

BEFORE THE DIRECTOR
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION

In the Matter of the Amendment of	
Oregon Administrative Rules (OAR) Chapter 436,	ORDERS OF ADOPTION
Division 045, Reopened Claims Program.....	No. 03-072
Division 055, Certification of Claims Examiners.....	No. 03-073
Division 060, Claims Administration	No. 03-074
Division 070, Workers' Benefit Fund.....	No. 03-075
Division 075, Retroactive Program.....	No. 03-076
Division 085, Premium Assessments:	
Assessments/Contributions	No. 03-077
Division 150, Workers' Benefit Fund Claims Program.....	No. 03-078

The Director of the Department of Consumer and Business Services, pursuant to the general rulemaking authority under ORS 656.726(4), and in accordance with the procedure provided by ORS 183.335, amends OAR chapter 436, Divisions 045, 055, 060, 070, 075, 085, and 150.

On September 12, 2003, the Workers' Compensation Division filed the *Notice of Proposed Rulemaking/Hearing* with the Secretary of State to amend these rules. A Notice of Periodic Review of Rules was contained in the *Notice*. The *Statement of Need and Fiscal Impact* accompanied the *Notice*. Copies of the *Notice* and *Statement* were mailed to interested persons and legislators in accordance with ORS 183.335(1) and OAR 436-001-0000 and posted to the Workers' Compensation Division's web site. The notice was published in the October, 2003 *Oregon Bulletin*.

On October 22, 2003, a public hearing was held as announced. In addition, the record was held open for written testimony through 5:00 p.m. October 27, 2003. A written summary of testimony received and agency responses thereto, as well as principal documents relied upon, will be on file and available for public inspection upon request during regular business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, in the Administrator's Office, Workers' Compensation Division, Labor & Industries Building, 350 Winter Street NE, Salem, Oregon 97301-3879.

RULE SUMMARY:

These rules have been amended to reflect Senate Bill 233's changes to ORS chapter 656.740. The time frame for appeal of a proposed order or proposed assessment of civil penalty will no longer be 60 days following the party's receipt of notice, but instead 60 days from the date the order is mailed by the department. In addition, a number of "housekeeping" amendments have been made.

FINDINGS:

Having reviewed and considered the record and being fully informed, I make the following findings:

- a) The applicable rulemaking procedures have been followed.
- b) These rules are within the Director's authority.

- c) The rules being adopted are a reasonable administrative interpretation of the statutes and are required to carry out statutory responsibilities.

IT IS THEREFORE ORDERED THAT:

- (1) Amendments to OAR Chapter 436, as set forth in Exhibit "A", attached hereto and incorporated by reference herein, **are adopted on this 3rd day of December 2003 to be effective January 1, 2004.**
- (2) A certified copy of the amended rules adopted herein shall be filed with the Secretary of State.
- (3) A copy of the amended rules with revision marks shall be filed with the Legislative Counsel pursuant to ORS 183.715 within ten (10) days after filing with the Secretary of State.

DATED this 3rd day of December, 2003.

DEPARTMENT OF CONSUMER
AND BUSINESS SERVICES

/s/ John L. Shilts

John L. Shilts, Administrator
Workers' Compensation Division

Pursuant to the Americans with Disabilities Act guidelines, alternative format copies of the rules will be made available to qualified individuals upon request.

If you have questions about these rules or need them in an alternate format, contact the Workers' Compensation Division at (503) 947-7810.

Attachments

Distribution: WCD-ID, S0, S1, S2, S3, NM

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 085**

PREMIUM ASSESSMENT; ASSESSMENT/CONTRIBUTIONS

EFFECTIVE JANUARY 1, 2004

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NOTE: Vertical bars in the right margins mark substantive revisions to the previously published rules.

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**EXHIBIT "A"
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 085**

436-085-0001 Authority for Rules

These rules are promulgated under the director's authority contained in ORS 656.726.

Stat. Auth.: ORS 656

Stats. Implemented: ORS 656.612, 656.614, 656.726

Hist: Filed 12/9/85 as WCD Admin. Order 5-1985, eff. 1/1/86.

436-085-0002 Purpose

The purpose of these rules is to establish guidelines for determining the department's premium assessment rate and to assure accurate and timely remittance of premium assessment and assessment/contribution moneys due the department.

Stat. Auth.: ORS 656.656

Stats. Implemented: ORS 656.612, 656.614

Hist: Filed 12/9/85 as WCD Admin. Order 5-1985, eff. 1/1/86.

436-085-0003 Applicability of Rules

These rules are effective January 1, 1991 to carry out provisions of:

- (1) ORS 656.506 - Workday Assessment/Contribution payable by workers and employers.
- (2) ORS 656.538 - Assessment for Handicapped Workers Reserve.
- (3) ORS 656.612 - Insurance and Finance Fund; purpose, administration, assessments and collections.
- (4) ORS 656.614 - Self-Insured Employers Adjustment Reserve; Self-Insured Employer Group Adjustment Reserve.
- (5) ORS 656.532 - Assessment for Reopened Claims Reserve.
- (6) ORS 656.745 - Civil penalty for inducing failure to report claims; failure to pay assessments; failure to comply with director rules or orders; amount; procedure.

Stat. Auth.: ORS 656.506, 656.538, 656.612, 656.614, 656.726(3)

Stats. Implemented: ORS 656.612, 656.614

Hist: Filed 12/9/85 as WCD Admin. Order 5-1985, eff. 1/1/86.

Amended 12/18/87 as WCD Admin. Order 5-1987, eff. 1/1/88.

Amended 11/29/90 as WCD Admin. Order 24-1990, eff. 1/1/91.

436-085-0005 Definitions

For the purpose of these rules unless the context requires otherwise:

- (1) "Assessments/Contributions" means moneys due the department under ORS 656.506, ORS 656.538 and ORS 656.532.
- (2) "Board" means the Workers' Compensation Board of the Department of Consumer and Business Services.
- (3) "Calendar Year" means a period of a year beginning January 1 and ending December 31.

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- (4) "Compliance" means the Compliance Section of the Workers' Compensation Division of the Department of Consumer and Business Services.
- (5) "Days" means calendar days unless otherwise specified.
- (6) "Default" means failure of an employer, insurer or self-insured employer or self-insured employer group to pay the moneys due the department under ORS 656.506, 656.538, 656.612, 656.614 and 656.532 at such intervals as the director shall direct.
- (7) "Department" means the Department of Consumer and Business Services.
- (8) "Director" means the director of the Department of Consumer and Business Services or the director's delegate for the matter.
- (9) "Fiscal Year" means the twelve-month period beginning July 1 and ending June 30.
- (10) "Hearings Division" means the Hearings Division of the Workers' Compensation Board.
- (11) "Insurer" means the State Accident Insurance Fund Corporation or an insurer authorized under ORS Chapter 731 to transact workers' compensation insurance in this State.
- (12) "Premium Assessments" means moneys due the department under ORS 656.612 and 656.614.
- (13) "Reporting Frequency Period" means the monthly, quarterly, semi-annual or annual period for which the insured employer reports to the insurer the payroll or any other information necessary to determine premium.
- (14) "Self-Insured Employer" means an employer who has been certified under ORS 656.430 as having met the qualifications of a self-insured employer set out by ORS 656.407.
- (15) "Self-insured Employer Group" means five (5) or more employers in the same industry certified under ORS 656.430 as having met the qualifications of a self-insured employer set out by ORS 656.407.

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.726

Hist: Filed 12/9/85 as WCD Admin. Order 5-1985, eff. 1/1/86.
Amended 12/18/87 as WCD Admin. Order 5-1987, eff. 1/1/88.
Amended 11/29/90 as WCD Admin. Order 24-1990, eff. 1/1/91.

436-085-0006 Administration of Rules

Any orders issued by the Divisions within the department in carrying out the director's authority to enforce ORS Chapter 656 and the rules adopted pursuant thereto, are considered orders of the director.

Stat. Auth.: ORS 656

Stats. Implemented: ORS 656.726

Hist: Filed 12/9/85 as WCD Admin. Order 5-1985, eff. 1/1/86.

436-085-0008 Administrative Review

(1) Any party as defined by ORS 656.005 aggrieved by a proposed order or proposed assessment of civil penalty of the director or division issued pursuant to ORS 656.745 or 656.750 may request a hearing by the Hearings Division of the Workers' Compensation Board in

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accordance with ORS 656.740 (section 9, chapter 170, Oregon Laws 2003).

(a) The request for hearing must be sent in writing to the 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 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 administrator within 60 days after the mailing date of the proposed order or assessment.

(2) Any party as defined by ORS 656.005 aggrieved by an action or order of the director or division 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 as modified by these rules pursuant to ORS 183.315(1). When the matter qualifies for review as a contested case, the process for review will be as follows:

(a) The request for hearing must be sent in writing to the 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 the administrator 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 an Administrative Law Judge of the Office of Administrative Hearings.

(c) Any proposed order issued by the administrative law judge is subject to 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 656.506, 656.538, 656.612, 656.614 & 656.726(4), 656.740

Stats. Implemented: ORS 183.310 - 183.550, 656.740, 656.745, 656.750

Hist: Filed 12/9/85 as WCD Admin. Order 5-1985, eff. 1/1/86.
Amended 12/18/87 as WCD Admin. Order 5-1987, eff. 1/1/88.
Amended 11/29/90 as WCD Admin. Order 24-1990, eff. 1/1/91.
Amended 12/13/91 as WCD Admin. Order 15-1991, eff. 1/1/92.
Amended 12/3/03 as WCD Admin. Order 03-077, eff. 1/1/04

436-085-0020 Premium Assessment Rates; Method and Manner of Determining

The premium assessment rate necessary to carry out the provision of ORS 656.612 and 656.614 shall be determined as follows:

(1) Each year the department shall estimate the premium to be earned during the ensuing calendar year by all insurers and self-insured employers. Based upon the estimated premium, the department shall develop a premium assessment rate percentage sufficient to ensure the department receives the dollar amount required to meet its financial obligations for that calendar year.

(2) On or before November 30 of each year, the department shall, by way of a bulletin, notify all insurers, self-insured employers and self-insured employer groups of the premium assessment rate to be applied against premium due during the ensuing calendar year. If, however, at any time the department determines that the published rate is insufficient or excessive, it may increase or decrease the premium assessment rate accordingly. However, the notice of such rate change shall be published by bulletin prior to the start of the calendar quarter it will become

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effective.

(3) The assessment for the Self-Insured Employer Adjustment Reserve and the Self-Insured Employer Group Adjustment Reserve established in ORS 656.614 shall be a premium assessment. The premium assessment rate percentage shall be published and adjusted as provided in section (2) of this rule.

Stat. Auth.: ORS 656.506, 656.538, 656.612, 656.614, 656.726(4)

Stats. Implemented: ORS 656.612, 656.614

Hist: Filed 10/30/81 as WCD Admin. Order 3-1981, eff. 11/1/81 (Temporary).
Amended 4/1/82 as WCD Admin. Order 7-1982, eff. 4/1/82.
Amended 5/17/82 as WCD Admin. Order 8-1982, eff. 5/17/82.
Amended 10/1/82 as WCD Admin. Order 10-1982, eff. 10/1/82.
Amended 12/22/83 as WCD Admin. Order 7-1983, eff. 12/27/83.
Renumbered from OAR 436-51, January 1, 1986.
Amended 12/9/85 as WCD Admin. Order 5-1985, eff. 1/1/86.
Amended 12/18/87 as WCD Admin. Order 5-1987, eff. 1/1/88.

436-085-0025 Premium Assessment; Manner and Intervals for Payments: Insurers

Insurers shall report and remit premium assessment moneys to the department as follows:

(1) Within 45 days following the last day of a calendar quarter, the insurer shall report and remit premium assessment based upon the insurer's direct earned premium for that quarter.

(2) Premium earned for periods prior to January 1, 1986 but established after that date shall be reported separately. All such periods shall be reported and adjusted at the premium assessment rate in effect at the beginning of the insured's policy period.

(3) Earned premium reported by insurers will be final except for adjustments made as a result of audits by the Insurance Division. All such adjustments will be made at the premium assessment rate, or rates, in effect for the year being adjusted.

(4) A separate report and remittance check shall be submitted for each insurer, including each insurer operating within a group of insurance companies.

(5) The director, by way of bulletin, shall prescribe the form and format and other contents of the report as well as the method and manner of computing the assessment amounts.

(6) The insurer shall maintain sufficient documentation to support the direct earned premium reported to the department and any adjustments thereto. The documentation shall be to the extent necessary for the department to verify the amount reported or adjusted.

(7) For the purpose of this rule, "earned premium" shall be the amount reported to the Oregon Insurance Division on Page 14, Column 3, Line 16 of the Annual Statement, exclusive of Longshore and Harbor Workers', Federal Employers Liability, Jones Acts, Employer Liability premium, and Excess Coverage premium and any premium reductions resulting from large deductible policies authorized pursuant to OAR Chapter 836, Divisions 42 and 54. These premiums:

- (a) Exclude reinsurance accepted and are without deduction of reinsurance ceded;
- (b) Are before application of any large deductible credits or modification; and
- (c) Are after application of experience rating, premium discounts, retrospective rating, or other individual risk rating adjustments, and are exclusive of deposit premiums.

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Stat. Auth.: ORS 656.506, 656.538, 656.612, 656.614, 656.726(4)

Stats. Implemented: ORS 656.612, 656.614

Hist: Filed 12/9/85 as WCD Admin. Order 5-1985, eff. 1/1/86.
Amended 12/18/87 as WCD Admin. Order 5-1987, eff. 1/1/88.
Amended 11/29/90 as WCD Admin. Order 24-1990, eff. 1/1/91.
Amended 12/13/91 as WCD Admin. Order 15-1991, eff. 1/1/92.
Amended 07/20/95 as WCD Admin. Order 95-056, eff. 10/01/95.

**436-085-0030 Premium Assessment; Manner and Intervals for Payments:
Self-Insured Employers and Self-Insured Employer Groups**

(1) As used in this rule the term "self-insured employers" includes self-insured employer groups.

(2) For premium assessment purposes the premium of all self-insured employers shall be determined by using those rates filed with the Insurance Division by a single insurer effective and filed by April 1, which the director has determined will provide the lowest overall rates to all self-insured employers.

(3) Self-insured employers may elect to have their premium calculated either by using:

(a) The normal method of calculation which is manual premium modified by experience rating and premium discount; or

(b) A one-year retrospective rating plan developed and approved by the department. However, any employer becoming self-insured after July 1, may not elect a retrospective rating plan for that fiscal year.

(4) On or before May 31 of each year, the department shall issue a bulletin notifying all self-insured employers of the premium rates, the retrospective rating plans developed pursuant to subsections (2) and (3) of this rule and the required form and format for reporting the assessment. On or before July 1 of each year, every self-insured employer electing to use a one-year retrospective rating plan must submit written notification of the election to the department. Once selected, the method may not be changed for that fiscal year. Any company failing to submit written notification of the selection by July 1 will be required to calculate and to remit premium assessment based on the normal method of premium calculation for that fiscal year.

(5) Within 30 days following the last day of a calendar quarter, the self-insured employer shall report and remit premium assessment. The premium assessment shall be based upon the self-insured's premium for that quarter and the premium assessment rate in effect for that quarter as determined pursuant to Rule 85-020. For retrospective rating plans the premium assessment shall be based upon 80 percent of the self-insured employer's standard premium until adjusted by retrospective rating.

(6) Notwithstanding subsection (5) of this rule all premium adjustments resulting from retrospective rating plans or payroll audits shall be made by using the premium assessment rate or rates in effect for the period being adjusted.

(7) Retrospective rating adjustments covering periods where more than one assessment rate applied will have the adjusted premium prorated in direct proportion to the self-insured's standard premium for each of the periods the assessment rates differed. Total premium assessment due for the entire period will be adjusted on the same basis.

(8) An experience rating modification will be determined individually for each self-

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insurance plan. Compliance will use the same method as that used by the Oregon Council on Compensation Insurance, except that Compliance will use only Oregon claims and payroll exposure and will assign a policy period of July 1 through the following June 30. Loss information necessary to calculate the experience rating modification shall be provided to Compliance by the authorized claims processing location(s). If sufficient experience is not available to promulgate an experience modification based on Oregon experience only, the self-insured shall be assigned an experience rating modification of 1.00.

(9) When Compliance orders an adjustment in the experience rating modification applicable for a particular policy period, the adjustment will be applied retroactively to the beginning of the period. Any resulting increase in the assessment is payable on demand. Any resulting decrease may be taken as an offset against the next quarterly assessment payment.

(10) When payroll information submitted for use in calculating the experience rating modification has been determined to be inaccurate, Compliance or the self-insured employer may request a revision of the experience rating modification. A payroll revision may be made only for the three most current years. Any experience modification using that revised payroll information shall be recalculated by Compliance.

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.612, 656.614

Hist: Filed 4/12/76 as WCB Admin. Order 2-1976, eff. 4/12/79, (Temporary) as Rule 436-51-140, (436-55-065).
Amended 6/15/76 as WCD Admin. Order 3-1976, eff. 6/15/76, as Rule 436-51-140, (436-55-065).
Amended 4/2/80 as WCD Admin. Order 3-1980, eff. 4/2/80
Filed 10/30/81 as WCD Admin. Order 3-1981, eff. 11/1/81 (Temporary).
Amended 2/10/82 as WCD Admin. Order 4-1982, eff. 2/15/82.
Amended 4/1/82 as WCD Admin. Order 7-1982, eff. 4/1/82.
Amended 5/17/82 as WCD Admin. Order 8-1982, eff. 5/17/82.
Amended 10/1/82 as WCD Admin. Order 10-1982, eff. 10/1/82.
Amended 6/30/83 as WCD Admin. Order 1-1983, eff. 7/1/83.
Amended 12/22/83 as WCD Admin. Order 7-1983, eff. 12/27/83.
Renumbered from OAR 436-51, January 1, 1986.
Amended 12/9/85 as WCD Admin. Order 5-1985, eff. 1/1/86.
Amended 12/18/87 as WCD Admin. Order 5-1987, eff. 1/1/88.
Amended 11/29/90 as WCD Admin. Order 24-1990, eff. 1/1/91.

436-085-0035 Audits

To ensure compliance with these rules, insurers, self-insured employers and self-insured employer groups shall be subject to periodic audits as authorized by ORS 656.726 (8), ORS 656.455 and ORS 656.745.

Stat. Auth.: ORS 656

Stats. Implemented: 656.455, 656.726, 656.745

Hist: Filed 12/9/85 as WCD Admin. Order 5-1985, eff. 1/1/86.

436-085-0060 Assessment of Civil Penalties

(1) The director pursuant to ORS 656.745 and 656.750, may assess a civil penalty against an employer, insurer, self-insured employer or self-insured employer group.

(2) A self-insured employer or self-insured employer group may be assessed a civil penalty of up to \$250 a day for each day a violation continues, for failure to comply with ORS 656.455.

(3) An employer, insurer, self-insured employer or self-insured employer group may be assessed a civil penalty of up to \$1,000 for failure to pay premium assessments,

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assessments/contributions or other payments due the director under ORS Chapter 656 and is in default.

(4) Each violation or each day a violation continues, shall be considered a separate violation subject to the penalty provisions of this rule.

Stat. Auth.: ORS 656.506, 656.538, 656.612, 656.614, 656.726(4)
Stats. Implemented: ORS 656.735, 656.740, 656.745, 656.750
Hist: Filed 12/9/85 as WCD Admin. Order 5-1985, eff. 1/1/86.
 Amended 12/18/87 as WCD Admin. Order 5-1987, eff. 1/1/88.
 Amended 12/13/91 as WCD Admin. Order 15-1991, eff. 1/1/92.

436-085-0065 Issuance/Service of Penalty Orders

(1) When the Director imposes a penalty under provisions of OAR 436-085-0060, the Order, including a notice of the party's appeal rights, shall be served on the party.

(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 instructions 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 FISCAL SERVICES SECTION, DEPARTMENT OF INSURANCE AND FINANCE, 21 LABOR AND INDUSTRIES BUILDING, 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 656.506, 656.538, 656.612, 656.614, 656.726(4)
Stats. Implemented: ORS 656.740
Hist: Filed 12/9/85 as WCD Admin. Order 5-1985, eff. 1/1/86.
 Amended 12/18/87 as WCD Admin. Order 5-1987, eff. 1/1/88.
 Amended 12/13/91 as WCD Admin. Order 15-1991, eff. 1/1/92.

436-085-0070 Suspension and Revocation of Authorization to Issue Guaranty Contracts

(1) Pursuant to ORS 656.447, the director may suspend or revoke the insurer's authority to issue guaranty contracts upon a determination that the insurer has failed to comply with its obligations under such contract or that it has failed to comply with the rules or orders of the director.

(2) For the purpose of this rule:

(a) "Suspension" and its variations means a stopping by the director of the insurer's

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authority to issue new guaranty contracts for a specified period of time.

(b) "Revocation" and its variations means a permanent revocation by the director of an insurer's authority to issue guaranty contracts.

(c) "Show-cause hearing" means an informal meeting with the director or designee in which the insurer shall be provided an opportunity to be heard and present evidence regarding any proposed orders by the director to suspend or revoke an insurer's authority to issue guaranty contracts.

(3) Suspension or revocation under this rule will not be made until the insurer has been given notice and the opportunity to be heard through a show-cause hearing before the director and "show cause" why it should be permitted to continue to issue guaranty contracts.

(4) A show-cause hearing may be held at any time the director finds that an insurer has failed to comply with its obligations under a guaranty contract or that it failed to comply with rules or orders of the director.

(5) Following a show-cause hearing, the director may rescind the proposed order if the insurer establishes to the director's satisfaction its ability and commitment to comply with ORS Chapter 656 and these rules.

(6) A suspension may be in effect for a period of up to 18 months. A suspended insurer may continue to serve existing accounts and renew any existing policy, unless the policy lapses or is canceled during the period of suspension.

(7) After 12 months of the suspension has elapsed, the division may audit the performance of the insurer. If the insurer is in compliance, the administrator may request the director to lift the suspension before the 18 months has elapsed. If the insurer is not in compliance, the administrator may request the director revoke the insurer's authority to issue guaranty contracts.

(8) When an insurer's authority to issue guaranty contracts has been revoked, the insurer may serve an existing account only until the policy lapses, is canceled or until the next renewal date, whichever first occurs.

(9) After a revocation of an insurer's authority to issue guaranty contracts has been in effect for five (5) years or longer, it may petition the director to restore its authority by submitting a plan in the form prescribed by the director, demonstrating its ability and commitment to comply with the workers' compensation law, these rules and orders of the director.

(10) Appeal of proposed and final orders of suspension and revocation issued under this rule may be made as provided in OAR 436-085-0008.

(11) Any order of suspension or revocation issued by a referee or other person pursuant to ORS 656.447 and this rule is a preliminary order subject to revision by the director.

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.447

Hist: Filed 11/29/90 as WCD Admin. Order 24-1990, eff. 1/1/91.

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

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

OAR chapter 436
Administrative Rules Chapter No.

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to become effective January 1, 2004 Rulemaking Notice was published in the October 2003 Oregon Bulletin.**
Date upon filing or later Month and Year

RULEMAKING ACTION

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

ADOPT: OAR 436-050-0165, 436-050-0480

AMEND: OAR

436-045-0008	436-050-0080	436-050-0180	436-050-0290	436-080-0003	436-080-0070
436-050-0003	436-050-0090	436-050-0185	436-050-0400	436-080-0005	436-080-0080
436-050-0005	436-050-0100	436-050-0190	436-050-0440	436-080-0006	436-085-0008
436-050-0006	436-050-0110	436-050-0195	436-055-0008	436-080-0010	436-150-0008
436-050-0008	436-050-0120	436-050-0200	436-060-0008	436-080-0020	436-160-0003
436-050-0040	436-050-0150	436-050-0210	436-070-0008	436-080-0030	436-160-0310
436-050-0050	436-050-0160	436-050-0220	436-075-0008	436-080-0040	436-160-0320
436-050-0055	436-050-0170	436-050-0260	436-080-0001	436-080-0060	436-160-0340
436-050-0060	436-050-0175	436-050-0270	436-080-0002	436-080-0065	436-160-0350
		436-050-0280			436-160-0360

REPEAL: OAR 436-050-0020, 436-050-0150T, 436-050-0160T 436-050-0165T,OAR 436-080-0050

ORS 656.704, 656.726(4)

Statutory Authority

ORS 183.335; OAR 137-001; OAR 436-001-0000 and 436-001-0005

Other Authority

ORS chapter 656

Statutes being Implemented

RULE SUMMARY

These rules have been amended in part to reflect Senate Bill 233's changes to ORS 656. The time frame for appeal of a proposed order or proposed assessment of civil penalty will no longer be 60 days following the party's receipt of notice, but instead 60 days from the date the order is mailed by the department. SB 233 also eliminated claim closure penalties for non-complying employers and changed the notification requirements for termination of guaranty contracts. In addition, these rules include a number of "housekeeping" amendments and supersede temporary OAR 436-050 rules indicated above after "REPEAL."

These rules:

- Repeal specific requirements affecting service of orders by the director.
- Reduce data reporting requirements for industry codes.
- Eliminate certain requirements to report coverage elections and cancellation of elections.
- Explain the notice and reporting requirements regarding the insurer's termination of guaranty contracts.
- State that active self-insurance certification remains in effect if a guaranty contract has been filed.
- Require notification of workers and other parties at least 10 days prior to changing claims processing locations.
- Require insurers and self-insured employers to keep documentation of dates payments are mailed.
- Require submission of audited financial statements by self-insured employers under certain conditions.
- Provide that an irrevocable standby letter of credit may be accepted by the director as an alternative to a surety bond as a security deposit. This provision has been in effect under authority of temporary rules effective 7/18/03.
- Provide that government securities, certificates of deposit, or time deposit accounts will not be accepted as new or replacement security deposits by self-insured employers effective January 1, 2004; require self-insured employers with existing securities of this type to complete a "Security Agreement and Notice to Intermediary," Form 440-4023, granting the department a security interest in and control over those financial assets.
- Provide that excess insurance coverage must be specific on a per occurrence basis, and that such coverage may include aggregate excess insurance.
- Incorporate annual reporting requirements for self-insured employers formerly published only in Bulletin 209.
- Require that future claim liability estimates or annual incurred losses include losses incurred but not reported.
- Require that a new self-insured employer's deposit is not less than the amount of the approved self-insured employer retention level for the employer's excess workers' compensation insurance.
- Require that each entity included under a self-insurance certification enter into an agreement making the entity jointly and severally liable for payment of compensation and moneys due.
- Require that self-insured employer groups maintain coverage records relating to each member.
- Prohibit a worker leasing company from providing workers' compensation coverage to another leasing company.
- Provide for assessment of civil penalties against worker leasing companies or prospective leasing companies that fail to meet the requirements of relevant rules. Provide penalty matrixes for worker leasing companies that violate these rules and for companies that operate as worker leasing companies without a license

Direct questions to: Fred Bruyns, Rules Coordinator; phone 503-947-7717; fax 503-947-7581; or e-mail fred.h.bruyns@state.or.us. Rules are available on the internet: <http://www.oregonwcd.org/policy/rules/rules.html>

For a copy of the rules, contact Publications at 503-947-7627, Fax 503-947-7630.

/s/ John L. Shilts

Authorized Signer

December 3, 2003

Date

John L. Shilts, 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.

**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 p.m. 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 p.m. the preceding workday.