

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION



**Premium Assessment
Oregon Administrative Rules
Chapter 436, Division 085**

Effective January 2, 2006

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NOTE: Significant revisions are marked with bold lines in the right margins.

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**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, division:)
001, Procedural Rules Governing)
Rulemaking and Hearings.....05-061)
009-0008, Oregon Medical Fee and Payment.....05-062)
045-0008, Reopened Claims Program05-063)
070-0008, Workers' Benefit Fund Assessment05-064)
075-0008, Retroactive Program05-065)
080-0070, Noncomplying employers.....05-066)
085-0008, Premium Assessment.....05-067)
140-0008, Construction Carve-Out Programs05-069)
150-0008, Workers' Benefit Fund Claims Program..05-070)
))
In the Matter of the Repeal of Oregon Administrative)
Rules (OAR) chapter 436, division:)
130, Rehabilitation Facilities05-068)

**ORDER OF
ADOPTION**

The Director of the Department of Consumer and Business Services, under the general rulemaking authority in ORS 656.726(4), and in accordance with the procedure provided by ORS 183.335, amends OAR chapter 436.

On August 12, 2005, the Workers' Compensation Division filed with the Secretary of State a *Notice of Proposed Rulemaking/Hearing* and *Statement of Need and Fiscal Impact*. The division mailed copies of the *Notice* and *Statement* to interested persons and legislators in accordance with ORS 183.335 and OAR 436-001-0000, and posted copies to its Web site. The Secretary of State included notice of the public hearing in its September 2005 *Oregon Bulletin*.

On September 26, 2005, a public hearing was held as announced. In addition, the record was held open for written testimony through September 30, 2005. The Workers' Compensation Division received written testimony about proposed revisions to this rule. A summary of this testimony and the agency's responses are 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, PO Box 14480, Salem, Oregon 97309-0405.

RULE SUMMARY

The Workers' Compensation Division has amended OAR chapter 436, division 001, "Procedural Rules Governing Rulemaking and Hearings," and several related rules in divisions 009, 045, 070, 075, 080, 085, 140, and 150. Most of the changes are related to passage of House Bill 2091 (Oregon Laws 2005, chapter 26), which moves hearings on workers' compensation matters currently processed by the Office of Administrative Hearings to the Workers' Compensation

**Order of Adoption
OAR 436-085**

Board, for all hearings held on or after January 2, 2006. The division has repealed several rules in OAR 436-001 because the Workers' Compensation Board already has rules in place that govern the conduct of hearings. In addition, OAR 436-001 has been reorganized to place rules in a sequence more aligned with the sequence of appeals and hearings.

The Workers' Compensation Division has repealed OAR chapter 436, division 130, "Rehabilitation Facilities," in its entirety. ORS 656.530, the statute implemented by OAR 436-130, was repealed by Oregon Laws 1999, chapter 273, section 1.

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", are attached, incorporated by reference, and **adopted on this 19th day of October 2005, to be effective January 2, 2006.**
- 2) A certified copy of the adopted rules will be filed with the Secretary of State.
- 3) A copy of the amended rules with revision marks will be filed with the Legislative Counsel under ORS 183.715 within ten days after filing with the Secretary of State.

DATED this 19th day of October 2005.

DEPARTMENT OF CONSUMER
AND BUSINESS SERVICES

/s/ John L Shilts

John L. Shilts, Administrator
Workers' Compensation Division

Under 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.

Distribution: WCD-ID, NM, ML, S0, S1, S2, S3, S4, S5, S6, S7, S8

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
PREMIUM ASSESSMENT**

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

436-085-0001 Authority for Rules

These rules are 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
Amended 3/23/05 as WCD Admin. Order 05-054, eff. 4/1/05

436-085-0002 Purpose

The purpose of these rules is to establish guidelines to assure accurate and timely reporting and remittance of premium assessment moneys due the director.

Stat. Auth.: ORS 656
Stats. Implemented: ORS 656.612, 656.614
Hist: Filed 12/9/85 as WCD Admin. Order 5-1985, eff. 1/1/86
Amended 3/23/05 as WCD Admin. Order 05-054, eff. 4/1/05

436-085-0003 Applicability of Rules

(1) These rules are effective April 1, 2005, to carry out the provisions of:

(a) ORS 656.612 – Consumer and Business Services Fund; purpose, administration, assessments, and collections.

(b) ORS 656.614 - Self-Insured Employers Adjustment Reserve; Self-Insured Employer Group Adjustment Reserve.

(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.: 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 3/23/05 as WCD Admin. Order 05-054, eff. 4/1/05

436-085-0005 Definitions

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) "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.

(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.

(4) "Earned premium" means the amount reported to the Oregon Insurance Division in

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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.

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

(7) "Premium Assessments" means moneys due the director under ORS 656.612 and 656.614.

(8) "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.

(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
 Amended 3/23/05 as WCD Admin. Order 05-054, eff. 4/1/05

436-085-0008 Administrative Review

(l) Any insurer or self-insured employer aggrieved by a proposed order or proposed assessment of civil penalty of the director issued pursuant to ORS 656.745 may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with ORS 656.740.

(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 for hearing is mailed or delivered to the administrator within 60 days after the mailing date of the proposed order or assessment.

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(2) Under ORS 656.704(2), any insurer or self-insured employer that disagrees with an action or order of the director under these rules, other than as described in section (1), may request a hearing by filing a request for hearing as provided in OAR 436-001-0019 within 30 days of the mailing date of the order or notice of action. OAR 436-001 applies to the hearing.

Stat. Auth.: 656.612, 656.614 & 656.726(4), 656.740
 Stats. Implemented: ORS 656.704, OL 2005 ch 26, 656.735, 656.740, 656.745
 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
 Amended 3/23/05 as WCD Admin. Order 05-054, eff. 4/1/05
 Amended 10/19/05 as WCD Admin. Order 05-067, eff. 1/2/06

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

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

(1) No later than the 15th day of the second month following the last day of a calendar quarter, the insurer must report and remit premium assessment based upon the insurer's assessable earned premium for that quarter.

(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.

(4) Assessable earned premium reported by insurers will be final except for corrections made as a result of audits by the 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 corrections will be made at the premium assessment rate in effect for the year being corrected.

(5) A separate report using Form 440-910 or its electronic equivalent, and remittance check must be submitted for each insurer, including each insurer operating within a group of insurance companies.

(6) The insurer must maintain sufficient documentation to support the assessable earned premium reported to the director and any adjustments or corrections thereto. The documentation must be sufficient for the director to verify the amount reported, adjusted, or corrected.

Stat. Auth.: 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
 Amended 3/23/05 as WCD Admin. Order 05-054, eff. 4/1/05

**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

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groups.

(2) For premium assessment purposes the premium of all self-insured employers 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 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.

(5) On or before May 31 of each year, the director will issue a bulletin notifying all self-insured employers of the premium rates and the retrospective rating plans developed pursuant to sections (2) and (3) of this rule.

(6) On or before July 1 of each year, every self-insured employer electing to change their current method of premium calculation must submit written notification of the election to the director. Once 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.

(7) No later than the last calendar day of the month that follows the last day of a calendar quarter, the self-insured employer must report and remit premium assessment using Form 440-900 or Form 440-937 or its electronic equivalent. The premium assessment must be based upon the self-insured employer's premium for that quarter and the premium assessment rate in effect for that quarter as prescribed in OAR 440-045. For retrospective rating plans the premium assessment 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.

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

(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 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.

(10) An experience rating modification will be determined individually for each self-insurance plan. The director will use the same method as that used by the Oregon Council on Compensation Insurance, except that the director will use only Oregon claims and payroll

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exposure and will assign a policy period of July 1 through the following June 30. Loss information necessary to calculate the experience rating modification must be provided to 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 will be assigned an experience rating modification of 1.00.

(11) When 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 applied against the next quarterly assessment payment.

(12) When payroll information submitted for use in calculating the experience rating modification has been determined to be inaccurate, 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 will be recalculated by 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
 Amended 3/23/05 as WCD Admin. Order 05-054, eff. 4/1/05

436-085-0035 Audits

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

Stat. Auth.: ORS 656.726
 Stats. Implemented: 656.726, 656.745
 Hist: Filed 12/9/85 as WCD Admin. Order 5-1985, eff. 1/1/86
 Amended 3/23/05 as WCD Admin. Order 05-054, eff. 4/1/05

436-085-0060 Assessment of Civil Penalties

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

(2) An insurer, self-insured employer or self-insured employer group in violation of OAR 436-085, may be assessed a civil penalty of up to \$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, will be considered a separate violation.

Stat. Auth.: 656.612, 656.614, 656.726(4)
 Stats. Implemented: ORS 656.735, 656.740, 656.745
 Hist: Filed 12/9/85 as WCD Admin. Order 5-1985, eff. 1/1/86.

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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
Amended 3/23/05 as WCD Admin. Order 05-054, eff. 4/1/05

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

October 19, 2005 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.

Fred Bruyns (503) 947-7717
Rules Coordinator Telephone

350 Winter Street NE; Salem OR 97301-3879, PO Box 14480, Salem OR 97309-0405
Address

to become effective January 2, 2006 Rulemaking Notice was published in the September 2005 *Oregon Bulletin*.**
Date upon filing or later Month and Year

RULEMAKING ACTION

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

ADOPT: 436-001-0023, 436-001-0027, 436-001-0252, 436-001-0259, 436-001-0296

AMEND: 436-001-0003, 436-001-0004, 436-001-0030, 436-001-0170, 436-001-0225, 436-001-0240,
436-001-0265, 436-001-0300, 436-009-0008, 436-045-0008, 436-070-0008, 436-075-0008,
436-080-0070, 436-085-0008, 436-140-0008, 436-150-0008

REPEAL: 436-001-0001, 436-001-0007, 436-001-0008, 436-001-0110, 436-001-0150, 436-001-0160,
436-001-0185, 436-001-0201, 436-001-0210, 436-001-0226, 436-001-0260, 436-130-0000,
436-130-0010, 436-130-0020, 436-130-0030, 436-130-0040, 436-130-0050, 436-130-0060,
436-130-0070, 436-130-0080, 436-130-0090, 436-130-0100

AMEND AND RENUMBER:

From 436-001-0000 to 436-001-0009
From 436-001-0155 to 436-001-0019
From 436-001-0275 to 436-001-0246

ORS 656.726(4)
Statutory Authority

Other Authority

ORS 656.704, Enrolled House Bill 2091 – OL 2005, chapter. 26; OL 1999, chapter 273, section 1
Statutes being Implemented

RULE SUMMARY

The Workers' Compensation Division has amended OAR chapter 436, division 001, "Procedural Rules Governing Rulemaking and Hearings," and several related rules in divisions 009, 045, 070, 075, 080, 085, 140, and 150. Most of the changes are related to passage of House Bill 2091 (Oregon Laws 2005, chapter 26), which moves hearings on workers' compensation matters currently processed by the Office of Administrative Hearings to the Workers' Compensation Board, for all hearings held on or after January 2, 2006. The division has repealed several rules in OAR 436-001 because the Workers' Compensation Board already has rules in place that govern the conduct of

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The Workers' Compensation Division has repealed OAR chapter 436, division 130, "Rehabilitation Facilities," in its entirety. ORS 656.530, the statute implemented by OAR 436-130, was repealed by Oregon Laws 1999, chapter 273, section 1.

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.wcd.oregon.gov/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

10/19/05

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.