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**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

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

**FILED**  
08/26/2019 2:09 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: 2020 Workers' Benefit Fund Assessment Rate

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 09/26/2019 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.*

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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: 09/19/2019

TIME: 4:00 PM

OFFICER: Fred Industries Bruyns

ADDRESS: Room F Labor & Industries

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SPECIAL INSTRUCTIONS:

Email to: fred.h.bruyns@oregon.gov

NEED FOR THE RULE(S):

The Workers' Benefit Fund (WBF) assessment rate has been established through rulemaking, and this rulemaking is needed to adjust the rate applied to hours worked in 2020. 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. ORS 656.506(5), as revised by House Bill 2788 (2019), effective Jan. 1, 2020, states in part, "The Legislative Assembly intends that the department set rates for the collection of assessments ... in a manner so that at the end of the period for which the rates are effective, the balance of the Workers' Benefit Fund is an amount of not less than 12 months of projected expenditures from the fund in regard to the department's functions and duties ...." The agency will propose an assessment rate it projects will continue to fund the WBF to a level exceeding 12 months of projected expenditures.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Enrolled House Bill 2788, the "Workers' Benefit Fund Assessment Rate Recommendation for CY 2020," and the Department of Administrative Services' economic and revenue forecast(s)." These documents will be available by mid-September upon request and at the public rulemaking hearing. These documents are available for public inspection

upon request to the Workers' Compensation Division, 350 Winter Street NE, Salem, Oregon 97301-3879. Contact Fred Bruyns, rules coordinator, 503-947-7717, fred.h.bruyns@oregon.gov.

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#### FISCAL AND ECONOMIC IMPACT:

The agency director is required to maintain sufficient funds in the Workers' Benefit Fund (WBF) for not less than 12 months of projected expenditures. The agency will propose a rate it estimates will be sufficient to maintain at least a 12-month fund balance. The proposed WBF assessment rate will be announced by mid-September.

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#### 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. The Workers' Benefit Fund (WBF) supports several agency programs that benefit Oregon workers, employers, and insurers. Sufficient funding of the WBF ensures these benefits continue as provided by statutes and rules.

The WBF assessment is calculated by multiplying the number of hours worked by an employee by a fixed amount – 2.4 cents per hour in 2019. The employer deducts one-half of that amount from the employee's wages and contributes an equal amount along with a combined tax and assessment report form prescribed by the Oregon Department of Revenue.

The assessment rate needed to maintain sufficient moneys in the WBF is determined in part by the number of hours worked by Oregon workers. The agency relies on economic forecasts in its estimates of revenues to the WBF, as well as expenditures. The agency's review of economic forecasts cannot be completed before this filing. "Workers' Benefit Fund Assessment Rate Recommendation for CY 2020" will be available at the public rulemaking hearing, and will include forecasts of WBF revenues and expenditures.

The proposed WBF assessment rate will be announced by mid-September.

#### 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:

All subject employers are required to pay the Workers' Benefit Fund (WBF) assessment. Oregon employers subject to the WBF assessment number approximately 124,000. 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 small cost for employers to adjust payroll systems to reflect any increase or decrease in the Workers' Benefit Fund assessment rate. The agency does not have data it can use to estimate the specific dollar impact of this adjustment.

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

The agency projects that there will be no impact on equipment, supplies, labor, or increased administration required for compliance, with or without any adjustment in the Workers' Benefit Fund assessment rate.

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

Small businesses have not been involved in determining whether to propose a change in the assessment rate. Any proposed revision will be based on an actuarial analysis of income to the Workers' Benefit Fund relative to outflows and the statutory requirement under ORS 656.506 to maintain funds sufficient for no less than 12 months of projected expenditures.

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WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The agency did not consult an advisory committee because any proposed change will be based on an actuarial analysis of income to the Workers' Benefit Fund relative to outflows and the statutory requirement under ORS 656.506 to maintain funds for no less than 12 months of projected expenditures.

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RULES PROPOSED:

436-070-0003, 436-070-0010

AMEND: 436-070-0003

RULE SUMMARY: Rule 0003 includes the effective date for OAR 436-070, and this date will be revised from Jan. 1, 2019 to Jan. 1, 2020.

CHANGES TO RULE:

436-070-0003

Applicability of Rules ¶¶

(1) These rules are effective Jan. 1, 2019~~20~~.¶¶

(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/Other Authority: ORS 656.506 (OL 2019, ch. 494), 656.726(4)

Statutes/Other Implemented: ORS 656.506 (OL 2019, ch. 494)

AMEND: 436-070-0010

RULE SUMMARY: Rule 0010 will set the 2020 Workers' Benefit Fund assessment rate. Analysis to determine the rate is ongoing. The proposed assessment rate will be announced by mid-September.

CHANGES TO RULE:

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 ~~2.4 cents~~ [proposed rate to be announced by mid-September] 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/Other Authority: ORS 656.506 (OL 2019, ch. 494), 656.726(4)

Statutes/Other Implemented: ORS 656.506 (OL 2019, ch. 494)