

BEFORE THE WORKERS' COMPENSATION BOARD OF  
THE STATE OF OREGON

In the Matter of the Adoption of Permanent	)	
Amendments to the Rules of Practice and	)	
Procedure for Contested Cases Under the	)	
Workers' Compensation Law, Relating	)	
to Filing and Service of Documents;	)	
Correspondence (OAR 438-005-0046); Notice	)	
of Claim Acceptance and Hearing Rights under	)	
ORS 656.262(6)(d) (OAR 438-005-0050);	)	
Notice of Claim Denial and Hearing Rights	)	
(OAR 438-005-0055); Request for Hearing	)	
(OAR 438-005-0070); Entitlement to Claims	)	
Information - Disclosure Requirements	)	
(OAR 438-007-0015); Notice of Settlement;	)	
Submission of Documents (OAR 438-009-0015);	)	WCB ADMIN. ORDER 1-2012
Required Information in a Claim Disposition	)	ORDER OF ADOPTION
Agreement (OAR 438-009-0022); Claim	)	
Disposition Agreements; Processing	)	
(OAR 438-009-0025); Postcard Announcing	)	
CDA Approval Order (OAR 438-009-0028);	)	
Claim Disposition Agreements; Stay of	)	
Other Proceedings; Payment of Proceeds	)	
(OAR 438-009-0030); Request for Board	)	
Review (OAR 438-011-0005); Briefs and	)	
Other Documents (OAR 438-011-0020);	)	
Communication with Board and Parties	)	
in Own Motion Cases (OAR 438-012-0016);	)	
Notice of Need for and Appointment of	)	
Interpreter (OAR 438-020-0010).	)	

1. On May 10, 2012, the Workers' Compensation Board filed a Notice of Proposed Rulemaking Hearing with the Secretary of State, giving notice of its intent to amend permanent rules of practice and procedure relating to the aforementioned rules. Copies of the notice were electronically provided to the *Oregonian*, the *Associated Press*, and the *Capitol Press* in the Capitol Press Room on June 13, 2012. The notice was published in the Secretary of State's June 2012 *Administrative Rule Bulletin*.

On May 11, 2012, notice of this hearing was posted on the Board's website at: <http://authoring-staging.apps.oregon.gov/WCB/legal/Pages/laws-and-rules.aspx>. On May 31, 2012, copies of the notice, as well as the proposed rule, were also mailed to all interested parties whose names appear on the Board's mailing list. On June 7, 2012 and June 8, 2012, copies of the notice and the proposed rule were respectively mailed and electronically provided to the appropriate legislators. Notice of the hearing was published in the May 2012 and June 2012

issues of the Board's News and Case Notes, which were posted on the Board's website in early May 2012 and June 2012, respectively. In addition, members of the Workers' Compensation Section of the Oregon State Bar were notified by e-mail about the Board's website posting regarding the aforementioned issues in its News and Case Notes in early May 2012 and June 2012.

Thereafter, in accordance with the notice, a public hearing was conducted by Debra L. Young, Staff Attorney, on June 29, 2012 at Salem, Oregon. The record of the public hearing was closed at 5:00 p.m. on June 29, 2012.

2. No testimony was presented at the scheduled hearing. Written comments were submitted by four individuals. Copies of the transcript of the public hearing and of all written comments received are available for public inspection and copying at the offices of the Board, 2601 25<sup>th</sup> St. SE, Suite 150, Salem, Oregon 97302-1280, during normal working hours from 8:00 a.m. to 5:00 p.m., Monday through Friday.

3. Order of Adoption for Rules (Exhibits A through N). The Board has thoroughly reviewed and considered all comments pertaining to its proposed permanent rules. A written summary of the comments is also included in the record.

As part of its comprehensive review of OAR Chapter 438 rules, the Board invited public comment regarding its administrative rules. Several of the public comments received concerned proposed changes involving technology. After reviewing those comments, as well as staff comments, the Board appointed an Advisory Committee on Technology to provide guidance on the impact the proposed rule changes would have on the workers' compensation system.<sup>1</sup> The committee was also asked to provide recommendations regarding the advancement of technology in the practice of workers' compensation law. After holding two public meetings, the committee issued a report. On May 8, 2012, at a public meeting, the Board discussed that report, as well as proposed amendments to its rules drafted in response to that report. After reviewing the committee's report and the drafts of amended rules addressing the committee's suggestions, the Board proposed the adoption of permanent amendments.

Consistent with the committee's recommendations, the Members' intention is to provide an electronic "filing/service" system to the extent possible without creating additional expenses on the agency or the parties. In particular, the present goal is to enhance parties'/practitioners' use (for purposes of "filing" and "service" under the Board's rules) of electronic mail (e-mail), as well as the Board's Online Services via its website ([www.wcb.oregon.gov](http://www.wcb.oregon.gov)).

For the reasons explained in the Board's May 10, 2012 Statement of Need (incorporated by this reference), as well as those explained below, the Board has reached the following conclusions regarding the proposed amendments and rules, which are contained in Exhibits A through N (attached and incorporated by this reference).

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<sup>1</sup> Administrative Law Judge (ALJ) Joy Dougherty served as the facilitator for the committee. The following practitioners also were members of the committee: Robert Guarrasi, Robert Kinney, Nancy Marque, and Rebecca Watkins. The Members extend to the committee their grateful appreciation for their valuable participation in this endeavor.

OAR 438-005-0046

OAR 438-005-0046 currently permits electronic filing/service of the following items: (1) requests for hearing; (2) requests for Board review of an ALJ's order; and (3) requests for Board review of a Director's order finding no bona fide medical services dispute. The Board proposed amending this rule to add the following items that may be filed/served electronically: (1) requests for extension of the briefing schedule under OAR 438-011-0020; and (2) requests for waiver of the Board's rules under OAR 438-011-0030. The Board also proposed amending the rule to allow the filing/service of these aforementioned items through the use of its website portal (once that system is installed and implemented).

These proposed amendments will be addressed in subsection (1)(e), with the requirements for filing such electronic requests by e-mail and by website portal provided in subsections (1)(f) and (1)(g), respectively. These proposed amendments are designed to provide an additional, convenient means to file/serve such requests.

In addition, current subsection (1)(f) addresses proving the "filing date" for "things" mailed by first class mail (*i.e.*, based on an attorney's certificate of mailing). However, the documents described in subsection (1)(c) or (1)(e) are exceptions to current subsection (1)(f). For readability purposes, as well as due to the aforementioned proposed changes to subsection (1)(e) and the creation of a new subsection (1)(f), the Board proposed renumbering current subsection (1)(f) as (1)(i).

These aforementioned proposed changes to the filing rule also result in renumbering current subsection (1)(g) as (1)(h) and amending the references to various subsections accordingly in sections (1) (filing) and (2) (service). The Board also proposed amending subsections (2)(a) and (2)(b) to include service by "website portal."

The Board also proposed to add section (4), which provides that signatures concerning any thing filed under these rules may be provided in writing, by facsimile transmission, by electronic scanning, by means of the website portal, or by other electronic means. Subsection (4)(a). *See* ORAP 16.40 (Electronic signatures). The proposed rule further states that registration on the website portal (by means of a user name and password) constitutes a signature of the filer. Subsection (4)(b). For documents filed by electronic means other than the website portal, the proposed rule provides that such a document must include a signature block with the printed name of the filer, preceded by an electronic symbol intended to substitute for a signature (such as, a scan of the filer's handwritten signature or "s/"). Subsection (4)(c). The Board also proposed adding subsection (4)(d), which states that any order, notice, or any other document issued by an Administrative Law Judge or the Board may include their signature by means of writing, by facsimile transmission, by electronic scanning, by website portal, or by other electronic means permitted under these rules. Finally, the proposed rule provides that an electronically submitted signature shall have the same force and effect as an original signature, subject to the requirements set forth in the Uniform Electronic Transactions Act (*See* ORS 84.004(8), ORS 84.019). Subsection (4)(e).

At the rulemaking hearing, no oral comments were received regarding these proposed amendments.<sup>2</sup>

The Board finds for the reasons expressed in its Statement of Need, and those discussed herein, that the proposed rule is reasonable, necessary, and proper. Accordingly, the Board adopts this proposed rule as a permanent rule, contained in Exhibit A and incorporated by this reference.

OAR 438-005-0050(2)

OAR 438-005-0046 currently permits physical delivery to any permanently staffed office of the Board, FAX, and electronic filing/service of requests for hearing. However, the required notice language in OAR 438-005-0050(2), which advises a worker of the right to request a hearing regarding a dispute concerning a Notice of Claim Acceptance, does not provide for these additional means of requesting a hearing, nor does it list the Board's e-mail address or FAX number for filing such a request. The Board proposed to amend the notice language in section (2) to include a reference to filing of a hearing request by e-mail, FAX, and physical delivery and to provide its e-mail address and FAX number for making such requests.<sup>3</sup>

In addition, at the request of the Ombudsman for Injured Workers (Ombudsman), the Board proposed adding the following language at the end of the notice requirement in OAR 438-005-0050(2): **“OR THE OMBUDSMAN FOR INJURED WORKERS TOLL FREE AT 1-800-927-1271.”**

At the rulemaking hearing, no comments were received regarding these proposed amendments.

The Board finds for the reasons expressed in its Statement of Need, and those discussed herein, that the proposed rule is reasonable, necessary, and proper. Accordingly, the

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<sup>2</sup> A written comment suggested allowing parties to file electronic “response” to issues raised in a hearing request, which would require amending OAR 438-005-0046 and OAR 438-006-0036. OAR 438-006-0036 requires that such “responses” must be filed on a form prescribed by the Board and simultaneously mailed to all other parties. However, OAR 438-006-0036 is not among those rules that the Board proposed amending. Therefore, the Board declined to amend OAR 438-006-0036 at this time. Instead, the Board will consider this possible amendment for a future date.

Insofar as this comment pertains to OAR 438-005-0046, this rule is among the proposed amended rules. Nevertheless, consistent with its decision to postpone consideration of the above-proposed amendment to the “hearing response” rule (OAR 438-006-0036), the Board decided to postpone consideration of this proposed amendment to OAR 438-005-0046 for a future date.

<sup>3</sup> With the above-adopted amendments, OAR 438-005-0046 will also permit filing/service of requests for hearing by registered users of the Board's website portal (once that system is installed and implemented). Such “registered users” will include regular participants in workers' compensation proceedings (*i.e.*, attorneys, insurers, self-insured employers, claim administrators, and processing agencies). Under such circumstances, the proposed revisions to the notice provision in OAR 438-005-0050(2), which is provided to workers, does not include reference to the Board's website portal.

Board adopts this proposed rule as a permanent rule, contained in Exhibit B and incorporated by this reference.

OAR 438-005-0055(1), (2)

Based on the same reasoning regarding the above-adopted amendment to OAR 438-005-0050(2), the Board proposed to amend the notice language in OAR 438-005-0055(1) and (2), which advise a worker of the right to request a hearing on a compensability denial and a non-cooperation denial, respectively. Specifically, the Board proposed to include reference to e-mail, FAX, and physical delivery filing of a hearing request and its e-mail address and FAX number for making such requests.<sup>4</sup> Also, for readability, the Board proposed to divide this notice language into paragraphs.

In addition, at the Ombudsman's request, the Board proposed adding the following language at the end of the notice requirement in OAR 438-005-0055(1) and (2):  
**“OR THE OMBUDSMAN FOR INJURED WORKERS TOLL FREE AT 1-800-927-1271.”**

At the rulemaking hearing, no oral comments were received regarding these proposed amendments.<sup>5</sup>

The Board finds for the reasons expressed in its Statement of Need, and those discussed herein, that the proposed rule is reasonable, necessary, and proper. Accordingly, the Board adopts this proposed rule as a permanent rule, contained in Exhibit C and incorporated by this reference.

OAR 438-005-0070

This rule concerns requests for hearing, and the last sentence provides: “A copy of the request should be mailed to the insurer, self-insured employer, claimant, or if represented, claimant’s counsel.” The Board proposed changing the term “mailed to” in this sentence to “served on” which would encompass the variety of transmissions, including electronic and facsimile, permitted by the “service” rule. *See* OAR 438-005-0046(2). Likewise, the Board proposed to add a reference to this “filing” rule to the first sentence of this rule.

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<sup>4</sup> With the above-adopted amendments, OAR 438-005-0046 will also permit filing/service of requests for hearing by registered users of the Board’s website portal (once that system is installed and implemented). Such “registered users” will include regular participants in workers’ compensation proceedings (*i.e.*, attorneys, insurers, self-insured employers, claim administrators, and processing agencies). Under such circumstances, the proposed revisions to the notice provisions in OAR 438-005-0055(1) and (2), which are provided to workers, does not include reference to the Board’s website portal.

<sup>5</sup> A written comment was received in conjunction with these proposed amendments. Specifically, a comment suggested amending the denial language in OAR 438-005-0055 to include the Workers’ Compensation Division’s (WCD’s) website address to conform with OAR 436-060-0140(10)(d). There has been no opportunity to consider input from the workers’ compensation community concerning this suggestion. Moreover, OAR 436-060-0140(10), a WCD rule, is written as a supplement to the Board’s rules; *i.e.*, the rules are not designed to match. Under these circumstances, the Board declined to amend its rule as suggested at this time.

In addition, the Board proposed to amend the rule to delete the social security number requirement and to change the citation to reflect the renumbering of ORS 656.283(3) to ORS 656.283(2). Or Laws Ch 35, § 2 (2009).

At the rulemaking hearing, no comments were received regarding these proposed amendments.

The Board finds for the reasons expressed in its Statement of Need, and those discussed herein, that the proposed rule is reasonable, necessary, and proper. Accordingly, the Board adopts this proposed rule as a permanent rule, contained in Exhibit D and incorporated by this reference.

OAR 438-007-0015(2), (3)

Section (2) provides, in part, that “[d]ocuments pertaining to claims are obtained by mailing a copy of the Request for Hearing, or a written demand accompanied by an attorney retention agreement or medical information release, to the insurer.” In order to allow for initiation of this process by e-mail or facsimile transmission (in addition to “mailing”), the Board proposed to include the term “delivering” in sections (2) and (3).

At the rulemaking hearing, no comments were received regarding these proposed amendments.

The Board finds for the reasons expressed in its Statement of Need, and those discussed herein, that the proposed rule is reasonable, necessary, and proper. Accordingly, the Board adopts this proposed rule as a permanent rule, contained in Exhibit E and incorporated by this reference.

OAR 438-009-0015(5)

In conjunction with the above-adopted amendment to OAR 438-005-0046 to add section (4), which provides for electronically generated signatures for any thing delivered for filing under these rules, the Board proposed to amend OAR 438-009-0015(5) to clarify that electronic signatures are permitted in settlement documents. Specifically, the Board proposed to eliminate the reference to the “original” settlement document being provided for approval and, instead, provide that “the settlement document and one legible copy” shall be provided for approval. In proposing this change, consistent with its advisory committee’s reasoning, the Board considered that accepting electronic signatures would not affect its costs or procedures; however, it would most likely expedite the settlement process and, potentially, eliminate mailing costs to both parties and practitioners.

At the rulemaking hearing, no comments were received regarding these proposed amendments. Nevertheless, the Administrator for the Workers’ Compensation Division (WCD) submitted a comment regarding proposed amendments to OAR 438-009-0025(1) that would also affect this proposed amendment to OAR 438-009-0015(5). Specifically, the WCD Administrator explained that the division no longer creates paper files for workers’ compensation claims, but rather claim documents are scanned and saved in

an electronic claim file in the division's Claim Information System (CIS). Therefore, the Administrator suggested amending OAR 438-009-0025(1) in a manner consistent with those procedures. The settlement documents under OAR 438-009-0015 are also scanned and saved in the division's CIS system. Consequently, as with CDAs under OAR 438-009-0025(1), the submission of a settlement document *and* "one legible copy" is no longer necessary. Thus, the Board has decided not to include the phrase "and one legible copy" in section (5) of this rule.

The Board finds for the reasons expressed in its Statement of Need, and those discussed herein, that the proposed rule, as amended herein, is reasonable, necessary, and proper. Accordingly, the Board adopts this proposed rule as a permanent rule, contained in Exhibit F and incorporated by this reference.

#### OAR 438-009-0022(4)(h)

Subsection (4)(h) provides the notice language for claim disposition agreements (CDAs). As requested by the Ombudsman, the Board proposed updating this notice language to include the current title "Ombudsman for Injured Workers" and to list the Ombudsman's toll-free number without any reference to a local phone number. In addition, pursuant to the Division's request, the Board proposed that the Division's toll-free phone number be listed without any reference to "in Oregon."

At the rulemaking hearing, no comments were received regarding these proposed amendments.

The Board finds for the reasons expressed in its Statement of Need, and those discussed herein, that the proposed rule is reasonable, necessary, and proper. Accordingly, the Board adopts this proposed rule as a permanent rule, contained in Exhibit G and incorporated by this reference.

#### OAR 438-009-0025(1)

Based on the same reasoning regarding the above-adopted amendment to OAR 438-009-0015(5), the Board proposed to amend OAR 438-009-0025(1) to clarify that electronic signatures are permitted in CDAs. Specifically, the Board proposed to eliminate the reference to the "original" CDA being filed for approval and, instead, provide that "the claim disposition agreement and one legible copy" shall be filed with the Board for approval. As a result of this proposed change, the Board also proposed to delete word "original" from the last sentence of section (1).

One comment was received at the rulemaking hearing in conjunction with these proposed amendments. Specifically, the WCD Administrator explained that the division no longer creates paper files for workers' compensation claims, but rather claim documents are scanned and saved to an electronic claim file in the division's CIS system. The Administrator suggested amending OAR 438-009-0025(1) to not require that a copy of a CDA be conformed and distributed to the Director. The Administrator proposed the following changes to that sentence (which includes the Board's proposed change deleting

“original”): “The [*original*] claim disposition agreement shall be retained in the Board’s file and a copy [*shall*] **will** be [*conformed and distributed to*] **provided for** the Director’s **claim file.**”

After considering this proposed change, for the reasons expressed in the aforementioned comment, the Board agrees that such amended language is appropriate. Furthermore, consistent with this change, it is unnecessary for parties to submit a proposed agreement *and* “a legible copy.” Thus, the Board has decided not to include the phrase “and one legible copy” in the first sentence of section (1) of this rule.

The Board finds for the reasons expressed in its Statement of Need, and those discussed herein, that the proposed rule, as amended herein, is reasonable, necessary, and proper. Accordingly, the Board adopts this proposed rule as a permanent rule, contained in Exhibit H and incorporated by this reference.

#### OAR 438-009-0028

This rule provides the requirements for announcement of a CDA approval order by means of postcards, which is the only method currently available for providing such announcement. The committee recommended that an electronic notification system be created, which will streamline the process and reduce costs to parties and practitioners. After considering the committee’s report, the Board proposed to amend the rule to provide two electronic means of announcing a CDA approval order, in addition to the existing postcard system, which will no longer be mandatory (except in the case of unrepresented claimants).

Specifically, the Board proposed adding section (1) to include three means of announcing a CDA approval order: (a) By means of the Board’s website portal for registered users;<sup>6</sup> (b) The posting of the CDA’s approval on the Board’s website (which is an action taken for all approved CDAs) shall constitute notice of the approval of the agreement to the party and the party’s attorney; or (c) By postcards as prescribed in sections (3) and (4) of this rule. In addition, the Board proposed to include in this amended section (1) a reference to an exception in section (2) to this permissive selection of notification methods. The Board proposed adding section (2) to require that unrepresented claimants be provided notification of a CDA approval by the postcard method.

The Board proposed to renumber the existing section (1) (which provides for postcard announcement of CDA approval orders) as section (3) and change the term “shall” to “may,” making such postcard announcements optional, rather than mandatory, except as provided in section (2), which makes postcard announcements mandatory for unrepresented claimants. As a result of these proposed changes, sections (2) and (3) will be renumbered as sections (4) and (5), respectively. Finally, the reference in renumbered section (5) to section (2) will be changed to section (4).

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<sup>6</sup> Once that system is installed and implemented, “registered users” will include regular participants in workers’ compensation proceedings (*i.e.*, attorneys, insurers, self-insured employers, claim administrators, and processing agencies).



At the rulemaking hearing, no comments were received regarding these proposed amendments.

The Board finds for the reasons expressed in its Statement of Need, and those discussed herein, that the proposed rule is reasonable, necessary, and proper. Accordingly, the Board adopts this proposed rule as a permanent rule, contained in Exhibit I and incorporated by this reference.

OAR 438-009-0030(2), (3), (5), (6)

Section (6) of this rule refers to notice of approval of a CDA by means of postcards pursuant to OAR 438-009-0028. Based on the reasoning regarding the above-adopted amendments to OAR 438-009-0028, which would permit electronic notification, the Board proposed to amend OAR 438-009-0030(6) to: (1) add language providing that “[n]otice of this approval shall be accomplished in the manner provided in OAR 438-009-0028”; and (2) delete language that provides for exclusive notification by means of postcards in subsections (6)(a) and (6)(b).

At the rulemaking hearing, no comments were received regarding these proposed amendments to section (6). However, reasoning that the division staff receives notification of the Board’s receipt of a CDA and any further Board/ALJ action through its electronic data processing system, the WCD Administrator proposed removing the requirement to affirmatively notify the Director of receipt of a CDA in OAR 438-009-0030(2) and (3).

In considering this suggestion, the Board reasoned that the requirement for “Director notification” in sections (2) and (3) remains. However, the Director receives such notification through WCD’s Claims Information System that is supplied, in part, by the Board’s document scanning procedures (which is the source of Board/ALJ CDA information in the WCD’s Claims Information System). Thus, notice is provided to the Director by virtue of the internal electronic document processing by the Board and WCD. Therefore, the Board decided that it is not necessary to amend sections (2) and (3) to delete “Director notification.”

The Administrator also proposed deleting the requirement in section (5) that a copy of a Board or an ALJ decision approving or disapproving a CDA be mailed to the Director.

Based on the above reasoning, the Board determined that “Director notification” of such a decision approving or disapproving a CDA is necessary. However, such notification need not be achieved by mail. Instead, notice can be provided by means of the same internal procedures discussed above. To accommodate this change in procedure and consistent with the amendment to OAR 438-009-0025(1), the Board amends the rule as follows:

“(5) In the event that the Administrative Law Judge who mediated the agreement or the Board Members issue a separate written decision, **the Administrative Law Judge or the Board will provide a copy of the decision for the Director’s**

**claim file, and** copies of that decision approving or disapproving a claim disposition agreement shall be mailed to parties[, ] **and** their attorneys[, *and the Director*].”

The Board finds for the reasons expressed in its Statement of Need, and those discussed herein, that the proposed rule is reasonable, necessary, and proper. Accordingly, the Board adopts this proposed rule as a permanent rule, contained in Exhibit J and incorporated by this reference.

OAR 438-011-0005(2)

Section (2) provides that “[c]opies of a request for Board review of an Administrative Law Judge’s order shall be simultaneously mailed to all parties who appeared at the hearing and to their attorneys, if represented by an attorney.” The Board proposed to amend section (2) by replacing “mailed to” with “served on.” This amendment will permit transmission of notification of a Board appeal by all means permitted in OAR 438-005-0046(2) (service rule), including e-mail and facsimile transmission. Consistent with this amendment, the Board proposed adding a reference to OAR 436-005-0046 (the “service rule”) to section (1) of this rule.

The Board also proposed to amend section (2) to comport with ORS 656.295(2), which provides that “[t]he requests for review shall be mailed to the board and copies of the request shall be mailed to all parties to the proceeding before the Administrative Law Judge.” Including the above proposed amendment, the Board proposed amending OAR 438-011-0005(2) as follows:

“Copies of a request for Board review of an Administrative Law Judge’s order shall be simultaneously [*mailed to*] **served on** all parties [*who appeared at the hearing*] **to the proceeding** and to their attorneys, if represented by an attorney.”

This potential conflict between ORS 656.295(2) and OAR 438-011-0005(2) was discussed in *David A. Buswell*, 62 Van Natta 1673, 1674 n 2 (2010) (“To the extent that OAR 438-011-0005(2) is inconsistent with ORS 656.295(2), the statute controls and we give no effect to the rule as it would otherwise apply in this particular case.”). In *Buswell*, a claimant was a party to the proceeding, but did not appear at the hearing. The current language in OAR 438-011-0005(2) would indicate that service on the claimant was not required, whereas ORS 656.295(2) would require such service. The proposed amendment would resolve this conflict.

At the rulemaking hearing, no comments were received regarding these proposed amendments.

The Board finds for the reasons expressed in its Statement of Need, and those discussed herein, that the proposed rule is reasonable, necessary, and proper. Accordingly, the Board adopts this proposed rule as a permanent rule, contained in Exhibit K and incorporated by this reference.

OAR 438-011-0020(2), (3)

Under its current practice, the Board is distributing hearing transcripts to practitioners by e-mail. Yet, the first sentence of section (2) provides that the briefing schedule begins “within 21 days after the date of mailing of the transcript of record to the parties.” To reflect the different distribution methods for transcripts, the Board proposed to change the first sentence of section (2) to the following: “The party requesting Board review shall file its appellant’s brief with the Board within 21 days after the date of the Board’s ‘Notice of Briefing.’” In addition, the Board proposed replacing other references in section (2) to “mailing” with “filing,” which would reflect the different methods that transmissions are permitted under OAR 438-005-0046(1) (filing rule).

The Board also proposed to amend the first sentence of section (3) as follows: “Extensions of time for filing of briefs will be allowed only on written request filed **pursuant to OAR 438-005-0046(1)** no later than the date the brief is due.” As discussed above, the Board proposed to amend OAR 438-005-0046(1) to permit e-mail filing of request for extension of the briefing schedule under OAR 438-011-0020. By cross-referencing these rules, the Board intends to clarify that the “written request” required for extensions of time for filing of briefs in OAR 438-011-0020(3) includes e-mail requests.

At the rulemaking hearing, no comments were received regarding these proposed amendments.

The Board finds for the reasons expressed in its Statement of Need, and those discussed herein, that the proposed rule is reasonable, necessary, and proper. Accordingly, the Board adopts this proposed rule as a permanent rule, contained in Exhibit L and incorporated by this reference.

OAR 438-012-0016

This rule provides that “[a] copy of any document in an Own Motion proceeding, including correspondence, directed to the Board or to a party in the claim shall be simultaneously mailed to all other parties involved in the claim or, if a party is currently represented by an attorney, to the party’s attorney.” In order to allow for service on the other party (or its representative) of these documents by e-mail or facsimile transmission (in addition to transmission by “mail”), the Board proposed to include the phrase “or delivered.”

At the rulemaking hearing, no comments were received regarding these proposed amendments.

The Board finds for the reasons expressed in its Statement of Need, and those discussed herein, that the proposed rule is reasonable, necessary, and proper. Accordingly, the Board adopts this proposed rule as a permanent rule, contained in Exhibit M and incorporated by this reference.

OAR 438-020-0010(1)

The Board's Online Services page on its website ([www.wcb.oregon.gov](http://www.wcb.oregon.gov)) provides access to an electronic submittal of the "Interpreter Request Form" as a means to notify the Interpreter Services Coordinator (ISC) that an interpreter is needed. To further clarify this notification process, the Board proposes adding this information to section (1). In addition, the Board proposes to include a reference to its website portal (<https://portal.wcb.oregon.gov>), which once installed, will provide another method for practitioners to notify the ISC of their interpreter needs.

At the rulemaking hearing, no comments were received regarding these proposed amendments.

The Board finds for the reasons expressed in its Statement of Need, and those discussed herein, that the proposed rule is reasonable, necessary, and proper. Accordingly, the Board adopts this proposed rule as a permanent rule, contained in Exhibit N and incorporated by this reference.

4. Under the authority granted by ORS 656.726(5), the Board finds that:
  - a. All applicable rulemaking procedures have been followed; and
  - b. The rules being adopted are reasonable, necessary and proper.

**PURSUANT TO THE AMERICANS WITH DISABILITIES ACT GUIDELINES, ALTERNATIVE FORMAT COPIES OF THE RULES WILL BE MADE AVAILABLE TO QUALIFIED INDIVIDUALS UPON REQUEST TO THE BOARD.**

Consequently, in accordance with its Notice of Proposed Rulemaking, the Board adopts the attached rules, as set forth in Exhibits "A" through "N" incorporated herein by this reference, as permanent rules of the Workers' Compensation Board, to become effective November 1, 2012. The amendments are applicable as follows:

Amendments to OAR 438-005-0046 apply to all requests filed on or after November 1, 2012.

Amendments to OAR 438-005-0050 and OAR 438-005-0055 apply to all notices of claim acceptance and notices of claim denial issued on or after November 1, 2012.

Amendments to OAR 438-005-0070 and OAR 438-007-0015 apply to all requests for hearing filed on or after November 1, 2012.

Amendments to OAR 438-009-0015, OAR 438-009-0022, and OAR 438-009-0025 apply to all settlements and claim disposition agreements submitted on or after November 1, 2012, and in which all signatures are dated on or after November 1, 2012

Amendments to OAR 438-009-0028 and OAR 438-009-0030 apply to all claim disposition agreements approved on or after November 1, 2012.

Amendments to OAR 438-011-0005 apply to all requests for Board review filed on or after November 1, 2012.

Amendments to OAR 428-011-0020 apply to all briefing schedules implemented on or after November 1, 2012.

Amendments to OAR 438-012-0016 apply to all documents submitted in an Own Motion proceeding on or after November 1, 2012.

Amendments to OAR 438-020-0010 apply to all requests for an interpreter made on or after November 1, 2012.

The Board further orders that notice of this Order of Adoption, along with a certified copy of the amended rules, be filed with the Secretary of State and that a copy of the aforementioned notice and amended rules be filed with the Legislative Counsel within 10 days after filing with the Secretary of State as required by ORS 183.715.

Dated this 20<sup>th</sup> day of August, 2012.

**WORKERS' COMPENSATION BOARD**

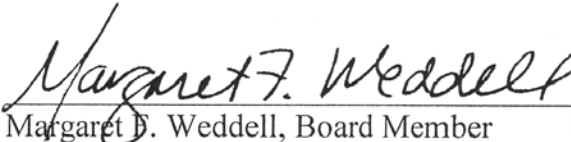
by:

  
Abigail L. Herman, Board Chair

  
Frank Biehl, Board Member

  
Vera Langer, Board Member

  
Greig Lowell, Board Member

  
Margaret F. Weddell, Board Member