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BEV CLARNO
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A. RICHARD VIAL
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 436
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION

FILED
10/29/2019 4:10 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Subjectivity of home health workers; exiting self-insurance and release of security; premium assessment rates

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/27/2019 11:55 PM

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.

CONTACT: Fred Bruyns
503-947-7717
fred.h.bruyns@oregon.gov

350 Winter Street NE
PO Box 14480
Salem, OR 97309

Filed By:
FREDERICK BRUYNS
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 11/21/2019

TIME: 10:00 AM

OFFICER: Fred Bruyns

ADDRESS: Labor & Industries Building,

Room F

350 Winter Street NE

Salem, OR 97301

SPECIAL INSTRUCTIONS:

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

NEED FOR THE RULE(S):

Rule amendments are needed to implement House Bill 3003, affecting release of security when an employer exits self-insurance. Additional amendments are needed to better align the rules with statutes governing employer coverage requirements and premium assessments.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

House Bill 3003 (2019); rulemaking advisory committee meeting records; written advice. These documents are available for public inspection upon request to the Workers' Compensation Division, 350 Winter Street NE, Salem, Oregon 97301-3879. Please contact Fred Bruyns, rules coordinator, 503-947-7717, fred.h.bruyns@oregon.gov.

FISCAL AND ECONOMIC IMPACT:

The agency does not expect significant cost increases or decreases for its operations due to adoption of any of the proposed rule amendments.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

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

- a. The agency estimates that proposed rule changes will not significantly affect costs to state agencies for compliance with the rules.
- b. The agency estimates that proposed rule changes will affect costs to units of local government for compliance with the rule, but only if the government units are self-insured; these costs are estimated in "c" below.
- c. The agency estimates that proposed rule changes will increase some costs to the public for compliance with the rule. The proposed change to the method for determining the rates used for premium assessments on self-insured employers will increase premium assessments. Currently, assessments are based on the lowest rates filed by an Oregon workers' compensation insurer, which are generally equivalent to the manual rates published by the National Council on Compensation Insurance modified by a loss cost multiplier (LCM) of less than 1.0. Historically, these extremely low rates have only been filed by specialized insurers who write very little premium, so these rates would not be available to most, if any, self-insured employers if they exited self-insurance and obtained workers' compensation insurance coverage.

The proposed method would use manual rates modified by a multiplier no greater than the average of all LCMs filed with the Division of Financial Regulation for the preceding fiscal year, weighted by market share. In determining the multiplier, the director could consider factors including, but not limited to, the net difference between the maximum multiplier possible and the multiplier used in the preceding fiscal year.

To estimate the fiscal impact of the rule change, the agency analyzed available data for 2018. The rates used in 2018 were modified by an LCM of 0.978, and a multiplier based on the weighted average of LCMs currently on file would have been about 1.38, a 41.1% increase. The overall cost increase for self-insured employers in 2018 would have been approximately 41.1%, or \$3,550,000, if the maximum multiplier of 1.38 was used.

However, it is difficult to estimate what the fiscal impact will be in future years because the manual rates and insurer LCMs for those years have not yet been filed. Further, the director may choose a multiplier in future years that is lower than the maximum multiplier allowed under the proposed method.

The proposed amendments implement House Bill 3003, which repealed statutory language requiring the director to retain a former self-insured employer's security deposit for 62 months before allowing the employer to substitute a policy of paid-up insurance. New provisions for earlier release of security may decrease the costs for a self-insured employer to exit self-insurance.

The agency projects that other proposed changes to the rules will not have significant fiscal or economic effects on any person or organization subject to the rules.

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

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

Proposed rule changes primarily affect workers' compensation insurers, self-insured employers, and self-insured employer groups. These entities tend to be large employers and not small businesses as defined by ORS 183.310.

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

The agency projects no increased costs for reporting, recordkeeping, professional services, or other administrative activities required for compliance with proposed rule changes.

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

The agency projects no increased costs for equipment, supplies, labor, or administration required for compliance with proposed rule changes.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The businesses affected by the proposed rule changes are mostly large employers. However, the request for committee members and agenda topics was distributed to more than 3,500 stakeholders, including representatives of small businesses.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

436-050-0003, 436-050-0005, 436-050-0008, 436-050-0045, 436-050-0050, 436-050-0165, 436-050-0200, 436-085-0001, 436-085-0002, 436-085-0003, 436-085-0005, 436-085-0008, 436-085-0015, 436-085-0025, 436-085-0030, 436-085-0035

AMEND: 436-050-0003

RULE SUMMARY: Amended rule 0003 includes minor wording changes to enhance clarity.

CHANGES TO RULE:

436-050-0003

Purpose and Applicability and Purpose of these Rules ¶

(1) Purpose. These rules carry out the workers' compensation law related to employers' and insurers' responsibilities to cover subject workers for compensable injuries and illnesses.¶

(2) Applicability.¶

(a) These rules apply to employers, self-insured employers, and insurers.¶

(b) The requirements of OAR 436-050-0165, 436-050-0170, 436-050-0175, 436-050-0180, 436-050-0190, 436-050-0200, 436-050-0205, 436-050-0210 and 436-050-0220 apply to both self-insured employers and self-insured employer groups. References in those rules to "employer" include employer groups, and references to "self-insured employer" include self-insured employer groups.¶

~~(3) Director's discretion.~~ (c) The director may waive procedural rules as justice requires, unless otherwise obligated by statute.

Statutory/Other Authority: ORS 656.726(4)

Statutes/Other 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, 731.475

AMEND: 436-050-0005

RULE SUMMARY: Amended rule 0005 better defines terms used in this rule division.

CHANGES TO RULE:

436-050-0005

Definitions ¶¶

Unless a term is defined elsewhere in these rules, the definitions of ORS chapter 656 are incorporated by reference and made a part of these rules. For the purpose of these rules, unless the context requires otherwise:¶¶

- (1) "Assigned claims agent" means an entity selected by the director to process the claims of a non-complying employer under ORS 656.054.¶¶
- (2) "Audited financial statement" means a financial statement audited by an outside accounting firm.¶¶
- (3) "Board" means the Workers' Compensation Board and includes its Hearings Division.¶¶
- (4) "Cancel" or "cancellation," in relation to an insurance policy, means ending the policy at a date before its expiration date.¶¶
- (45) "Claims processing location" means a place of business maintained or operated by an insurer, self-insured employer, self-insured employer group, or service company to process claims and keep records as required by ORS 731.475 and 656.455. "Claims processing location" does not include a post office box, commercial mail receiving agency, virtual office, or the place of residence of an employee of the insurer, self-insured employer, self-insured employer group, or service company.¶¶
- (56) "Days" means calendar days unless otherwise specified.¶¶
- (67) "Default" means failure of an employer, insurer, or self-insured employer to pay the moneys due to the director under ORS 656.506, 656.612, and 656.614 at such intervals as the director directs.¶¶
- (78) "Director" means the director of the Department of Consumer and Business Services or the director's designee.¶¶
- (89) "Division" means the Workers' Compensation Division of the Department of Consumer and Business Services.¶¶
- (10) "Governmental subdivision" means a citiesy, countiesy, special district as defined in ORS 198.010, intergovernmental agenciesy created under ORS 225.050, school districts as defined in ORS 255.005, public housing authoritiesy created under ORS chapter 456, or regional council of governments created under ORS chapter 190.¶¶
- (9) "~~Hearings Division~~" means ~~the Hearings Division of the Workers' Compensation Board.~~¶¶
- (1011) "Insurer" means the State Accident Insurance Fund Corporation or an insurer authorized under ORS chapter 731 to transact workers' compensation insurance in Oregon.¶¶
- (112) "Nonrenewal" means the insurer's decision not to renew a policy at its expiration date.¶¶
- (123) "Person" means an individual, partnership, corporation, joint venture, limited liability company, association, government agency, sole proprietorship, or other business entity allowed to do business in the State of Oregon.¶¶
- (134) "Premium" means the monetary consideration for an insurance policy.¶¶
- (145) "Premium assessments" means moneys due the director under ORS 656.612 and 656.614.¶¶
- (156) "Principal" means the entity whose liability is secured by a surety bond.¶¶
- (17) "Process claims" ~~means~~ the determination of compensability and management of workers' compensation claims by an Oregon certified claims examiner.¶¶
- (168) "Proof of coverage" has the ~~same meaning as defined in~~ provided under OAR 436-162-0005.¶¶
- (179) "Reinstatement" means the continuation or reestablishing of workers' compensation insurance coverage, ~~as noted by the effective date of the reinstatement,~~ under a workers' compensation insurance policy that was previously canceled.¶¶
- (1820) "Renewal" or "renew" means the issuance of a policy succeeding a previously issued policy or the issuance of a certificate or notice extending the terms of an existing policy for a specified period beyond its expiration date.¶¶

~~(219)~~ "Self-insured employer" means an employer that has been certified under ORS 656.430 as having met the qualifications of a self-insured employer set out by under ORS 656.407.¶

~~(202)~~ "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 under ORS 656.407 and ~~OAR 436-050-0260 through 436-050-0340.~~¶

~~(213)~~ "Service company" means the contracted agent for an insurer, self-insured employer, or self-insured employer group authorized to process claims and make payment of compensation on behalf of the insurer, self-insured employer, or self-insured employer group.¶

~~(224)~~ "State" means the state of Oregon.¶

~~(23)~~ "Substantial ownership" means a percentage of ownership equal to or greater than the average percentage of ownership of all the owners, or ten percent, whichever is less.¶

~~(245)~~ "Written" means information communicated in writing, and includes electronic records.

Statutory/Other Authority: ORS 656.726(4)

Statutes/Other Implemented: ORS 656.726(4)

AMEND: 436-050-0008

RULE SUMMARY: Amended rule 0008 uses revised terms consistent with changes to rule 0005.

CHANGES TO RULE:

436-050-0008

Requests for Hearings or Administrative Review ¶¶

(1) Request for hearing on an action concerning a worker's right to compensation. Any party, or assigned claims agent, that disagrees with an action taken under these rules that concerns a worker's right to compensation, or the amount of compensation due, may request a hearing by the ~~Hearings Division~~board under ORS chapter 656 and OAR chapter 438.¶¶

(2) Request for hearing on proposed sanctions or civil penalties. Any party, or assigned claims agent, that disagrees with a proposed order, or proposed assessment of civil penalty, of the director issued under ORS 656.254, 656.735, 656.745, or 656.750 may request a hearing by the ~~Hearings Division~~board. To request a hearing, the party or assigned claims agent must:¶¶

(a) Mail or deliver a written request to the ~~Workers' Compensation D~~ivision within 60 days of the mailing date of the proposed order or assessment; and¶¶

(b) Specify, in the request, the reasons why the party or assigned claims agent disagrees with the proposed order or assessment.¶¶

(3) Request for administrative review. Any party, or assigned claims agent, that disagrees with an action taken under these rules other than as described in section (1) of this rule may request the director to conduct an administrative review of the action.¶¶

(a) To request administrative review, the party or assigned claims agent must:¶¶

(A) Mail or deliver a written request for review to the ~~Workers' Compensation D~~ivision within 90 days of the contested action; and¶¶

(B) Specify, in the request, the reasons why the party or assigned claims agent disagrees with the action.¶¶

(b) Requests mailed more than 90 days after the contested action may be considered if the director determines there was good cause for delay, or that substantial injustice may otherwise result.¶¶

(4) Request for hearing on an action not concerning a worker's right to compensation. Any party, or assigned claims agent, that disagrees with an action or order of the director under these rules other than as described in section (1) or (2) of this rule may request a hearing by filing a request under 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.

Statutory/Other Authority: ORS 656.704, 656.726(4), ~~656.745~~

Statutes/Other Implemented: ORS 656.704, ORS 656.254, 656.735, 656.740, 656.745, 656.750

AMEND: 436-050-0045

RULE SUMMARY: Amended rule 0045 clarifies that:

- "Private employment contract" means a contract under which a worker is directly employed by the owner of the private home; and
- "Home health worker" does not include a worker employed by a home health agency, as defined in ORS 443.014, or in-home care agency, as defined in OAR 333-536-0005.

CHANGES TO RULE:

436-050-0045

Non-Subject Workers ¶

For the purposes of clarifying terms used in ORS 656.027:¶

(1) A ~~"worker engaged in household domestic service by private employment contract"~~ includes "Private employment contract" means a contract under which a worker in the direct employment of the owner of the private home. As used in this ~~rule section~~, "owner of the private home" means:¶

(a) Any person who occupies and owns, leases, or rents the private home;¶

(b) Any person related by blood, marriage, or Oregon registered domestic partnership to a person described under subsection (1)(a) ~~of this rule~~; or¶

(c) Any person who, by direction of a person described under subsection (1)(a) ~~of this rule~~, or by order of a court, has become responsible for managing the household affairs of that person.¶

(2) "Home health worker" does not include a worker employed by a home health agency, as defined in ORS 443.014, or in-home care agency, as defined in OAR 333-536-0005.¶

(3) A "person performing foster parent or adult foster care duties" means:¶

(a) A person performing foster parent duties, including, but not limited to:¶

(A) Any person certified as a foster parent by the Oregon Department of Human Services under ORS chapter 418; or¶

(B) Any person employed by a certified foster parent in the operation of a foster home as defined in ORS chapter 418; or¶

(b) A person performing adult foster care duties, including, but not limited to:¶

(A) Any person operating an adult foster home licensed under ORS 443.705 to 443.825; or¶

(B) Any person employed by the operator to perform services that assist the residents of the adult foster home.¶

(3c) ~~As used in this rule, "adult foster home"~~ "adult foster home", as used in subsection (b), means any family home or facility, licensed under ORS 443.705 to 443.825, in which room, board, and 24-hour care services are provided, for compensation, to five or fewer adults who are not related to the operator by blood or marriage.

Statutory/Other Authority: ORS 656.726(4)

Statutes/Other Implemented: ORS 656.027

AMEND: 436-050-0050

RULE SUMMARY: Amended rule 0050:

- Clarifies that section (2) applies to employers who are subject to a maximum number of exempt members, partners, or corporate officers under ORS 656.027; and
- Includes revisions to enhance clarity, including the addition of a definition of "substantial ownership" moved from rule 0005.

CHANGES TO RULE:

436-050-0050

Corporate Officers, ~~Partnerships~~; Limited Liability Company Members, ~~Partners~~; Subjectivity ¶

(1) A corporation, limited liability company, or partnership may elect to provide workers' compensation coverage for otherwise nonsubject workers: ¶

(a) ~~The election must be made in writing to the insurer at the beginning of a coverage policy and~~ A carrier-insured employer must make the election to the insurer in writing on or before the effective date of the policy. A copy of the election must be sent to the director. An election remains in effect until a revised written designaelection is given to the insurer. ¶

(b) A self-insured employer must file the election with the director. ¶

(2) If an entity employer that is subject to a maximum number of exempt corporate officers, members, or partners under ORS 656.027 does not file itsan initial election, or is not in compliance underwith ORS 656.017 and 656.407, then these exempt individuals will be determined in the following order: ¶

(a) For a corporation: ¶

(A) President; ¶

(B) Secretary, if any; ¶

(C) Vice President, if any; ¶

(D) Secretary/Treasurer, if any; ¶

(E) Treasurer, if any; ¶

(F) All other officers, if any; or ¶

(b) For a limited liability company or ~~partners of a partnership:~~ ¶

(A) The member or partner with the largest ownership interest; ¶

(B) The member or partner with the next largest ownership interest; and ¶

(c) If more than one person is inholds the same office, or more than one member or partner haves equal ownership interest, the sequence of those persons will be determined by whose birthday falls earlier in atthe same as the chronological order of their birthdays in a calendar year. ¶

(3) Noncomplying corporations, noncomplying limited liability companies, or noncomplying partnerships, regardless of the number of employees, are limited to two exempt officers, members, or partners to be determined in accordance with section (2) of this rule. ¶

(4) For the purposes of clarifying terms used in ORS 656.027: ¶

(a) "Commercial harvest of timber" means all commercial activities relating to harvest of timber from a parcel of property including, but not limited to, road building, marking of trees to be cut, timber falling, slash removal, and transportation of timber to the location where it will be processed into lumber or other products; ~~and~~ ¶

(b) "Director" means a person elected or appointed to a corporation's board of directors in accordance with its articles of incorporation or bylaws; ~~and~~ ¶

(c) "Substantial ownership" means a percentage of ownership equal to or greater than the average percentage of ownership of all the owners, or ten percent, whichever is less.

Statutory/Other Authority: ORS 656.726(4)

Statutes/Other Implemented: ORS 656.027, 656.039

AMEND: 436-050-0165

RULE SUMMARY: Amended rule 0165 includes:

- Plain-language revisions to enhance clarity;
- A reference to Bulletin 147 for details regarding acceptable forms of security deposit; and
- References to the use of policies of paid-up insurance when existing security must be replaced and a self-insured employer's certification has been canceled or revoked.

CHANGES TO RULE:

436-050-0165

Security Deposit Requirements ¶

(1) Adoption of standards.¶

The director adopts, by reference, the International Standby Practices 1998 (ISP98), ICC Publication No. 590.¶

(a) This publication may be ~~access~~purchased from the International Chamber of Commerce website: at https://~~2go~~.iccwbo.org/policy/banking/; and¶

(b) Copies of this publication are available for review during regular business hours at the Workers' Compensation Division, 350 Winter Street NE, Salem OR 97301.¶

(2) Required security deposit. Each self-insured employer is required to provide a security deposit that is acceptable to the director as detailed in Bulletin 147. Under the conditions and requirements of this rule, the director may accept:¶

(a) An irrevocable standby letter of credit (ISLOC); or¶

(b) A surety bond.¶

(3) Irrevocable standby letters of credit. An ISLOC may be approved by the director as all or part of the security deposit. The director may approve the ISLOC under the following conditions:¶

(a) The ISLOC must be issued ~~by~~ or confirmed by an Oregon state-chartered bank or a federally chartered bank from which funds will be immediately payable on demand;¶

(A) Except for federally chartered instrumentalities of the United States operating under the authority of the Farm Credit Act of 1971 as amended, the bank issuing the ISLOC must, at the time of issuance, have a long-term certificate of deposit rating of:¶

(i) "Aaa", "Aa", or "A" in the current monthly edition of "Moody's Statistical Handbook" prepared by Moody's Investors Service Inc., New York; or¶

(ii) "AAA", "AA" or "A" in the current quarterly edition or monthly supplement of "Financial Institutions Ratings" prepared by Standard & Poor's Corporation, New York;¶

(B) An ISLOC issued by a bank that does not meet the ~~credit~~ rating requirement of paragraph (A) at the time of issuance will only be accepted with a confirming ISLOC issued by an Oregon state-chartered bank or federally chartered bank that meets the ~~credit~~ rating requirement of paragraph (A). The confirming ISLOC must state that the confirming bank is primarily obligated to pay on demand the full amount of the ISLOC regardless of reimbursement from the bank whose ISLOC is being confirmed;¶

(C) If, ~~subsequent to the issuance of the ISLOC~~, a bank's rating falls below the acceptable rating level as set forth in paragraph (A), rating requirement of paragraph (A) subsequent to the issuance of the ISLOC, the self-insured employer must, within 60 days of the publication of the lower ~~credit~~ rating:¶

(i) Replace the ISLOC with a new ISLOC issued by an Oregon state-chartered bank or ~~with~~ a federally chartered bank with an acceptable ~~credit~~ rating;¶

(ii) ~~Confirm~~ Have the ISLOC confirmed by an Oregon state-chartered bank or a federally chartered bank that has an acceptable ~~credit~~ rating; ~~or~~¶

(iii) Replace the ISLOC with a ~~policy of insurance or a surety bond~~ of equal amount that is approved by the director, as substitute security for the ISLOC, if the policy of insurance or, if the surety bond covers all workers' compensation liabilities and obligations that would have been covered by the ISLOC;¶

~~(b) The issuing bank must use or~~¶

- (iv) Obtain a policy of paid-up insurance that is accepted by the director in accordance with OAR 436-050-0200(5), if the certification of the self-insured employer has been canceled or revoked;¶
- (b) Form 3640, "Irrevocable Standby Letter of Credit," must be used for the ISLOC;¶
- (c) The ISLOC must be issued under the legal name or assumed business name of the self-insured employer as registered with the Oregon Secretary of State;¶
- (d) The ISLOC must state that it will be automatically extended, without amendment, for one year from the expiration date, or any subsequent expiration date, unless, at least 60 days before the expiration date, the bank gives the director is notified in writing written notice, by registered mail or overnight delivery, at least 60 days before the expiration date, that the bank has elected not to extend the ISLOC for another period;¶
- (e) The ISLOC must state that if the issuing bank or any confirming bank is closed at the time of expiration of the ISLOC for any reason that would prevent delivery of a demand notice during its normal hours of operation, the ISLOC will be automatically extended for a period of 30 days commencing on the next day of operation;¶
- (f) The ISLOC must be able to be called immediately if:¶
- (A) The self-insured employer has defaulted in payment of its workers' compensation liabilities or obligations, or in payments due to the director under ORS chapter 656;¶
- (B) The self-insured employer has filed for bankruptcy;¶
- (C) The self-insured employer has failed to renew the ISLOC or provide acceptable substitute security at least fifteen 15 days before the expiration date of the ISLOC; or¶
- (D) The beneficiary has determined the existing security is deemed inadequate, that additional or replacement security must be provided by the self-insured employer, and that neither has been provided self-insured employer has failed to provide additional or replacement security after being ordered to do so by the director, notwithstanding written notice to the self-insured employer;¶
- (g) The credit funds provided by the ISLOC must be available by presentation of the beneficiary's sight draft drawn at sight on the issuing bank, payable within three business days, when accompanied by one of the statements contained in subsection (f), signed by the director or designee;¶
- (h) The ISLOC is must not be subject to any qualifications or conditions by the issuing bank or confirming bank and must state that it is each bank's individual obligation, which is in no way contingent upon reimbursement;¶
- (i) An The ISLOC must state that:¶
- (A) The funds provided by the ISLOC are not construed to be an asset of the self-insured employer; and that it¶
- (B) If legal proceedings are initiated by any party with respect to the payment of any ISLOC, it is agreed that such proceedings must will be subject to the jurisdiction of Oregon courts and Oregon law;¶
- (j) P The ISLOC must state that payment of any amount under an the ISLOC must will be made only by wby wire transfer to a department account with the State Treasurer at a designated bank. Wire transfers must be in the name of the "Department of Consumer and Business Services In Trust For [the legal name of the certified self-insured employer]" to a department account, with the State Treasurer, at a designated bank;¶
- (k) The ISLOC must conform to and reference the International Standby Practices 1998 (ISP98), ICC Publication No. 590;¶
- (l) A The ISLOC must state that all bank charges for the ISLOC must will be for the account of the applicant;¶
- (m) A The ISLOC must state that any amendment to the ISLOC must be approved and accepted by the director by the beneficiary before the amendment is effective;¶
- (n) Each The self-insured employer that submits an acceptable ISLOC as its security deposit must provide at the ISLOC must provide an accompanying Form 3529, "Memorandum of Understanding," with the ISLOC, affirming the self-insured employer's acceptance of all of the following requirements:¶
- (A) An The ISLOC is provided to the director in place of, or in addition to, a surety bond or other forms of security that may be determined to be acceptable for certification as a self-insured employer or for continuing as a certified self-insured employer;¶
- (B) The self-insured employer understands tacceptable to the director under this rule;¶
- (B) The ISLOC will be automatically extended without amendment for an additional one year from the expiration date, or any subsequent expiration date, unless, at least 60 days before the expiration date, the director is notified

~~in writing by the bank~~ bank notifies the director in writing that the ISLOC will not be renewed;¶

(C) The ISLOC may be replaced with an ISLOC or surety bond of equal amount that is accepted by the director as substitute security, or a policy of paid-up insurance that is accepted by the director as ~~substitute security for the ISLOC~~ in accordance with OAR 436-050-0200(5), if the new ISLOC ~~or~~, surety bond, or policy of paid-up insurance covers all workers' compensation liabilities and obligations that would have been covered by the ISLOC ~~to be replaced~~;¶

~~(D) The self-insured employer affirms that the ISLOC, in the amount required, is being offered with the understanding that t;~~¶

~~(D) The ISLOC can be called immediately, at the director's discretion, if the director receives notice that the ISLOC will not be renewed; if the self-insured employer fails to pay its workers' compensation liabilities, obligations, or payments due to the director under ORS chapter 656; or if the self-insured employer files bankruptcy; or if the self-insured employer fails to renew the ISLOC or provide acceptable substitute security at least fifteen days before the expiration date of the ISLOC; or if the director has determined the existing security is deemed inadequate, that additional or replacement security must be provided by the self-insured employer and that ordered the self-insured employer to provide additional or replacement security, and neither has been provided, notwithstanding written notice to the self-insured employer; and~~¶

(E) If legal proceedings are initiated by any party with respect to payment of any ISLOC, ~~then it is agreed that the proceedings will be subject to the jurisdiction of Oregon courts and application of Oregon law.~~¶

(4) Surety bonds. A surety bond may be ~~accept~~ approved by the director as a ~~security deposit or substitute~~ all or part of the security deposit for an ISLOC, government securities, moneys, or time deposits. A.¶

~~(a) The director may approve the surety bond under the following conditions:~~¶

~~(A) The surety bond may~~ be accepted as all or part of the security deposit. The director, in each particular case, will determine if the surety bond submitted is acceptable, if the issuing surety is acceptable, and if its language and format are acceptable. ~~The director may accept the surety bond under~~ company authorized under ORS chapter 731 to transact surety business in Oregon;¶

~~(B) The surety company or its parent must have and maintain an acceptable credit rating in accordance with the following conditions:~~¶

~~(a) The surety bond must be issued by a surety company authorized to transact surety business in Oregon Standard and Poor's Insurer Financial Strength Rating of A or better; or~~¶

~~(ii) A.M. Best Company Financial Strength Rating of B+ or better;~~¶

~~(b) Form 824, "Surety Bond," must be used for all the surety bonds;~~¶

~~(c) The surety bond must be issued under the legal name or assumed business name of the self-insured employer as registered with the Oregon Secretary of State;~~¶

~~(d) Surety bonds submitted for the self-insured employer's security deposit~~ The surety bond must be continuous in form;¶

~~(e) The surety bonds must state that it may only be terminated by the surety company by giving the director and the Principal written notice. The notice must state that the termination will be effective on a date not less than thirty days after the date the notice is received by the director, such t. Termination will be effective. Such termination of a surety bond in no way limits the liability of the S surety for subsequent defaults of the Principal's liability or obligations incurred under ORS chapter 656 before the effective date of such the termination;~~¶

~~(f) Form 1810, "The surety Bond Rider" must be used for all department required increases or authorized decreases in the penal sum of the surety bond. The suret must state that the liability of the surety company may b ond rider is not effective until it is acceptly be discharged by in the department;~~¶

~~(g) Surety bonds and all riders to the surety bonds must be executed by the surety company's attorney in fact and the attorney in fact's appointment and power of attorney must accompany all surety bonds and riders submitted. The power of attorney must authorize the attorney in fact to execute the surety bond in the amount of the penal sum of the bond;~~¶

~~(h) The liability of a surety company under its surety bond may only be discharged in the event that~~ event that the

surety bond is released in writing by the director. The director may release a surety bond when:¶

(A) ~~The Principal files acceptable~~ provides substitute security as the security deposit that is accepted by the director as substitute security for in lieu of the surety bond to be released, covering all past, present, existing, and potential liability of the Principal under ORS chapter 656 and covering all the Surety's liability under the surety bond to be released, in an amount required by the director; and¶

(B) ~~The surety bond is released as documented in writing from the director,~~ in an amount required by the director; or¶

(ii) ~~If the certification of the administrator of the Workers' Compensation Division, or their designated authorized representative;~~¶

(C) ~~A self-insured employer has been canceled or revoked, the self-insured employer obtains a policy of paid-up insurance or an ISLOC of equal amount that is acceptable~~ by the director may be accepted as substitutin accordance with OAR 436-050-0200(5). ¶

(H) ~~The security for the bond and all~~ surety bond if the policy of insurance or ISLOC covers all workers' compensation liabilities and obligations that would have been covered by the surety bond;¶

(i) ~~The surety company or its parent must have and maintain a~~ riders must be executed by the surety company's attorney in fact. The attorney in fact's appointment and power of attorney must accompany the surety bond and all riders submitted. The power of attorney must authorize the attorney in fact ~~acceptable credit rating in accordance with the following:~~ to execute the surety bond in the amount of the penal sum of the bond. ¶

(A) ~~Standard and Poor's Insurer Financial Strength Rating of A or better rating,~~ or¶

(B) ~~A.M. Best Company Financial Strength Rating of B+ or better rating;~~ Form 1810, "Surety Bond Rider" must be used for all department-required increases or authorized decreases in the penal sum of the surety bond. The surety bond rider is not effective until it is accepted by the department. ¶

(j) ~~A~~ The surety bond must be replaced by the self-insured employer with an acceptable type of security deposit within 30 days after notice from the department that the Surety has been placed in conservatorship, is seized, or declares insolvency, or ~~the~~ has a current credit rating is below the ratings required in subsection (i) ~~(B)~~. ¶

(5) Government securities, certificates of deposit, or time deposit accounts, Government securities, certificates of deposit, or time deposit accounts will not be accepted as security deposits for certified self-insured employers who must increase their security deposit or for employers whose self-insurance certification was granted after January 1, 2004. ¶

(a) Government securities, certificates of deposit, or time deposit accounts that were accepted by the director as a self-insured employer's or a self-insured employer group's required security deposit before January 1, 2004, may remain as the security deposit until the maturity date of those investments. At that time, the government securities, certificates of deposit, or time deposit accounts pledged to the department as security deposits must be replaced by a surety bond or ISLOC acceptable to the director. ¶

(b) A self-insured employer that has government securities, certificates of deposit, or time deposit accounts as all or part of its security deposit must complete Form 4023, "Security Agreement and Notice to Intermediary," granting the department a security interest in and control over those financial assets. ¶

~~{Publications: Publications referenced are available from the agency.}~~

Statutory/Other Authority: ORS 656.430, 656.726(4)

Statutes/Other Implemented: ORS 656.430

AMEND: 436-050-0200

RULE SUMMARY: Amended rule 0200:

- Implements House Bill 3003 (2019) and describes the process for release of security after cancellation or revocation of self-insurance; and
- Includes plain-language revisions to enhance clarity.

CHANGES TO RULE:

436-050-0200

Self-Insured Certification Cancellation; Revocation ¶

(1) Effective period of self-insurance certification. A self-insured employer's certification remains in effect until:¶

(a) Revoked as provided ~~by~~under OAR 436-050-0150 to 436-050-0195, ORS 656.434, and ORS 656.440; or¶

(b) Canceled by the self-insured employer with the approval of the director.¶

(2) Cancellation of self-insurance certification. If a self-insured employer wishes to cancel its self-insurance certification or cancel the self-insurance coverage of any entity included under its self-insurance certification:¶

(a) The employer must submit a written request to the director. The request must include:¶

(A) The arrangements that have been made to process present and future claims for which the employer is responsible;¶

(B) A statement of all present and future claims liabilities for all liabilities incurred during the period of self-insurance; and¶

(C) Any reports and moneys due the director under ORS 656.506, 656.612, and 656.614;¶

(b) The request under subsection (a) must be submitted at least 60 days before the desired date of cancellation. If the request to cancel is submitted fewer than 60 days before the desired date of cancellation, or otherwise does not meet the requirements of this section, the director may set a cancellation date later than the date requested;¶

(c) If the self-insured employer will continue to have subject workers after the cancellation date, the employer must ~~provide the director~~demonstrate compliance with ORS 656.017, before the desired date of cancellation, by causing one of the following:¶

~~(A) An insurer filed proof of coverage for a workers' compensation insurance policy under ORS 656.017 and 656.419;¶~~

~~(B) Evidence of a worker leasing arrangement as allowed under ORS 656.850; or¶~~

~~(C) An assigned risk binder that demonstrates compliance with ORS 656.052; and to be filed with the director:¶~~

(A) Proof of coverage provided by an insurer under ORS 656.407, filed by the insurer;¶

(B) Notice of client coverage provided by a worker leasing company under OAR 436-180-0110, filed by the worker leasing company; or¶

(C) A copy of an assigned risk binder issued by the Plan Administrator of the Oregon Workers' Compensation Insurance Plan under OAR 836-043-0044, filed by the Plan Administrator.¶

(d) If the self-insured employer fails to provide the director evidence of coverage under subsection (c) before the desired date of cancellation, the self-insurance certification, including reports and moneys due the director under ORS 656.506, 656.612, and 656.614, will remain in effect.¶

(3) Responsibility for processing claims. If a workers' compensation insurance policy ~~is in effect and an active~~and a self-insurance certification is on file with the director ~~are both in effect~~are both in effect for the same employer for the same time period, the self-insured employer ~~has the responsibility of~~is responsible for processing claims ~~that occurring~~that occur during the time period ~~as provided under the self insurance certification.~~¶

(4) Revocation of self-insurance certification. The director may revoke the self-insurance certification of any self-insured employer that fails to comply with ORS 656.407, 656.430, and these rules; defaults under ORS 656.443; or commits any violation for which a civil penalty ~~could~~may be assessed under ORS 656.745. Except as provided in ORS 656.430(9), notice of certificate revocation will be issued in accordance with the provisions of ORS 656.440.

¶

(5) Release of Security after Self-Insured Certification Cancellation; Revocation. If the certification of a self-insured employer has been canceled or revoked, the director may accept a policy of paid-up insurance in lieu of the self-insured employer's security deposit.

(a) The director may accept a policy of paid-up insurance under the following conditions:

(A) The policy must be issued by an insurer, as defined in OAR 436-050-0005;

(B) The policy must provide that the insurer agrees to assume, without monetary limit, all responsibilities and liability of the self-insured employer under ORS chapter 656 for the period the self-insured employer's certification was in effect;

(C) The policy must not be subject to cancellation; and

(D) The policy must not contain provisions or endorsements that do not comply with ORS Chapter 656 or OAR Chapter 436, including provisions that limit when a claim may be reported.

(b) The director may consider the following factors when determining whether to accept a policy of paid-up insurance:

(A) The amount of the insurer's surplus, as reported on column 1, line 37 of the Liabilities, Surplus, and Other Funds page of the insurer's Annual Statement under OAR 836-011-0000, relative to the amount of security the self-insured employer is required to maintain under OAR 436-050-0180; and

(B) The amount of the insurer's total adjusted capital relative to the insurer's authorized control level risk-based capital, as reported on column 1, lines 28 and 29 of the Five-Year Historical Data page of the insurer's Annual Statement under OAR 836-011-0000.

(c) Upon accepting a policy of paid-up insurance, the director will release the self-insured employer's security deposit in writing.

Statutory/Other Authority: ORS 656.726(4)

Statutes/Other Implemented: ORS 656.434, 656.440

REPEAL: 436-085-0001

RULE SUMMARY: Repealed rule 0001 described the director's authority under ORS 656.726; the statute is sufficient without the rule.

CHANGES TO RULE:

~~436-085-0001~~

~~Authority for Rules~~

~~These rules are adopted under the director's authority contained in ORS 656.726.~~

~~Statutory/Other Authority: ORS 656~~

~~Statutes/Other Implemented: ORS 656.612, 656.614, 656.726~~

REPEAL: 436-085-0002

RULE SUMMARY: Repealed rule 0002 included a statement of purpose that has been paraphrased in rule 0003.

CHANGES TO RULE:

~~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.~~

~~Statutory/Other Authority: ORS 656~~

~~Statutes/Other Implemented: ORS 656.612, 656.614~~

AMEND: 436-085-0003

RULE SUMMARY: Amended rule 0003:

- Removes the effective date; each rule is subject to its own effective date, and that date is included in the history line below the rule;
- Includes a statement of purpose moved in and paraphrased from rule 0002; and
- Includes other minor revisions to enhance clarity.

CHANGES TO RULE:

436-085-0003

Purpose and 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 - Scarry out the workers' compensation law related to the development and collection of assessments from insurers, self-insured employers, and self-insured employer groups.¶~~

~~(2) These rules apply to assessments paid by insurers, self-insured Eemployers-Adjustment Reserve; S, and self-insured Eemployer Ggroup-Adjustment Reserves under ORS 656.612 and 656.614.¶~~

~~(23) The director may waive procedural rules as justice requires, unless otherwise obligated by statute.~~

~~Statutory/Other Authority: ORS 656.612, 656.614, 656.726(4)~~

~~Statutes/Other Implemented: ORS 656.612, 656.614~~

AMEND: 436-085-0005

RULE SUMMARY: Amended rule 0005 has streamlined definitions that better reflect the terms used in the rule division; substantive provisions have been moved to rule 0015.

CHANGES TO RULE:

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~~
Unless a term is defined elsewhere in these rules, the definitions of ORS chapter 656 are incorporated by reference and made a part of these rules. For the purpose of these rules, unless the context requires otherwise:¶¶

~~(1) "Assessable earned premium" means the amount of earned premium that is subject to the premium assessment.¶¶~~

~~(2) "Direct earned premium" for the purposes of these rules means "assessable earned premium." "Board" means the Workers' Compensation Board and includes its Hearings Division.¶¶~~

~~(3) "Director" means the director of the Department of Consumer and Business Services or the director's delegate for the mattersignee.¶¶~~

~~(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 Premiums Earned, Line 16~~
total amount of 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 premium~~
insurance premium earned by an insurer before any modification for premium assessment purposes.¶¶

~~(5) "Exempted earned premium" means premium earned on:~~¶¶

~~(a) Insurance under the jurisdiction of the federal government (e.g., U.S., including the Longshore and Harbor Workers' Compensation Act, Federal Employer's Liability Act, and Jones Act); and~~¶¶

~~(b) Employer liability increased limits premium as reported in the insurer's Annual Statement, Exhibit of Premiums and Losses (that would be reported on 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 of the insurer's annual statement.¶¶

~~(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 that 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.~~
Statutory/Other Authority: ORS 656.726, ORS 656.612

Statutes/Other Implemented: ORS 656.726, 656.612, 656.614

AMEND: 436-085-0008

RULE SUMMARY: Amended rule 0008 includes plain-language revisions to enhance clarity.

CHANGES TO RULE:

436-085-0008

Administrative Review ¶

~~(1) Any insurer or self-insured employer aggrieved by party that disagrees with a proposed order or proposed assessment of civil penalty issued by the director issued pursuant to ORS 656.745 may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with~~
under these rules may request a hearing by the board under ORS 656.740.¶

~~(a) The To request for a 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 party must:¶~~

(a) Mail or deliver a written request to the Workers' Compensation Division within 60 days after of the mailing date 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; and¶~~

(b) Specify, in the request, the reasons why the party disagrees with the proposed order or assessment.¶

(2) Any party that disagrees with an action or order of the director taken under these rules, other than as described in section (1), may request a hearing by filing a of this rule, may request for a hearing as provided in under OAR 436-001-0019 by filing a request within 30 days of the mailing date of the order or notice of action. OAR 436-001 applies to the hearing.

Statutory/Other Authority: ORS 656.612, 656.614, 656.726(4), 656.740 726(4)

Statutes/Other Implemented: ORS 656.704, 656.735, 656.740, 656.745 & OL 2005, Ch. 26

ADOPT: 436-085-0015

RULE SUMMARY: Adopted (new) rule 0015 includes substantive provisions relevant to the determination of assessable earned premium for insurers, moved in from rule 0005.

CHANGES TO RULE:

436-085-0015

Premium Assessment; Determination of Assessable Premium: Insurers

(1) For the purpose of these rules, "direct earned premium," as used in ORS 656.612 means "assessable earned premium."

(2) Assessable earned premium must be calculated by making the following modifications to earned premium:

(a) Subtracting exempted earned premium. The amount of exempted earned premium subtracted must be determined on a direct basis prior to reinsurance transactions; and

(b) Adding large deductible premium credits or modifications.

(3) Earned premium must be calculated in the same manner as direct premiums earned, as reported on Statutory Page 14 (Business in the State of Oregon), column 2, line 16 of the insurer's annual statement under OAR 836-011-0000. Earned premium:

(a) Excludes reinsurance accepted and is without deduction of reinsurance ceded;

(b) Excludes large deductible credits or modifications;

(c) Includes experience rating, premium discounts, retrospective rating, audit premiums, foreign terrorism premiums, domestic terrorism and catastrophic premiums, and other individual risk rating adjustments; and

(d) Excludes deposit premiums.

Statutory/Other Authority: ORS 656.612, ORS 656.726(4)

Statutes/Other Implemented: ORS 656.612

AMEND: 436-085-0025

RULE SUMMARY: Amended rule 0025:

- Requires that the insurer's premium assessment report be signed by the person who prepares the report; and
- Includes plain-language revisions to enhance clarity.

CHANGES TO RULE:

436-085-0025

Premium Assessment; Manner and Intervals for Reporting and Payments: Insurers ¶

~~(1) Insurers must report and remit pay premium assessment moneys to the directors using a completed Form 440-910 as follows:¶~~

~~(1) No later than the 15th day of the second month following the last day of a calendar quarter, the 910, "Workers' Compensation Insurer Premium Assessment Report." The report must be signed by the person who prepares the report.¶~~

~~(2) An insurer must report and remit pay premium assessment based upon the insurer's assessable earned premium for that quarter and the premium assessment rate in effect under OAR 440-045 no later than:¶~~

~~(a) November 15, for the quarter ending September 30;¶~~

~~(b) February 15, for the quarter ending December 31;¶~~

~~(c) May 15, for the quarter ending March 31; and¶~~

~~(d) August 15, for the quarter ending June 30.¶~~

~~(23) The director may allow an insurer to report and remit pay premium assessments annually when the insurer's annual premium assessment is has been less than \$1,000 for at least two consecutive years.¶~~

~~(3a) If a An eligible insurer elects not to under this section may choose to:¶~~

~~(A) Continue reporting and pay annually, or an eligible insurer elects to ring quarterly; or¶~~

~~(B) Revert to reporting and paying quarterly after having reported and paid annually for at least one year, it.¶~~

~~(b) The insurer must notify the director of its choice in writing prior to before the first quarter's premium assessment due date. An insurer's reporting and payment frequency remains in effect for the full calendar year and cannot be changed mid-year.¶~~

~~(4) The director may waive an insurer's reporting liability requirement after confirming that the insurer has had no earned premium for at least four consecutive quarters. The A waiver will remains in effect until premium is earned.¶~~

~~(5) Assessable earned premium reported by insurers will be is final except for corrections made as a result of audits by the director, examinations by the Insurance Divis Division of Financial Regulation or insurance regulator of the insurer's state of domicile, or detection by the insurer of clerical error of a clerical error by the insurer. 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 report and pay premium assessment using a separate Form 440-910 and remittance check.¶~~

~~(7) The insurer must maintain sufficient documentation to support the for the director to verify the amount of 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.~~

Statutory/Other Authority: ORS 656.612, 656.614, 656.726(4)

Statutes/Other Implemented: ORS 656.612, 656.614

AMEND: 436-085-0030

RULE SUMMARY: Amended rule 0030:

- Requires an authorized representative of the self-insured employer or group to certify that the payroll and assessment quarterly report is true and accurate;
- Changes the basis for premium assessments on self-insured employers and self-insured employer groups. Assessments are currently based on the lowest rates filed by a single insurer. The proposed method bases assessments on the manual rates developed by the National Council on Compensation Insurance, modified by a multiplier determined by the director. Under the proposed method, the multiplier for a fiscal year will be no greater than the average of all loss cost multipliers filed with the Division of Financial Regulation in the preceding fiscal year, weighted by market share. In determining the multiplier, the director could consider factors including, but not limited to, the net difference between the maximum multiplier possible and the multiplier used in the preceding fiscal year. Assessments collected under this division are deposited in the Consumer and Business Services Fund, which funds the operations of the Workers' Compensation Division and the Workers' Compensation Board, as well as a portion of Oregon-OSHA, the Division of Financial Regulation, and other parts of the Department of Consumer and Business Services that support these operations. The Consumer and Business Services Fund is separate from the Workers' Benefit Fund, the latter of which funds a number of programs that provide direct services to injured workers and is funded through a payroll tax;
- Provides that the optional one-year retrospective rating plan for self-insured employers will be developed by the Division of Financial Regulation;
- Includes a reference to the National Council on Compensation Insurance's Experience Rating Plan Manual - 2003 Edition, and explains that this publication is available for review in the Workers' Compensation Division's Salem, Oregon office; and
- Clarifies that if the director waives a self-insured employer's premium assessment reporting requirement because the self-insured employer has not had Oregon payroll for four consecutive quarters, the waiver will remain in effect until the self-insured employer has Oregon payroll.

CHANGES TO RULE:

436-085-0030

Premium Assessment; Manner and Intervals for Payments; Experience Rating Modification Factors: 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) Self-insured employers must report and pay premium assessments using a completed Form 900, "Payroll and Assessment Quarterly Report - Retrospective rating plan," or 937, "Payroll and Assessment Quarterly Report - Normal plan." The report must be certified to be true and accurate by an authorized representative of the self-insured employer.¶¶
- (3) 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 calculated using rates developed by the director. The rates for each fiscal year will be developed by applying a multiplier determined by the director to the manual rates published by the National Council on Compensation Insurance effective and published by April 1 of the previous fiscal year.¶¶
 - (a) The multiplier will be no greater than the average of all loss cost multipliers filed with the Division of Financial Regulation effective and filed by April 1, which the director has determined will provide the lowest overall rates to all self-insured employers of the previous fiscal year, weighted by market share.¶¶
 - (b) For the purpose of determining the multiplier, the director may consider factors including, but not limited to, the net difference between the maximum multiplier possible under subsection (a) of this section and the modifier used in the preceding fiscal year.¶¶
- (34) Self-insured employers may elect to have their premium calculated using 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 by the Division of Financial Regulation and approved by the director. However, any employer becoming self-insured after July 1, may not elect to choose 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 to be used in the fiscal year beginning July 1.
- (6) On or before July 1 of each year, every self-insured employer electing to may change their current method of premium calculation must by submitting written notification of the election its choice to the director. Once elected chosen, the method may not be changed for that fiscal year and remains in effect until the self-insured employer timely elects chooses 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 A self-insured employer must use the normal method of premium calculation unless it has notified the director that it chooses to use a one-year retrospective rating plan.
- ~~(8) A self-insured employer must report and pay 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 under OAR 440-045 no later than:~~
- ~~(a) October 31, for the quarter ending September 30;~~
- ~~(b) January 31, for the quarter ending December 31;~~
- ~~(c) April 30, for the quarter ending March 31; and~~
- ~~(d) July 31, for the quarter ending June 30.~~
- ~~(9) Premium assessment for a self-insured employer that has chosen to have its premium calculated using a retrospective rating plan must be based on 80 percent of the self-insured employer's assessable premium until adjusted by retrospective quarters.~~
- ~~(8) Notwithstanding section (7) of this rule arating.~~
- (10) 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) R11) When retrospective rating adjustments covering are made to periods where more than one assessment rate applied will have, the adjusted premium will be prorated in direct proportion to the self-insured employer's standard assessable premium for each of the periods the assessment rates differ eperiod. Total premium assessment due for the entire period will be adjusted on the same basis.~~
- (10) The director will determine an experience rating modification factor for each self-insurance plan ed employer.
- (a) The director will use the same method as that used by the National Council on Compensation Insurance calculate experience rating modification factors using the method provided by the National Council on Compensation Insurance in the Experience Rating Plan Manual - 2003 Edition, 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. A copy of the Experience Rating Plan Manual - 2003 Edition is available for review during regular business hours at the Workers' Compensation Division, 350 Winter St. NE, Salem OR 97301.
- (b) The self-insured employer's authorized claims processing location(s) must provide the director with the loss information necessary to calculate the experience rating modification: factor.
- (c) If sufficient Oregon experience is not available to pronom calculate an experience rating modification factor

based on Oregon experience only, the director will assign the self-insured employer an experience rating modification factor of 1.00.¶

~~(11) When~~ If payroll information submitted by a self-insured employer is determined to be incorrect, the director may order an adjustment in the experience rating modification applicable, or the self-insured employer may request, a revision of experience rating modification factors using that data. Only payroll information reported in the last three calendar years may be corrected. The director will recalculate all experience rating modification factors previously calculated using the incorrect payroll information.¶

(e) When the director orders an adjustment to the experience rating modification factor 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~~ The director may waive a self-insured employer's reporting requirement or the self-insured employer may's request a revision of the experience rating modification. A payroll revisifier confirming that the self-insured employer has had no Oregon mpay be made only for the last three calendar years. Any experience modification using that revised payroll information will be recalculated by the director roll for four consecutive quarters. The waiver will remain in effect until the self-insured employer has Oregon payroll.

Statutory/Other Authority: ORS 656.726, ORS 656.612

Statutes/Other Implemented: ORS 656.612, 656.614

AMEND: 436-085-0035

RULE SUMMARY: Amended rule 0035 includes plain-language revisions to enhance clarity.

CHANGES TO RULE:

436-085-0035

Audits II

~~To ensure compliance with these rules, the director will monitor and conduct periodic audits of insurers, self-insured employers, and self-insured employer groups will be subject to periodic audits as authorized by ORS 656.726 and 656.745~~to ensure compliance with these rules.

Statutory/Other Authority: ORS 656.726

Statutes/Other Implemented: ORS 656.726, ~~656.745~~