

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

PREMIUM ASSESSMENT[; ASSESSMENT/CONTRIBUTIONS]

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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 436-085.

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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 PREMIUM ASSESSMENT[; ASSESSMENTS/CONTRIBUTIONS] RULES**

**PROPOSED
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 085**

436-085-0001 Authority for Rules

These rules are [promulgated] **adopted** 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 **reporting and remittance** of premium assessment [and assessment/contribution] moneys due the [department] **director**.

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

(1) These rules are effective [January 1, 1991] **April 1, 2005**, to carry out **the** provisions of:

[(1) ORS 656.506 - Workday Assessment/Contribution payable by workers and employers.

(2) ORS 656.538 - Assessment for Handicapped Workers Reserve.

(3) **(a)** ORS 656.612 – [Insurance and Finance] **Consumer and Business Services** Fund; purpose, administration, assessments and collections.

[(4) **(b)** 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.]

(2) 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, 656.538,]656.612, 656.614, 656.726[(3)] **(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.

436-085-0005 Definitions

[For the purpose of these rules unless **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/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.

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(3) "Calendar Year" means a period of a year beginning January 1 and ending December 31.

(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.]

(1) "Assessable earned premium" means the amount of earned premium, minus exempted earned premium, plus large deductible premium credits or modifications that are subject to the premium assessment.

[(8)](2) "Direct earned premium" for the purposes of these rules means "assessable earned premium."

(3) "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.]

(4) "Earned premium" means the amount reported to the Oregon Insurance Division in the insurer's Annual Statement, Exhibit of Premiums and Losses (Statutory Page 14), Business in the State of Oregon, Column 2 Direct Premiums Earned, Line 16 Workers' Compensation. 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, audit premiums, foreign terrorism premiums, domestic terrorism and catastrophic premiums, or other individual risk rating adjustments, and are exclusive of deposit premiums.

(5) "Exempted earned premium" means premium earned on insurance under jurisdiction of the federal government (e.g. U.S. Longshore and Harbor Workers' Compensation Act, Federal Employer's Liability Act, and Jones Act), employer liability increased limits premium, and excess coverage premium. All exempted earned premium must be stated on a direct basis prior to reinsurance transactions.

[(11)](6) "Insurer" means the State Accident Insurance Fund Corporation or an insurer authorized under ORS [c]chapter 731 to transact workers' compensation insurance in this [s]state.

(12) (7) "Premium Assessments" means moneys due the [department]**director** 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)](8) "Self-Insured Employer" means an employer who has been certified under ORS

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656.430 as having met the qualifications of a self-insured employer set out by ORS 656.407.

[15](9) "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] **insurer or self-insured employer** 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 accordance with ORS 656.740 [(section 9, chapter 170, Oregon Laws 2003)].

(a) The request for hearing must be sent in writing to the [A]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 [A]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 **for hearing** 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] **insurer or self-insured employer** 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)] **690 and OAR 436-001**. 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 [A]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] **mailed or delivered** 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 [A]administrative [L]law [J]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.

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Stat. Auth.: [ORS 656.506, 656.538], 656.612, 656.614 & 656.726(4), 656.740

Stats. Implemented: ORS 183.310 - 183.[550]540, 656.740, 656.745, 656.[750]735

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 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] **must** report and remit premium assessment moneys to the [department] **director** **using a completed Form 440-910, or its electronic equivalent,** as follows:

(1) [Within 45 days] **No later than the 15th day of the second month** following the last day of a calendar quarter, the insurer [shall] **must** report and remit premium assessment based upon the insurer's [direct] **assessable** 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.]

(2) Upon written request from the insurer, the director may allow an insurer to report and remit premium assessments annually when the annual premium assessment is less than \$1,000.

(3) The director may waive an insurer's reporting liability after confirming that the insurer has no earned premium for at least four consecutive quarters. The waiver will remain in effect until premium is earned.

[(3)] **(4) Assessable** [E] earned premium reported by insurers will be final except for [adjustments] **corrections** made as a result of audits by the [Insurance Division] **director, examinations by the Insurance Division or insurance regulator of the insurer's state of domicile, or detection by the insurer of clerical error.** All such [adjustments] **corrections** will be made at the premium

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assessment rate[, or rates,] in effect for the year being [adjusted]**corrected**.

(4)(5) A separate report **using Form 440-910 or its electronic equivalent**, and remittance check [shall]**must** 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]**must** maintain sufficient documentation to support the [direct]**assessable** earned premium reported to the [department]**director** and any adjustments **or corrections** thereto. The documentation [shall]**must** be [to the extent necessary]**sufficient** for the [department]**director** to verify the amount reported, [or]adjusted, **or corrected**.

(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.]

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]**will** 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]**director**. However, any employer becoming self-insured after July 1, may not elect a retrospective rating plan for that fiscal year.

(4) **Self-insured employers are required to calculate and remit premium assessments based on the normal method of premium calculation unless the current method elected is to use the one-year retrospective rating plan.**

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(5) On or before May 31 of each year, the [department]**director will** [shall] issue a bulletin notifying all self-insured employers of the premium rates, the retrospective rating plans developed pursuant to [sub]sections (2) and (3) of this rule[and the required form and format for reporting the assessment].

(6) On or before July 1 of each year, every self-insured employer electing to [use a]**change their current method of premium calculation** [one-year retrospective rating plan] must submit written notification of the election to the [department]**director**. Once [s]elected, the method may not be changed for that fiscal year **and remains in effect until the self-insured employer timely elects to change the method.** [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]**(7)** [Within 30 days following]**No later than the last calendar day of the month that follows** the last day of a calendar quarter, the self-insured employer [shall]**must** report and remit premium assessment **using Form 440-900 or Form 440-937 or its electronic equivalent.** The premium assessment [shall]**must** be based upon the self-insured[']s **employer's** premium for that quarter and the premium assessment rate in effect for that quarter as [determined pursuant to Rule 85-020] **prescribed in OAR 440-045.** For retrospective rating plans the premium assessment [shall]**must** be based upon 80 percent of the self-insured employer's standard premium until adjusted by retrospective rating. **The director may waive the self-insured reporting requirement after confirming that the self-insured employer has no Oregon payroll for four consecutive quarters.**

[6]**(8)** Notwithstanding [sub]section [5]**(7)** of this rule all premium adjustments resulting from retrospective rating plans or payroll audits [shall]**must** be made by using the premium assessment rate or rates in effect for the period being adjusted.

[7]**(9)** 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 **employer'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]**(10)** An experience rating modification will be determined individually for each self-insurance plan. [Compliance]**The director** will use the same method as that used by the Oregon Council on Compensation Insurance, except that [Compliance]**the director** 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]**must** be provided to [Compliance]**the director** 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 **employer** [shall]**will** be assigned an experience rating modification of 1.00.

[9]**(11)** When [Compliance]**the director** 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]**applied** against the next quarterly assessment payment.

[10]**(12)** When payroll information submitted for use in calculating the experience rating

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modification has been determined to be inaccurate, [Compliance] **the director** 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] **will** be recalculated by [Compliance] **the director**.

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 656.726

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 **in violation of OAR 436-085,** may be assessed a civil penalty of up to [\$1,000] **\$2,000** for **each violation or \$10,000 in the aggregate for all violations within any three month period.** [failure to pay premium assessments, 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] **will** 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:

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- (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 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.]