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NOTICE OF PROPOSED RULEMAKING INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 836
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE REGULATION

FILED

04/24/2025 11:07 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: NCCI Statistical Plan changes related to the Experience Rating Plan Manual for Workers' Compensation

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 05/29/2025 5:00 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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350 Winter St. NE
Salem, OR 97301

Filed By:
Karen Winkel
Rules Coordinator

HEARING(S)

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

DATE: 05/22/2025

TIME: 9:00 AM - 9:30 AM

OFFICER: Raven Collins

IN-PERSON HEARING DETAILS

ADDRESS: Labor and Industries Building, 350 Winter St. NE, Basement, Conf Rm F, Salem, OR 97301

SPECIAL INSTRUCTIONS:

This is a hybrid meeting conducted in-person and virtually via Microsoft Teams.

REMOTE HEARING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 503-446-4951

CONFERENCE ID: 376740660

SPECIAL INSTRUCTIONS:

Meeting ID: 213 137 168 067

Passcode: ob2Pb2os

NOTE: PUBLIC COMMENTS ARE PUBLIC RECORDS AND WILL BE POSTED ON THE DFR RULEMAKING WEBPAGE.

NEED FOR THE RULE(S)

ORS 737.205 and ORS 737.320 require workers' compensation insurers to file copies of rates, rating plans, and rating systems with the director of the Department of Consumer and Business Services (DCBS). It also allows insurers to meet filing obligations by becoming a member of or a subscriber to a licensed rating organization, which makes filings on the insurer's behalf.

ORS 737.225 states that the director shall prescribe by rule the statistical plan for workers' compensation insurance. Accordingly, OAR 836-042-0045 prescribes the Statistical Plan for Workers' Compensation and Employer Liability Insurance filed by the National Council on Compensation Insurance. Revisions approved by the director will become effective on or before July 1, 2025.

The statistical plan revisions include:

- Reporting rules applicable to affiliate self-insured groups was revised to remove the option to report data under the old Pre-URE Workers Compensation Statistical Plan.
- Reporting rules applicable to non-affiliate self-insured groups were updated to clarify options for reporting data under NCCI's Statistical Plan or by using the ERM-6 Form.
- Reporting rules related to liability-over claims were removed from NCCI's Experience Rating Plan Manual and added appropriately to NCCI's Statistical Plan.

Additionally, part of a different rule is being amended, OAR 836-042-0025(2)(b), which doesn't allow schedule rating plans. This rule conflicts with ORS 656.508(3), which grants the State Accident Insurance Fund (SAIF) the right to use schedule rating. Therefore, a minor rule change is needed to align with the statute.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Draft rules are available from Karen Winkel, Rules Coordinator, Division of Financial Regulation (DFR) located at 350 Winter St. NE, Salem, OR 97301 and are available on the division's website:
<https://dfr.oregon.gov/laws-rules/Pages/proposed-rules.aspx>.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The statistical plan updates are primarily intended to impact the affiliates that report workers' compensation data to NCCI. The adoption of these rules will not impact one group of people differently than others.

FISCAL AND ECONOMIC IMPACT:

This rulemaking does not create new requirements for businesses generally. It will not have a fiscal impact. Based on financial filings made to DFR, no workers' compensation insurers meet the definition of a small business under ORS 183.310, because no workers' compensation insurer is independently owned and operated.

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) Based on information currently available to DCBS, the proposed rule would not have a fiscal or economic impact on state agencies, local government units, nor the public.

(2)(a) Zero. Based on financial filings made to DFR, no workers' compensation insurers meet the definition of a small business under ORS 183.310, because no insurer is independently owned and operated.

(2)(b) There will be no expected reporting, recordkeeping, administrative activities, or cost required to comply with the rules for any small businesses. This is because no insurers meet the definition of a small business under ORS 183.310

per financial filings submitted to DFR. There will be no additional costs to insurers, even though none of them are small businesses.

(2)(c) There will be no cost of professional services, equipment supplies, labor, or increased administration required to comply with the rules for any small businesses. This is because no insurers meet the definition of a small business under ORS 183.310 per financial filings submitted to DFR. There will be no additional costs to insurers, even though none of them are small businesses.

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

Invitees of the advisory committee included small businesses that purchase workers' compensation insurance and insurers that provide coverage for small businesses.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

836-042-0025, 836-042-0045

AMEND: 836-042-0025

RULE SUMMARY: This rule does not allow for scheduled rating plans, which is in conflict with ORS 656.508(3). Therefore, part (b) of this rule will be removed.

CHANGES TO RULE:

836-042-0025

Workers Compensation Filings Standards for Unfair Discrimination ¶

- (1) Except for revisions solely attributable to legislative enactments, changes in administrative rules or orders, or approved by the Director to prevent an impairment, or applying to state agencies, workers' compensation insurance rates, rating plans, rating systems or provisions for claim payment are unfairly discriminatory if either:¶
- (a) Revision of a rate, rating plan or rating system is filed to become effective within six months of the effective date of a corresponding rate, rating plan or rating system previously established pursuant to OAR 836-042-0015 by the filing insurer; or¶
- (b) The rating system does not contain rules specifying that a revision of a rate, rating plan or system shall not apply to an insured until an anniversary rating date at least 11 months and 16 days subsequent to the earlier of the preceding anniversary rating date or the preceding policy effective date established for an insured unless approved by the Director to apply to all policies in force on a common date; or¶
- (c) Premium rates are based on provisions for claim payment filed by a licensed rating organization which are not the provisions most recently approved or premium rates are determined by multiplying superseded provisions by a factor; or¶
- (d) Provisions for claim payment to be used by an insurer as a basis for premium rates are revised to be effective on a date other than the date of a revision approved for a licensed rating organization.¶
- (2) Workers' compensation insurance rating plans or rating systems are presumed to be unfairly discriminatory, unless demonstrated otherwise, if either:¶
- (a) A rating plan or rating system which produces only credit modifications to an insured's premiums is offered at the option of the insurer;¶
- ~~(b) The modification of the premium or premium rates applicable to an insured cannot be quantitatively determined by the Commissioner except for the uncertainty of estimated exposures; or¶~~
- ~~(b)~~ An insurer has filed two or more schedules of premium rates without providing a clear rule for deciding which schedule is to be applied to an insured.¶
- (3) Premiums are unfairly discriminatory if differentials between insureds fail to reasonably reflect the differences in expected losses and expenses to the insurer attributable to the insureds. Workers' compensation insurance rates, rating plans or rating systems are not unfairly discriminatory when different premiums result or different rates apply to insureds if:¶
- (a) Differences in loss exposures, expense factors or investment income opportunity to an insurer can be

attributed to the insureds; and

(b) The differences are reasonably reflected by the rates, rating plan or rating system.

Statutory/Other Authority: ORS 731.244

Statutes/Other Implemented: ORS 737.310

AMEND: 836-042-0045

RULE SUMMARY: Amended for revisions to become effective on or before July 1, 2025, is prescribed as the statistical plan for workers' compensation and employers' liability insurance.

CHANGES TO RULE:

836-042-0045

Workers Compensation Statistical Plan ¶

(1) The Statistical Plan for Workers' Compensation and Employers' Liability Insurance, 2008 Edition, filed by the National Council on Compensation Insurance and approved by the director to become effective January 1, 2009, and revisions approved by the director to become effective on or before ~~November~~ July 1, 2023³⁵, is prescribed as the statistical plan for workers' compensation and employers' liability insurance.¶

(2) Manuals or guides referenced within the statistical plan designated in section (1) of this rule are not prescribed by this rule.

Statutory/Other Authority: ORS 737.225(4)

Statutes/Other Implemented: ORS 737.265(2), 737.320