



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

Nov. 10, 2015

Proposed Changes to Workers' Compensation Rules Threshold (split point) for reporting individual claims by self-insured employers

The Workers' Compensation Division proposes changes to OAR 436-050, Employer/Insurer Coverage Responsibility.

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?

Dec. 21, 2015, 10 a.m.

Where is the hearing?

Labor & Industries Building
350 Winter Street NE, Room E
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
Phone – 503-947-7717; Fax – 503-947-7514

The closing date for written comments is Dec. 23, 2015.

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

FILED 11-9-15 3:54 PM ARCHIVES DIVISION SECRETARY OF STATE
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Department of Consumer and Business Services, Workers' Compensation Division Agency and Division	436 Administrative Rules Chapter Number
Fred Bruyns Rules Coordinator	(503) 947-7717 Telephone
Department of Consumer and Business Services, Workers' Compensation Division, PO Box 14480, Salem, OR 97309-0405 Address	

RULE CAPTION

Threshold (split point) for reporting individual claims by self-insured employers
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

Hearing Date	Time	Location	Hearings Officer
12-21-15	10:00 a.m.	Room E, Labor & Industries Building, 350 Winter St. NE, Salem	Fred Bruyns

RULEMAKING ACTION

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

- ADOPT:**
- AMEND:**
436-050-0003, 436-050-0175
- 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:
656.407, 656.430, and 656.726(4)

Other Authority:

Statutes Implemented:
656.407, 656.430

RULE SUMMARY

The public may also listen to the hearing or testify by telephone:
Dial-in number is 1-213-787-0529; Access code is 9221262#.

The agency proposes to index the threshold for reporting individual claims by self-insured employers to the National Council on Compensation Insurance (NCCI) split point as published in agency Bulletin 209, and to remove the NCCI split point dollar amount from the rules. The split point will increase from \$15,500 to \$16,000 effective Jan. 1, 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.

12-23-2015 Close of Business Last Day (m/d/yyyy) and Time for public comment	Fred Bruyns Rules Coordinator Name	fred.h.bruyns@oregon.gov Email Address
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*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.

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11-9-15 3:54 PM
ARCHIVES DIVISION
SECRETARY OF STATE

Department of Consumer and Business Services, Workers' Compensation Division
Agency and Division

436
Administrative Rules Chapter Number

Threshold (split point) for reporting individual claims by self-insured employers

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

In the Matter of:

Amendment of OAR 436-050, Employer/Insurer Coverage Responsibility

Statutory Authority:

656.407, 656.430, and 656.726(4)

Other Authority:

Statutes Implemented:

656.407, 656.430

Need for the Rule(s):

The agency is proposing changes in self-insured loss reporting to ensure that reporting requirements remain consistent with requirements for insurers developed by the National Council on Compensation Insurance (NCCI). Under OAR 436-085-0030(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 * * *."

Documents Relied Upon, and where they are available:

Advisory committee records, OAR 436-085-0030(10), and the NCCI 2016 advisory loss cost filing, OREG-130268041, effective 1/1/2016. These records are available for public inspection in the offices of the Workers' Compensation Division, 350 Winter Street NE, Salem, Oregon 97301-3879, upon advance request, during regular business hours, 8:00 a.m. and 5:00 p.m., Monday through Friday. Contact Fred Bruyns, 503-947-7717, fred.h.bruyns@oregon.gov.

Fiscal and Economic Impact:

The agency projects that proposed changes will have no significant fiscal or economic impact on any persons or organizations.

Statement of Cost of Compliance:

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

- a. The agency projects that proposed rule changes will create no significant compliance costs for state agencies.
- b. The agency estimates that proposed rule changes will create no significant compliance costs for units of local government.
- c. The agency estimates that proposed rule changes will create no significant compliance costs for the public.

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:
Self-insured employers are usually larger employers that can assume the risk ordinarily carried by an insurance company.

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

The agency projects that there will be no related cost increases for small businesses.

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

The agency projects that there will be no related cost increases for small businesses.

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

The agency invited more than 2900 people to a rulemaking advisory committee meeting, including a number of small business representatives. However, the subject matter of the rulemaking issues discussed was almost exclusively relevant to larger businesses, and small business representatives did not attend the Sept. 24, 2015 advisory committee meeting.

Administrative Rule Advisory Committee consulted?: Yes

If not, why?:

12-23-2015 Close of Business	Fred Bruyns	fred.h.bruyns@oregon.gov
Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address



Employer/Insurer Coverage Responsibility Oregon Administrative Rules Chapter 436, Division 050

Proposed

NOTE: New text is underlined. Deletions have ~~strike through~~ a style.

436-050-0003 Applicability of Rules

- (1) These rules are effective ~~Jan. 1, 2015~~Jan. 1, 2016, to carry out the provisions of:
- (a) ORS 656.017 – Employer required to pay compensation and perform other duties.
 - (b) ORS 656.029 – Independent contractor status.
 - (c) ORS 656.126 – Coverage while temporarily in or out of state.
 - (d) ORS 656.407 – Qualifications of insured employers.
 - (e) ORS 656.419 – Workers' compensation insurance policies.
 - (f) ORS 656.423 – Cancellation of coverage by employer.
 - (g) ORS 656.427 – Cancellation of workers' compensation insurance policy or surety bond liability by insurer.
 - (h) ORS 656.430 – Certification of self-insured employer.
 - (i) ORS 656.434 – Certification effective until canceled or revoked; revocation of certificate.
 - (j) ORS 656.443 – Procedure upon default by employer.
 - (k) ORS 656.447 – Sanctions against insurer for failure to comply with orders, rules, or obligations under workers' compensation insurance policies.
 - (l) ORS 656.455 – Records location and inspection.
 - (m) ORS 656.745 – Civil penalties.
 - (n) ORS 656.850 and 656.855 – Worker leasing companies.
 - (o) ORS 731.475 – Insurer's in-state location.
- (2) The director may waive procedural rules as justice requires, unless otherwise obligated by statute.

Stat. Auth: ORS 656.704 and 656.726(4)

Stats. Implemented: ORS 656.017, 656.029, 656.126, 656.407, 656.419, 656.423, 656.427, 656.430, 656.434, 656.443, 656.447, 656.455, 656.745, 656.850, 656.855, and 731.475

Hist: Amended 11/26/14 as WCD Admin. Order 14-062, eff. 1/1/15

Amended xx/xx/xx/ as WCD Admin. Order xx-xxx, eff. xx/xx/xx

See also the Index to Rule History: http://wcd.oregon.gov/policy/rules/436_history.pdf.

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION**Proposed** EMPLOYER/INSURER COVERAGE RESPONSIBILITY**436-050-0175 Annual Reporting Requirements**

(1) To determine the financial status of a self-insured employer and to evaluate the employer's continuity of operation, a self-insured employer must file annually with the director an audited financial statement or annual report with audited financial statement, including SEC Form 10K if issued, for the just completed fiscal year. A self-insured employer that is not a municipality must make the filing within 120 days of the fiscal year end and a self-insured employer that is a municipality must make the filing within 180 days of the fiscal year end. All financial statements and annual financial reports filed, as required by this section, will be retained by the director for a period of at least three years. In lieu of an audited financial statement or annual report, a self-insured employer may file a financial statement certified by the employer that the financial statement is true and accurate and presents the employer's financial condition and results of operations as of the date of the statement.

(2) Notwithstanding section (1) of this rule, the director may require an employer to submit an audited financial statement if the certified financial statement submitted is insufficient to evaluate the employer's financial status.

(3) The financial statements and reports filed by a self-insured employer group must demonstrate the group's acceptable financial viability based on criteria under OAR 436-050-0260 including, but not limited to, satisfactory financial ratios and net worth.

(4) By March 1 of each year, self-insured employer groups must file with the director:

(a) A statement certifying the amount of the group's combined net worth under OAR 436-050-0260(3)(a), as of the date of the statement; and

(b) A copy of the fidelity bond furnished to the group by the administrator or a copy of the comprehensive crime policy obtained by the group, in an amount sufficient to protect the group against the misappropriation or misuse of any moneys or securities. If the fidelity bond or policy covers more than one year, is still in effect, and a copy was provided to the director in the prior year, the group's annual filing may state that fact in lieu of providing an additional copy.

(5) By March 1 of each year, self-insured employer groups consisting of private employer members must file with the director:

(a) A statement certifying that each employer member of the group meets the individual net worth requirement under OAR 436-050-0260(3)(b), as of the employer member's most recent fiscal year end; and

(b) A list of the group's current board members and their professional affiliations.

(6) The self-insured employer must report claim loss data described in Bulletin 209 by March 1 of each year for the purposes of experience rating modification, retrospective rating calculations, and determining deposits.

(a) The report must be certified to be true and accurate by an authorized representative of the self-insured employer, and must include:

(A) A report of losses for each year in the experience rating period. The report must cover all claims incurred during the reporting period and must be valued as of January 1 of the current year. Reports must include:

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION**

Proposed EMPLOYER/INSURER COVERAGE RESPONSIBILITY

- (i) Contract medical expenses;
 - (ii) Total maximum medical reimbursement amount;
 - (iii) Number of claims for which the maximum medical reimbursement amount is claimed;
 - (iv) For claims with incurred losses ~~of \$15,500 or less~~ at or below the National Council on Compensation Insurance (NCCI) split point published in Bulletin 209, total paid, outstanding reserves, and total incurred losses;
 - (v) Number of claims with incurred losses ~~of \$15,500 or less~~ at or below the NCCI split point; and
 - (vi) For each claim with incurred losses exceeding ~~\$15,500~~ the NCCI split point, worker's name, date of injury, claim number, total paid, outstanding reserves, and total incurred losses. Claims must be listed in alphabetical order.
- (B) A report of losses covering the self-insured period prior to the experience rating period. The report must list all open claims and must be valued as of January 1 of the current year. The report must include:
- (i) The worker's name, listed in alphabetical order;
 - (ii) Date of injury;
 - (iii) Claim number;
 - (iv) Total paid;
 - (v) Outstanding reserves; and
 - (vi) Total incurred losses.
- (C) Identification of claims involving catastrophes, Workers with Disabilities Program, permanent total disability or fatal benefits, third party recoveries, and claims where the total incurred has or is expected to exceed the self-insured retention of the self-insured employer's excess insurance policy.
- (D) The total annual paid losses for the previous four fiscal years valued as of January 1 of the current year.
- (b) Bulletin 209 provides guidelines for self-insured employers and their authorized representatives to use in submitting the required data. Bulletin 209 is available on the Workers' Compensation Division's website.
- (c) Each self-insured city, county, or qualified self-insured employer group that is exempted from the security deposit requirements under ORS 656.407(3) and OAR 436-050-0185 must, in addition to the above, provide the director by March 1 of each year, the procedures, methods, and criteria used in the process of determining the amount of their actuarially sound workers' compensation loss fund, including procedures for determining the amount for injuries incurred but not reported. The director may require a qualified self-insured employer group exempted from the security deposit requirements to provide an actuarial study that demonstrates its loss reserve account is actuarially sound and adequately funded under OAR 436-050-0185(2)(d).

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION**Proposed** EMPLOYER/INSURER COVERAGE RESPONSIBILITY

(7) Notwithstanding sections (1) through (5) of this rule, the director may require a self-insured employer group to submit financial statements, reports, or information more frequently for reasons including, but not limited to, changes in the group's financial status or viability, private employer members' individual net worth, group membership, private employer groups' board membership, or incurred claims costs.

(8) Notwithstanding section (6) of this rule, the director may require a self-insured employer to submit claim loss data more frequently if the nature of the self-insured employer's business has changed since the last annual loss report for reasons including, but not limited to, mergers or acquisitions, changes in employment level, nature of employment, or incurred claims costs.

(9) If a self-insured employer fails to comply with the requirements of sections (1) through (8) of this rule, the director may impose any or all of the following sanctions:

(a) Require the self-insured employer to increase its deposit and premium assessments by 25%;

(b) Conduct an audit to obtain the necessary loss information at the self-insured employer's expense;

(c) Assess civil penalties of up to \$250 per day that the information is not provided beyond the deadline; or

(d) Revoke the employer's certification for self-insurance.

(10) To ensure each self-insured employer's claims are valued appropriately for use in deposit, experience rating, and retrospective rating calculations, the director will perform routine test audits. If a self-insured employer's total claims values are found to be 10 percent or more below the director's determined values, the current experience rating will be recalculated using the director's determined values and will be used in the security deposit and retrospective rating calculations. In addition, penalties may be assessed.

Stat. Auth: ORS 656.407, 656.430, 656.704, and 656.726(4)

Stats. Implemented: ORS 656.407 and 656.430

Hist: Amended 11/26/14 as WCD Admin. Order 14-062, eff. 1/1/15

Amended xx/xx/xx/ as WCD Admin. Order xx-xxx, eff. xx/xx/xx

See also the Index to Rule History: http://wcd.oregon.gov/policy/rules/436_history.pdf