Oregon
Kate Brown, Governor

Department of Consumer and Business Services
Workers' Compensation Division
350 Winter St. NE
P.O. Box 14480
Salem, OR 97309-0405
1-800-452-0288, 503-947-7810
www.wcd.oregon.gov

Aug. 16, 2016

# Proposed Changes – Workers' compensation rules governing Workers' Benefit Fund assessments

The Workers' Compensation Division proposes changes to OAR 436-070, Workers' Benefit Fund Assessment. Please review the attached documents for more information about proposed changes and possible fiscal impacts.

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

**When is the hearing?** Sept. 23, 2016, 3 p.m.

**Where is the hearing?** Labor & Industries Building
350 Winter Street NE, Room 260 (2nd floor)
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:
Email – fred.h.bruyns@oregon.gov
Fred Bruyns, rules coordinator
Workers' Compensation Division
350 Winter Street NE (for courier or in-person delivery)
PO Box 14480, Salem, OR 97309-0405
Fax – 503-947-7514

**The closing date for written comments is Sept. 29, 2016**.

**How can I get copies of the proposed rules and view testimony?**

On the Workers' Compensation Division's website –

**http://wcd.oregon.gov/laws/Pages/proposed-rules.aspx**.

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

**FILED**
8-15-16 3:41 PM
ARCHIVES DIVISION
SECRETARY OF STATE

Department of Consumer and Business Services, Workers' Compensation Division — 436
Agency and Division — Administrative Rules Chapter Number

Fred Bruyns — (503) 947-7717
Rules Coordinator — Telephone

Department of Consumer and Business Services, Workers' Compensation Division, PO Box 14480, Salem, OR 97309-0405
Address

**RULE CAPTION**

Workers' compensation rules governing Workers' Benefit Fund assessments

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

| Hearing Date | Time | Location | Hearings Officer |
|---|---|---|---|
| 9-23-16 | 3:00 p.m. | Room 260 (2nd flr) Labor & Industries Bldg, 350 Winter St. NE, Salem, | Fred Bruyns |

**RULEMAKING ACTION**

Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT**:

**AMEND:**
OAR 436-070-0003, 436-070-0010

**REPEAL:**

**RENUMBER**: Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**AMEND AND RENUMBER**: Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**Statutory Authority:**
ORS 656.726(4); 656.506

**Other Authority:**

**Statutes Implemented:**
ORS 656.506

**RULE SUMMARY**

The public may also listen to the hearing or testify by telephone: Dial-in number is 213-787-0529; Access code is 9221262#.

The agency proposes to amend OAR chapter 436, division 070, "Workers' Benefit Fund Assessment," to:
- Revise the hourly assessment rate that subject employers and any employers electing to provide workers' compensation coverage for their employees must pay to the Department of Consumer and Business Services for the Workers' Benefit Fund (WBF). The agency will announce the proposed 2017 WBF assessment rate by mid-September, 2016.

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

| 09-29-2016 Close of Business | Fred Bruyns | fred.h.bruyns@oregon.gov |
|---|---|---|
| Last Day *(m/d/yyyy)* and Time for public comment | Rules Coordinator Name | Email Address |

*The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation.

Secretary of State

# STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing accompanies this form.

**FILED**
8-15-16 3:41 PM
ARCHIVES DIVISION
SECRETARY OF STATE

Department of Consumer and Business Services, Workers' Compensation Division — 436

Agency and Division — Administrative Rules Chapter Number

Workers' compensation rules governing Workers' Benefit Fund assessments

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 436-070, Workers' Benefit Fund Assessment

**Statutory Authority:**

ORS 656.726(4); 656.506

**Other Authority:**

**Statutes Implemented:**

ORS 656.506

**Need for the Rule(s):**

The Workers' Benefit Fund (WBF) assessment rate has been established through rulemaking, and this rulemaking is needed to revise the rate. The WBF supports several important programs, including return-to-work incentive programs and a program that provides cost-of-living increases for some worker benefits. The proposed rule changes are needed to set the assessment rate that will be in effect starting Jan. 1, 2017. The agency will announce the proposed WBF assessment rate by mid-September, 2016.

**Documents Relied Upon, and where they are available:**

The "Workers' Benefit Fund Assessment Rate Recommendation for CY 2017." This document will be available by mid-September and subsequently available upon request. Please contact Fred Bruyns, 503-947-7717, fred.h.bruyns@oregon.gov.

**Fiscal and Economic Impact:**

The agency director is required to maintain sufficient funds in the WBF for not less than six months of projected expenditures. The agency estimates that the revised assessment rate will be sufficient to maintain at least a six-month fund balance. The agency will announce the proposed assessment rate by mid-September 2016; fiscal and economic impact information will be available at that time, as well as at the public rulemaking hearing.

The fiscal impact of the proposed amendment cannot be estimated until it is determined if there will be a proposed change in the WBF assessment rate. Before recommending the 2017 rate, the agency must analyze additional financial data and review and authorize a proposed WBF assessment rate. We expect the recommendation for the 2017 WBF assessment rate to be announced by mid-September 2016. At that time we will have the information necessary to estimate the impacts on state agencies, local government, and the public, as well as to estimate the extent of the impacts. The estimated impacts will be provided at the rulemaking hearing.

Refer to additional economic impacts under "Statement of Cost of Compliance" below.

**Statement of Cost of Compliance:**

**1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):**

The agency will announce the proposed 2017 WBF assessment rate by mid-September 2016. At that time we will have the information necessary to estimate the impacts on state agencies, local government, and the public, as well as to estimate the extent of the impacts. The estimated impacts will be provided at the rulemaking hearing.

**2. Cost of compliance effect on small business (ORS 183.336):**

**a. Estimate the number of small business and types of businesses and industries with small businesses subject to the rule:**

The agency will announce the proposed 2017 WBF assessment rate by mid-September 2016. At that time we will have the information necessary to estimate the cost of compliance effect on small business. The estimated impact will be provided at the rulemaking hearing.

Oregon employers subject to the WBF assessment number approximately 112,000. At least 90 percent of employers are small businesses (50 or fewer employees).

**b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:**

The agency projects a cost for employers to adjust payroll systems to reflect any change, whether an increase or a decrease, in the Workers' Benefit Fund assessment rate. The agency does not have data it can use to estimate the dollar impact of this adjustment.

**c. Equipment, supplies, labor and increased administration required for compliance:**

The agency projects no impact on equipment, supplies, labor, or increased administration required for compliance.

**How were small businesses involved in the development of this rule?**

Small businesses were not involved in the decision to revise the assessment rate. The proposed revision is based on an actuarial analysis of income to the Workers' Benefit Fund and the statutory requirement under ORS 656.506 to maintain funds sufficient for no less than six-months of projected expenditures.

**Administrative Rule Advisory Committee consulted?:** No

**If not, why?:**

The agency did not consult an advisory committee because the proposed change will be based on an actuarial analysis of income to the Workers' Benefit Fund and the statutory requirement under ORS 656.506 to maintain funds for no less than six-months of projected expenditures.

| 09-29-2016 Close of Business | Fred Bruyns | fred.h.bruyns@oregon.gov |
|---|---|---|
| Last Day (m/d/yyyy) and Time for public comment | Printed Name | Email Address |

## *Proposed* OREGON ADMINISTRATIVE RULES
## CHAPTER 436, DIVISION 070

### 436-070-0003 Applicability of Rules

(1) These rules are effective ~~April 1, 2013~~Jan.1, 2017.

(2) These rules govern the Workers' Benefit Fund assessment under ORS 656.506.

(3) These rules apply to all subject employers as defined in ORS 656.005 and any otherwise non-subject employer who elects coverage pursuant to ORS 656.039.

(4) 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.

Statutory authority: ORS 656.506, 656.726(4)
Statutes implemented: ORS 656.506
Hist: Amended 12/7/12 as WCD Admin. Order 12-063, eff. 4/1/13
Amended xx/xx/xx as WCD Admin. Order 16-XXX, eff. xx/xx/xx

### 436-070-0010 Assessment Rate: Method and Manner of Determining

(1) All subject employers and any employer electing to provide workers' compensation coverage for its employees must pay an assessment rate of ~~3.3~~ [**See footnote.**] cents per hour to the Department of Consumer and Business Services, under this rule division and ORS 656.506.

(2) Factors considered in developing the rate include, but are not limited to:

(a) The estimated annual fund expenditures and revenues;

(b) The fund balance requirements;

(c) The estimated annual hours worked per employee;

(d) The estimated number of employees covered by workers' compensation insurance; and

(e) Other records relating to fund expenditures and revenues.

Statutory authority: ORS 656.506, 656.726(4)
Statutes implemented: ORS 656.506
Hist: Amended 12/7/12 as WCD Admin. Order 12-063, eff. 4/1/13
Amended xx/xx/xx as WCD Admin. Order 16-XXX, eff. xx/xx/xx

**Footnote:** **The agency will announce the proposed 2017 WBF assessment rate by mid-September 2016.**