

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
WORKERS' COMPENSATION DIVISION

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

**Effective July 1, 2011**

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**NOTE:** Significant revisions are marked with vertical 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	)	<b>ORDER OF</b>
Rules (OAR):	)	<b>ADOPTION</b>
436-085, Premium Assessment	)	<b>No. 11-053</b>
	)	

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 procedures in ORS 183.335, amends OAR chapter 436, division 085.

On March 14, 2011, 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 436-001-0009, and posted copies to its website. The Secretary of State included notice of the public hearing in its April 2011 *Oregon Bulletin*. On April 20, 2011, a public hearing was held as announced. The record remained open for written testimony through April 25, 2011. No one submitted written testimony or testified at the public rulemaking hearing.

**SUMMARY OF RULE AMENDMENTS**

These rules:

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

**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, division 085 are adopted as administrative order No. 11-053 on this **16<sup>th</sup> day of May 2011, to be effective July 1, 2011.**
- 2) A certified copy of the adopted rules will be filed with the Secretary of State.

**Order of Adoption**  
**OAR chapter 436, division 085**

- 3) A copy of the adopted 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 16<sup>th</sup> day of May 2011.**

*/s/ John L. Shilts*

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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, 503-947-7810.

**Distribution:** WCD-S0, S2, M2; Electronic mailing list

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**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  
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 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) 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  
Amended 5/16/11 as WCD Admin. Order 11-053, eff. 7/1/11

**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 Direct

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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 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 or more employers 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

Amended 5/16/11 as WCD Admin. Order 11-053, eff. 7/1/11

#### **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 ch 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 as follows:

(1) No later than the 15<sup>th</sup> 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) 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.

(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.

(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.

(6) Each insurer, including each insurer operating within an insurer group, must submit a separate report using Form 440-910 and remittance check.

(7) The insurer must maintain sufficient documentation to support the assessable earned premium reported to the director and any adjustments or corrections. 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  
Amended 5/16/11 as WCD Admin. Order 11-053, eff. 7/1/11

**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 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

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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 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. 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 for each self-insurance plan. The director will use the same method as that used by the National Council on Compensation Insurance, 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. If sufficient experience is not available to promulgate an experience modification based on Oregon experience only, the director will assign the self-insured employer an experience rating modification of 1.00.

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(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) If payroll information submitted by the self-insured employer for use in calculating the experience rating modification 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 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  
Amended 5/16/11 as WCD Admin. Order 11-053, eff. 7/1/11

### **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

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 May 16, 2011 by the  
Date prior to or same as filing date  
Department of Consumer and Business Services, Workers' Compensation Division 436

Agency and Division Administrative Rules Chapter Number

Fred Bruyns 350 Winter St. NE; PO Box 14480, Salem, Oregon 97309 503-947-7717  
Rules Coordinator Address Telephone

to become effective July 1, 2011. Rulemaking Notice was published in the April 2011 Oregon Bulletin.\*\*  
Date upon filing or later Month and Year

**RULE CAPTION**

**Reporting and remittance of workers' compensation premium assessment**

**Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.**

**RULEMAKING ACTION**

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

**AMEND:** OAR 436-085-0003, 436-085-0005, 436-085-0025, 436-085-0030

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

Other Auth.:

Stats. Implemented: ORS 656.612, 656.614

**RULE SUMMARY**

**Revised OAR 436-085, "Premium Assessment" rules:**

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

*/s/ John L. Shilts*  
Authorized Signer

John L. Shilts  
Printed name

5/16/2011  
Date

\*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. \*\*The Oregon Bulletin is published the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings 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, when filings are accepted until 5:00 pm on the preceding workday. ARC 930-2005