" means the end of entitlement to a benefit because of limits set forth in the statute in effect at the time of the worker's injury.

(8) "Insurer" means the State Accident Insurance Fund Corporation, an insurer authorized under ORS Chapter 731 to transact workers' compensation insurance in this state, an employer or employer group who has been certified as self-insured under ORS 656.430.

(9) "Retroactive Program benefit" means that additional benefit paid to eligible claimants or beneficiaries to bring their benefits to a more current level.

(10) "Social Security Offset" means a reduction of permanent total disability benefits or fatal benefits based upon the amount of federal social security disability benefits received by a worker or surviving spouse.

(11) "Spouse" means the husband or wife of a worker. This definition also includes cohabitants as defined in ORS 656.226.

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

(13) "Through" means inclusion of a specific date.

(14) "To" means until but not including a specific date.

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.726

Hist: Filed 12-22-89 as WCD Admin. Order 6-1989, eff. 1-1-90

Amended 6-18-90 as WCD Admin. Order 11-1990, eff. 7-1-90 (Temp)

Amended 11-29-90 as WCD Admin. Order 23-1990, eff. 12-26-90

Amended 12/4/97 as WCD Admin. Order 97-062, eff. 1/1/98

#### **436-075-0006 Administration of Rules**

For the purpose of administering these rules, orders of Compliance are deemed orders of the director.

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.726

Hist: Filed 12-22-89 as WCD Admin. Order 6-1989, eff. 1-1-90

#### **436-075-0008 Administrative Review**

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

(a) The request for hearing must be sent in writing to the Administrator of the Workers' Compensation Division. No hearing will be granted unless the request specifies the grounds upon

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
WORKERS' COMPENSATION DIVISION  
RETROACTIVE PROGRAM**

---

which the person requesting the hearing contests the proposed order or assessment.

(b) The request for hearing must be filed with the Administrator of the Workers' Compensation Division by the aggrieved person within 60 days after the mailing of the proposed order or assessment. No hearing will be granted unless the request is mailed or delivered to the administrator within 60 days after the mailing date of the proposed order or assessment.

(2) Under ORS 656.704(2), any party that disagrees with an action or order of the director under these rules, other than as described in section (1), may request a hearing by filing a request for hearing as provided in OAR 436-001-0019 within 30 days of the mailing date of the order or notice of action. OAR 436-001 applies to the hearing.

Stat. Auth.: ORS 656.740, 656.745, 656.750  
 Stats. Implemented: ORS 656.704, OL 2005 ch 26, 656.740, 656.745, 656.750  
 Hist: Filed 12-22-89 as WCD Admin. Order 6-1989, eff. 1-1-90  
 Amended 6-18-90 as WCD Admin. Order 11-1990, eff. 7-1-90 (Temp)  
 Amended 11-29-90 as WCD Admin. Order 23-1990, eff. 12-26-90  
 Amended 12/4/97 as WCD Admin. Order 97-062, eff. 1/1/98  
 Amended 12/3/03 as WCD Admin. Order 03-076, eff. 1/1/04  
 Amended 10/19/05 as WCD Admin. Order 05-065, eff. 1/2/06

**436-075-0010      Criteria for Eligibility**

(1) The department shall issue a bulletin to notify all insurers of changes in the Retroactive Program benefit levels whenever the director determines a change is necessary as indicated in ORS 656.506(7).

(2) Eligibility for Retroactive Program benefits shall be based upon the worker's injury date as follows:

(a) Workers or beneficiaries eligible to receive either death or permanent total disability benefits become eligible for Retroactive Program benefit increases when the benefits granted under the Retroactive Program bulletin exceed the benefits provided by the statute in effect at the time of the injury.

(b) For workers receiving temporary total disability benefits, the injury must have occurred prior to July 1, 1973. Workers with injuries occurring between July 1, 1973 and April 1, 1974 may qualify for benefits according to the limits defined in the Retroactive Program bulletin. Workers injured on or after April 1, 1974 are not entitled to receive Retroactive Program increases to their temporary total disability benefit.

(3) A claim shall not be eligible for Retroactive Program benefits if all issues except compensable medical services are disposed of pursuant to ORS 656.236 or settled pursuant to ORS 656.289 prior to becoming eligible under section (2) of this rule.

(4) Costs for claims of subject workers of an employer which is noncomplying as defined in ORS 656.052 are not eligible for reimbursement from the program, but remain a cost recoverable from the employer as provided by ORS 656.054(3).

Stat. Auth.: ORS 656.506  
 Stats. Implemented: ORS 656.236, ORS 656.289 and ORS 656.506  
 Hist: Filed 12-22-89 as WCD Admin. Order 6-1989, eff. 1-1-90  
 Amended 11-29-90 as WCD Admin. Order 23-1990, eff. 12-26-90  
 Amended 12/4/97 as WCD Admin. Order 97-062, eff. 1/1/98

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
WORKERS' COMPENSATION DIVISION  
RETROACTIVE PROGRAM**

---

**436-075-0020 Death Benefit**

(1) Death benefits shall be paid to eligible beneficiaries pursuant to ORS 656.204, and the Retroactive Program benefit schedules.

(2) Burial benefits shall be paid pursuant to ORS 656.204 (1) and the Retroactive Program benefit schedules.

(3) The statutory death benefit for injuries occurring from July 1, 1973 to April 1, 1974 will be reduced by the Social Security benefit received, up to the July 1, 1973 statutory benefit level. The amount of reduction to the statutory benefit is a Retroactive Program benefit. The insurer shall request reimbursement only for the adjusted Retroactive Program benefit.

(4) Benefits payable for a partial month shall be calculated by dividing the monthly benefit by the actual number of days in the month and multiplying that result by the number of days payable.

(5) Benefits for dependents shall be paid to the date of any status change.

(6) Remarriage allowance shall be paid pursuant to ORS 656.204 and the Retroactive Program benefit schedules.

Stat. Auth.: ORS 656.506  
Stats. Implemented: ORS 656.204  
Hist: Filed 12-22-89 as WCD Admin. Order 6-1989, eff. 7-1-90  
Amended 12/4/97 as WCD Admin. Order 97-062, eff. 1/1/98

**436-075-0030 Permanent Total Disability Benefit**

(1) Permanent total disability benefits shall be paid in accordance with ORS 656.206 and the benefit schedules set forth in the Retroactive Program bulletin.

(2) Benefit amounts payable for a partial month shall be calculated as set forth in 436-075-0020(4).

(3) Benefits for dependents shall be paid to the date of any status change.

(4) Any Social Security Offset determined pursuant to ORS 656.209 shall be first applied against the statutory portion of the permanent total disability benefit. Any amount of the social security offset that exceeds the statutory benefit shall be applied against the Retroactive Program benefit. The insurer shall request reimbursement only for that portion of the Retroactive Program benefit which has not been offset.

Stat. Auth.: ORS 656.506  
Stats. Implemented: ORS 656.206 and ORS 656.209  
Hist: Filed 12-22-89 as WCD Admin. Order 6-1989, eff. 1-1-90  
Amended 12/4/97 as WCD Admin. Order 97-062, eff. 1/1/98

**436-075-0040 Death during Permanent Total Disability**

(1) If the injured worker dies during the period of permanent total disability, death benefits shall be paid to eligible beneficiaries pursuant to ORS 656.208 and ORS 656.204, and the Retroactive Program benefit schedules.

(2) Permanent total disability benefits shall be paid to the date of death, at which time death benefits will commence. Where death benefits are not due, permanent total disability benefits shall be paid through the date of death.

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
WORKERS' COMPENSATION DIVISION  
RETROACTIVE PROGRAM**

---

(3) Social Security benefit for injuries occurring between July 1, 1973 and April 1, 1974 will be applied as set forth in 436-075-0020 (3).

(4) Benefit amounts payable for a partial month shall be calculated as set forth in 436-075-0020(4).

(5) Burial benefits shall be paid in accordance with ORS 656.208 (1) and 656.204 (1) and the Retroactive Program benefit schedules; however if the injury date is prior to July 1, 1973, burial benefits are due only if death results from the accidental injury causing the permanent total disability.

Stat. Auth.: ORS 656.506  
Stats. Implemented: ORS 656.204 and ORS 656.208  
Hist: Filed 12-22-89 as WCD Admin. Order 6-1989, eff. 1-1-90  
Amended 12/4/97 as WCD Admin. Order 97-062, eff. 1/1/98

**436-075-0050 Temporary Total Disability**

(1) Temporary total disability benefits shall be paid in accordance with ORS 656.210, OAR 436-060-0150 and the benefit schedules set forth in the Retroactive Program bulletin.

(2) In no case shall the computation of benefits under these rules and the Retroactive Program bulletin cause a reduction in temporary total disability benefits currently being paid.

Stat. Auth.: ORS 656.506  
Stats. Implemented: ORS 656.210  
Hist: Filed 12-22-89 as WCD Admin. Order 6-1989, eff. 1-1-90  
Amended 12/4/97 as WCD Admin. Order 97-062, eff. 1/1/98

**436-075-0065 Dispositions**

(1) Any disposition of the claim by the parties pursuant to ORS 656.236, or settlement of the claim pursuant to ORS 656.289, is not eligible to receive reimbursement from the Retroactive Program unless made with the prior written approval of the director.

(2) Requests for written approval of proposed dispositions should include:

(a) A copy of the proposed disposition which specifies the amount of the proposed contribution to be made from the Retroactive Program;

(b) A statement from the insurer indicating how the amount of the contribution was calculated;

(c) Any other information as required by the director.

(3) The director will not approve the disposition for reimbursement if:

(a) The ratio of the amount requested from the program to the total amount of the disposition exceeds the percentage of current benefits due the worker from the program; or

(b) The settlement exceeds a reasonable projection of future liability.

(4) The insurer shall submit dispositions to the division in the format prescribed by the director.

Stat. Auth.: ORS 656.506  
Stats. Implemented: ORS 656.236 and ORS 656.289  
Hist: Amended 6-18-90 as WCD Admin. Order 11-1990, eff. 7-1-90 (Temp)  
Filed 11-29-90 as WCD Admin. Order 23-1990, eff. 12-26-90

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
WORKERS' COMPENSATION DIVISION  
RETROACTIVE PROGRAM**

---

Amended 12/4/97 as WCD Admin. Order 97-062, eff. 1/1/98

**436-075-0070 Reimbursement**

(1) Reimbursement from the Retroactive Program will be authorized by the Compliance Section on a quarterly basis.

(2) Requests for reimbursement must be mailed or delivered to Compliance within 30 days after the end of each quarter to be processed in that quarterly disbursement.

(3) Requests for reimbursement mailed or delivered to Compliance more than 30 days after the end of the quarter will be held over and processed with the next quarterly disbursement.

(4) A separate request for reimbursement shall be submitted for each insurer and shall include a signed certification that the payments reported on the request have been made in the amounts reported.

(5) Requests for reimbursement must be submitted in the format prescribed by the director. Each request must accurately reflect the marital/dependency status in effect and eligible for reimbursement in the period requested.

(6) Compliance will not process any request failing to meet the requirements of section (4) or (5), until such requirements are met.

(7) The department shall recover any overpayment made to an insurer as a result of an insurer error in reporting, or incorrect information submitted on a quarterly request form.

(8) In the event a denied claim is found to be compensable by a hearing referee, the Workers' Compensation Board, or the Court of Appeals, and that decision is reversed by a higher level of appeal, the insurer shall receive reimbursement for Retroactive Program benefit payments required to be made while the claim was in an accepted status.

Stat. Auth.: ORS 656.506

Stats. Implemented: ORS 656.506

Hist: Filed 12-22-89 as WCD Admin. Order 6-1989, eff. 1-1-90

Amended 12/4/97 as WCD Admin. Order 97-062, eff. 1/1/98

**436-075-0090 Third Party Recovery**

(1) In the event of a third party recovery, previously reimbursed Retroactive Program benefits are a portion of the paying agency's lien.

(2) When the insurer learns of third party settlement negotiations on any claim for which it has received reimbursement from the Retroactive Program, the insurer should notify Compliance in accordance with the provisions set forth in ORS 656.593.

(3) Remittance on recovered Retroactive Program benefits shall be made to the department in the quarter following the recovery in amounts determined in accordance with ORS 656.591 and ORS 656.593.

Stat. Auth.: ORS 656.506

Stats. Implemented: ORS 656.591 and ORS 656.593

Hist: Filed 12-22-89 as WCD Admin. Order 6-1989, eff. 1-1-90

Amended 12/4/97 as WCD Admin. Order 97-062, eff. 1/1/98

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
WORKERS' COMPENSATION DIVISION  
RETROACTIVE PROGRAM**

---

**436-075-0100 Assessment of Civil Penalties**

Pursuant to ORS 656.745 the director may assess a civil penalty against an insurer for failure to comply with these rules. Penalty orders shall be issued in accordance with ORS 656.447 and 656.704 and are subject to review under OAR 436-075-0008.

Stat. Auth.: ORS 656.745

Stats. Implemented: ORS 656.204, ORS 656.726, ORS 656.745 and ORS 656.447

Hist: Filed 12-22-89 as WCD Admin. Order 6-1989, eff. 1-1-90

Amended 6-18-90 as WCD Admin. Order 11-1990, eff. 7-1-90 (Temp)

Amended 11-29-90 as WCD Admin. Order 23-1990, eff. 12-26-90

**436-075-0110 Suspension and Revocation of Authorization to Issue Guaranty Contracts**

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

(2) For the purpose of this rule:

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

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

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

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

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

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

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

(7) After 12 months of the suspension has elapsed, the division may audit the performance of the insurer. If the insurer is in compliance, the administrator may request the director to lift the suspension before the 18 months has elapsed. If the insurer is not in compliance, the administrator may request the director revoke the insurer's authority to issue guaranty contracts.

(8) When an insurer's authority to issue guaranty contracts has been revoked, the insurer

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
WORKERS' COMPENSATION DIVISION  
RETROACTIVE PROGRAM**

---

may serve an existing account only until the policy lapses, is canceled or until the next renewal date, whichever first occurs.

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

(10) Appeal of proposed and final orders of suspension and revocation issued under this rule may be made as provided in OAR 436-075-0008.

(11) Any order of suspension or revocation issued by a referee or other person pursuant to ORS 656.447 and this rule is a preliminary order subject to revision by the director.

Stat. Auth.: ORS 656.447

Stats. Implemented: ORS 656.446

Hist: Filed 11-29-90 as WCD Admin. Order 23-1990, eff. 12-26-90

Secretary of State  
**Certificate and Order for Filing**  
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies\* are true, full and correct copies of the  
PERMANENT Rule(s) adopted on

October 19, 2005 by the  
Date prior to or same as filing date

Department of Consumer and Business Services  
Workers' Compensation Division  
Agency and Division

OAR chapter 436  
Administrative Rules Chapter No.

Fred Bruyns  
Rules Coordinator

(503) 947-7717  
Telephone

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

to become effective January 2, 2006 was published in the September 2005 *Oregon Bulletin*.\*\*  
Date upon filing or later Month and Year

**RULEMAKING ACTION**

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

**ADOPT:** 436-001-0023, 436-001-0027, 436-001-0252, 436-001-0259, 436-001-0296

**AMEND:** 436-001-0003, 436-001-0004, 436-001-0030, 436-001-0170, 436-001-0225, 436-001-0240,  
436-001-0265, 436-001-0300, 436-009-0008, 436-045-0008, 436-070-0008, 436-075-0008,  
436-080-0070, 436-085-0008, 436-140-0008, 436-150-0008

**REPEAL:** 436-001-0001, 436-001-0007, 436-001-0008, 436-001-0110, 436-001-0150, 436-001-0160,  
436-001-0185, 436-001-0201, 436-001-0210, 436-001-0226, 436-001-0260, 436-130-0000,  
436-130-0010, 436-130-0020, 436-130-0030, 436-130-0040, 436-130-0050, 436-130-0060,  
436-130-0070, 436-130-0080, 436-130-0090, 436-130-0100

**AMEND AND RENUMBER:**

From 436-001-0000 to 436-001-0009  
From 436-001-0155 to 436-001-0019  
From 436-001-0275 to 436-001-0246

ORS 656.726(4)  
Statutory Authority

Other Authority

ORS 656.704, Enrolled House Bill 2091 – OL 2005, chapter. 26; OL 1999, chapter 273, section 1  
Statutes being Implemented

**RULE SUMMARY**

The Workers' Compensation Division has amended OAR chapter 436, division 001, "Procedural Rules Governing Rulemaking and Hearings," and several related rules in divisions 009, 045, 070, 075, 080, 085, 140, and 150. Most of the changes are related to passage of House Bill 2091 (Oregon Laws 2005, chapter 26), which moves hearings on workers' compensation matters currently processed by the Office of Administrative Hearings to the Workers' Compensation Board, for all hearings held on or after January 2, 2006. The division has repealed several rules in OAR 436-001 because the Workers' Compensation Board already has rules in place that govern the conduct of hearings. In addition, OAR 436-001 has been reorganized to place rules in a sequence more aligned with the sequence of appeals and hearings.

The Workers' Compensation Division has repealed OAR chapter 436, division 130, "Rehabilitation Facilities," in its entirety. ORS 656.530, the statute implemented by OAR 436-130, was repealed by Oregon Laws 1999, chapter 273, section 1.

Direct questions to: Fred Bruyns, Rules Coordinator; phone 503-947-7717; fax 503-947-7581; or e-mail [fred.h.bruyns@state.or.us](mailto:fred.h.bruyns@state.or.us). Rules are available on the internet: <http://www.wcd.oregon.gov/policy/rules/rules.html>

For a copy of the rules, contact Publications at 503-947-7627, Fax 503-947-7630.

/s/ John L Shilts

Authorized Signer

10/19/05

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.

\*\*The *Oregon Bulletin* is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 p.m. on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 p.m. the preceding workday.