

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
PROPOSED OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 070**

WORKERS' BENEFIT FUND ASSESSMENT

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The proposed amendment to the rules was announced in the Secretary of State's Oregon Bulletin dated February 1, 2005. On March 1, 2005, a public rulemaking hearing was held as announced at 2:00 p.m. in Room F of the Labor and Industries Building, 350 Winter Street NE, Salem, Oregon 97301-3879. Fred Bruyns, Rules Coordinator, acted as presiding officer. Business Support Services audio-recorded the hearing and created a written transcript. The record was held open for written comment through March 4, 2005.

No oral or written testimony was submitted regarding proposed changes to OAR 436-070.

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Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING

A Statement of Need and Fiscal Impact accompanies this form.

Dept of Consumer and Business Services, Workers' Compensation Division		OAR CHAPTER 436	
Agency and Division		Administrative Rules Chapter Number	
Fred Bruyns		(503) 947- 7717 Fax (503) 947-7581	
Rules Coordinator		Telephone	
PO Box 14480, Salem, OR 97309-0405; 350 Winter Street NE, Rm 27, Salem, OR 97301-3879			
Address			
		Room F (basement, Labor & Industries Building	
March 1, 2005	2:00 p.m..	350 Winter Street NE, Salem, Oregon	Fred Bruyns
Hearing date	Time	Location	Hearings Officer

NOTE: The hearing will begin at 2:00 p.m. and end when all present who wish to testify have done so. Written testimony will be accepted through March 4, 2005.

**The site of the hearing is accessible for individuals with mobility impairments.
Auxiliary aids for persons with disabilities are available upon advance request.**

RULEMAKING ACTION

AMEND: OAR chapter 436, divisions 009, 010, 070, and 085

REPEAL: OAR 436-070-0060, 436-085-0006, 436-085-0020, 436-085-0065, 436-085-0070

ORS 656.726(4), 656.704

Stat. Auth.

ORS 183.335; OAR 137-001; OAR 436-001

Other Authority

ORS chapter 656; sections 005, 245, 248, 250, 252, 254, 256, 260, 264, 268, 273, 313, 325, 327, 331, 506, 612, 614, 704, 735, 740, 745, 794; ORS chapter 183, sections 310 through 690; ORS chapter 293, section 445

Stats. Implemented

RULE SUMMARY

The agency proposes to amend OAR chapter 436-009. These proposed rules:

- Adopt by reference updated medical resources:
 - Centers for Medicare & Medicaid Services 2005 Medicare Resource-Based Relative Value Scale Addendum B "Relative Value Units (RVUs) and Related Information" except the "status indicators," and Addendum C "Codes with Interim RVUs," 69 Federal Register No. 219, November 15, 2004 as the fee schedule for payment of medical service providers except as otherwise provided in the rules;
 - *American Society of Anesthesiologists (ASA), Relative Value Guide 2005* as a supplementary fee schedule for payment of anesthesia service providers except as otherwise provided in the rules for anesthesia codes not found in the Federal Register; and
 - *The Physicians' Current Procedural Terminology (CPT® 2005)*, Fourth Edition Revised, 2004 for billing by medical providers;
- Provide that if a party submits a request for administrative review without the required information, the review may not begin until the information is submitted;
- Remove intradiscal electrothermal therapy from the list of non-compensable services;
- Provide for the determination of an adjusted cost/charge ratio for a newly established hospital based on the ratios of similar hospitals, when there is insufficient data available specific to the new hospital;
- Increase maximum fees paid to physician assistants and nurse practitioners from 80 to 85% of a physician's allowable fee for a comparable service;
- Require insurers to pay medical providers for bills they have received prior to a DCS, but which were not included in the DCS or were not paid according to the terms of the DCS. Payment must be made within 45 days of the insurer's knowledge of the unpaid bill;
- Modify "no show" notice from 24 to 48 hours for medical arbiter examinations;
- Increase by 10% the relative value units for physical capacity examinations and work capacity evaluations; and
- Replace references to Vioxx®, Celebrex®, and Bextra® with "COX-2 inhibitors" as being limited to a five-day initial supply without clinical justification.

The agency proposes to amend OAR chapter 436-010. These proposed rules:

- Provide that if a party submits a request for administrative review without the required information, the review may not begin until the information is submitted.
- Provide that, for the purpose of determining attorney fees, the threshold of extraordinary circumstances is not met by merely exceeding 8 hours or exceeding a benefit amount of \$6000.

Notice of Proposed Rulemaking Hearing

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- Clarify that, in order to provide compensable medical services under ORS 656, a nurse practitioner must be licensed in Oregon and must be assigned an authorized nurse practitioner number by the director;
- Provide that signed workers' compensation release statements do not authorize release of mental health records covered by federal regulations;
- Clarify communication and notification requirements regarding elective surgery;
- Require insurers to give written notice, with specified time frames, of when a worker is no longer subject to a managed care organization (MCO), to the worker, the worker's representative, all medical service providers, and the MCO, and that such notice advise the worker how the worker may receive medical services for compensable injuries after the worker is no longer enrolled; and
- Clarify that authorized nurse practitioners must refer workers for closing examinations to medical providers who are eligible to be attending physicians only if there is a reasonable expectation of permanent impairment, and if the referral is made, that the referral must occur within five days of the examination in which the worker is declared medically stationary.

The agency proposes to amend (and repeal in part) OAR chapter 436-070. These proposed rules:

- Clarify that employers that elect to provide workers' compensation coverage for otherwise non-subject workers are then subject to Workers' Benefit Fund assessments;
- Establish a process for the department to notify employers that filings are late or inaccurate, and to estimate assessments due under specific conditions;
- Provide that employers or the director may initiate resolution of reporting errors, omissions, or discrepancies for a period not to exceed the current calendar year plus three prior calendar years, however, no time limitation applies to cases involving fraud;
- Require employers to maintain payroll and employment records that reflect the total hours worked by all employees for the current calendar year plus three prior calendar years;
- Provide that for an overpayment of less than \$20, the director will refund the overpayment only upon written request; and
- Repeal 436-070-0060, "Issuance/Service of Penalty Orders," because service of orders is sufficiently described in the Oregon Rules of Civil Procedure.

The agency proposes to amend (and repeal in part) OAR chapter 436-085. These proposed rules:

- Provide that the director may allow an insurer to report and remit premium assessments annually when the annual premium assessment is less than \$1,000;
- Provide that the director may waive an insurer's reporting liability after confirming that the insurer has no earned premium for at least four consecutive quarters;
- Provide that the director may waive a self-insured employer's reporting liability after confirming that the employer has had no Oregon payroll for four consecutive quarters;
- Provide that the self-insurer's premium reporting method remains in effect until the employer timely elects to change the method;
- Provide for the assessment of civil penalties up to the statutory maximum of \$2,000 rather than the \$1,000 maximum stated in the current rule;
- Repeal 436-085-0020, "Premium Assessment Rates; Method and Manner of Determining," because rates are now established under OAR 440-045;
- Repeal 436-085-0065, "Issuance/Service of Penalty Orders," because service of orders is sufficiently described in the Oregon Rules of Civil Procedure; and
- Repeal 436-085-0070, "Suspension and Revocation of Authorization to Issue Guaranty Contracts," because this rule duplicates provisions in OAR 436-050-0015;

Request for public comment:

The agency requests public comment on whether other options should be considered for achieving the rules' substantive goals while reducing the negative economic impact of the rules on business.

Address questions to: Fred Bruyns, Rules Coordinator; phone 503-947-7717; fax 503-947-7581; e-mail fred.h.bruyns@state.or.us Proposed rules are available on the Workers' Compensation Division's Web site: <http://wcd.oregon.gov/policy/rules/rules.html> or from WCD Publications at 503-947-7627 or fax 503-947-7630.

March 4, 2005
Last Day for Public Comment

/s/ John L. Shilts
Authorized Signer and Date

1/14/2005

John L. Shilts, Administrator, Workers' Compensation Division
Printed name

*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 pm 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 pm on the preceding workday.

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

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

OAR CHAPTER 436
Administrative Rules Chapter Number

In the Matter of)	Statutory Authority,
The Amendment of:)	Statutes Implemented,
OAR 436-009, Oregon Medical Fee and Payment Rules)	Statement of Need,
OAR 436-010, Medical Services)	Principal Documents Relied Upon,
OAR 436-070, Workers' Benefit Fund)	Statement of Fiscal Impact
OAR 436-085, Premium Assessment)	

Statutory Authority: ORS 656.704, 656.726(4)

Other Authority: ORS 183.335; OAR 137-001; OAR 436-001

Statutes Implemented: ORS chapter 656; sections 005, 245, 248, 250, 252, 254, 256, 260, 264, 268, 273, 313, 325, 327, 331, 506, 612, 614, 704, 735, 740, 745, 794; ORS chapter 183, sections 310 through 690; ORS chapter 293, section 445

Need for the Rule(s):

Rule amendments are needed to:

- Carry out the director's duties to publish and update medical fee schedules under ORS 656.248;
- Update the list of non-compensable medical procedures;
- Clarify medical rule requirements affecting authorized nurse practitioners, elective surgery, administrative review, and attorney fees;
- Establish time-frames for record-keeping and account resolution affecting Workers' Benefit Fund assessments;
- Reduce reporting requirements for insurers and self-insured employers who have little or no earned premium or payroll;
- Eliminate the annual requirement for self-insured employers that use retrospective rating methods to re-elect the method annually in order to avoid reverting to "normal" rating methods;
- Simplify the refund process for small overpayments of Workers' Benefit Fund assessments; and
- Repeal duplicative administrative rules.

Documents Relied Upon: Advisory committee meeting records; issues documents, and medical cost analyses. These documents are available for public inspection in the Administrator's Office, Workers' Compensation Division, 350 Winter Street NE, Salem, Oregon 97301-3879, upon request and between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday. Please call (503) 947-7810 to request copies.

Fiscal and Economic Impact:

Increased reimbursements to nurse practitioners and physician assistants (from 80% to 85% of a physician's allowable fee for a comparable service) should have a minimal to negligible impact on insurers' and self-insured employers' costs, in part because these services represent a very small fraction of medical services, and also because some reimbursements are currently above 85%. However, some nurse practitioners and physician assistants will derive an economic benefit from this change.

Statement of Need and Fiscal Impact

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Maximum reimbursements for physical capacity examinations and work capacity evaluations are proposed to be increased by 10%. Because many providers do not bill at the maximum allowable rate, we estimate the net result will be a 4.2% increase in reimbursement for these services, to be paid by insurers and self-insured employers. The system-wide cost should not exceed \$20,000. Medical providers who perform these services should derive an economic benefit from this change.

Reductions in premium assessment reporting and payment requirements should result in savings for the affected insurers and self-insured employers; and

Other rule amendments should have either no significant fiscal impact or produce slight savings due to simplification of record-keeping and account resolution, primarily affecting administration of and payments to the Workers' Benefit Fund.

Administrative Rule Advisory Committee consulted: Yes

November 16, 2004, November 22, 2004, November 23, 2004

/s/ John L. Shilts

1/14/2005

Signature and Date

John L. Shilts, Administrator, Workers' Compensation Division

Printed name

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
PROPOSED WORKERS' BENEFIT FUND ASSESSMENT RULES**

**PROPOSED
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 070**

436-070-0001 Authority for Rules

(1) These rules are [promulgated] **adopted** under the [D]director's authority contained in ORS 656.726 and [ORS]656.506.

Stat Auth: ORS 656.726, 656.506

Stats. Impltd: ORS 656.506

Hist: Filed 6/30/83 as WCD Admin. Order 3-1983, eff. 7/1/83

436-070-0002 Purpose

The purpose of these rules is to:

(1) Prescribe the manner and intervals in which the assessment rate [necessary to fund the programs]is to be calculated;

(2) Prescribe the manner and intervals employers are to withhold, **file**, and remit assessments; and

(3) Prescribe the conditions affecting the adjustment of the assessments as authorized by ORS 656.506.

Stat Auth: ORS 656.506

Stats. Impltd: ORS 656.506

Hist: Filed 6/30/83 as WCD Admin. Order 3-1983, eff. 7/1/83
Amended 10/31/94 as WCD Admin. Order 94-060, eff. 1/1/95
Amended 1/12/96 as WCD Admin. Order 96-050, eff. 1/12/96

436-070-0003 Applicability of Rules

(1) These rules [apply to all assessments] govern the Workers' Benefit Fund assessment [due and collected from employees and employers]pursuant to ORS 656.506 on or after the effective date of these rules.

(2) These rules apply to all subject employers as defined in ORS 656.005 and any otherwise non-subject employer who elects coverage pursuant to ORS 656.039.

(3) 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 656.506

Stats. Impltd: ORS 656.506

Hist: Filed 6/30/83 as WCD Admin. Order 3-1983, eff. 7/1/83
Amended 10/31/94 as WCD Admin. Order 94-060, eff. 1/1/95
Amended 1/12/96 as WCD Admin. Order 96-050, eff. 1/12/96

436-070-0005 Definitions

[Additional definitions are contained in ORS 656. As used in the rules, unless the context otherwise requires:]**Except where the context requires otherwise, the construction of these rules is governed by the definitions in the Workers' Compensation Law and as follows:**

(1) "Assessments" means the funds due from employees and employers pursuant to ORS 656.506.

(2) "Employee" means a subject Oregon worker [within the meaning of the Workers' Compensation Law]**as**

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defined in ORS 656.005 and any otherwise nonsubject worker for whom coverage is elected under ORS 656.039.

[(3) "Employer" means a subject Oregon employer within the meaning of the Workers' Compensation Law.]

[(4)] **(3)** "Fund" means the Workers' Benefit Fund as [established by Section 15, Chapter 641, Oregon Laws 1995] **created in ORS 656.506.**

[(5)] **(4)** "Fund balance" means the balance of the fund after revenue and investment income has been added and expenditures have been subtracted.

[(6) "Programs" mean the Retroactive Program, Reemployment Assistance Program, Reopened Claims Program and Handicapped Workers' Program as established by ORS 656.506, [656.530,]656.622, 656.625 and 656.628.]

Stat Auth: ORS 656.506

Stats. Impltd: ORS 656.506

Hist: Filed 6/30/83 as WCD Admin. Order 3-1983, eff. 7/1/83
Amended 10/31/94 as WCD Admin. Order 94-060, eff. 1/1/95
Amended 1/12/96 as WCD Admin. Order 96-050, eff. 1/12/96

436-070-0008 Administrative Review

(1) **Contested case hearings regarding sanctions and civil penalties:** Any [party] **employer** as defined by ORS 656.005 **and OAR 436-070-0005** aggrieved by a proposed order or proposed assessment of civil penalty of the director 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 656.740 [(section 9, chapter 170, Oregon Laws 2003)].

(a) The request for hearing must be sent in writing to the [director] **administrator of the Workers' Compensation Division.** No hearing will be granted unless the request specifies the grounds upon which the person requesting the hearing contests the proposed order or assessment.

(b) The request for hearing must be filed with the [director] **administrator of the Workers' Compensation Division** 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 director within 60 days after the mailing date of the proposed order or assessment.

(2) **Contested case hearings regarding estimation actions and orders:** Any [party] **employer** as defined by ORS 656.005 **and OAR 436-070-0005** aggrieved by an action or order of the director pursuant to these rules, other than as described in section (1), [where such action or order qualifies for review as a contested case,] may request review pursuant to ORS 183.310 through 183.[550] **690 and OAR 436-001.** [When the matter qualifies for review as a contested case,] [t] **The process for review will be as follows:**

(a) The request for hearing must be sent in writing to the [director] **administrator of the Workers' Compensation Division.** No hearing will be granted unless the request specifies the grounds upon which the action or order is contested and is [received by] **mailed or delivered to** the [director] within thirty (30) days of the action or from the date of mailing or other service of an order.

(b) The hearing will be conducted by [the] an [A] **administrative** [L] **law** [J] **judge** of the Office of Administrative Hearings.

(c) Any proposed order [in a contested case] issued by the administrative law judge is subject to

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revision by the director. The director may allow objections to the proposed order to be filed for the director's consideration within thirty (30) days of issuance of the proposed order.

Stat Auth: ORS 656.735 and 656.740

Stats. Impltd: ORS 656.735 and 656.740 [(section 9, chapter 170, Oregon Laws 2003)]

Hist: Filed 10/31/94 as WCD Admin. Order 94-060, eff. 1/1/95
Amended 1/12/96 as WCD Admin. Order 96-050, eff. 1/12/96
Amended 12/3/03 as WCD Admin. Order 03-075, eff. 1/1/04

436-070-0010 Assessment Rate: Method and Manner of Determining

[(1) The Director shall deposit the assessments collected pursuant to ORS 656.506 and these rules to the Worker Benefit Fund .

(2)]Prior to November 15 each year, the [D]director [shall] **will** compute[an] **and notify employers of the following calendar year's** assessment rate necessary to meet the needs of the fund. [The assessment rate shall be preprinted on the Oregon Quarterly Tax Report and mailed to each employer.] Factors considered in developing the rate include, but are not limited to:

[(a)]**(1)** The estimated annual fund expenditures and revenues;

[(b)]**(2)** The fund balance requirements;

[(c)]**(3)** The estimated annual hours worked per employee;

[(d)]**(4)** The estimated number of employees covered by workers' compensation insurance; and

[(e)]**(5)** Other records relating to fund expenditures and revenues.

Stat Auth: ORS 656.506

Stats. Impltd: ORS 656.506

Hist: Filed 6/30/83 as WCD Admin. Order 3-1983, eff. 7/1/83
Amended 10/31/94 as WCD Admin. Order 94-060, eff. 1/1/95
Amended 1/12/96 as WCD Admin. Order 96-050, eff. 1/12/96

436-070-0020 Assessments: Manner and Intervals for Filing and Payment

(1) Every employer [shall] **must** compute the total assessment amount due for each employee by multiplying the assessment rate determined in OAR 436-070-0010 [(2)] by the number of hours or parts of an hour the employee worked in the pay period.

(a) If actual hours worked are not tracked, an employer may either calculate the assessments using a flat rate, use contract information stating the number of hours an employee works, or come up with a reasonable method for calculating hours worked. If the flat rate method is used, the calculation [shall] **must** be based on 40 hours per week for employees paid weekly or biweekly, or 173.33 hours per month for employees paid monthly or semi-monthly.

(b) [t]The employer [shall] **will** retain from the moneys earned by each employee one half (1/2) of the amount due. In addition, the employer [shall] **will** be assessed an amount equal to the amount retained from each employee.

(2) Every employer [shall] **must** [make and]file a [quarterly]report of employee hours worked and **remit** amounts due upon a combined [quarterly]tax and assessment report form prescribed by the Department of Revenue. The report [shall] **must** be filed with the Department of Revenue;

(a) at the times and in the manner prescribed in ORS 316.168 and 316.171; **or**

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(b) annually as required or allowed pursuant to ORS 316.197 or 657.571. [The assessments shall be reported and remitted as follows:

(a) Employers shall remit payment with an Oregon Combined Tax Payment Coupon (Form OTC) as required by the Department of Revenue.

(b) Employers shall file the Oregon Quarterly Tax Report (Form OQ) each calendar quarter.]

[(c)](3) For employers required to report quarterly, [Employer] reports and payments are due on or before the last day of the **first** month after the close of each calendar quarter. **For employers that report annually, reports and payments are due on or before the last day of January following the close of each calendar year.** [; provided, however, that when the due date specified falls upon a Saturday, Sunday, or a legal holiday, the reports and payments shall not be due until the next business day. The date of receipt shall be determined in accordance with the provisions of ORS 293.660 and ORS 305.820.]

[(3)](4) Employers who fail to timely **and accurately** [report] **file** and remit assessments may be charged interest on all overdue balances at the rate established by ORS 82.010 and may be assessed civil penalties in accordance with OAR 436-070-0050.

[(a) If](5) If an employer fails to file a [required quarterly] report **and** [or] remit assessments **due timely and accurately, the director may send to the employer a written Failure to File Notice or Notice of Audit Findings. The notice will include a** [due by the 10th day of the second month following the end of the calendar quarter, the Department may coordinate with the Department of Revenue and Employment Department to send the employer at the employer's last known address a combined written notice (Failure to File Notice)] **warning** [the employer] that [subsequent] failure to **timely and accurately resolve all issues addressed in the written notice may** [file a required report could] result in the imposition of a [late filing] **civil** penalty. **The director may coordinate with the Department of Revenue and Employment Department to provide written notice of failure to file.**

[(b)](a) Within 30 days of the Failure to File Notice or the Notice of Audit Findings, the employer must file an accurate report and remit the assessments due, or otherwise resolve to the satisfaction of the director all issues identified in the written notice. If an employer fails to [file a required quarterly report or remit assessments due within 30 days of the date of the Failure to File Notice] **comply with the notice,** the [D] **director may estimate the assessments due, including penalties and interest, and send to the employer a Notice of Estimation.**

(b) Within 30 days of the Notice of Estimation, the employer must pay the director's estimated assessment or file and remit accurate assessment due. If the employer fails to comply with the notice, the director may send to the employer an Order of Default assessing all amounts due as calculated by the director.

(c) Within 30 days of the Order of Default, the employer must remit the estimated assessment due, unless the order is timely appealed as provided in OAR 436-070-0008.

[(c) The director will mail written notice of the estimated assessments to the employer at the employer's last known address.

(d) The employer shall file the required quarterly report and remit assessments due, including penalties and interest, or remit the estimated assessments, including penalties and interest, within 30 days from the mailing date of the Director's notice. Unless appealed by the employer as provided in OAR 436-070-0008, the director's notice shall be final.]

(6) Employers or the director may initiate activity to resolve reporting errors, omissions, or discrepancies for a period not to exceed the current calendar year plus three prior calendar years. No calendar year limitation applies to cases involving fraud.

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(7) When the director determines that the department has received moneys in excess of the amount legally due and payable or that it has received moneys to which it has no legal interest, the director will refund or credit the excess amount. For amounts less than \$20, the director will refund to employers the excess amount only upon receipt of a written request from the employer or the employer's legal representative.

Stat Auth: ORS 656.506 and 82.010

Stats. Impltd: ORS 656.506 ~~and 293.455~~

Hist: Filed 6/30/83 as WCD Admin. Order 3-1983, eff. 7/1/83
Amended 10/31/94 as WCD Admin. Order 94-060, eff. 1/1/95
Amended 1/12/96 as WCD Admin. Order 96-050, eff. 1/12/96

436-070-0040 Monitoring/Auditing

(1) Employers [shall] **must** maintain payroll and employment records which reflect the total hours worked by all employees **for the current calendar year plus three prior calendar years.**

(2) Pursuant to ORS 656.726⁽⁸⁾ and 656.758], the [D]director may inspect the books, records and payrolls of employers pertinent to the administration of these rules. Employers [shall] **must** provide the [D]director with all pertinent books, records and payrolls upon request.

Stat Auth: ORS 656.726⁽⁸⁾

Stats. Impltd: ORS 656.506

Hist: Filed 6/30/83 as WCD Admin. Order 3-1983, eff. 7/1/83
Amended 10/31/94 as WCD Admin. Order 94-060, eff. 1/1/95

436-070-0050 Assessment of Civil Penalties

(1) The [D]director pursuant to ORS 656.745 may assess a civil penalty against an employer.

(2) [An employer who fails to pay assessments or other payments due to the Director and is in default may be assessed a civil penalty of up to] **If the director finds any employer in violation of OAR 436-070, or an order of the director, the employer may be subject to penalties pursuant to ORS 656.745 of not more than** \$2,000 for each violation or \$10,000 in the aggregate for all violations within any three month period. Each violation, or each day a violation continues, [shall] **will** be considered a separate violation.

(3) **An** employer **may be assessed a penalty for late filing or payment when received more than 10 calendar days after the due date established in** [who fails to comply with the requirements of] OAR 436-070-0020(2)[,]. **The penalty will be assessed at** [may be assessed a civil penalty of up to \$2,000. When penalties are issued due to an employer's failure to pay assessments, the penalties will be assessed at] 10% of the outstanding balance, with a minimum of \$50 for each violation **up to \$2,000.** Penalties [shall be] **are** in addition to interest and assessments owed.

Stat Auth: ORS 656.745(2)

Stats. Impltd: ORS 656.745

Hist: Filed 10/31/94 as WCD Admin. Order 94-060, eff. 1/1/95
Amended 1/12/96 as WCD Admin. Order 96-050, eff. 1/12/96

[436-070-0060 Issuance/Service of Penalty Orders

(1) When the Director imposes a penalty under provisions of OAR 436-070-0050, the Order, including a notice of the party's appeal rights, shall be served on the party.

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(2) The Order shall be served by:

(a) Delivering a copy to the party in the manner provided by Rule 7 of Oregon Rules of Civil Procedure, subsection (D)(2); or

(b) Sending a copy to the party by certified mail with instruction to deliver to the addressee only, return receipt requested. If the employer is a corporation, the certified mail may be addressed to any one of the persons named in Rule 7 of Oregon Rules of Civil Procedure (D)(3)(b)(i).

(3) Orders of the Director issued pursuant to these rules shall contain the following notice:

IF YOU DISAGREE WITH THIS ORDER, YOU MAY REQUEST A HEARING. YOUR REQUEST MUST BE IN WRITING, DIRECTED TO THE DIRECTOR, DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, 350 WINTER STREET NE, ROOM 21 , SALEM, OREGON 97310.

THE REQUEST MUST SPECIFY THE GROUNDS UPON WHICH YOU CONTEST THE ORDER. THE REQUEST FOR HEARING MUST BE RECEIVED BY THE DEPARTMENT WITHIN 20 CALENDAR DAYS AFTER YOU RECEIVE THIS ORDER. IF YOU DO NOT FILE A REQUEST FOR A HEARING WITHIN THE TIME ALLOWED, THIS ORDER WILL BECOME FINAL AND WILL NOT BE SUBJECT TO REVIEW BY ANY AGENCY OR COURT.

Stat Auth: ORS 656.745(2)(b)

Hist: Filed 10/31/94 as WCD Admin. Order 94-060, eff. 1/1/95

Amended 1/12/96 as WCD Admin. Order 96-050, eff. 1/12/96]