

EXHIBIT "A"
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 060
TEMPORARY RULES 0010, 0019, 0035, & 0500
EFFECTIVE SEPTEMBER 22, 2003

436-060-0010 Reporting Requirements

(1) A subject employer shall accept notice of a claim for workers' compensation benefits from an injured worker or the worker's representative. The employer shall provide a copy of the "Worker's and Employer's Report of Occupational Injury or Disease," Form 440-801 (Form 801) or, an optional short form, the "Worker's Notice of Claim for Occupational Injury or Disease," Form 440-801W (Form 801W), to the worker immediately upon request; the form must be readily available for workers to report their injuries. Proper use of this form satisfies ORS 656.265.

(2) A "First Medical Report," Form 440-827 (Form 827), signed by the worker, is written notice of an accident which may involve a compensable injury under ORS 656.265. The signed Form 827 shall start the claim process, but shall not relieve the worker or employer of the responsibility of filing a Form 801 or Form 801W. If a worker reports a claim electronically, the insurer may require the worker to sign a medical release form, so the insurer can obtain medical records, pursuant to OAR 436-010-0240, necessary to process the claim.

(3) Employers, except self-insured employers, shall report the claim to their insurers no later than five days after notice or knowledge of any claim or accident which may result in a compensable injury. The report shall provide the information requested on the Form 801, and shall include, but not be limited to, the worker's name, address, and social security number, the employer's legal name and address, and the data specified by ORS 656.262 and 656.265.

(4) If an injured worker requires only first aid, no notice need be given the insurer, unless the worker chooses to file a claim. If a worker signs a Form 801 or Form 801W, the claim must be reported to the insurer. For the purpose of this section, "first aid" means any treatment provided by a person who does not require a license in order to provide the service. If the person must be licensed to legally provide the treatment or if a bill for the service will result, notice must be given to the insurer. When the worker requires only first aid and chooses not to file a claim, the employer shall maintain records showing the name of the worker, the date, nature of the injury and first aid provided for one year. These records shall be open to inspection by the director, or any party or its representative. If an employer subsequently learns that such an injury has resulted in medical services, disability or death, the date of that knowledge will be considered as the date on which the employer received notice or knowledge of the claim for the purposes of processing pursuant to ORS 656.262.

(5) The director may assess a civil penalty against an employer delinquent in reporting claims to its insurer in excess of ten percent of the employer's total claims during any quarter.

(6) An employer intentionally or repeatedly paying compensation in lieu of reporting to its insurer claims or accidents which may result in a compensable injury claim may be assessed a civil penalty by the director.

(7) The insurer shall process and file claims and reports required by the director in compliance with ORS chapter 656, WCD Administrative Rules, and WCD Bulletins. Such

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

filings shall not be made by computer-printed forms, facsimile transmission (FAX), electronic data interchange (EDI), or other electronic means, unless specifically authorized by the director.

(8) When a claim is received and the insurer does not provide insurance coverage for the worker's employer on the date of injury, the insurer may check for other coverage or forward it to the director. The insurer shall do one or the other within three days of determining they did not provide coverage on the date of injury. If the insurer checks for coverage and coverage exists, the insurer shall send the claim to the correct insurer within the same three day period. If the insurer checks for coverage and coverage cannot be found, the insurer shall forward the claim to the director within the same three day period.

(9) The insurer or self-insured employer and third party administrator, if any, shall be identified on all insurer generated workers' compensation forms, including insurer name, third party administrator name (if applicable), address, and phone number of the location responsible for processing the claim.

(10) The insurer shall file all disabling claims with the director within 21 days of the employer's date of knowledge. The employer's knowledge date is the earliest of: (a) the date the employer (any supervisor or manager) first knew of a claim; or (b) when enough facts exist to lead a reasonable employer to conclude that workers' compensation liability is a possibility. To meet this filing requirement, the Insurer's Report, Form 440-1502 (Form 1502) accompanied by the Form 801, or its electronic equivalent, is to be submitted to the director. However, when the Form 801 is not available within a time frame that would allow a timely filing, a Form 1502, accompanied by a signed Form 827 when available, will satisfy the initial reporting requirement. If the Form 801 is not submitted at the time of the initial filing of the claim, the Form 801 must be submitted within 30 days from the filing of the Form 1502. A Form 801 prepared by the insurer in place of obtaining the form from the employer/worker does not satisfy the filing requirement of the Form 801, unless the employer/worker cannot be located, or the form cannot be obtained from the employer/worker due to lack of cooperation, or the form is computer-printed based upon information obtained from the employer and worker. The insurer shall submit copies of all acceptance or denial notices not previously submitted to the director with the Form 1502. Form 1502 is used to report claim status and activity to the director.

(11) When submitting an initial Form 1502, the insurer shall report:

- (a) The status of the claim;
- (b) Reason for filing;
- (c) Whether first payment of compensation was timely, if applicable;
- (d) Whether the claim was accepted or denied timely, if applicable; and
- (e) Any Managed Care Organization (MCO) enrollment, and the date of enrollment, if applicable.

(12) The insurer shall file an additional Form 1502 with the director within 21 days of:

- (a) The date of any reopening of the claim;
- (b) Changes in the acceptance or disability status;

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

(c) Any litigation order or insurer's decision that causes reopening of the claim or changes the acceptance or disability status;

(d) MCO enrollment that occurs after the initial Form 1502 has been filed;

(e) The insurer's knowledge that a previous Form 1502 contained erroneous information;

or

(f) The date of any denial.

(13) A nondisabling claim shall only be reported to the director if it is denied, in part or whole. It must be reported to the director within 21 days of the date of denial. A nondisabling claim which becomes disabling must be reported to the director within 21 days of the date of the status change.

(14) If the insurer voluntarily reopens a qualified claim pursuant to ORS 656.278, it shall file a Form 3501 with the director within 21 days of the date the insurer reopens the claim.

(15) The insurer shall report a new medical condition reopening on the Form 1502 if the claim cannot be closed within 21 days of the first to occur: acceptance of the new condition, or the insurer's knowledge that interim temporary disability compensation is due and payable.

(16) New condition claims that are ready to be closed within 21 days shall be reported on the "Insurer Notice of Closure Summary," Form 440-1503 (Form 1503) at the time the insurer closes the claim. The Form 1503 shall be accompanied by the "Modified Notice of Acceptance" and "Updated Notice of Acceptance at Closure" letter.

(17) If, after receiving a claim from a worker or from someone other than the worker on the worker's behalf, the insurer receives written communication from the worker stating the worker never intended to file a claim and wants the claim "withdrawn," the insurer shall submit a Form 1502 with a copy of the worker's communication to the director, if the claim had previously been reported.

(18) The director may issue a civil penalty against any insurer delinquent in reporting or in submitting Forms 801, 1502, 1503 or 1644 with a late or error ratio in excess of ten percent during any quarter. For the purposes of this section, a claim or form shall be deemed to have been reported or submitted timely according to the provisions of ORS 656.726(4).

(19) Insurers shall make an annual report to the director reporting attorney fees, attorney salaries, and all other costs of legal services paid pursuant to ORS chapter 656. The report shall be submitted on forms furnished by the director for that purpose. Reports for each calendar year shall be filed not later than March 1 of the following year.

(20) [If the insurer receives a claim from a worker eligible for supplemental disability under ORS 656.210(5)(a) and OAR 436-060-0035, the insurer shall advise the director that it elects to pay or not pay supplemental disability benefits. Such election remains in effect for all supplemental disability claims received by the insurer during that calendar year. The insurer shall make its election by filing Form 3504, "Supplemental Disability Benefits Quarterly Reimbursement Request" or Form 3503, "Supplemental Disability Payment Voucher" with the director.] **If an insurer elects to process and pay supplemental disability benefits, pursuant to ORS 656.210(5)(a), the insurer does not need to inform the director of their election. The insurer shall request reimbursement, pursuant to OAR 436-060-0500, by filing Form 3504 "Supplemental Disability Benefits Quarterly Reimbursement Request" with the director for any quarter during which they processed and paid supplemental disability benefits. If**

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

an insurer elects not to process and pay supplemental disability benefits, the insurer shall submit Form 3530, "Supplemental Disability Election Notification," to the director by February 1 of each year. The election remains in effect for all supplemental disability claims the insurer receives during that calendar year. The election is made by the insurer and applies to all third party administrators an insurer may use for processing claims. Through December 31, 2003, an insurer may elect to process, but not pay supplemental disability benefits by submitting Form 3530, "Supplemental Disability Election Notification," to the director.

(21) An insurer may change its election made under section (20):

(a) [Once during calendar year 2002] **By December 31, 2003;** and

(b) Once after the division completes its first audit of supplemental disability payments made by the insurer.

Stat. Auth: ORS 656.262, 656.264, 656.265(6), 656.704, 656.726(4) and 656.745

Stat. Impltd: ORS 656.262(13), 656.264, 656.265, 656.704, 656.726(4), and section 3 (5)(a), chapter 865, Oregon Laws 2001

Hist: WCB Order 4-1967, eff. 7/1/67

Filed 1/11/80 as WCD Admin. Order 1-1980, eff. 1/11/80

Amended 12/23/81 as WCD Admin. Order 6-1981, eff. 1/1/82

Amended 12/29/83 as WCD Admin. Order 8-1983, eff. 1/1/84

Renumbered from 436-54-100, May 1, 1985

Amended 12/12/85 as WCD Admin. Order 8-1985, eff. 1/1/86

Amended 12/18/87 as WCD Admin. Order 4-1987, eff. 1/1/88

Amended 12/22/89 as WCD Admin. Order 7-1989, eff. 1/1/90

Amended 6/18/90 as WCD Admin. Order 8-1990, eff. 7/1/90 (Temp)

Amended 11/30/90 as WCD Admin. Order 26-1990, eff. 12/26/90

Amended 1/3/92 as WCD Admin. Order 1-1992, eff. 2/1/92

Amended 8/11/94 as WCD Admin. Order 94-055, eff. 8/28/94

Amended 2/2/96 as WCD Admin. Order 96-053, eff. 2/12/96

Amended 11/30/01 as WCD Admin. Order 01-061, eff. 1/1/02

Amended 10/2/02 as WCD Admin. Order 02-059, eff 11/1/02

Amended 8/28/03 as WCD Admin. Order 03-060, eff 9/2/03 (Temp.)

Amended 9/22/03 as WCD Admin. Order 03-061, eff. 9/22/03 (Temp.)

436-060-0019 Determining and Paying the Three Day Waiting Period

(1) Pursuant to ORS 656.210 and 656.212, the three day waiting period is three consecutive calendar days beginning with the first day the worker loses time or wages from work as a result of the compensable injury, subject to the following:

(a) If the worker leaves work but returns and completes the work shift without loss of wages, that day shall not be considered the first day of the three day waiting period.

(b) If the worker leaves work but returns and completes the work shift and receives reduced wages, that day shall be considered the first day of the three day waiting period.

(c) If the worker does not complete the work shift, that day shall be considered the first day of the three day waiting period even if there is no loss of wages. For the purpose of this rule, an attending physician's authorization of temporary disability is not required to begin the waiting period; however, the waiting period would not be due and payable unless authorized.

(2) Pursuant to ORS 656.210(3), no disability payment is due the worker for temporary total disability suffered during the first three calendar days after the worker leaves work as a result of a compensable injury, unless the worker is totally disabled after the injury and the total disability continues for a period of 14 consecutive days or unless the worker is admitted as an

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

inpatient to a hospital within 14 days of the first onset of total disability. For the purpose of this rule, admittance as an inpatient to a hospital can be any time following the date of the injury, but must be within 14 days of the first onset of total disability to waive the three day waiting period.

(3) If compensation is due and payable for the three day waiting period, the worker shall be paid for one-half day for the initial work day lost if the worker leaves the job during the first half of the shift and does not return to complete the shift. No compensation is due for the initial day of the waiting period if the worker leaves the job during the second half of the shift.

(4) If a worker is employed with varying days off or cyclic work schedules, the three day waiting period shall be determined using the work schedule of the week the worker begins losing time or wages as a result of the injury. If the worker is no longer employed with the employer at injury or does not have an established schedule when the worker begins losing time/wages, the three day waiting period and scheduled days off shall be based on the work schedule of the week the worker was injured.

Stat. Auth: ORS 656.210, 656.212, 656.704, and 656.726(4)

Stat. Impltd: ORS 656.210, 656.212

Hist: Adopted 11/30/01 as WCD Admin. Order 01-061, eff. 1/1/02
Amended 8/28/03 as WCD Admin. Order 03-060, eff 9/2/03 (Temp.)
Amended 9/22/03 as WCD Admin. Order 03-061, eff 9/22/03 (Temp.)

436-060-0035 Supplemental Disability for Workers with Multiple Jobs at the Time of Injury

(1) For the purpose of this rule:

(a) **“Assigned processing agent” is the company or business whom the director has selected and authorized to process and pay supplemental disability benefits on behalf of the director, when the insurer has elected not to process and/or pay these benefits.**

(b) “Primary job” means the job at **which the injury occurred.**

[(b)] (c) “Secondary job” means any other job(s) held by the worker in Oregon subject employment at the time of injury.

[(c)] (d) “Temporary disability” means wage loss replacement for the primary job.

[(d)] (e) “Supplemental disability” means wage loss replacement for the secondary job(s) that exceeds the temporary disability, up to, but not exceeding, the maximum established by ORS 656.210.

[(e)] (f) “Verifiable documentation” means check stubs or payroll records which include:

(A) Identification of the Oregon subject employer(s) and the time period of the date of injury to establish the worker held the secondary job, in addition to the primary job, at the time of injury; and

(B) Adequate information to calculate the average weekly wage in accordance with OAR 436-060-0025.

[(f)] (g) “Insurer” includes third party administrator.

(2) The insurer shall establish the temporary disability rate by multiplying the weekly wages, determined pursuant to OAR 436-060-0025, from the primary employer by

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
CLAIMS ADMINISTRATION

66 2/3% (.6667). If the results meet or exceed the maximum temporary disability rate, the worker is not eligible for supplemental disability benefits.

[(2)] **(3)** Within [(5)] **five** business days of receiving a claim **on which the temporary disability rate does not meet or exceed the maximum rate**, the insurer shall send a worker who identifies employment in addition to the primary job on the Form 801 a notice informing the worker of the date the insurer received the claim and the final date by which the insurer **or the assigned processing agent** must receive verifiable documentation to determine the worker's eligibility for supplemental disability. **If the insurer has elected not to process and/or pay these benefits, the insurer shall copy the assigned processing agent with the notice to the worker and the notice shall contain the name, address, and telephone number of the assigned processing agent. The notice shall also clearly advise the worker that the verifiable documentation must be sent to the assigned processing agent.**

[(3)] **(4)** Within 14 days of receiving the worker's verifiable documentation, the insurer **or the assigned processing agent** shall determine the worker's eligibility for supplemental disability and shall communicate the decision to the worker and the worker's representative, if any, in writing. The written communication shall advise the worker why he/she is not eligible when that is the decision and how to appeal the decision, if the worker disagrees with the decision.

[(4)] **(5)** A worker is eligible if:

(a) The worker was employed at the secondary job by an Oregon subject employer at the time of the injury,

(b) The worker provides verifiable documentation to the insurer **or the assigned processing agent** within 30 days of the insurer's receipt of the initial claim, and

(c) The worker's temporary disability rate from wages at the primary job does not meet or exceed the maximum rate under section [(6)] **(2)** of this rule.

[(5)] **(6)** The insurer **or the assigned processing agent** shall calculate supplemental disability for an eligible worker by adding all earnings the worker received from all subject employment, pursuant to ORS 656.210(2)(a)(B). In no case shall an eligible worker receive less compensation than would be paid if based solely on wages from the primary employer.

[(6) To establish the temporary disability rate, the insurer shall multiply the weekly wages, determined pursuant to OAR 436-060-0025, from the primary employer by 66 2/3% (.6667). If the results meet or exceed the maximum temporary disability rate, the worker is not eligible for supplemental disability benefits.]

(7) If the **temporary disability** rate from the primary employer does not meet or exceed the maximum rate, the insurer **or the assigned processing agent** shall combine the weekly wages, determined pursuant to OAR 436-060-0025, for each employer and multiply by 66 2/3% (.6667) to establish the combined disability rate up to the maximum rate. This is the base amount on which the worker's combined benefits will be calculated.

[(8) To establish the combined partial disability benefits when the worker has post injury wages from either job, the insurer shall use all post injury wages from both primary and all secondary employers. The insurer shall calculate the amount due the worker based on the combined wages at injury and combined post injury wages using the temporary partial disability calculation in OAR 436-060-0030. The insurer shall then calculate the amount due from the primary job based only on the primary wages at injury and the primary post injury wages. That

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

amount shall be subtracted from the amount due the worker; the remainder is the supplemental disability amount. If the worker receives post injury wages from the secondary job equal to or greater than the secondary wages at the time of injury, no supplemental disability is due.]

(8) If the worker returns to modified work:

(a) At the primary job only, the insurer shall calculate the amount due from the primary job based only on the primary wages at injury and the primary post injury wages.

(b) At the secondary job only, the insurer or the assigned processing agent shall calculate the amount due from the secondary job based only on the secondary wages at injury and the secondary post injury wages.

(c) At both the primary and secondary job, the insurer shall calculate temporary partial disability based only on the primary wages at injury and the primary post injury wages; the insurer or the assigned processing agent shall calculate partial supplemental disability based only on the secondary wages at injury and the secondary post injury wages.

(9) If the worker receives post injury wages from the secondary job equal to or greater than the secondary wages at the time of injury, no supplemental disability is due.

(10) If the worker returns to a job not held at the time of the injury, the insurer or the assigned processing agent shall process supplemental disability under the same terms, conditions and limitations as OAR 436-060-0030.

[9] **(11)** Except as otherwise provided in sections [(6)] **(2)**, (7), [and] (8), **and (9)** of this rule, supplemental disability shall be due and processed under the same provisions, conditions, and limitations as would be applicable to temporary disability for the job at injury. Supplemental disability may be due on a non-disabling claim even if temporary disability is not due from the primary job. The non-disabling claim will not change to disabling status due to payment of supplemental disability. When supplemental disability payments cease on a non-disabling claim, the insurer **or the assigned processing agent** shall send the worker written notice advising the worker that their supplemental disability payments have stopped and of the worker's right to appeal that action to the Workers' Compensation Board **within 60 days of the notice**, if the worker disagrees.

[(10)] **(12)** If the insurer has elected to **process and** pay supplemental disability pursuant to ORS 656.210(5)(a), the insurer shall determine the worker's on-going entitlement to supplemental disability and shall pay the worker supplemental disability simultaneously with any temporary disability due. Reimbursement for supplemental disability paid will be made pursuant to OAR 436-060-0500.

[(11)] **(13) Through December 31, 2003,**[1] if the insurer has elected **to process, but** not [10] pay supplemental disability pursuant to ORS 656.210(5)(b), the insurer shall determine the worker's on-going entitlement to supplemental disability and shall submit a Form 3503, "Supplemental Disability Payment Voucher" (Form 3503), to the division no later than the date the payment would otherwise be due. Form 3503 must include:

- (a) The WCD file number, if known,
- (b) The worker's name and mailing address,

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

- (c) The date of injury,
- (d) Whether the claim is disabling or non-disabling,
- (e) The worker's social security number,
- (f) The insurer's claim number,
- (g) The legal name of the primary job employer,
- (h) The primary job employer's WCD registration number,
- (i) The weekly wage of the primary job,
- (j) The legal names of all secondary job employers,
- (k) The WCD registration number for each secondary job employer,
- (l) The pre-injury weekly wage of each secondary job,
- (m) Supplemental disability payable from and through dates, and
- (n) The amount of supplemental disability to pay the worker.

(14) If the insurer has elected not to process and/or pay supplemental disability, the assigned processing agent shall determine the worker's on-going entitlement to supplemental disability and shall pay the worker supplemental disability due once each 14 days.

[⁽¹²⁾] **(15)** A worker who is eligible for supplemental disability under section [⁽⁴⁾] **(5)** of this rule has an on-going responsibility to provide information and documentation to the insurer **or the assigned processing agent**, even if temporary disability is not due from the primary job.

(16) If the insurer has elected not to process and/or pay supplemental disability, the insurer and the assigned processing agent shall communicate and retain documentation of shared information, as necessary, to coordinate benefits due.

[⁽¹³⁾] **(17)** Supplemental disability applies to occupational disease claims the same as injury claims. Supplemental disability benefits for an occupational disease shall be based on the worker's combined primary and secondary wages at the time there is medical verification the worker is unable to work because of the disability.

[⁽¹⁴⁾] **(18)** When an insurer elects to pay supplemental disability pursuant to ORS 656.210(5)(a) and OAR 436-060-0010(20) and receive reimbursement pursuant to OAR 436-060-0500, the insurer shall maintain a record of supplemental disability paid to the worker, separate from temporary disability paid as a result of the job at injury.

[⁽¹⁵⁾] **(19)** If a worker disagrees with the insurer's **or the assigned processing agent's** decision about the worker's eligibility for supplemental disability or the rate of supplemental disability, the worker may request a hearing before the Hearings Division of the Workers' Compensation Board. If the worker chooses to request a hearing on the insurer's decision concerning the worker's eligibility for supplemental disability, the worker must submit an appeal of the insurer's **or the assigned processing agent's** decision within 60 days of the notice in section [⁽³⁾] **(4)** of this rule. Disputes that arise about the rate of supplemental disability may be

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

resolved pursuant to OAR 436-060-0025(5) **and may be submitted at any time**. However, the insurer for the primary job is not required to contact the secondary job employer. The worker is responsible to provide any necessary documentation. By requesting resolution of the dispute under OAR 436-060-0025(5), the worker authorizes the Workers' Compensation Division to contact the secondary job employer to verify information provided by the worker to resolve the dispute.

Stat. Auth: ORS 656.210, 656.704, and 656.726(4)

Stat. Impltd: ORS 656.210, 656.325(5), 656.704, 656.726(4), and section 3 (2)(a), chapter 865, Oregon Laws 2001

Hist: Adopted 11/30/01 as WCD Admin. Order 01-061, eff. 1/1/02
Amended 4/19/02 as WCD Admin. Order 02-056, eff. 5/10/02 (Temp.)
Amended 10/2/02 as WCD Admin. Order 02-059, eff. 11/1/02
Amended 8/28/03 as WCD Admin. Order 03-060, eff. 9/2/03 (Temp.)
Amended 9/22/03 as WCD Admin. Order 03-061, eff. 9/22/03 (Temp.)

436-060-0500 Reimbursement of Supplemental Disability for Workers with Multiple Jobs at the Time of Injury

(1) When an insurer elects to pay supplemental disability due a worker with multiple jobs at the time of injury, reimbursement of the supplemental amount shall be made by the director quarterly, after receipt and approval of documentation of compensation paid by the insurer or the third party administrator.

(2) Requests for reimbursement shall be submitted on Form 3504, "Supplemental Disability Benefits Quarterly Reimbursement Request," and shall include, but may not be limited to:

- (a) Identification and address of the insurer responsible for processing the claim;
- (b) The worker's name, WCD file number, date of injury, social security number, and the insurer claim number;
- (c) Whether the claim is disabling or non-disabling;
- (d) The primary and secondary employer's legal names;
- (e) The primary and secondary employer's WCD registration numbers;
- (f) The weekly wage of all jobs at the time of the injury separated by employer;
- (g) The dates for the period(s) of supplemental disability due and payable to the worker. Dates must be inclusive (e.g., 1-16-02 through 1-26-02);
- (h) The amount of supplemental disability paid for the periods in (2)(g);
- (i) The quarter and year in which the payment was made;
- (j) A signed payment certification statement verifying the payments; and
- (k) Any other information required by the director.

(3) In addition to the supplemental disability reimbursement, the division shall calculate and the insurer shall be reimbursed an administrative fee based on the annual claim processing administrative cost factor, as published in Bulletin 316.

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

(4) Periodically the division will audit the physical file of the insurer responsible for processing the claim to validate the amount reimbursed. Reimbursement will be disallowed and repayment will be required if, upon such audit, it is found:

(a) Payments exceeded statutory amounts due, excluding reasonable overpayments, as determined by the division;

(b) Compensation has been paid as a result of untimely or inaccurate claims processing;
or

(c) Payments of compensation have not been documented, as required by OAR 436-050.

(5) Supplemental disability benefits due subject workers of an employer who is in a noncomplying status as defined in ORS 656.052 are not eligible for separate reimbursement under this rule, but remain a cost recoverable from the employer as provided by ORS 656.054(3).

(6) Claim Dispositions or Stipulated Settlements, pursuant to ORS 656.236 or 656.289 which include amounts for supplemental disability benefits due to multiple jobs, are not eligible to receive reimbursement from the Workers' Benefit Fund unless made with the prior written approval of the director.

(a) Requests for written approval of proposed dispositions shall include:

(A) A copy of the proposed disposition or settlement which specifies the amount of the proposed contribution to be made from the Workers' Benefit Fund;

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

(C) Any other information required by the director.

(b) The director will not approve the disposition for reimbursement if the proposed contribution exceeds a reasonable projection of that claim's future liability to the Workers' Benefit Fund.

Stat. Auth: ORS 656.704, 656.726(4), and section 3 (5)(a), chapter 865, Oregon Laws 2001

Stat. Impltd: ORS 656.210, 656.704, and 656.726(4)

Hist: Adopted 11/30/01 as WCD Admin. Order 01-061, eff. 1/1/02

Amended 10/2/02 as WCD Admin. Order 02-059, eff 11/1/02

Amended 8/28/03 as WCD Admin. Order 03-060, eff 9/2/03 (Temp.)

Amended 9/22/03 as WCD Admin. Order 03-061, eff 9/22/03 (Temp.)

Corrected copy (amendment to copy filed 9/22/03)
Secretary of State
Certificate and Order for Filing
TEMPORARY ADMINISTRATIVE RULES
A Statement of Need and Justification accompanies this form

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

September 22, 2003 by the
Date prior to or same as filing date.

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

chapter 436, division 060
Administrative Rules Chapter No.

Fred Bruyns
Rules Coordinator

(503) 947-7717
Telephone

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

to become effective September 22, 2003 through February 28, 2004
Date upon filing or later A maximum of 180 days including the effective date.

RULEMAKING ACTION

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

AMEND: OAR 436-060-0010, 436-060-0019, 436-060-0035, 436-060-0500

SUSPEND: OAR 436-060-0010T, 436-060-0019T, 436-060-0035T, 436-060-0500T

ORS 656.210, 656.704, 656.726
Statutory Authority:

ORS 183.335; OAR 137
Other Authority:

ORS 656.210, 656.325, 656.704, 656.726
Statutes being Implemented

RULE SUMMARY

Temporary rules are needed to return rules 0019 and 0500 to their permanent rule wording in effect from 1/1/02 through 9/1/03 and 11/1/02 through 9/1/03 respectively, and to amend temporary rules 0010 and 0035; these rules were issued as temporary rules effective September 2, 2003. The 9/2/03 changes to rules 0019 and 0500 were not necessary to meet the primary purpose of the temporary rules as described in the next paragraph. Temporary rule 0010 has been clarified. The 9/2/03 temporary rule 0035 had stated "(6) Supplemental disability is not due on a non-disabling claim, even though the worker may otherwise be eligible for supplemental disability." This statement has been removed; supplemental disability may be due on a non-disabling claim.

Temporary amendments to OAR 436-060 affect the administration and processing of supplemental disability claims under ORS 656.210. In addition to the direct payment of supplemental disability payments, the Department of Consumer and Business Services will administer these benefits using an "assigned processing agent" if an insurer or self-insured employer chooses to have the department both administer and pay supplemental disability claims.

/s/ Jerry Managhan
Authorized Signer

September 29, 2003
Date

Jerry Managhan, Deputy Administrator, Workers' Compensation Division
Printed name

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

Secretary of State

STATEMENT OF NEED AND JUSTIFICATION

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

Dept. of Consumer and Business Services,
Workers' Compensation Division

Agency and Division

OAR chapter 436

Administrative Rules Chapter Number

In the Matter of)

OAR 436-060)

Claims Administration)

) Statutory Authority,
) Statutes Implemented,
) Statement of Need,
) Principal Documents Relied Upon

Statutory Authority: ORS 656.210, 656.704, 656.726

Other Authority: ORS 183.335, OAR 137

Statutes Implemented: ORS 656.210, 656.212, 656.325, 656.704, 656.726

Need for the Temporary Rules: These temporary rules are needed to replace temporary rules that were effective September 2, 2003. The primary change affects temporary rule 0035, which had stated "(6) Supplemental disability is not due on a non-disabling claim, even though the worker may otherwise be eligible for supplemental disability." This statement has been removed; supplemental disability may be due on a non-disabling claim.

Temporary rules are needed to immediately implement ORS 656.210 regarding the department's obligation to administer and pay supplemental disability benefits if the insurer or self-insured employer chooses to have the department do so.

Documents Relied Upon: Senate Bill 485, 2001 Legislative Session; Senate Bill 914, 2003 Legislative Session. These documents are available for public review from the Administrator's Office, Department of Consumer and Business Services, Workers' Compensation Division, Labor and Industries Building, 350 Winter Street N.E., Salem, Oregon 97301-3879, during regular business hours, between 8:00 am and 5:00 pm, Monday through Friday.

Justification of Temporary Rule(s): Failure to act promptly will result in serious prejudice to the public interest or the interest of the parties concerned, primarily Oregon insurers and self-insured employers. These temporary rules are needed immediately to bring administrative rules into alignment with ORS 656.210. The Department of Consumer and Business Services has entered into a contract with an "assigned processing agent" to process and pay supplemental disability claims.

/s/ Jerry Managhan

September 22, 2003

Authorized Signer and Date

Jerry Managhan, Deputy Administrator, Workers' Compensation Division

Printed name