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DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE REGULATION

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CONTACT: Karen Winkel
503-947-7694
karen.j.winkel@oregon.gov

350 Winter St. NE
Salem, OR 97301

Filed By:
Karen Winkel
Rules Coordinator

RULES:

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AMEND: 836-043-0125

NOTICE FILED DATE: 02/26/2019

RULE SUMMARY: Revises wording of description of alternative audit level.

CHANGES TO RULE:

836-043-0125

Purpose ¶¶

A Test Audit Program shall be conducted by the bureau to carry out ORS 737.318. To perform this function, the bureau shall maintain the test audit staff for examining pertinent records of a number of Oregon insureds and insurers established according to the schedule in Exhibit 1 of OAR 836-043-0130, or another appropriately credible audit levels, as determined by the director. The purposes of the test audit program are as follows: ¶¶

(1) To check the accuracy and reliability of each insurer's audits, verify the classifications assigned, and assure that the premiums charged are based upon filed rates, rating plans and rating systems on file with and approved by the director; ¶¶

(2) To establish minimum auditing standards and to develop a program for monitoring insurer performance toward the achievement of established standards; and ¶¶

(3) To improve audit proficiency through the evaluation of insurer auditing practices. ¶¶

[ED-NOTE: Exhibits referenced are available from the agency.]

Statutory/Other Authority: ORS 731.244, ORS 737.318

Statutes/Other Implemented: ORS 737.318

AMEND: 836-043-0130

NOTICE FILED DATE: 02/26/2019

RULE SUMMARY: Revises formula for selection of risks for test audits.

CHANGES TO RULE:

836-043-0130

Selection of Risks for Test Audit ¶

(1) All insurers or insurer groups shall be test audited on a continuous basis. Each quarter, the bureau shall send a list of policies selected for test audit to each insurer's Oregon policy issuing office or other office designated by the insurer. ¶

(2) The number of policies to be selected for each insurer shall be determined based on the schedule provided in Exhibit 1, using the insurer's current policy premium distribution ~~and~~ the error ratio ~~from the insurer's previous test audits, and the statewide error rate~~. The policy premium distribution shall be based on estimated annual standard premium reported by the insurer for policies subject to selection. For each insurer, the error ratio shall be the number of policies found to have audit errors divided by the total number of policies test audited during the latest six quarters. ~~The error ratio shall be assigned a credibility weight, as described in Exhibit 1, and the complement weight shall be assigned to the statewide error ratio of all insurers for the latest six quarters. The credibility for the audit types specified in Exhibit 1. The weighted average error rate shall be calculated according to the formula shown in Exhibit 1.~~ The weighted average error ratio for the insurer shall be used to determine the policy sample rates in Exhibit 1. The director may order additional focused audits in addition to the required test audits described in Exhibit 1. When ordering additional focused audits, the director shall describe risk factors that required additional review. ¶

(3) The quarterly list of policies selected for test audit shall be randomly drawn from an insurer's entire book of workers' compensation business, subject to ~~the requirements of section (2) of this rule. Additional policies may be added at the request of the director~~ a maximum premium of \$500,000 from the most recent available estimated annual standard premium reported by the insurer and the requirements of section (2) of this rule. The list shall indicate, for each insurer or insurer group, the insured, the policy number, the issuing office (if available) and the policy dates. This list shall only include policies with expiration dates not less than 90 days prior to the date of selection. Unless otherwise requested by the director, this list shall exclude: ¶

- (a) Wrap-up policies approved under ORS 737.602 or Sections 1 and 2, Chapter 336, Oregon Laws 1995; ¶
- (b) Policies for risks that have been test audited within the four ~~five~~-year period prior to the date of selection; ~~and~~ ¶
- (c) Policies canceled by either the insured or the insurer prior to the expiration date of the policy; ~~and~~ ¶
- (d) Self-insured groups. ¶

(4) Within 45 days after receipt of the selection list, each issuing office shall provide the bureau the following audit material on those risks for which it is responsible: ¶

- (a) If an audit is performed, a non-returnable copy of the auditor's work sheets and the premium invoice; ¶
- (b) Correspondence pertinent to proper completion of the audit; ¶
- (c) If the insured's payroll report has been utilized, a copy of the insured's payroll report and the premium invoice; and ¶
- (d) A list of all compensable indemnity claims. The claim listing should also reflect each compensable medical-only claim with reported loss amounts of \$5,000 or more. The bureau must receive at least the name of the injured employee and the date of accident, although the following information must also be submitted if available; job title, nature of injury, Basic Manual classification to which claim is assigned, claim file number and a brief description of what the employee was doing when the accident occurred. ~~(See Exhibit 1.)~~ ¶

(5) At least 10 days before the test auditor's planned date of call, the auditor must inform the insured in writing of the planned date of call. ¶

(6) The written notice required by section (5) of this rule must include certain information. An example of acceptable written notice is located on the Department of Consumer and Business Services, ~~Insurance Division~~

website at ~~www.insurance~~ Division of Financial Regulation website at dfr.oregon.gov. The notice must include the following information: ¶

(a) Identification of the insurer, the insured, the policy number, and the policy period being audited; ¶

(b) The scheduled date and time of the test audit; ¶

(c) Explanation of the test audit program and the statutory authority to conduct test audits; ¶

(d) Identification of the bureau responsible for conducting the test audit; ¶

(e) Explanation of the bureau's authority under the policy to examine the insured's records; ¶

(f) Explanation of the types or specific records the insured must make available to the auditor; and ¶

(g) Contact information for the auditor. ¶

(7) The bureau shall complete the test audits within six months of ~~the date of selection. Test audits not completed within the six-month period may not be included in the insurer's result. Nevertheless, the insurer shall submit a revised unit statistical report for any late test audits that would have otherwise constituted an error~~ receipt of the insurer's audit information. The director may request the bureau to provide a quarterly report of test audits that are not completed in a timely manner. ¶

(8) The following must be obtained from bureau files: ¶

(a) A policy data sheet providing all necessary information shown on the insurer's policy; and ¶

(b) A copy of the latest bureau inspection. ¶

[~~ED. NOTE: Exhibits referenced are available from the agency.~~]

Statutory/Other Authority: ORS 731.244, ORS 737.318

Statutes/Other Implemented: ORS 737.318

RULE ATTACHMENTS DO NOT SHOW CHANGES. PLEASE CONTACT AGENCY REGARDING CHANGES.

EXHIBIT 1
Percent of policies selected for test audit under OAR 836-043-0130

PORTION OF COMPANY'S POLICIES TO BE AUDITED
 FOR A GIVEN ERROR RATE

BASED ON 6 QUARTERS OF DATA

WEIGHTED ERROR RATE*	25% OR more	24%	23%	22%	21%	20%	19%	18%	17%	16%	15%	14%	13%	12%	11%	10%	9%	8%	7%	6% OR less
PREMIUM SIZE																				
0 – 2500	1.4%	1.3%	1.3%	1.2%	1.2%	1.1%	1.1%	1.0%	1.0%	0.9%	0.9%	0.8%	0.8%	0.7%	0.7%	0.6%	0.5%	0.5%	0.4%	0.3%
2,501–10,000	5.4%	5.2%	5.1%	4.9%	4.8%	3.2%	3.1%	2.9%	2.8%	2.7%	2.5%	2.4%	2.2%	2.1%	1.9%	1.8%	1.6%	1.4%	1.3%	1.1%
10,001–100,000	5.0%	4.9%	4.8%	4.6%	4.5%	3.0%	2.9%	2.8%	2.7%	2.6%	2.5%	2.3%	2.2%	2.0%	1.9%	1.8%	1.5%	1.4%	1.3%	1.1%
100,001–500,000	5.6%	5.5%	5.4%	5.3%	5.2%	2.7%	2.6%	2.5%	2.4%	2.3%	2.3%	2.1%	2.0%	1.8%	1.7%	1.6%	1.4%	1.3%	1.2%	1.0%

*Weighted Error Rate: The weighted error rate is the sum of 50% of the statewide 6 quarter error rate and 50% of the insurer's 6 quarter error rate, rounded to the nearest percent.
 The weighted error rate includes the results of field audits and desk audits only. Results for payroll reports and non productive audits are not included.

AMEND: 836-043-0135

NOTICE FILED DATE: 02/26/2019

RULE SUMMARY: Allows test audits to be performed on site or as virtual audits.

CHANGES TO RULE:

836-043-0135

Test Audits ¶

- (1) ~~A~~An analysis of ~~¶~~test ~~A~~audit ~~R~~results shall be completed on each test audit. ¶
- (2) The test auditor shall interview the insured or an authorized representative of the insured in order to solicit the insured's cooperation and also to obtain all factual data necessary for proper completion of the test audit. ¶
- (3) If a current inspection is in the file, the test auditor shall verify data contained in that report. ¶
- (4) Each test audit, ~~using the audit detail form,~~ may be performed on site or as a virtual audit and shall contain the following: ¶
 - (a) A reconciliation of payroll subject to premium charge, which must be made with the independent control records of the State Unemployment Insurance quarterly reports and FICA quarterly report; ¶
 - (b) A review of the cash disbursements journal to develop the remuneration paid to contract labor and casual labor; ¶
 - (c) A detailed review of at least one pay period to verify proper classification; ¶
 - (d) A review of time cards to verify proper treatment of overtime remuneration; ¶
 - (e) A review of original entry records to verify proper application of the "division of single employee's payroll" rules (OAR 836-042-0050 to 836-042-0060); ¶
 - (f) A ~~listing by~~ listing of the name, duties, and earnings of all persons assigned to the "standard exceptions" classifications. When size of the risk makes the listing impractical, spot checks must be made; ¶
 - (g) A ~~listing by~~ listing of the name, title, duties, and earnings of all covered executive officers, partners or individuals; ¶
 - (h) A summary, by classification, of all chargeable payrolls; ¶
 - (i) A summary of the differences between the test audit and the insurer audit. ¶
- (5) Examples of the templates and forms described in this rule are located on the Department of Consumer and Business Services, ~~Insurance Division website at www.insurance.oregon.gov.~~ ¶
[~~ED. NOTE: Exhibits referenced are available from the agency.~~] Division of Financial Regulation website at dfr.oregon.gov.

Statutory/Other Authority: ORS 731.244, ORS 737.318

Statutes/Other Implemented: ORS 737.318

AMEND: 836-043-0145

NOTICE FILED DATE: 02/26/2019

RULE SUMMARY: Revises procedure for which the rating bureau reports test audit results to insurers.

CHANGES TO RULE:

836-043-0145

Disposition of Test Audits ¶¶

(1) The bureau shall submit individual results of each test audit to the office or offices designated by the insurer as soon as the bureau audit is completed. ¶¶

(2) For ~~those~~ audits that do not result in a significant premium difference, defined as in excess of \$500 in premium or in excess of two percent of the total standard premium, whichever is greater, the bureau ~~must notify the insurer by letter of the name of the insured, shall provide the insurer with the policy numbers and the fact that the named insureds for all~~ test audit ~~was closed without change from the original audit.~~ ¶¶

(3) For ~~those~~ audits that ~~do develop~~ result in a significant premium difference, the bureau ~~must~~ shall provide the insurer with a report explaining the difference and the effect of such difference upon the total premium. An example of this report template is located on the Department of Consumer and Business Services, ~~Insurance Division website at www.insurance~~ Division of Financial Regulation website at dfr.oregon.gov. ¶¶

(4) Results of test audits of individual insurers shall be confidential data under ORS 731.264-312. ¶¶

(5) Immediately upon receipt of the bureau's report, the insurer shall determine whether it agrees with the bureau's findings, auditing the insured if necessary. If the insurer agrees with the bureau's findings, the insurer shall file the corrected information on the original or, if necessary, on a revised unit statistical report. When the net premium difference is not sufficient to qualify as an "error" but a single difference is sufficiently large to qualify as an error prior to any offsetting premium amounts, the insurer shall be advised of such differences by an "advisory" notice. Also, when individual claims have been assigned to an incorrect classification an "advisory" notice shall also be submitted to the insurer. Upon receipt of the "advisory" notice, the insurer shall report such payrolls or losses on the initial or, if necessary, a "C" (corrected) Unit Statistical Report. All test audit differences must be closed within sixty days of notification unless the insurer requests an extension and the request is approved by the bureau. ¶¶

(6) When classifications utilized by the insurer are found to be in error, the bureau shall take the normal appropriate action to secure compliance. ¶¶

(7) Findings resulting from test audits shall not be utilized in any action by an insurer to enforce premium collections. ¶¶

(8) If there is disagreement with the bureau's findings, the insurer shall communicate with the designated contact at the National Council on Compensation Insurance office to resolve areas of contention. ¶¶

(9) When an insurer is unable to resolve test audit differences with the bureau staff, the insurer may present an appeal to the committee. ¶¶

(10) When an insurer is unable to resolve test audit differences with the committee, the insurer may present an appeal to the director for final determination. ¶¶

[ED. NOTE: Exhibits referenced are available from the agency.]

Statutory/Other Authority: ORS 731.244, ORS 737.318

Statutes/Other Implemented: ORS 737.318

AMEND: 836-043-0150

NOTICE FILED DATE: 02/26/2019

RULE SUMMARY: Revises requirements for reporting test audit results to insurers.

CHANGES TO RULE:

836-043-0150

Summary of Test Audit Results ¶¶

(1) Test audit results shall be summarized quarterly for the individual insurer or insurer group, as well as for the industry as a whole. The summary must include all prior quarters up to but not exceeding a total of six quarters. The summary must reflect separately the results of field audits, desk audits, ~~and reviews of non-productive audits,~~ and payroll reports. An example of this report template is located on the Department of Consumer and Business Services, ~~Insurance Division~~ Division of Financial Regulation website at www.insurancedfr.oregon.gov. ¶

(2) The summary of test audit results must be reported quarterly to the insurer's home office to the attention of the designated contact. If the insurer's home office is located outside Oregon, a copy of the summary results must also be forwarded to the Oregon branch or division office that reports directly to the home office. It shall be the insurer's responsibility to keep the bureau advised of the responsible contact to whom the summary results should be directed. ¶

~~(3) The bureau shall meet with each insurer to review its results and when requested, may offer remedial suggestions when such action is indicated. ¶~~

(4) The bureau shall maintain sufficient records to permit accurate reporting to the insurer and the director. ¶

~~(54) Copies of all individual insurer and summary reports shall be submitted~~ made available to the director upon completion. ¶

~~[ED. NOTE: Exhibits referenced as Individual insurer reports shall be made available from to the agency.]~~ director upon request.

Statutory/Other Authority: ORS 731.244, ORS 737.318

Statutes/Other Implemented: ORS 737.318

AMEND: 836-043-0155

NOTICE FILED DATE: 02/26/2019

RULE SUMMARY: Revises allowable number of errors found in test audits and when remediation is required.

CHANGES TO RULE:

836-043-0155

Test Audit Standards ¶¶

~~(1) An insurer that fails to achieve the Minimum Standard of~~ meets the test audit performance standard when the number of premium differences for field audits and desk audits in excess of \$500 or two percent of the insured's standard premium, whichever is greater, does not exceed the maximum allowable number of errors shown in the Test Audit Performance Standards in Exhibit 2. ¶¶

~~(2) An insurer that fails to meet the Test Audit Performance standards~~ for six consecutive quarters shall meet with the director; or the director's designated representative; to provide a detailed explanation of the remedial measures the insurer is taking to restore overall audit proficiency to an acceptable level. ~~An insurer meets the Minimum Standard when the~~ ¶¶

~~(3) If an insurer satisfies the requirement that the number of premium differences in excess of \$500 or two percent of the insured's standard premium, whichever is greater, must not exceed the critical number shown in the Table of Minimum Standards Exhibit 2.~~ ¶¶

~~(2) If an insurer still fails to achieve the Minimum Standard following presentation of remedial measures to the director, a~~ fails to meet the test audit performance standards after implementing the remedial measures required in section ~~(42)~~ of this rule, the director may impose a penalty, including possible suspension of the insurer's certificate of authority. ¶¶

~~(3) For the purposes of this rule, only policies that exceed \$5,000 in annual standard premium after test audit will be used to determine whether an insurer achieves the Minimum Standard.~~ ¶¶

[ED. NOTE: Exhibits referenced are available from the agency.]

Statutory/Other Authority: ORS 731.244, ORS 737.318

Statutes/Other Implemented: ORS 737.318

RULE ATTACHMENTS DO NOT SHOW CHANGES. PLEASE CONTACT AGENCY REGARDING CHANGES.

Exhibit 2
Test Audit Performance Standards
For OAR 836-043-0155

Number of Test Audits Performed in the last 6 quarters (1)	Maximum Allowable Number of Errors
5 – 6	4
7 – 14	5
15 – 22	6
23 – 27	7
28 – 32	8
33 – 38	9
39 – 44	10
45 – 50	11
51 – 56	12
57 – 62	13
63 – 68	14
69 – 74	15
75 – 80	16
81 and over	20%

(1) Only test audits performed for field audits or desk audits are included in the test audit performance standards.

AMEND: 836-043-0165

NOTICE FILED DATE: 02/26/2019

RULE SUMMARY: Revises frequency requirement for DCBS examination of audit programs.

CHANGES TO RULE:

836-043-0165

Monitoring Audit Program System ¶¶

~~(1) The director shall~~may examine every insurer at least once each three years for the purpose of determining its compliance with:¶¶

~~(a)~~1 The statistical reporting requirements of OAR 836-042-0045;¶¶

~~(b)~~2 The premium audit program requirements of OAR 836-043-0110 and 836-043-0115; and¶¶

~~(c)~~3 The minimum standards of insured education programs of OAR 836-043-0120.¶¶

~~(2) The director shall continuously monitor the bureau for the purpose of assuring its compliance with the test audit program requirements of OAR 836-043-0125 to 836-043-0155.~~

Statutory/Other Authority: ORS 731.244, ORS 737.318

Statutes/Other Implemented: ~~ORS 737.235, 737.318(3)(b)~~318, ORS 737.235