

**ADMINISTRATIVE ORDER NO. 5-1985  
EFFECTIVE JANUARY 1, 1986**

**WORKERS' COMPENSATION DEPARTMENT  
OREGON ADMINISTRATIVE RULES  
CHAPTER 436, DIVISION 85**

**PREMIUM ASSESSMENT; ASSESSMENT/CONTRIBUTIONS**

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**EXHIBIT "A"  
OREGON ADMINISTRATIVE RULES  
CHAPTER 436, DIVISION 85**

**436-85-001 AUTHORITY FOR RULES**

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

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

**436-85-002 PURPOSE**

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

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

**436-85-003 APPLICABILITY OF RULES**

These rules are effective January 1, 1986 to carry out provisions of:

- (1) ORS 656.506 - Workday Assessment/Contribution payable by workers and employers.
- (2) ORS 656.538 - Assessment for Handicapped Workers Reserve.
- (3) ORS 656.612 - Administrative Fund; purpose, administration, assessments and collections.
- (4) ORS 656.614 - Self-Insured Employers Adjustment Reserve; Self-Insured Employer Group Adjustment Reserve.
- (5) 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.

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

**436-85-005 DEFINITIONS**

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

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

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656.612 and 656.614 at such intervals as the Director shall direct.

(7) "Department" means the Oregon Workers' Compensation Department, consisting of the Board, Director and all their assistants and employees.

(8) "Director" means the Director of the Workers' Compensation Department.

(9) "Fiscal Year" means the twelve-month period beginning July 1 and ending June 30.

(10) "Hearings Division" means the Hearings Division of the Workers' Compensation Board.

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

(12) "Premium Assessments" means moneys due the Department under ORS 656.612 and 656.614.

(13) "Reporting Frequency Period" means the monthly, quarterly, semiannual or annual period for which the insured employer reports to the insurer the payroll or any other information necessary to determine premium.

(14) "Self-Insured Employer" means an employer who has been certified under ORS 656.430 that the qualifications of a self-insured employer set out by ORS 656.407 have been met.

(15) "Self-insured Employer Group" means five (5) or more employers in the same industry certified under ORS 656.430 that the group meets the qualifications of a self-insured employer set out by ORS 656.407.

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

**436-85-006            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.

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

**436-85-008            ADMINISTRATIVE REVIEW**

(1) Upon receipt of a request for a hearing, Compliance Division shall forward the request to the Department of Justice with pertinent records in the matter as requested.

(2) The Department of Justice shall forward the request and other pertinent information to the Hearings Division.

(3) Notwithstanding ORS 183.135(1), the issuance of orders under these rules, the conduct of hearings and the judicial review thereof by the Court of Appeals shall be as provided in ORS 183.415 through ORS 183.495 except:

(a) The Board may promulgate rules for the conduct of the hearings under these rules;

(b) The order of the hearing referee shall be deemed to be a final order of the Director;

and

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(c) The Director shall have the same right to a judicial review of the order of the hearing referee as any person who is adversely affected or aggrieved by such final order.

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

**436-85-010 ASSESSMENTS/CONTRIBUTIONS; MANNER AND INTERVALS  
FOR PAYMENT: INSURERS, SELF-INSURED EMPLOYERS AND SELF-INSURED  
EMPLOYER GROUPS**

(1) In lieu of paying directly to the Department the money due the Department under ORS 656.506 and 656.538, an insured employer shall pay such money to the employer's insurer for remittance to the Department.

(2) The reporting frequency period established on the guaranty contract or any changes thereto will be the controlling factor in the payment and remittance of assessment/contribution moneys. For the purposes of this section, the reporting frequency period will end on the last day of the calendar quarter.

(3) Assessment/contribution moneys due the Department shall be paid and remitted as follows:

(a) Within 30 days of the last day of the employer's reporting frequency period, the employer shall report and remit assessment/contribution moneys to the employer's insurer in the manner and form prescribed by the insurer.

(b) Within 45 days of the end of each calendar quarter, the insurer shall report and pay those moneys due the Department for those employers required to report during or for that quarter.

(c) An insurer shall submit a report to the Department along with the money due the Department under this rule. A separate report and remittance check shall be submitted for each insurer, including each insurer operating within a group of insurance companies. The report shall be in the form and format and contain such other information as the Director may prescribe.

(4) When reporting in accordance with section (3)(a) an employer for bookkeeping convenience may, unless the worker objects, withhold a fixed sum per month from salaried workers employed by the month in lieu of deducting the designated amount for each day of employment. This option is also applicable to employers' assessments. If this method is used for worker's contributions, it must also be used for employer's assessments and vice versa. The amount to be remitted for worker's contributions and employer's assessments on a monthly basis will be equal to 20 times the applicable daily rate.

(5) Failure of the employer to report and remit moneys due the Department under this rule does not relieve the insurers of their responsibility to report and pay those moneys due the Department.

(6) Notwithstanding the requirements of this section, a self-insured employer or self-insured employer group shall remit moneys due the Department under this rule within 30 days of the end of each calendar quarter. The money due under this rule shall be remitted and reported in a manner prescribed by the Director.

Hist: Filed 12/19/75 as WCB Admin. Order 18-1975, effective 1/1/76 as Rule 436-55-050  
Amended 4/2/80 as WCD Admin. Order 3-1980, effective 4/2/80  
Amended 2/10/82 as WCD Admin. Order 4-1982, effective 2/15/82

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Amended 6/30/83 as WCD Admin. Order 1-1983, effective 7/1/83  
 Amended 12/22/83 as WCD Admin. Order 7-1983, effective 12/27/83  
 Renumbered from OAR 436-51, January 1, 1986  
 Amended 12/9/85 as WCD Admin. Order 5-1985, effective 1/1/86

**436-85-020            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 December 31 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.

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

**436-85-025            PREMIUM ASSESSMENTS; MANNER AND INTERVALS FOR PAYMENTS: INSURERS**

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

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

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

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

(4) A separate report and remittance check shall be submitted for each insurer, including

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each insurer operating within a group of insurance companies.

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

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

(7) For the purpose of this rule "earned premium" shall be the amount reported to the Oregon Insurance Division on Page 14, Column 3, Line 16 of the Annual Statement, exclusive of Longshore and Harbor Workers', Federal Employers Liability, the Jones Act, and Employer Liability premium. These premiums:

- (a) Exclude reinsurance accepted and are without deduction of reinsurance ceded, and
- (b) Are after application of experience rating, premium discounts or retrospective rating and exclusive of deposit premiums.

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

**436-85-030                    PREMIUM ASSESSMENTS; MANNER AND INTERVALS FOR  
PAYMENTS: SELF-INSURED EMPLOYERS AND SELF-INSURED EMPLOYER  
GROUPS**

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

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

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

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

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

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

(5) Within 30 days of the last day of a calendar quarter the self-insured employer shall report and remit premium assessment. The premium assessment shall be based upon the self-insured's premium for that quarter and the premium assessment rate in effect for that quarter as

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determined pursuant to Rule 85-020. For retrospective rating plans the premium assessment shall be based upon 80 percent of the self-insured employer's standard premium until adjusted by retrospective rating.

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

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

(8) In determining the experience rating modification of a self-insured employer the Compliance Division will use the same method as that used by the Oregon Council on Compensation Insurance, except that the Compliance Division will use only Oregon claims and payroll exposure and will assign a policy period of July 1 through the following June 30. If sufficient experience is not available to promulgate an experience modification based on Oregon experience only, the self-insured shall be assigned an experience rating modification of 1.00. When the Compliance Division orders an adjustment in the experience rating modification applicable for a particular policy period, the adjustment will be applied retroactively to the beginning of the period. Any resulting increase in the assessment is payable on demand. Any resulting decrease may be taken as an offset against the next quarterly assessment payment.

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

**436-85-035            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.

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

**436-85-060            ASSESSMENT OF CIVIL PENALTIES**

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

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

(3) An employer, insurer, self-insured employer or self-insured employer group may be

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assessed a civil penalty of up to \$1,000 for 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 be considered a separate violation subject to the penalty provisions of this rule.

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

**436-85-065                   ISSUANCE/SERVICE OF PENALTY ORDERS**

(1) When the Compliance Division imposes a penalty under provisions of 85-060, the Order, including a notice of the party's appeal rights, shall be served on the party.

(2) The Order shall be served by:

(a) Delivering a copy to the party in the manner provided by Rule 7 of Oregon Rules of Civil Procedure, subsection (D)(2); or

(b) Sending a copy to the party by certified mail with instructions to deliver to the addressee only, return receipt requested. If the employer is a corporation, the certified mail may be addressed to any one of the persons named in Rule 7 of Oregon Rules of Civil Procedure D (3)(b)(i).

(3) Orders of the Compliance Division 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 WORKERS' COMPENSATION DEPARTMENT, 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."**

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