



Oregon

John A. Kitzhaber, MD, Governor

Department of Consumer and Business Services
Workers' Compensation Division
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March 17, 2011

Proposed Changes to Workers' Compensation Rules

The Workers' Compensation Division proposes changes to OAR chapter 436, division 085, "Premium Assessment." These rules govern the reporting and payment of premium assessment but do not establish the assessment rate.

Please review the attached documents for more information about proposed rule changes and projected fiscal impacts.

The division welcomes public comment on proposed changes and has scheduled a public hearing.

- When is the hearing?** April 20, 2011, 1:30 p.m.
- Where is the hearing?** Labor & Industries Building
350 Winter Street NE, Room F (basement),
Salem, Oregon 97301
- How can I make a comment?** Come to the hearing and speak, send written comments, or do both. Send written comments to:
Fred Bruyns, rules coordinator
Workers' Compensation Division
350 Winter Street NE (for courier or in-person delivery)
PO Box 14480, Salem, OR 97309-0405
Email - fred.h.bruyns@state.or.us
Phone – 503-947-7717; Fax – 503-947-7514

The closing date for written comments is April 25, 2011.

How can I get copies of the proposed rules?

On the Workers' Compensation Division's website –
www.wcd.oregon.gov/policy/rules/rules.html#proprules
Or call 503-947-7717 to get free paper copies

Questions?

Contact Fred Bruyns, 503-947-7717.

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING
A Statement of Need and Fiscal Impact accompanies this form.

Department of Consumer and Business Services,
Workers' Compensation Division

OAR CHAPTER 436

Agency and Division

Administrative Rules Chapter Number

Fred Bruyns
Rules Coordinator

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503-947- 7717
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RULE CAPTION

Reporting and remittance of workers' compensation premium assessment

April 20, 2011	1:30 p.m.*	Room F, Labor & Industries Building 350 Winter Street NE, Salem, Oregon	Fred Bruyns
Hearing date	Time	Location	Hearings Officer

*NOTE: The hearing will begin at 1:30 p.m. and end when all present who wish to testify have done so. Written testimony will be accepted through April 25, 2011.

**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 436-085

ORS 656.726(4), 656.612, 656.614

Stat. Auth.

Other Authority

ORS 656.612, 656.614

Stats. Implemented

RULE SUMMARY

The agency proposes to amend OAR chapter 436, division 085, "Premium Assessment." These proposed rules:

- Clarify some of the reporting and remittance requirements through the use of plain language and removal of obsolete information.
- Define "exempted earned premium" and "self-insured employer group."
- List key criteria for annual reporting eligibility.

Request for public comment: The Workers' Compensation Division 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 or requests for paper copies of the rules to: Fred Bruyns, Rules Coordinator; phone 503-947-7717; fax 503-947-7514; e-mail fred.h.bruyns@state.or.us. Proposed rules are available on the Workers' Compensation Division's website: <http://wcd.oregon.gov/policy/rules/rules.html#proprules>

April 25, 2011

Last Day for Public Comment

(Last day to submit written comments to the
Rules Coordinator)

/s/ John L. Shilts

Authorized Signer and Date

March 14, 2011

John L. Shilts, Administrator, Workers' Compensation Division

Printed name

*Hearing Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. ARC 920-2005

Distribution: WCD-S0, S2, S, U, AT, EG, LU, NM, EC, TT, M2; E-mail lists; and legislators under ORS 183.335(15)

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

436

Administrative Rules Chapter Number

Reporting and remittance of workers' compensation premium assessment

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of: The amendment of OAR 436-085, Premium Assessment

Statutory Authority: ORS 656.726(4), 656.612, 656.614

Other Authority:

Stats. Implemented: ORS 656.612, 656.614

Need for the Rule(s): These rules should be amended in order to replace obsolete information and to specify criteria for annual reporting eligibility.

Documents Relied Upon, and where they are available: Advisory committee meeting records. These records are available for public inspection in the Administrator's Office, Workers' Compensation Division of the Department of Consumer and Business Services, 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 503-947-7717 to request copies.

Fiscal and Economic Impact: The agency projects that these proposed rule changes should not have significant economic impacts on any persons or businesses, including small businesses.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)): **None.**
2. Cost of compliance effect on small business (ORS 183.336):
 - a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: **These rules govern reporting and remittance of premium by insurers and self-insured employers, which would not be defined as small businesses under ORS 183.310.**
 - b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services: **None.**
 - c. Equipment, supplies, labor and increased administration required for compliance: **None.**

How were small businesses involved in the development of this rule? **Small businesses are not directly affected by the proposed rule amendments; however, we invited representatives of businesses (small and large) to the advisory committee meeting.**

Administrative Rule Advisory Committee consulted?: **Yes**
If not, why?:

/s/ John L. Shilts
Signature

John L. Shilts
Printed name

March 14, 2011
Date

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



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

Proposed

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NOTE: Revisions are marked as follows:

Deleted text has a "strike-through" style, as in
Added text is bold and underlined, as in

~~Deleted~~
Added

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: 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 656.656
Stats. Implemented: ORS 656.612, 656.614
Hist: 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~~, **July 1, 2011** 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.~~ **The director may waive procedural rules as justice requires, unless otherwise obligated by statute.**

Stat. Auth.: 656.612, 656.614, 656.726(4)
Stats. Implemented: ORS 656.612, 656.614
Hist: 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 **Department of Consumer and Business Services**, Insurance Division in the insurer's Annual Statement, Exhibit of Premiums and Losses (Statutory Page 14), Business in the State of Oregon, Column 2

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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), **and** employer liability increased limits premium, ~~and excess coverage premium~~ **as reported 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.** 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 **and OAR 436-050-0260 through 436-050-0340.**

Stat. Auth.: ORS 656.726
Stats. Implemented: ORS 656.726
Hist: Amended 3/23/05 as WCD Admin. Order 05-054, eff. 4/1/05

436-085-0008 Administrative Review

(1) 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.

(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

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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-eh-26~~, 656.735, 656.740, 656.745
 Hist: 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, t~~The director may allow an insurer to report and remit premium assessments annually when the annual premium assessment is less than \$1,000 **for at least two consecutive years.**

(3) If an eligible insurer elects not to report and pay annually, or an eligible insurer elects to revert to reporting and paying quarterly after having reported and paid annually for at least one year, it must notify the director in writing prior to the first quarter's premium assessment due date. An insurer's reporting and payment frequency remains in effect the full calendar year and cannot be changed mid-year.

~~(3)~~ **(4)** 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)~~ **(5)** 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)~~ **(6) Each insurer, including each insurer operating within an insurer group, must submit** ~~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)~~ **(7)** 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: 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~~ **under** 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) **The director will determine** ~~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 **a workers' compensation rating organization**

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licensed in Oregon, except that the director will use only Oregon claims and payroll exposure and will assign a policy period of July 1 through the following June 30. **The self-insured employer's authorized claims processing location(s) must provide the director** ~~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~~ **director will assign the self-insured employer** 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~~ **If** payroll information submitted **by the self-insured employer** for use in calculating the experience rating modification ~~has been determined to be~~ **is** 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 **last** three ~~most current years~~ **calendar 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: 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: 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: Amended 3/23/05 as WCD Admin. Order 05-054, eff. 4/1/05