

**ADMINISTRATIVE ORDER NO. 24-1990
EFFECTIVE JANUARY 1, 1991**

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

PREMIUM ASSESSMENT; ASSESSMENT/CONTRIBUTIONS

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

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, eff. 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, eff. 1/1/86.

436-85-003 Applicability of Rules

These rules are effective January 1, 1991 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 - Insurance and Finance Fund; purpose, administration, assessments and collections.
- (4) 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.

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.

436-85-005 Definitions

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

- (1) "Assessments/Contributions" means moneys due the Department under ORS 656.506, ORS 656.538 and ORS 656.532.
- (2) "Board" means the Workers' Compensation Board of the Department of Insurance and Finance.
- (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

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of the Department of Insurance and Finance.

- (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 Insurance and Finance.
- (8) "Director" means the Director of the Department of Insurance and Finance 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.
- (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, 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) "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.
- (15) "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.

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.

436-85-006 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, eff. 1/1/86.

436-85-008 Administrative Review

(1) Any party as defined by ORS 656.005(20) 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.

(a) The request for hearing must be sent in writing to the administrator of the Workers'

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Compensation Division. No hearing shall be granted unless the request specifies the grounds upon which the person requesting said hearing contests the proposed order or assessment.

(b) The request for hearing must be filed with the administrator of the Workers' Compensation Division within twenty (20) days of receipt by the aggrieved person of notice of the proposed order or assessment. No hearing shall be granted unless the request is received by the administrator within said twenty (20) days of receipt of notice.

(2) Any party as described in section (1) 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 by hearing before the director 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). When the matter qualifies for review as a contested case, the process for review shall be as follows:

(a) The request for hearing must be sent in writing to the administrator of the Workers' Compensation Division. No hearing shall be granted unless the request specifies the grounds upon which the action or order is contested and is received by the administrator within thirty (30) days of the action or from the date of mailing or other service of an order.

(b) The hearing shall be conducted by the director or the director's designee.

(c) Any order in a contested case issued by another person on behalf of the director is a proposed order 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.

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.

**436-85-010 Assessments/Contributions; Manner and Intervals for Payment:
Insurers, Self-Insured Employers and Self-Insured Employer Groups**

(1) In lieu of paying assessments/contributions directly to the Department, 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 following 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 following the end of each calendar quarter, the insurer shall report and pay those moneys due the Department for those employers whose reporting frequency period

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ends during or at the end of the calendar 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 following 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, eff. 1/1/76 as Rule 436-55-050
Amended 4/2/80 as WCD Admin. Order 3-1980, eff 4/2/80
Amended 2/10/82 as WCD Admin. Order 4-1982, eff. 2/15/82
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

436-85-020 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 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.

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(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, 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.

436-85-025 Premium Assessment; Manner and Intervals for Payments: Insurers

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

(1) Within 45 days following 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, or rates, in effect for the year being adjusted.

(4) A separate report and remittance check shall 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 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, Jones Acts, Employer Liability premium, and Excess Coverage premium. These premiums:

(a) Exclude reinsurance accepted and are without deduction of reinsurance ceded, and

(b) Are after application of experience rating, premium discounts, retrospective rating, or other individual risk rating adjustments, and are exclusive of deposit premiums.

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.

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436-85-030 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 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 following 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 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) An experience rating modification will be determined individually for each self-insurance plan. Compliance will use the same method as that used by the Oregon Council on Compensation Insurance, except that Compliance 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 be provided to

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Compliance 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 shall be assigned an experience rating modification of 1.00.

(9) When Compliance 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.

(10) When payroll information submitted for use in calculating the experience rating modification has been determined to be inaccurate, Compliance 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 be recalculated by Compliance.

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.

436-85-035 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, eff. 1/1/86.

436-85-060 Assessment of Civil Penalties

(1) The Director, through Compliance 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 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.

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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.

436-85-065 Issuance/Service of Penalty Orders

(1) When Compliance 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 Compliance 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 DIVISION, DEPARTMENT OF INSURANCE AND FINANCE, 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, eff. 1/1/86.
Amended 12/18/87 as WCD Admin. Order 5-1987, eff. 1/1/88.

436-85-070 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.

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(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 436-85-008.

(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.

Hist: Filed 11/29/90 as WCD Admin. Order 24-1990, eff. 1/1/91.