

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 December 3, 2013 by the  
Date prior to or same as filing date

Department of Consumer & Business Services/Workers' Compensation Board		Chapter 438
Agency and Division		Administrative Rules Chapter Number
Karen Burton	2601 25 <sup>th</sup> St. SE, Ste. 150, Salem, OR 97302-1280	(503)934-0123
Rules Coordinator	Address	Telephone
to become effective <u>April 1, 2014</u>		Rulemaking Notice was published in the <u>August 2013</u> <u>Oregon Bulletin</u> .
Date upon filing or later		Month and Year

**RULE CAPTION**

Adopting OAR 438-011-0055, which requires "paying agency" to issue a "third party election" letter.

**Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.**

**RULEMAKING ACTION**

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

**ADOPT:** OAR 438-011-0055.

**AMEND:**

**REPEAL:**

**RENUMBER:**

**AMEND & RENUMBER:**

**Stat. Auth.:** ORS 656.726(5)

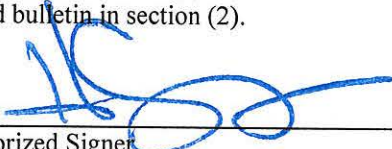
**Other Auth.:**



**Stats. Implemented:** ORS 656.576; ORS 656.578; ORS 656.580; ORS 656.583; ORS 656.587; ORS 656.591; ORS 656.593.

**RULE SUMMARY**

After considering the report from the "Third Party Rule Concepts" Advisory Committee, the Board proposes to adopt OAR 438-011-0055 to provide the parties' respective responsibilities in the third party "election/assignment" process under ORS 656.578 and ORS 656.583. Section (1) of the rule requires a carrier ("paying agency") to serve a written demand ("third party election" letter) on the claimant/beneficiaries/legal representative ("the claimant") if the paying agency intends to require the claimant to exercise the right of election in ORS 656.578 to recover damages from a noncomplying employer or third person ("third party"). Section (2) requires the "paying agency" to include with this "third party election" letter a separate enclosure prescribed by Board bulletin that explains the "third party election/assignment" process. If the claimant does not read or understand English, or is otherwise unable to understand written language, the paying agency shall provide this information in a language or other manner that ensures the claimant's understanding. *Id.* Section (3) provides that the "third party election" letter must: (a) contain the information prescribed in ORS 656.583; and (b) include a statement that the claimant has been provided with the informational enclosure prescribed by Board bulletin in section (2).

	Holly J. Somers	December 12, 2013
Authorized Signer	Printed name	Date

**Note:** Permanent rulemakings must be submitted by the 15th day of the month to be included in the next month's *Oregon Bulletin* and online *OAR Compilation* updates.