

5-Year Rule Review Report

Rule number: OAR 438-007-0045 (Translation of Documents)

Date adopted: April 1, 2019

Advisory committee used? Yes No

If yes, identify members. After completing its review, the agency must provide advisory committee members a copy of its report. ORS 183.405(3).

Advisory committee members: Jennifer Flood (Ombuds Office for Oregon Workers), Krishna Balasubramani, Bin Chen, Katherine Krametbauer (SAIF), Ana Maria Meneses-Henry, and Matthew U'Ren. Administrative Law Judge Bruce Smith served as facilitator.

1. Did the rule achieve its intended effect? Yes No

a. What was the intended effect?

OAR 438-007-0045 was adopted to comply with the court's decision in *Camacho v. SAIF*, 263 Or App 647 (2014), and to provide a procedure for the translation of non-English language documents admitted into evidence at hearings before the Workers' Compensation Board's Hearings Division.

b. How did the rule succeed or fail in achieving this effect?

The rule requires documents admitted as evidence at a hearing to be written in English or translated into English. The parties may stipulate in writing or orally to the English translation of the document, or the party offering the document for admission may include an English translation. The Administrative Law Judge resolves disputes regarding the accuracy of the English translation. The costs incurred in reaching a stipulated translation shall be borne in a manner agreed on by the parties. The costs incurred in obtaining a party-offered translation shall be borne by the offering party. The costs incurred by the claimant for translation of documents are subject to reimbursement pursuant to ORS 656.386(2). Finally, the costs incurred in assisting the Administrative Law Judge to reach resolution of a dispute shall be borne by the Board.

2. Was the fiscal impact statement underestimated or overestimated or just about right or unknown? (Check one).

a. What was the estimated fiscal impact?

The Board Members noted that the rule would create costs for parties in

translating non-English documents. However, the Board explained that because most non-English documents were already being translated, most of those costs were presumably already incurred by the parties. The Board also projected minimal costs to the Board's Hearings Division in resolving disputes regarding the English translation of documents.

b. What was the actual fiscal impact?

The Board did not receive any comments regarding the fiscal impact of translating non-English documents on parties. Accordingly, it does not appear that the rule has had a noteworthy fiscal impact. Additionally, because there have been very few disputes regarding the English translation of documents that have required resolution by an Administrative Law Judge, the costs to the Board have been minimal.

c. If the answer to question 2 is unknown, briefly explain why.

3. Have subsequent changes in the law required the rule be repealed or amended?
 Yes X No If yes, explain.

4. Is the rule still needed? X Yes No Explain.

OAR 438-007-0045 provides parties with a process for admitting non-English documents into evidence at hearing. The rule also creates a process to resolve disputes regarding the accuracy of the translation.

Dated this 8 day of May , 2024.

Workers' Compensation Board

by: 
Joy Dougherty, Board Chair


Sally Anne Curey, Board Member


Moisés Ceja, Board Member


Roger Ousey, Board Member


Jenny Ogawa, Board Member