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

Effective Jan. 1, 2017

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NOTE: Revisions are marked as follows:

Deleted text has a "strike-through" style, as in ~~Deleted~~
Added text is underlined, as in Added

HISTORY LINES: These rules include only the most recent "History" lines. The history line shows when the rule was last revised and its effective date. To obtain a comprehensive history for OAR chapter 436, please call the Workers' Compensation Division, 503-947-7627, or visit the division's website: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 050

GENERAL PROVISIONS

436-050-0001 Authority for Rules [Repeal]

~~These rules are adopted under the director's authority contained in ORS 656.407, 656.430, 656.455, 656.726, 656.850, 656.855, and 731.475.~~

Statutory authority: ORS 656.704 and 656.726(4)
Statutes implemented: ORS 656.017, 656.018, 656.021, 656.023, 656.027, 656.029, 656.031, 656.037, 656.039, 656.126, 656.128, 656.140, 656.403, 656.407, 656.419, 656.423, 656.427, 656.430, 656.434, 656.440, 656.443, 656.447, 656.455, 656.614, 656.745, 656.750, 656.850, 656.855, and 731.475
Hist: Amended 10/4/12 as WCD Admin. Order 12-056, eff. 1/1/13
Repealed 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf

436-050-0002 Purpose [Repeal – See rule 0003]

~~The purpose of these rules is to carry out the workers' compensation law related to employers' and insurers' responsibilities to cover subject workers for compensable injuries and illnesses.~~

Statutory authority: ORS 656.704 and 656.726(4)
Statutes implemented: ORS 656.017
Hist: Amended 10/4/12 as WCD Admin. Order 12-056, eff. 1/1/13
Repealed 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf

436-050-0003 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.

(~~1~~2) Applicability.

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.~~These rules are effective Jan. 1, 2016, to carry out the provisions of:~~

~~(a) ORS 656.017 – Employer required to pay compensation and perform other duties.~~

~~(b) ORS 656.029 – Independent contractor status.~~

~~(c) ORS 656.126 – Coverage while temporarily in or out of state.~~

~~(d) ORS 656.407 – Qualifications of insured employers.~~

~~(e) ORS 656.419 – Workers' compensation insurance policies.~~

~~(f) ORS 656.423 – Cancellation of coverage by employer.~~

~~(g) ORS 656.427 – Cancellation of workers' compensation insurance policy or surety bond liability by insurer.~~

~~(h) ORS 656.430 – Certification of self-insured employer.~~

~~(i) ORS 656.434 – Certification effective until canceled or revoked; revocation of certificate.~~

~~(j) ORS 656.443 – Procedure upon default by employer.~~

~~(k) ORS 656.447 – Sanctions against insurer for failure to comply with orders, rules, or obligations under workers' compensation insurance policies.~~

~~(l) ORS 656.455 – Records location and inspection.~~

~~(m) ORS 656.745 – Civil penalties.~~

~~(n) ORS 656.850 and 656.855 – Worker leasing companies.~~

~~(o) ORS 731.475 – Insurer's in-state location.~~

(~~2~~3) Director's discretion.

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

Statutory authority: ORS ~~656.704 and~~ 656.726(4)
Statutes implemented: ORS 656.017, 656.029, 656.126, 656.407, 656.419, 656.423, 656.427, 656.430, 656.434, 656.443, 656.447, 656.455, 656.745, 656.850, 656.855, and 731.475
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Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf

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.

~~(2) "Board" means the Workers' Compensation Board of the Department of Consumer and Business Services.~~

(3) "Cancel" or "cancellation" ~~of coverage~~in relation to an insurance policy means ending ~~a~~the policy at a date before its expiration date.

(4) "Client" means a person to whom workers are provided under contract and for a fee on a temporary or leased basis.

~~(5) "Complete records" means written records required to be kept in Oregon as described in OAR 436-050-0110 and 0120 and OAR 436-050-0210 and 0220.~~

(~~6~~5) "Controlling person" means a person having substantial ownership or who is an officer or director of a corporation; a member or manager of a limited liability company; a partner of

a partnership; or an individual who has, directly or indirectly, the power to direct or cause the direction of the management, policies, or operation of a person offering worker leasing services.

(~~7~~6) "Days" means calendar days unless otherwise specified.

(~~8~~7) "Default" means failure of an employer, insurer, or self-insured employer to pay the moneys due the director under ORS 656.506, 656.612, and 656.614 at such intervals as the director directs.

~~(9) "Department" means the Department of Consumer and Business Services.~~

(~~10~~8) "Director" means the director of the Department of Consumer and Business Services or the director's ~~delegate for the matter, unless the context requires otherwise~~designee.

~~(11) "Division" means the Workers' Compensation Division of the Department of Consumer and Business Services.~~

~~(12) "Fiscal Year" means the twelve-month period beginning July 1 and ending June 30.~~

(~~13~~9) "Governmental subdivision" means cities, counties, special districts defined in ORS 198.010, intergovernmental agencies created under ORS 225.050, school districts as defined in ORS 255.005, public housing authorities created under ORS chapter 456, or regional council of governments created under ORS chapter 190.

(~~14~~10) "Hearings Division" means the Hearings Division of the Workers' Compensation Board.

(~~15~~11) "Insurer" means the State Accident Insurance Fund Corporation or an insurer authorized under ORS chapter 731 to transact workers' compensation insurance in Oregon.

(~~16~~12) "Leased worker" means any worker provided by a worker leasing company on other than a "temporary basis" as described in OAR 436-050-0420.

(~~17~~13) "Nonrenewal" means the insurer's decision not to renew a policy at its expiration date.

(~~18~~14) "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.

(~~19~~15) "Premium" means the monetary consideration for an insurance policy.

(~~20~~16) "Premium assessments" means moneys due the director under ORS 656.612 and 656.614.

(~~21~~17) "Process claims" is the determination of compensability and management of compensation by an Oregon certified claims examiner.

~~Determining compensability and managing compensation must be done from within this state under ORS 731.475 and this definition. Insurers and self-insured employers may receive claims reports at locations out-of-state as long as claims are forwarded to an Oregon location for processing. The act of making payment may be done from out-of-state as directed from the Oregon place of business.~~

(~~22~~18) "Proof of coverage" ~~for purposes of OAR 436-050~~ has the same meaning as defined in OAR 436-162-0005.

~~(23) "Renewal" or "renew" means the issuance of a policy succeeding a policy previously issued and delivered by the same insurer or the issuance of a certificate or notice extending the terms of an existing policy for a specified period beyond its expiration date.~~

(~~24~~19) "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.

(20) "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.

(~~25~~21) "Self-insured employer" means an employer who has been certified under ORS 656.430 as having met the qualifications of a self-insured employer set out by ORS 656.407.

(~~26~~22) "Self-insured employer group" means five ~~(5)~~ 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.

(23) "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.

(~~27~~24) "State" means the State of Oregon.

(~~28~~25) "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.

(~~29~~26) "Worker leasing company" means a "person," as described in section (14~~8~~) of this rule, who provides workers, by contract and for a fee, as established in ORS 656.850.

(~~30~~27) "Written" means information ~~that which is expressed~~ communicated in writing, and includes electronic records.

Statutory authority: ORS ~~656.704 and~~ 656.726(4)
Statutes implemented: ORS ~~656.704 and~~ 656.726(4)
Hist: Amended 10/4/12 as WCD Admin. Order 12-056, eff. 1/1/13
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See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf

436-050-0006 Administration of Rules [Repeal]

~~Any orders issued by the division in carrying out the director's authority to enforce ORS chapter 656 and these rules are considered orders of the director.~~

Statutory authority: ORS 656.704 and 656.726(4)
Statutes implemented: ORS 656.704 and 656.726(4)
Hist: Amended 10/4/12 as WCD Admin. Order 12-056, eff. 1/1/13
Repealed 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17

436-050-0008 Requests for Hearings or Administrative Review ~~and Contested Cases~~

(~~1~~1) Request for hearing on an action concerning a worker's right to compensation.

Any party, ~~as defined by ORS 656.005, including an~~or assigned claims agent, ~~under ORS 656.054, aggrieved by~~that disagrees with an action taken under these rules that concerns ~~in which~~ a worker's right to compensation, or the amount ~~thereof~~ of compensation due~~is directly in issue~~, may request a hearing by the Hearings Division ~~of the Workers' Compensation Board~~ under ORS chapter 656 and ~~the board's Rules of Practice and Procedure for Contested Cases~~OAR chapter 438 ~~under the workers' compensation law except where otherwise provided in ORS chapter 656~~.

(2) Request for hearing on proposed sanctions or civil penalties.

Any party, or assigned claims agent, ~~as described in section (1) aggrieved by~~that disagrees with a proposed order, or proposed assessment of civil penalty, of the director ~~or division~~ issued under ORS 656.254, 656.735, 656.745, or 656.750 may request a hearing by the Hearings Division. To request a hearing the party or assigned claims agent must:

(a) Mail or deliver a ~~sending a~~ written request to the Workers' Compensation Division~~'s administrator~~ within 60 days ~~after the order was mailed~~of the mailing date of the proposed order or assessment; and~~.~~

(b) Specify, in the request,

~~(3) A hearing will not be granted if the request:~~

~~(a) Fails to state~~ the ~~specific grounds for~~ reasons ~~which~~ why the party or assigned claims agent ~~contests~~ disagrees with the proposed order or assessment.~~; or~~

~~(b) Is mailed or delivered to the administrator more than 60 days after the order was mailed.~~

(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 Division 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.

~~Under ORS 656.704(2) and 731.240(1), a~~Any party, or assigned claims agent, that disagrees with an action or order of the director ~~or division~~ under these rules~~,~~ other than as described in

section (1) or (2)~~,~~ of this rule may request a hearing by filing a request ~~for hearing as provided in~~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.

~~(5) Any party described in section (1) aggrieved by an action taken under these rules by another person except as described in sections (1) through (3) above may request administrative review by submitting a written request to the administrator. The request must specify the grounds upon which the action is contested and be received by the administrator within 90 days of the contested action unless the administrator determines there was good cause for delay or that substantial injustice may otherwise result.~~

Statutory authority: ORS 656.704, 656.726(4), and 656.745
Statutes implemented: ORS 656.254, 656.704, 656.735, 656.740, 656.745, and 656.750
Hist: Amended 10/4/12 as WCD Admin. Order 12-056, eff. 1/1/13
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See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf

436-050-0015 Suspension and Revocation of Authorization to Issue Workers' Compensation Insurance Policies

(1) General.

~~Under ORS 656.447, t~~The director may suspend or revoke ~~the~~an insurer's authori~~ty~~zation to ~~renew or~~ issue or renew workers' compensation insurance policies upon a determination that:

(a) ~~t~~The insurer has failed to comply with its obligations under ~~the~~ any workers' compensation policy; or

(b) The insurer ~~that it~~ has failed to comply with ~~the law~~ORS chapter 656, ~~rules~~OAR chapter 436, or the orders of the director.

~~(2) For the purpose of this rule:~~

~~(a) "Suspend" or "suspension" means a stopping by the director of the insurer's authority to issue new workers' compensation insurance policies for a specified period of time.~~

~~(b) "Revoke" or "revocation" means a permanent revocation by the director of an insurer's authority to renew or issue workers' compensation insurance policies.~~

~~(c) "Show-cause hearing" means an informal meeting with the director or designee in which the insurer will be provided an opportunity to be heard and present evidence regarding any proposed orders by the director to suspend or revoke an insurer's authority to issue workers' compensation insurance policies.~~

(~~3~~2) Show-cause hearings.

The director will not ~~S~~suspend~~sion~~ or revoke~~cation~~ an insurer's authorization to issue or renew workers' compensation insurance policies ~~under this rule will not be made~~ until the insurer has been given notice and the opportunity to be heard through an informal show-cause hearing ~~before~~ with the director.

(a) During the show-cause hearing, the insurer will be provided an opportunity to:

(A) Present evidence regarding any proposed orders by the director to suspend or revoke the insurer's authorization to issue or renew workers' compensation insurance policies; and

(B) ~~show cause~~Give reason why ~~it~~ the insurer should be permitted to continue to issue and renew workers' compensation insurance policies.

~~(4) A show-cause hearing may be held at any time the director finds that an insurer has failed to comply with its obligations under a workers' compensation insurance policy or has failed to comply with law, rules, or orders of the director.~~

(~~5~~b) Following ~~a~~the show-cause hearing, the director may rescind ~~the~~ a proposed order of suspension or revocation if the insurer establishes to the director's satisfaction its ability and commitment to comply with ORS ~~C~~chapter 656 and ~~these rules~~OAR chapter 436.

(~~6~~3) Suspension of authorization to issue workers' compensation insurance policies.

If the director suspends an insurer's authorization to issue workers' compensation insurance policies:

(a) ~~A~~The suspension may be in effect for a period of up to 18 months;~~.~~

(b) ~~A~~The suspended insurer may continue to serve existing accounts and renew any existing policy, unless there is a cancellation or nonrenewal of the policy ~~nonrenews or is canceled~~ during the period of suspension; and

(c) ~~.~~

~~(7) After 12 months of the suspension has elapsed, t~~The ~~division~~director may audit the performance of the insurer during the period of suspension, and:~~.~~

(A) If the insurer is in compliance, the ~~administrator may request the~~ director ~~to~~ may lift the suspension ~~before the 18 months has elapsed.~~; or

(B) If the insurer is not in compliance, and the suspension has been in effect for at least 12 months, ~~the administrator may request~~ the director may revoke the insurer's authori~~ty~~zation to renew or issue workers' compensation insurance policies.

(~~8~~4) ~~-~~Revocation of authorization to issue workers' compensation insurance policies.

If the director revokes ~~When~~ an insurer's authorization~~ty~~ to issue or renew workers' compensation insurance policies ~~has been revoked,~~:

(a) ~~t~~The insurer may serve an existing account only until the policy is canceled or until the next renewal date, whichever first occurs; and ~~.~~

(~~9~~b) The insurer ~~After a revocation of an insurer's authority to issue workers' compensation insurance policies has been in effect for five years or longer, it~~ may petition the director to restore ~~its~~ the insurer's authori~~ty~~zation by submitting a plan demonstrating its ability and commitment to comply with ~~the workers' compensation law~~ORS chapter 656, ~~these rules~~OAR chapter 436, and the orders of the director.

(~~10~~5) Appeal and revision of orders of suspension or revocation.

~~Appeal of~~Any proposed and final orders of suspension ~~and~~ or revocation issued under this rule is a preliminary order subject to revision by the director, and may be ~~made as provided in~~appealed under OAR 436-050-0008.

~~(11) Any order of suspension or revocation issued under ORS 656.447 and this rule is a preliminary order subject to revision by the director.~~

Statutory authority: ORS ~~656.704 and~~ 656.726(4)
Statutes implemented: ORS 656.447
Hist: Amended 10/4/12 as WCD Admin. Order 12-056, eff. 1/1/13
Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf

436-050-0025 Service of the Notice of Civil Penalty Orders

When the director issues a civil penalty order, it will be served by certified mail, return receipt requested, or in any other manner provided by Oregon Rules of Civil Procedure (7)(D) available at: https://www.oregonlegislature.gov/bills_laws/Pages/orcp.aspx. Proof of service may include a hard copy signed receipt or electronic verification.

Statutory authority: ORS ~~656.704 and~~ 656.726(4)
Statutes implemented: ORS 656.704, 656.726, and 656.740
Hist: Amended 10/4/12 as WCD Admin. Order 12-056, eff. 1/1/13
Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf

COVERAGE

436-050-0040 Responsibility for Providing Coverage When a Contract Is Awarded

(1) If a person, including a person that is a sole proprietorship, that is responsible to provide coverage for an individual performing labor under ORS 656.029, fails to comply with ORS 656.017, that person ~~In the operation of ORS 656.029 a subject employer who fails to comply with ORS 656.017~~ is considered a "noncomplying employer" ~~as defined by ORS 656.005~~.

~~(2) For the purposes of this rule:~~

~~(a) "Assistance of others" means one or more individuals directly and immediately aiding in a common undertaking.~~

(~~b~~2) As used in ORS 656.029, "the performance of labor where such labor is a "~~N~~normal and customary part or process of the person's trade or business"" ~~refers to~~includes the day-to-day activities or operations which are necessary to successfully carry out the business or trade. ~~e.~~

(~~3~~3) ~~Under ORS 656.037, a~~A person contracting to pay remuneration for professional real estate activity as defined in ORS chapter 696, to a qualified real estate broker ~~or qualified principal real estate broker,~~ as defined in ORS 316.209, is not an employer of the qualified real estate broker, and is not required to provide coverage under ORS 656.017.

Statutory authority: ORS ~~656.704 and~~ 656.726(4)
Statutes implemented: ORS 656.029 and 656.037
Hist: Amended 10/4/12 as WCD Admin. Order 12-056, eff. 1/1/13
Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17

See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf

436-050-0045 Non~~s~~ ~~S~~ubject Workers

(1) For the purposes of clarifying terms ~~As~~ used in ORS 656.027~~(1)~~:

(a) A "worker engaged in household domestic service by ~~"P~~private employment contract"~~"~~ includes a worker in the ~~means~~ direct employment of the ~~worker by the~~ owner of the private home.

~~(b)~~ As used in this rule, "owner of the private home" means:

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

(B) ~~a~~Any person related by blood, marriage, or ~~an~~ Oregon registered domestic partnership to that person~~,~~; or

(C) ~~a~~Any person who, by direction of that person or by order of a court, has become responsible for managing the household affairs of that person~~.~~;

(~~2~~b) ~~As used in ORS 656.027(19):~~

~~(a) "~~A "person performing foster parent duties" means:

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

(B) ~~a~~Any person employed by ~~that~~ the foster parent~~person~~ in the operation of a foster home as defined in ORS chapter 418~~ and any rules promulgated thereunder.~~; and

(~~b~~c) A "~~A~~ person performing adult foster care duties" means:

(A) ~~any~~ Any person ~~licensed by the Oregon Department of Human Services or Oregon Health Authority to~~ operating~~e~~ an adult~~n~~ foster home licensed under ORS 443.705 to 443.825;~~adult foster home,~~ or

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

~~(3) As used in this rule, "adult foster home" 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 authority: ORS ~~656.704 and~~ 656.726(4)
Statutes implemented: ORS 656.027
Hist: Amended 10/4/12 as WCD Admin. Order 12-056, eff. 1/1/13
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See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf

436-050-0050 Corporate Officers, Partnerships; Limited Liability Company Members; Subjectivity

(1) ~~Under ORS 656.027, a~~A corporation, limited liability company, or partnership may~~must~~ elect ~~in writing to its insurer~~ to provide workers' compensation coverage for otherwise nonsubject workers~~.~~:

(a) The election must be made in writing to the insurer at the ~~inception~~ beginning of a coverage policy and remain in effect until a revised written designation is given to the insurer~~.~~;

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

(2) If an entity does not file its initial election, or is not in compliance under ORS 656.017 and 656.407, then those 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 ~~there is~~ more than one person is in the same office, or more than one member or partner have equal ~~the~~ ownership interest ~~is the same in any of the offices listed in subsections (a) and (b) of this rule~~, the sequence of those persons will be determined by whose birthday falls earlier in a year.

(~~2~~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 (~~1~~2) of this rule.

(~~3~~4) For 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.~~.~~

~~(c) "Eligible officer" means a corporate officer who is also a director of the corporation and who has a substantial ownership interest in the corporation.~~

~~(d) "Eligible partner" or "eligible member" means a partner or member who has substantial ownership in the business entity.~~

~~(e) "Noncomplying" means an employing legal entity of subject workers which is in violation of ORS 656.017(1).~~

Statutory authority: ~~ORS 656.704 and~~ ORS 656.726(~~3~~4)
Statutes implemented: ORS 656.027
Hist: Amended 10/4/12 as WCD Admin. Order 12-056, eff. 1/1/13
Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf

436-050-0055 Extraterritorial Coverage

(1) For the purposes of ~~Criteria to be used in~~ determining whether a worker is temporarily in or out of state under ORS 656.126, the director will use criteria ~~may~~ includ~~e~~ing, but ~~are~~ not limited to, the following:

(a) The extent to which the worker's work within the state is of a temporary duration;

(b) The intent of the employer ~~in regard to~~regarding the worker's employment status;

(c) The understanding of the worker ~~in regard to~~regarding the employment status with the employer;

(d) The permanent location of the employer and its permanent facilities;

(e) The circumstances and directives surrounding the worker's work assignment;

(f) The state laws and regulations to which the employer is otherwise subject;

(g) The residence of the worker;

(h) The extent to which the employer's work in the state is of a temporary duration, established by a beginning date and expected ending date of the employer's work; and

(i) Other information relevant to the determination.

(2) Within 30 days after coverage of an Oregon employer is effective, the insurer providing the coverage must notify the employer in writing of the provisions of ORS 656.126 and this rule.

Statutory authority: ORS ~~656.704 and~~ 656.726(4)
Statutes implemented: ORS 656.126
Hist: Amended 10/4/12 as WCD Admin. Order 12-056, eff. 1/1/13
Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf

436-050-0060 Transition from Guaranty Contract Filings to Policy-Based Proof of Coverages [Repeal]

~~(1) Proof of coverage reporting requirements are prescribed by OAR 436-162.~~

~~(2) An active guaranty contract on file with the director on or after July 1, 2009 meets the Oregon proof of coverage requirement until it is replaced by a proof of coverage filing for renewal or new coverage effective on or after July 1, 2009, or until canceled under ORS 656.423 or 656.427. Active guaranty contracts on file with the director will not serve as proof of coverage on or after July 1, 2010.~~

~~(3) Filings for policies with a coverage effective date before July 1, 2009 create, endorse, cancel, or reinstate a guaranty contract. Filings for policies with a coverage effective date on or after July 1, 2009 establish, endorse, cancel, or reinstate proof of coverage filings.~~

~~(4) A guaranty contract in effect on or after July 1, 2009 is canceled the earliest of:~~

~~(a) The employer obtaining other Oregon workers' compensation coverage and causing the insurer to make a coverage filing with the director;~~

~~(b) The employer providing the insurer 30 days written notice of cancellation; or~~

~~(c) The insurer mailing notice of cancellation to the employer at least 45 days prior to the cancellation effective date, 90 days notice if the cancellation is based on an insurer's decision not to offer insurance to employers with a specific premium category, or 10 days notice if the cancellation is based on nonpayment of premium.~~

Statutory authority: ORS 656.704 and 656.726(4)
Statutes implemented: ORS 656.419, 656.427
Hist: Amended 9/17/08 as WCD Admin. Order 08-061, eff. 7/1/09
Repealed 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17

INSURERS

436-050-0110 Notice of Insurer's Place of Business in State; Coverage Records Insurer Must Keep in Oregon

(1) Claims processing locations.

Every insurer that is authorized to issue workers' compensation ~~coverage~~ policies to Oregon subject employers ~~as required by ORS chapter 656~~must comply with the following:

(a) The insurer may not process or maintain records of claims subject to ORS chapter 656 at any location outside of this state;

(A) The insurer may receive claim reports at locations outside of the state as long as claims are forwarded to an Oregon location for processing; and

(B) Payments may be made from outside of the state as directed from the Oregon location;

(b) The insurer may not have more than eight locations at any time where its claims are processed or its claims records are maintained. The insurer must count each physical location where it processes claims or maintains records as one location; and

(c) The insurer must give the director notice of the location, mailing address, telephone number, email address, and any other contact information requested by the director, of any location in this state where the insurer processes claims ~~and~~ or keeps written records of claims and proof of coverage as required by ORS 731.475~~.~~;

(A) ~~The insurer may not have more than eight locations at any one time where claims are processed or records are maintained. While the insurer may have more than one location in this state,~~ T~~t~~he information provided ~~to the director~~ in the notice must reasonably lead an inquirer to:

(i) ~~a~~A person who can respond to inquiries ~~as to~~regarding workers' compensation insurance policy~~y~~, claim filing, and claims processing location information; and

(ii) ~~to access a~~An ~~in-state~~ Oregon certified claims examiner who can respond ~~within a reasonable time~~ to ~~specific~~ reasonable claims processing inquiries within~~. A response time of~~ 48 hours ~~or less~~, not including weekends or legal holidays;~~, would satisfy a reasonable expectation.~~

~~(2) Notice under section (1) of this rule must be filed with the director within 30 days after the insurer becomes authorized and starts writing workers' compensation insurance policies for Oregon subject employers, and~~ (B) The notice must also include contact information for:

(~~a~~i) A designated person or position within the company who will assure payment of penalties and resolution of collections issues resulting from orders issued by the director; ~~and~~

(~~b~~ii) A designated person or position within the company who can respond to workers' compensation policy and proof of coverage filing inquiries~~.~~; and

(iii) A company email address that is monitored on a regular basis, where the director can direct general inquiries; and

(C) The notice must be filed with the director not more than 30 days after the insurer becomes authorized and starts writing workers' compensation insurance policies for Oregon subject employers.

(~~3~~2) Service companies.

If an insurer elects to use ~~a~~ one or more service company~~y~~ies ~~to satisfy the purposes of ORS 731.475~~ with respect to all or any portion of its business~~,~~:

(a) ~~t~~The insurer must~~, prior to using the service company in Oregon, file with~~ provide the director with a copy of the agreement between the insurer and each service company ~~for approval~~, and must give the director notice of the location and mailing address of each service company~~.~~;

(b) The director must approve the service agreement before the service company begins processing the insurer's claims in Oregon, regardless of the agreement's effective date;

(c) To be approved, ~~T~~the service agreement must:

(~~a~~A) Be between the underwriting insurer and a service company that is incorporated in or authorized to do business in Oregon, and must not be between any other third parties;

(~~b~~B) Identify the insurer by company name, or if multiple insurers related by ownership, by the name of the group if it includes all affiliates;

(~~c~~C) Identify the service company by name;

(~~d~~D) Grant the service company a power of attorney to act for the insurer in workers' compensation coverage and claims proceedings under ORS chapter 656; and~~,~~

(~~e~~E) Contain only those provisions for workers' compensation activities that are allowed in Oregon. The director may approve an agreement that contains provisions for activities not allowed in Oregon if the agreement or an addendum provides that any services or provisions not allowed under Oregon workers' compensation law will not be applied when processing Oregon claims. The director may require existing agreements that contain provisions for activities not allowed in Oregon to be amended accordingly; and~~.~~

(d) The insurer must count each service company that processes the insurer's claims as one of the eight claims processing locations allowed under subsection (1)(b) of this rule. Each service company at a physical location must be counted as a separate claims processing location.

(~~4~~3) Changes in place of business.

If the insurer~~'s~~ or its service company~~'s~~ will change its primary place of business or contact information ~~will change~~, the insurer must notify the director of the new location, mailing address, telephone number, email address, and any other contact information at least 30 days before the effective date of the change.

(~~5~~4) Changes in claims processing locations.

~~When~~ If an insurer changes claims processing locations~~,~~ or service companies: ~~, or self-administration,~~

(a) At least 10 days before the change is effective, t~~t~~he insurer must provide ~~at least 10 days prior~~ notice of the change, and provide the name of a contact person for, telephone number, email address and mailing address of the new location to:

(A) Any workers~~s~~, or the estate of any deceased worker, with an open or active claim that will be processed at the new location~~s,~~ ;

(B) ~~t~~Each worker's~~heir~~ attorney~~s~~, if any~~-~~;

(C) Each worker's ~~and~~ attending physician~~s~~; and

(D) Any beneficiaries receiving benefits under the claims~~. The notice must provide the name of a contact person, telephone number, and mailing address of the new claim processor.~~;

(b) At least 10 days before the change is effective, ~~The~~ the insurer must ~~also~~ provide ~~at least 10 days prior~~ notice to the director of which claims will be transferred. The notice to the director must include:

(~~a~~A) ~~Contact information for both the sending processor and receiving processor of the claims to include a~~ A contact person, telephone number, email address, and mailing address~~,~~ for both the sending processor and receiving processor of the claims;

(B) ~~and~~ The physical address where the claims ~~are to~~will be processed;

(~~b~~C) Verification of whether the claims to be transferred include closed claims; ~~and~~

(~~c~~D) If only a portion of the insurer's claims will be transferred, ~~A~~ a listing of the claims being transferred that identifies:

(i) ~~the~~ The underwriting insurer; ~~,~~

(ii) The ~~employer~~employer~~,~~ ;

(iii) The claimant's name~~,~~ ;

(iv) The date of injury; ~~,~~ and

(v) The sending processor's claim number~~.~~ ; and

(E) Any other information requested by the director; and

(c) If the insurer does not provide notice as required by this section, the director may assess a civil penalty against the insurer.

(~~6~~5) Activities required to be conducted at in-state locations.

~~For the purpose of this rule,~~ The following ~~those~~ activities must be conducted at a designated in-state location~~(s) and~~ by ~~the~~ an authorized representative~~(s)~~ of the insurer: ~~must include, but need not be limited to:~~

(a) Processing ~~and keeping complete records of~~ claims for compensation;

(b) Responding to specific claims processing inquiries;

(c) ~~Keeping~~ Maintaining records required under OAR 436-050-0120 ~~of payments of compensation~~;

~~(d) Keeping records, including records of claims processed by prior service companies, in a written form, not necessarily original form, and making those records available upon request; and~~

(~~e~~d) Accommodating periodic ~~in-state~~ audits by the director~~.~~ ; and

(e) Any other activity necessary to meet the requirements of ORS chapter 656 and OAR chapter 436.

~~(7) Records every insurer is required to keep in this state include all the written records of the insurer that show its insured employers have complied with ORS 656.017, including the records described by OAR 436-050-0120.~~

Statutory authority: ORS 731.475~~, 656.704,~~ and 656.726(4)
Statutes implemented: ORS 731.475
Hist: Amended 10/4/12 as WCD Admin. Order 12-056, eff. 1/1/13
Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf

436-050-0120 Records Insurers Must Keep in Oregon; Removal and Disposition

(1) Claims records insurers must keep in Oregon.

~~The records of claims for compensation that e~~Each insurer is required to keep the following records of claims for compensation in this state ~~include~~and make those records available to the director upon request:

(a) Written records used and relied upon in processing claims;

(b) A written record of all payments made as a result of any claim including ddocumentation of:

(A) theThe amount of the payment;

(B) The date the payment was mailedissued;

(C) The date the payment was mailed or delivered. ; and

(D) Documentation may be the actual mailing date, or aAn explanation of the time period between the date the payment was of issuedance and the date the payment was mailingmailed or delivered, if any; and

(ec) A wWritten records as to whetherof the approval or denial of claims for supplemental temporary disability benefits, as required under ORS 656.210(5); for workers employed in more than one job, were approved or denied.

(d) Written records of the insurer that show its insured employers have complied with ORS 656.017; and

(e) Written records, or copies of records, of claims processed by prior service companies.

(2) Claims records the insurer may remove from Oregon.

An insurer may remove the following records, under the conditions described in this section:

(a) Records of a denied claim may be removed from this state after all the appellate procedures have been exhausted and the denial has been affirmed by operation of law.

(3b) Records of any claim for a compensable injury, including a denied claim that is found to be compensable, may be removed from this state after the expiration of the aggravation rights or not less than one year following the final payment of compensation, whichever is the last to occur.

(4) When a denied claim is found to be compensable, the records of the claim are subject to section (3) of this rule.

(53) Destruction of claims records.

The insurer may destroy claims records when the insurer can verify that all potential for benefits to the worker or the worker's beneficiaries is gone.

(64) Proof of coverage records insurer must keep in Oregon.

The records relating to proof of coverage that insurers are required to keep in the state include:

(a) A written record of each workers' compensation insurance policy and related endorsements, reinstatements, or cancellations issued as required under the workers' compensation law;

(b) Written records of premiums due and premiums collected by the insurer from its insured employers as a result of coverage issued under the workers' compensation law; and

(c) Written records that segregate and show specifically for each employer the amounts due from the employer and all such money collected and paid by the insurer for premiums for insurance coverage, premium assessments, and any other moneys due the director or required to be ~~remitted~~ paid to the director.

(~~7~~5) Disposal of proof of coverage records.

If all ~~remittances~~ payments have been made, proof of coverage records may be disposed of after the later of:

(a) ~~the~~ The next ~~Insurance Division~~ examination of the insurer by the Division of Financial Regulation under ORS 731.300; or

(b) ~~the~~ January 1 of the year following ~~end of~~ three ~~full~~ calendar years ~~following the calendar year in which the~~after the cancellation or nonrenewal of the workers' compensation insurance policy ~~cancels or is not renewed, whichever occurs later~~.

Statutory authority: ORS 731.475, ~~656.704,~~ and 656.726(4)
Statutes implemented: ORS 731.475
Hist: Amended 10/4/12 as WCD Admin. Order 12-056, eff. 1/1/13
Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf

SELF-INSURED EMPLOYERS

436-050-0150 Qualifications of a Self-Insured Employer

(1) General qualifications.

To qualify as a self-insured employer, the employer must:

(a) Establish proof that the employer has an adequate staff qualified to process claims;

(b) Establish proof of the financial ability to make certain the prompt payment of all compensation and other payments due under ORS chapter 656;

(c) Obtain excess insurance coverage in the amounts approved by the director; and

(d) Be registered and authorized to do business in this state under ORS chapters 58, 60, 62, 63, 65, 67, 70, and 648, as applicable, or be a municipal or public corporation as defined in ORS 297.405.

(2) Claims processing staff.

~~An~~ The employer must establish~~es~~ proof of an adequate staff qualified to process claims by:

(a) Employing and retaining at each claims processing location, at least one ~~person~~ claims examiner that is ~~qualified in accordance with~~certified under OAR 436-055-0070 to process claims in this state, and is actually involved in the claims processing function; or

(b) Contracting the services of one or more service companies that employ at each claims processing location in this state, at least one ~~person~~ claims examiner that is certified ~~qualified in accordance with~~under OAR 436-055-0070 to process claims in this state, and that is actually involved in processing the self-insured employer's claims ~~processing~~.

(3) Proof of financial ability.

~~An~~ Unless exempt under OAR 436-050-0185, the employer must establish~~es~~ proof of financial ability by:

(a) ~~p~~Providing a security deposit that the director determines is acceptable ~~in accordance with~~under OAR 436-050-0165, and in an amount as determined ~~in accordance with~~under OAR 436-050-0180~~.~~; and

(b) Demonstrate acceptable financial strength by maintaining a rating equal to "strong" or "moderate" as determined under sections (4) and (5) of this rule.

(4) Financial strength analysis.

The financial reports submitted by the employer under OAR 436-050-0175(1) must contain information sufficient to calculate the financial ratios described in this section. The points awarded for each ratio will be used to determine the employer's financial strength under section (5) of this rule.

(a) For the purposes of calculating the financial ratios under this section:

(A) The face value of a self-insured employer's irrevocable standby letter of credit (ISLOC) used to satisfy the director's requirement for a security deposit may not be included in the self-insured employer's reported assets;

(B) **Current assets** include all assets that may be reasonably expected to be converted into cash, or could become the equivalent of cash, within one year in the normal course of business;

(i) Current assets include, but are not limited to cash, accounts receivable, inventory, and prepaid expenses, and investments, marketable securities, and bonds that mature within one year or may be converted to cash without penalties or fees; and

(ii) Current assets must not include fixed assets, accumulated depreciation, intangible assets, or investments, marketable securities, or bonds with maturity dates of one year or longer;

(C) **Current liabilities** are debts and obligations expected to be due within the next year;

(i) Examples of current liabilities include accounts payable, notes payable, accrued taxes, and wages and salaries owed to workers;

(ii) Current liabilities must not include debts or claims on assets that will be due a year or more in the future or longer-term liabilities;

(D) **Long-term liabilities** must include all debts and obligations expected to be due one year or more in the future. Long-term liabilities include any mortgages, loans, bonds, and claims reserve funds not due within one year;

(E) **Net assets** are total assets less total liabilities. Financial statements and reports may otherwise refer to net assets as net position, adjusted net worth, surplus, owner's equity, or shareholders' equity; and

(F) **Net income** is the net revenue from sales, interest, or services rendered minus costs, operating expenses, and taxes. Financial statements and reports may otherwise refer to this component as comprehensive income, net earnings, or net profit;

(b) The **current ratio** is calculated by dividing current assets by current liabilities. A maximum of six points are possible for the current ratio, to be awarded as follows:

Ratio	=	**Points**
At least 2	=	6 points
At least 1.75	=	5 points
At least 1.6	=	4 points
At least 1.4	=	3 points
At least 1.25	=	2 points
At least 1	=	1 points
Less than 1	=	0 points

(c) The **debt-to-equity ratio** is calculated by dividing long-term liabilities by net assets. A maximum of six points are possible for the debt-to-equity ratio, to be awarded as follows:

Ratio		**Points**
25% or less	=	6 points
50% or less	=	5 points
70% or less	=	4 points
80% or less	=	3 points
90% or less	=	2 points
100% or less	=	1 points
More than 100%	=	0 points

(d) The **return-on-net assets ratio** is calculated by dividing net income by net assets. A maximum of six points are possible for the return-on-net-assets ratio, to be awarded as follows:

Ratio		**Points**
At least 10%	=	6 points
At least 8%	=	5 points
At least 6%	=	4 points

At least 4% = 3 points

At least 3% = 2 points

At least 2% = 1 points

Less than 2% = 0 points

(5) Rating of financial strength.

The employer's financial strength will be rated based on the sum of the points awarded for the three ratios under section (4) of this rule.

(a) A sum of 13 to 18 points is equal to a **strong** rating:

(A) The director will approve initial or continued certification if the employer meets all of the requirements of this rule; and

(B) The employer's security deposit amount will be determined based on OAR 436-050-0180(1) or (3);

(b) A sum of 7 to 12 points is equal to a **moderate** rating:

(A) The director will approve initial or continued certification if the employer meets all the requirements of this rule; and

(B) The employer's security deposit amount will be determined based on OAR 436-050-0180 (1) and (2), or (3); and

(c) A sum of 0 to 6 points is equal to a **weak** rating:

(A) The director may not approve the application for initial self-insured employer certification; and

(B) For an existing certified self-insured employer, the director may:

(i) Provide the employer notice of the director's intent to revoke its self-insurance certification under OAR 436-050-0200 and this rule;

(ii) Increase the security deposit calculated under OAR 436-050-0180 by an amount based on factors including, but not limited to, the considerations identified in OAR 436-050-0180(4); or

(iii) Allow the amount of the security deposit to be determined based on a certified actuarial study under OAR 436-050-0180(3); or

(iv) Request that the employer submit a financial correction plan that demonstrates the employer's ability to improve its rating, in a reasonable time period, without hampering the employer's ability to pay compensation and other amounts due under ORS chapter 656;

(~~4~~6) Failure to maintain qualifications.

Failure of a certified self-insured employer to maintain the qualifications required in this rule ~~will~~ may result in revocation of the employer's self-insured certification. If the director intends to revoke the employer's self-insured employer's certification:

(a) The director will give ~~T~~the employer ~~will be given~~ 30 days written notice ~~of the intent to revoke the self-insured certification, to be~~;

(b) The revocation will be effective 30 days from the date ~~of~~the employer ~~receipt~~ receives ~~of~~ the director's revocation notice~~.~~; and

(c) If the employer complies with the qualification requirements within the 30-day period, the revocation will be canceled and the certification will remain in effect.

Statutory authority: ORS 656.407~~,~~ ~~656.704,~~ and 656.726(4)
Statutes implemented: ORS 656.407
Hist: Amended 10/4/12 as WCD Admin. Order 12-056, eff. 1/1/13
Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf

436-050-0160 Applying for Certification as a Self-Insured Employer

(1) Required information.

An employer applying for certification as a self-insured employer must submit:

(a) A completed Form 1868, "Application for Self-Insurance;" ~~(Form 440-1868);~~

(b) Proof of an adequate staff qualified to process ~~of~~ the employer's claims ~~processing ability by~~under OAR 436-050-0150(2);

~~employing and retaining at each claims processing location, at least one person that is actually involved in the claims processing function and is qualified in accordance with OAR 436-055-0070; or by contracting with a service company that will have at least one person qualified in accordance with OAR 436-055-0070, that will be processing the employer's claims in this state, under ORS 656.455(1);~~

(c) The employer's audited financial statements or audited annual reports for the last three fiscal or calendar years, subject to the following:~~.~~

(A) If the audited financial statements of a parent company are provided in ~~lieu~~ place of statements for the employer, the director will not authorize the individual employer to be self-insured under its own program, unless a parental company guarantee can be obtained. Otherwise, it will be necessary for the parent company to be the self-insured employer or to separately insure the employer. In the context of this section, a parent company is a legal entity that owns a majority interest in the employer, or owns a majority interest in another entity or succession of entities that own a majority interest in the employer; or

(B) If audited financial statements are not available at the time of application, the employer may submit certified financial statements in place of audited financial statements or annual reports. However, if the certified financial statements submitted are insufficient to evaluate the employer's financial ability, the director may require the employer to submit audited financial statements;

(d) The employer's most recent experience rating modification worksheet and supporting documentation. Applicants with prior Oregon experience who do not submit this data will be assigned a 1.50 experience rating modification pending receipt of the data. All those without prior Oregon experience will be assigned a 1.00 experience rating modification;

(e) The type, retention, and limitation levels of excess workers' compensation insurance the employer is planning to obtain as required by OAR 436-050-0170;

(f) If applicable, ~~within 30 days after the date of certification,~~ a service agreement between the employer and service company that has been signed by both parties that meets the requirements of OAR 436-050-0210. The agreement must:

(A) Be submitted at least 14 days before the desired date of certification, and be approved by the director before the service company begins processing claims, regardless of the effective date established in the agreement; and

(B) The agreement must also contain the location, mailing address, telephone number, and any other contact information of the service company;

(g) Proof of the employer's ability to provide an acceptable security deposit, including either:

(A) Evidence from a surety bond company admitted to do surety business in this state that they will issue a surety bond for the employer, as Principal, and the Oregon Department of Consumer and Business Services, Workers' Compensation Division, as Obligee; or

(B) ~~e~~Evidence from a qualified bank that they will issue an irrevocable standby letter of credit for the employer with the Oregon Department of Consumer and Business Services as the beneficiary;

(h) Evidence of an occupational safety and health loss control program in accordance with OAR 437-001 as required by ORS 656.430(10); and

(i) Evidence of:

(A) The employer's -authorization to do business in this state under ORS chapters 58, 60, 62, 63, 65, 67, 70, and 648, as applicable~~.~~; or

(B) The employer's status as a municipal or public corporation as defined in ORS 297.405.

(2) Review of application.

Within 30 days of receipt of all information required in section (1) of this rule, the director will review the application and notify the employer that the request for certification as a self-insured employer is approved or denied.

(a) If the request is denied, ~~and~~ the notice will include the reason ~~therefore~~for denial; or~~,~~

(b) If the request is approved, ~~that the employer is qualified as a self-insured employer. If the employer qualifies as a self-insured employer,~~ the notice will include:

(~~a~~A) Confirmation of ~~T~~the type and the amount of the security deposit required;

(~~b~~B) Approval of the type, retention, and limitation levels of the excess insurance required; ~~or~~and

~~(c) The type, retention, and limitation levels of excess insurance required.~~

(C) Approval of a service agreement submitted under OAR 436-050-0110, if applicable.

(3) Issuance of certification.

If approved, the certification of self-insurance will be issued upon receipt of the security deposit and the appropriate excess insurance binder.

~~(4) Unless a later date is specified by the applicant, t~~The effective date of certification will be the first day of the month following the date the ~~requirements of section (3) of this rule are met~~certificate is issued, or a later date specified by the applicant.

~~(5) Notwithstanding subsection (l)(c) of this rule, an employer making application may submit certified financial statements in lieu of audited financial statements or annual reports. However, the director may require the employer to submit audited financial statements if the certified financial statements submitted are insufficient to evaluate the employer's financial status.~~

Statutory authority: ORS 656.430~~, 656.704~~, and 656.726(4)
Statutes implemented: ORS 656.430
Hist: Amended 10/4/12 as WCD Admin. Order 12-056, eff. 1/1/13
Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf

436-050-0165 Security Deposit Requirements

~~**(1) For the purposes of this rule:**~~

~~**(a) "Employer" includes employer groups;**~~

~~**(b) "Self-insured employer" includes self-insured employer groups; and**~~

~~**(c) "ISLOC" means irrevocable standby letter of credit.**~~

(1) Adoption of standards.

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

(a) This publication may be accessed from the International Chamber of Commerce website: **http://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.

~~A~~ Each self-insured employer is required to provide a security deposit that is acceptable to the director~~, to establish proof of its financial ability, and to be qualified and certified as a self-insured employer or to be certified as a self-insured employer group~~. Under the conditions and requirements of this rule, the director may accept:

~~In accordance with ORS 656.407, a surety bond or~~ (a) ~~an~~ An irrevocable standby letter of credit (ISLOC); or ~~may be accepted for the required security deposit if it complies with the following conditions and requirements:~~

(b) A surety bond.

(~~a~~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: ~~if the issuing bank and the ISLOC meet the requirements of this rule:~~

(~~A~~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 federally chartered instrumentalities of the United States operating under authority of the Farm Credit Act of 1971 as amended, ~~T~~the bank issuing the ISLOC must, at the time of issuance, have a long-term certificate of deposit ~~credit~~ rating ~~as set forth below~~of:

(i) ~~An~~ "Aaa", "Aa", or "A" ~~long term certificate of deposit (CD) rating~~ in the current monthly edition of "Moody's Statistical Handbook" prepared by Moody's Investors Service Inc., New York; or

(ii) ~~An~~ "AAA", "AA" or "A" ~~long term certificate of deposit (CD) rating~~ in the current quarterly edition or monthly supplement of "Financial Institutions Ratings" prepared by Standard & Poor's Corporation, New York;~~.~~

~~(B) Federally chartered instrumentalities of the United States operating under authority of the Farm Credit Act of 1971 as amended, are acceptable without rating.~~

(~~C~~B) An ISLOC issued by a bank that does not meet the credit rating requirement ~~set forth in~~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 meeting the credit ~~criteria~~ 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), 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 the ISLOC 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 surety bond covers all workers' compensation liabilities and obligations that would have been covered by the ISLOC;~~.~~

(~~D~~b) The issuing bank must use ~~the~~ Form 3640, ~~-~~"Irrevocable Standby Letter of Credit~~,~~;" ~~Form 440-3640, issued by the director.~~

(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;

(~~E~~d) The ISLOC will be automatically extended, without amendment, for ~~an additional~~ one ~~(1)~~ year from the ~~expiry~~expiration date, or any subsequent ~~expiry~~expiration date, unless, at least 60 days before the ~~expiry~~expiration date, the director is notified in writing by registered mail or overnight delivery, that the bank has elected not to extend the ISLOC for another period~~.~~;

(~~F~~e) If the issuing bank or any confirming bank is closed at the time of ~~expiry~~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;~~.~~

(~~G~~f) The ISLOC ~~can~~ must be able to be called immediately if:

(~~i~~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;

(~~ii~~B) The self-insured employer has filed for bankruptcy;

(~~iii~~C) The self-insured employer has failed to renew the ISLOC or provide acceptable substitute security ~~by~~ at least fifteen ~~(15)~~ days ~~prior to~~before the ~~expiry~~expiration date of the ISLOC; or

(~~iv~~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, notwithstanding written notice to the self-insured employer~~.~~;

(~~H~~g) The credit must be available by presentation of the beneficiary's draft drawn at sight on the issuing bank, payable within three business days, when accompanied by one of the statements contained in ~~436-050-0165(2)(a)~~subsection (~~G~~f), signed by the director~~-~~ or designee~~of the Department of Consumer and Business Services, or the administrator of the Workers' Compensation Division, or their designated authorized representative.~~;

(~~I~~h) The ISLOC is not subject to any qualifications or conditions by the issuing bank or confirming bank and is each bank's individual obligation, which is in no way contingent upon reimbursement~~.~~;

(~~J~~i) An ISLOC must ~~include a~~ state~~ment~~ that the funds provided by the ISLOC are not construed to be an asset of the self-insured employer and ~~a statement~~ that if legal proceedings are initiated by any party with respect to the payment of any ISLOC, it is agreed that such proceedings must be subject to the jurisdiction of Oregon courts and Oregon law~~.~~;

(~~K~~j) Payment of any amount under an ISLOC must be made only by wire transfer 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~~.~~;

(~~L~~k) ~~An~~ The ISLOC must conform to and reference ~~is subject to~~ the International Standby Practices 1998 (ISP98), ICC Publication No. 590;~~,~~ ~~which is hereby incorporated by reference, and a reference to this publication must be included in the text of the ISLOC. ICC Publication 590 may be obtained from the International Chamber of Commerce website: **http://iccwbo.org/policy/banking/**.~~

(~~M~~l) All bank charges for the ISLOC ~~are for~~must be for the account of the applicant;~~.~~

(~~N~~m) Any amendment to the ISLOC must be approved and accepted by the director before the amendment is effective~~.~~;

~~(O) If a bank's rating subsequent to the issuance of the ISLOC falls below the acceptable rating level as set forth in paragraph (A), 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 the ISLOC 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 surety bond covers all workers' compensation liabilities and obligations that would have been covered by the ISLOC.~~

(~~P~~n) Each self-insured employer that submits an acceptable ISLOC as its security ~~deposit,~~deposit must ~~furnish~~ provide a Form 3529, "~~a m~~Memorandum of ~~understanding~~ Understanding," with the ISLOC, ~~on the department's Form 440-3529, that~~ affirming~~s~~ the self-insured employer's acceptance of all of the following requirements:

(~~i~~A) An ISLOC is ~~furnished~~ provided to the director in~~stead~~ place of or in addition to ~~of~~ 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;

(~~ii~~B) The self-insured employer understands the ISLOC will be automatically extended without amendment for an additional one ~~(1)~~ year from the ~~expiry~~expiration date, or any subsequent ~~expiry~~expiration date, unless, at least 60 days before the ~~expiry~~expiration date, the director is notified in writing by the bank that the ISLOC will not be renewed;

(~~iii~~C) The ISLOC may be replaced with an ISLOC or surety bond of equal amount or a policy of insurance that is accepted by the director as substitute security for the ISLOC, if the new ISLOC or surety bond or policy of insurance covers all workers' compensation liabilities and obligations that would have been covered by the ISLOC to be replaced;

(~~iv~~D) The self-insured employer affirms that the ISLOC, in the amount required, is being offered with the understanding that 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 the self-insured employer files bankruptcy; or the self-insured employer fails to renew or provide acceptable substitute security ~~by~~ at least fifteen ~~(15)~~ days ~~prior to~~before the ~~expiry~~expiration date of the ISLOC; or 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 neither has been provided, notwithstanding written notice to the self-insured employer; and

(~~v~~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.

(~~b~~4) Surety bonds.

A surety bond may be accepted by the director as a security deposit or substitute security deposit for an ISLOC, government securities, ~~monies~~moneys, or time deposits. A 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 the following conditions:

(~~A~~a) The surety bond must be issued by a surety company authorized to transact surety business in Oregon;

(~~B~~b) Form 824, "Surety Bond" ~~Form 440-824~~ must be used for all 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;

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

(~~D~~e) Surety bonds may be terminated by the surety company by giving the director and the Principal written notice stating that on a date not less than thirty days after the date the notice is received by the director, such termination will be effective. Such termination in no way limits the liability of the Surety for subsequent defaults of the Principal's liability or obligations incurred under ORS chapter 656 ~~prior to~~before the effective date of such termination;

(~~E~~f) ~~Surety Bond Rider~~ Form ~~440-~~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;

(~~F~~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;

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

(~~i~~A) The Principal files acceptable substitute security as the security deposit that is accepted by the director as substitute security for 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

(~~ii~~B) The surety bond is released as documented in writing from the director or the administrator of the Workers' Compensation Division, or their designated authorized representative;~~.~~

(~~iii~~C) A policy of insurance or an ISLOC of equal amount that is acceptable by the director may be accepted as substitute security for the 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~~.~~;

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

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

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

(~~I~~j) A 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 current credit rating is below the ratings required in subsection (~~H~~i).

(5~~c~~) 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 ~~prior to~~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, ~~a~~ "Security Agreement and Notice to Intermediary," ~~Form 440-4023,~~ granting the department a security interest in and control over those financial assets.

~~(d) 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.~~

Statutory authority: ORS 656.430~~,~~ ~~656.704,~~ and 656.726(4)
Statutes implemented: ORS 656.430
Hist: Amended 8/15/14 as WCD Admin. Order 14-059, eff. 9/15/14
Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf

436-050-0170 Excess Insurance Requirements

(1) Excess insurance requirements.

A self-insured employer must have excess workers' compensation insurance coverage appropriate for the employer's potential liability under ORS chapter 656~~.001 to 656.990~~ with an insurer authorized to do business in this state, subject to the following:~~.~~

(a) Except for endorsements requiring pre-approval by the director ~~in~~ under sections (~~4~~3) and (~~5~~4) of this rule, the policy providing such coverage and any subsequent endorsements ~~thereto~~ must be filed with the director ~~not later than~~within 30 days after the effective date of the ~~coverage is effective~~policy or endorsement~~.~~ ;

(b) A self-insured public utility with assets in excess of $500 million as reflected by the employer's audited financial statement submitted in accordance with OAR 436-050-0160 or 436-050-0175, may obtain the required excess workers' compensation insurance coverage from an eligible surplus lines insurer;~~.~~

~~(2)~~ (c) The excess insurance policy~~:~~

~~(a) M~~ must include a provision for reimbursement to the director of all expenses paid by the director on behalf of the self-insured employer under ORS 656.614 and 656.443 ~~in the same manner~~ as if the director were the -insured employer, subject to the policy limitations or amounts and limits of liability to the insured employer;~~ and~~

(~~b~~d) Coverage must be continuous and remain in effect from the date of certification until the certification is revoked or canceled;~~ and~~

(~~c~~A) Coverage must be specific on a per-~~-~~occurrence basis;~~ and~~

(~~d~~B) Coverage may include aggregate excess insurance; and

(~~e~~C) Coverage may include a deductible endorsement acceptable to the director under sections (~~4~~3) and (~~5~~4) of this rule;~~.~~

(e) Excess insurance obtained under this rule does not relieve any self-insured employer from full responsibility for claims processing and the payment of compensation required under ORS chapter 656 and OAR chapter 436. A self-insured employer may not transfer claims to any excess insurer or service company acting on behalf of an excess insurer for the processing of the employer's claims, regardless of the types and amounts of excess coverage; and

(f) When an excess insurance policy is canceled by the excess insurer or the employer, a copy of the notice of cancellation must be filed with the director at least 30 days before the effective date of cancellation.

(~~3~~2) Self-insured retention level for a self-insured employer group.

The self-insured retention level for a self-insured employer group's excess insurance policy must not be less than $300,000.

(~~4~~3) Changes in the self-insured retention level.

Changes in the self-insured retention level and policy limits of the excess insurance require prior approval of the director. Proposed changes must be submitted to the director for approval at least 30 days before the effective date of the change. The director may require a reduction in the self-insured retention level or an increase in the policy limits by order. ~~Those items considered i~~When determining and approving the retention and limitation levels of the excess insurance, the director will consider ~~be the employer's~~:

(~~a~~a) The employer's ~~F~~financial status;

(~~b~~b) The employer's ~~For self-insured employer groups,~~ financial ~~viability~~ strength as determined under OAR 436-050-0150 or OAR 436-050-0260;

(~~c~~c) The employer's ~~R~~risk and exposure;

(~~d~~d) The employer's ~~C~~claim history; and

(~~e~~e) The amount of the employer's required security deposit.

(~~5~~4) Per-accident deductible endorsements.

Any ~~E~~endorsements~~s~~ addressing a per-accident deductible in excess of a self-insured employer group's retention level ~~require prior~~must be approv~~a~~ed ~~of~~by the director before the effective date of the endorsement, subject to the following:~~.~~

(a) In determining whether to approve a deductible endorsement, the director will consider the group's retention level, policy limits, and the items listed in section (~~4~~3) of this rule; and

~~.~~(b) The director will not approve per-accident deductible endorsements in excess of the retention level that contain language allowing the excess insurer, at its discretion, to limit its obligations under subsection (~~2~~1)(~~a~~c) of this rule.

(~~6~~5) Director's orders to amend excess insurance.

A self-insured employer ~~will be allowed a period, not to exceed 30 days, within which to~~must comply with an order of the director ~~to the employer~~ to reduce the self-insured retention level or increase the policy limitation or amounts and limits of liability of the excess insurance within 30 days after the order's mailing date.

~~(7) Excess insurance obtained under this section does not relieve any self-insured employer from full responsibility for claims processing and the payment of compensation required under ORS chapter 656 and these rules. Regardless of the types and amounts of excess coverage a self-insured employer must not transfer claims to the excess insurer(s) for processing.~~

~~**(8)**~~

~~When an excess insurance policy is canceled by the excess insurer or the employer, a copy of such notice must be filed with the director 30 days before the effective date of cancellation.~~

(~~9~~6) Revocation for failure to comply with these rules.

If a self-insured employer does not comply with the requirements of this ~~section~~rule~~,~~ the director may assess civil penalties against the employer, revoke the employer's self-insurance certification, ~~as a self-insured will be revoked~~ or both. If the director intends to revoke the employer's self insurance certification under this rule:

(a) The employer will be given written notice; ~~of such~~

(b) The revocation ~~which~~ will be effective 30 days from the employer's receipt of the notice~~.~~; and

(c) If the employer complies ~~required excess insurance is obtained~~ with the requirements of this rule before the effective date of the revocation, ~~within the 30 days,~~ the revocation will be canceled and certification will remain in effect.

Statutory authority: ORS 656.430, ~~656.704,~~ and 656.726(4)
Statutes implemented: ORS 656.430
Hist: Amended 8/15/14 as WCD Admin. Order 14-059, eff. 9/15/14
Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf

436-050-0175 Annual Reporting Requirements

(1) Annual Financial Report.

Every~~To determine the financial status of a self-insured employer and to evaluate the employer's continuity of operation, a~~ self-insured employer must file an annual financial report ~~annually~~ with the director, subject to the following:

(a) The report must include ~~an~~ the employer's audited financial statements or annual report with audited financial statement for the just completed fiscal year, and ~~including~~ SEC Form 10K, if issued~~,~~; ~~for the just completed fiscal year.~~

(b) The report must be filed within the following time frames:

(A) A self-insured employer that is not a municipal~~ity~~ or public corporation as defined in ORS 297.405 must make the filing within 120 days of the end of its fiscal year ~~end~~; or

(B) ~~and a~~A self-insured employer that is a municipal~~ity~~ or public corporation as defined in ORS 297.405 must make the filing within 180 days of the end of its fiscal year ~~end.~~ ;

~~All financial statements and annual financial reports filed, as required by this section, will be retained by the director for a period of at least three years.~~ (c) If audited financial statements are not available for filing within the time frames of subsection (b), the~~In lieu of an audited financial statement or annual report, a~~ self-insured employer may file a financial statement that is certified by the self-insured employer that the financial statement is true and accurate and presents the self-insured employer's financial condition and results of operations as of the date of the statement. ~~.~~

~~(2) Notwithstanding section (l) of this rule, t~~The director may require a~~n~~ self-insured employer to submit an audited financial statement if the certified financial statement submitted is insufficient to evaluate the self-insured employer's financial status;~~.~~

(~~3~~d) The financial statements and reports ~~filed by a self-insured employer group~~ must include information sufficient to determine ~~demonstrate~~ the ~~group's~~ self-insured employer's ~~acceptable~~ financial viability ~~based on criteria~~ under OAR 436-050-0150 or OAR 436-050-0260; and~~including, but not limited to, satisfactory financial ratios and net worth.~~

(e) All financial statements and annual financial reports filed under this section will be retained by the director for a period of at least three years.

(4~~2~~) Additional requirements for self-insured employer groups.

In addition to the requirements of section (1) of this rule, ~~B~~by March 1 of each year~~,~~ each self-insured employer group~~s~~ must file with the director:

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

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

~~(5) By March 1 of each year,~~ (c) If the self-insured employer group~~s~~ consists~~ing~~ of private employer members ~~must file with the director~~:

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

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

(3~~6~~) Claims loss data reporting.

The self-insured employer must report claim loss data ~~described in Bulletin 209~~ by March 1 of each year for the purposes of experience rating modification, retrospective rating calculations, and determining deposits. Bulletin 209 provides guidelines for self-insured employers and their authorized representatives to use in submitting the required data.

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

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

(~~i~~A) Contract medical expenses;

(~~ii~~B) Total maximum medical reimbursement amount;

(~~iii~~C) The ~~N~~number of claims for which the maximum medical reimbursement amount is claimed; and

(~~iv~~D) Separate lists including all claims with total incurred losses above and below the National Council on Compensation Insurance split point published in Bulletin 209. The lists must include:

(i) ~~For claims with incurred losses at or below the National Council on Compensation Insurance (NCCI) split point published in Bulletin 209, total paid, outstanding reserves, and total incurred losses;~~

~~(v) Number of claims with incurred losses at or below the NCCI split point; and~~

~~(vi) For each claim with incurred losses exceeding the NCCI split point,~~ The worker's name, listed in alphabetical order;

(ii) The date of injury~~,~~;

(iii) The claim number~~,~~;

(iv) The total amount paid~~,~~;

(v) ~~o~~Outstanding reserves~~,~~; and

(vi) ~~t~~Total incurred losses~~. Claims must be listed in alphabetical order.~~;

(~~B~~b) A report of losses covering the self-insured employer's non-experience period ~~prior to the experience rating period~~. The report must list all open claims and must be valued as of January 1 of the current year~~. The report~~, and must include:

(~~i~~A) The worker's name, listed in alphabetical order;

(~~ii~~B) The ~~D~~date of injury;

(~~iii~~C) The ~~C~~claim number;

(~~iv~~D) The ~~T~~total amount paid;

(~~v~~E) Outstanding reserves; and

(~~vi~~F) Total incurred losses~~.~~;

(~~C~~c) Identification of claims involving:

(A) ~~catastrophes~~Catastrophes;

(B) The~~,~~ Workers with Disabilities Program~~,~~;

(C) ~~permanent~~ Permanent total disability;

(D) ~~or f~~Fatal benefits~~,~~;

(E) ~~third~~ Third party recoveries~~,~~; and ~~claims where the~~

(F) ~~total~~ Total incurred losses that ~~has or is expected to~~ exceed, or are expected to exceed, the self-insured retention level of the self-insured employer's excess insurance policy~~.~~;

~~(D) The total annual paid losses for the previous four fiscal years valued as of January 1 of the current year.~~

~~(b) Bulletin 209 provides guidelines for self-insured employers and their authorized representatives to use in submitting the required data. Bulletin 209 is available on the Workers' Compensation Division's website.~~

(~~c~~d) If the self-insured employer is a ~~Each~~ self-insured city, county, or qualified self-insured employer group that is exempted from the security deposit requirements under ORS 656.407(3) and OAR 436-050-0185:~~-~~ ~~must, in addition to the above, provide the director by March 1 of each year,~~

(A) ~~t~~The procedures, methods, and criteria used in the process of determining the amount of their actuarially sound workers' compensation loss fund, including procedures for determining the amount for injuries incurred but not reported~~.~~; and

(B) Upon the director's request, ~~The director may require a qualified self-insured employer group exempted from the security deposit requirements to provide~~ an actuarial study that demonstrates its loss reserve account is actuarially sound and adequately funded under OAR 436-050-0185(2)(a)(~~d~~D).

(~~7~~4) Director's requests for additional information.

~~Notwithstanding sections (1) through (5) of this rule, t~~The director may require a self-insured employer ~~group~~ to provide additional information, or submit financial statements, reports, or ~~information~~ claims loss data more frequently.

(a) The director may require additional information or financial statements for reasons including, but not limited to~~,~~:

(A) ~~c~~Changes in the ~~group's~~ financial status or viability of a self-insured employer or group; and~~, private employer members' individual~~

(B) Changes in the net worth, group membership, or private employer group's~~'~~ board membership of a self-insured employer group.~~, or incurred claims costs.~~

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

(~~9~~5) Sanctions for failure to comply with this rule.

If a self-insured employer ~~fails to~~does not comply with the requirements of ~~sections (1) through (8) of~~ this rule, the director may ~~impose any or all of the following sanctions~~:

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

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

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

(d) Revoke the employer's certification for self-insurance under OAR 436-050-0200 or OAR 436-050-0340.

(~~10~~6) Claims reserve audits.

To ensure each self-insured employer's claims are valued appropriately for use in deposit, experience rating, and retrospective rating calculations, the director will perform routine ~~test~~ claims reserve audits.

(a) ~~If a self-insured employer's total claims values are found to be 10 percent or more below t~~The ~~director's determined~~ values determined at audit~~, the current experience rating~~ will be used to ~~r~~recalculate~~d~~ ~~using the director's determined values and will be used in~~ the self-insured employer's security deposit, experience rating factor, and retrospective rating adjustment. ~~calculations. In addition,~~

(b) If there is a 10 percent or greater difference between the values determined by the director at audit and the values that were reported by the self-insured employer, the director may assess civil penalties against the employer.~~may be assessed.~~

Statutory authority: ORS 656.407, 656.430, ~~656.704,~~ and 656.726(4)
Statutes implemented: ORS 656.407 and 656.430
Hist: Amended 12/24/15 as WCD Admin. Order 15-067, eff. 1/1/16
Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf

436-050-0180 Determination of Amount of Self-Insured Employer's Deposit; Effective Date of Order to Increase Deposit

(1) Indicated security deposit.

~~The deposit a~~Except for self-insured cities, counties, or qualified self-insured employer groups who are exempted under ORS 656.407(3) and OAR 436-050-0185, each self-insured employer is required ~~by ORS 656.407~~ to maintain a security deposit with the director ~~must be~~in an amount determined by the director, subject to the following:

(a) The deposit will not be less than the greater of:

(~~a~~A) $100,000; ~~or~~

(~~b~~B) Future claim liability, including losses incurred but not reported (IBNR), a claims processing administrative cost, and the anticipated assessments payable to the director for the employer's next fiscal year; or

(~~c~~C) The annual incurred losses for the self-insured employer's last fiscal year, including IBNR, a claims processing administrative cost, and anticipated assessments payable to the director for the employer's next fiscal year; ~~.~~

(~~2~~b) ~~Notwithstanding section (1) of this rule, i~~If the employer is applying for self-insurance, the amount of the initial deposit must not be less than the greater of:

(~~a~~A) The anticipated assessments payable to the director for the employer's next fiscal year, plus an amount equal to 65 percent of the annual premium the employer would pay if carrier-insured using the applicable occupational base rate premium, as such rate is applied to the anticipated payroll of the employer's Oregon operations for the employer's next fiscal year; ~~or~~

(~~b~~B) $300,000 plus $30,000 additional for each $100,000 the employer's net worth is below $2 million; or

(~~c~~C) The amount of the approved self-insured retention level for the employer's excess workers' compensation insurance;~~.~~

~~(3) In determining the amount of deposit the director will take into consideration:~~

~~(a) The financial ability of the employer to pay compensation and other payments due;~~

~~(b) The employer's probable continuity of operation;~~

~~(c) A self-insured employer group's financial viability, as determined by the director under OAR 436-050-0260;~~

~~(d) Retention and limitation levels of the employer's excess insurance in relation to the employer's financial status;~~

~~(e) Changes in the employer's business including, but not limited to, mergers or acquisitions, changes in employment level, nature of employment, incurred claims costs, or material growth in self-insured exposure; and~~

~~(f) The balance of the Self-Insured Employer Adjustment Reserve or the Self-Insured Employer Group Adjustment Reserve~~(c) Assessments payable to the director referred to in this section include moneys and assessments due under ORS 656.506, 656.612, and 656.614;

(d) Claims processing administrative costs will be determined by developing a percentage rate to be applied against the employer's unpaid losses;

(A) The rate will be based on the information contained in Schedule P, Part ID of the Annual Statement for the previous calendar year as reported to the Insurance Commissioner by SAIF Corporation and the 20 private insurers who had the highest earned premium reported for the preceding calendar year; and

(B) The rate will be computed annually to be effective for the subsequent fiscal year. The rate will be 105 percent of the median of ratios determined as follows for each of these insurers:

(i) "Loss expenses unpaid" for losses incurred in the latest eight years, divided by

(ii) "Losses unpaid" for losses incurred in the latest eight years; and

(e) Under this section, "Incurred but not reported" (IBNR) will be calculated by applying a loss development factor determined by the director against the employer's annual paid losses. ~~.~~

(42) Financial strength adjustment.

~~The amount of the deposit determined in sections (1) through (3) of this rule for a~~If the self-insured employer received a ~~group with~~ financial ~~ratios~~ strength rating equal to~~ing~~ ~~a~~ "moderate" ~~rating~~ under OAR 436-050-0150(5) or OAR 436-050-0260(~~13~~12), the amount of the deposit determined under section (1)~~(b)~~ will be increased by the following percentage factors:

(a) 12 total combined points = no change in calculated deposit;

(b) 11 total combined points = no change in calculated deposit;

(c) 10 total combined points = 5%;

(d) 9 total combined points = 10%;

(e) 8 total combined points = 15%; or

(f) 7 total combined points = 20%.

(3) Certified actuarial study.

An employer may request for its security deposit amount to be determined based on a recommended loss reserve level established by a certified actuarial study in place of the calculations under sections (1) and (2) of this rule. The director may base an employer's security deposit amount on a certified actuarial study under the following conditions:

(a) The actuarial study must be certified by an actuary who is a member in good standing of the American Academy of Actuaries;

(b) The actuarial study must be submitted to the director within seven days after the date of the director's notice establishing the security deposit amount calculated under sections (1) and (2) of this rule;

(c) The actuarial study must include an estimate or range of estimates of future claim liability and state what provisions for adverse claim development are included in these estimates;

(d) The actuarial study must identify the confidence levels associated with the recommended loss reserve level or loss reserve range;

(e) The actuarial study must include a statement of future claim liability, including the employers incurred but not reported (IBNR) losses;

(f) Subject to the minimum requirements of ORS 656.407 and this rule, upon the director's review and acceptance of the study the amount of the employer's security deposit will be based on:

(A) The actuarially sound recommended loss reserve level if a single estimate is provided; or

(B) The 75% confidence level estimate, if an actuarially sound loss reserve range is provided; and

(~~f~~g) If there is probable cause to believe the recommended loss reserve level or range is not actuarially sound, the director will determine the security deposit under sections (1) and (2) of this rule. Probable cause includes, but is not limited to:

(A) The actuarial study not containing a statement by the actuary that the recommended loss reserve level or range is actuarially sound;

(B) The actuarial study containing a disclaimer regarding the actuary's qualifications or ability to determine the adequacy of the loss reserve level for current or future liabilities; or

(C) The recommended loss reserve level or entire recommended loss reserve range being less than the 75 percent confidence level estimate established in the actuarial study.

(4) Additional factors for security deposit amount.

In determining the amount of deposit the director will take the following factors into consideration:

(a) The financial ability of the employer to pay compensation and other payments due;

(b) The employer's probable continuity of operation;

(c) A self-insured employer group's financial viability, as determined by the director under OAR 436-050-0150 or OAR 436-050-0260;

(d) Retention and limitation levels of the employer's excess insurance in relation to the employer's financial status;

(e) Changes in the employer's business including, but not limited to, mergers or acquisitions, changes in employment level, nature of employment, incurred claims costs, or material growth in self-insured exposure;

(f) The balance of the Self-Insured Employer Adjustment Reserve or the Self-Insured Employer Group Adjustment Reserve; and

(g) The employer's credit rating issued by a nationally recognized statistical ratings organization;

~~(5) Assessments payable to the director referred to in this section include moneys and assessments due under ORS 656.506, 656.612, and 656.614.~~

(~~6~~5) Time frame for compliance.

A self-insured employer ~~will be allowed a period, not to exceed 30 days, within which to~~must comply with an order of the director to the self-insured employer to increase the amount of its deposit within 30 days of the order. Failure to comply with this rule may result in the assessment of civil penalties, revocation of the employer's certification of self-insurance, or both.

~~(7) "Claims processing administrative cost" will be determined by developing a percentage rate to be applied against the employer's unpaid losses. The rate will be based on the information contained in Schedule P, Part ID of the Annual Statement for the previous calendar~~

~~year as reported to the Insurance Commissioner by SAIF Corporation and the 20 private insurers who had the highest earned premium reported for the preceding calendar year. The rate will be computed annually to be effective for the subsequent fiscal year. The rate will be 105 percent of the median of ratios determined as follows for each of these insurers:~~

~~(a) "Loss expenses unpaid" for losses incurred in the latest eight years, divided by~~

~~(b) "Losses unpaid" for losses incurred in the latest eight years.~~

~~(8) "Incurred but not reported" (IBNR) will be calculated by applying a loss development factor against the employer's annual paid losses. The loss development factor will be calculated annually by the director. An IBNR may be included in the security deposit calculation when the director identifies factors including, but not limited to, a decrease in the self-insured employer's credit rating, a negative net worth, negative cash flow, high debt-to-equity ratio, or material growth in self-insured exposure.~~

Statutory authority: ORS 656.407, ~~656.704,~~ and 656.726(4)
Statutes implemented: ORS 656.407
Hist: Amended 8/15/14 as WCD Admin. Order 14-059, eff. 9/15/14
Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf

436-050-0185 Qualifications for Deposit Exemption for Self-Insured Cities, Counties, and Qualified Self-Insured Employer Groups, Application Procedures, Conditions and Requirements, Revocation and Requalification

(1) Requirements to qualify for deposit exemption.

A self-insured city, county, or self-insured employer group that is a municipal or public corporation under ORS 297.405, may apply to be exempt from the security deposit requirements of ORS 656.407(2) and OAR 436-050-0150,~~.~~ ~~Under ORS 656.407(3),~~ if it meets the following requirements: ~~to qualify for exemption are as follows:~~

(a) The city, county, or qualified self-insured employer group must be in compliance with ORS 656.407(2) and OAR 436-050-0180 as an independently self-insured employer or self-insured employer group for the three consecutive years immediately ~~prior to~~before applying for the exemption; and

(b) The city, county, or qualified self-insured employer group must have in effect a workers' compensation loss reserve account that is actuarially sound and that is adequately funded as determined by the annual audit under ORS 297.405 to 297.740 to pay all compensation to injured workers and amounts due the director under ORS chapter 656. The workers' compensation loss reserve account must also be dedicated to and expended only for payment of compensation and amounts due the director by the city or county under ORS chapter 656.

(2) Application for security deposit exemption.

To apply for exemption from ORS 656.407(2), the city, county, or qualified self-insured employer group must submit a ~~A~~ written application ~~requesting exemption from ORS 656.407(2) must be submitted~~ to the director no later than 45 days ~~prior to~~before the date the exemption is desired to become effective.

(a) The application must include the following supporting documentation for review and approval:

(~~a~~A) A copy of the city's, county's, or qualified self-insured employer group's most recent annual audit as filed with the Secretary of State under ORS 297.405 to 297.740 that identifies the actuarially sound funded amount in the dedicated workers' compensation loss reserve if not previously filed as required by OAR 436-050-0175(1);

(~~b~~B) A copy of the city's, county's, or qualified self-insured employer group's current fiscal year's approved budget documents for internal service funds that state the budgeted amount for the funded workers' compensation loss reserve account;

(~~c~~C) A resolution or ordinance passed by the city's, county's, or qualified self-insured employer group's governing body that establishes an actuarially sound and adequately funded workers' compensation loss reserve account that dedicates the workers' compensation loss reserve account to and limits expenditures to only the payment of compensation and amounts due the director under ORS chapter 656. The resolution must also include the director's first lien and priority rights to the full amount of the workers' compensation loss reserve account required to pay the present discounted value of all present and future claims under ORS chapter 656; and

(~~d~~D) A statement giving the amount of the current reserves for present and future liabilities, the amount funded in the workers' compensation loss reserve account, and the procedures, methods, and criteria used in the process of determining the amount funded in their actuarially sound workers' compensation loss fund, including procedures for determining the amount for injuries incurred but not reported.

(~~A~~i) The statement must include the city's, county's, or qualified self-insured employer group's certification that the loss reserve account is actuarially sound and adequately funded if an actuarial study is not available.

(~~B~~ii) The director may require a city, county, or qualified self-insured employer group to demonstrate its loss reserve account is actuarially sound and adequately funded based on an actuarial study requested under OAR 436-050-0175(~~6~~3)(~~e~~d). The actuarial study must include an IBNR estimate and a copy of the study must be provided to the director.

(~~3~~b) Within 45 days of receipt of all application materials ~~information~~ required ~~by~~ under this section ~~(2) of this rule~~, the director will review the application and supporting documentation and notify the city, county, or qualified self-insured employer group that the request for exemption ~~under ORS 656.407(3)~~ is approved or denied.

(~~a~~A) If denied, the notice will provide the reasons for the denial, any requirements for reconsideration, and the right to administrative review as provided by OAR 436-050-0008.

(~~b~~B) If approved, the notice will include:

(~~A~~i) The confirmation of the effective date of exemption;

(~~B~~ii) Authorization for cancellation of any surety bond or ISLOC held as security under ORS 656.407(2) and OAR 436-050-0180; and

(~~C~~iii) Procedures for release of any government securities or time deposits held as security under ORS 656.407(2) and OAR 436-050-0180.

(~~4~~3) Inadequately funded loss reserve accounts.

If the director has probable cause to believe the employer's workers' compensation account is inadequately funded, the director may order a city, county, or qualified self-insured employer group to increase the amount of its workers' compensation loss reserve account and to provide documentation of the increase. The city, county, or qualified self-insured employer group must comply within 30 days of the director's order. Probable cause to believe the workers' compensation loss reserve account is not actuarially sound includes, but is not limited to:

(a) The annual audited financial statement under ORS 297.405 to 297.740 not containing a statement by the auditor that the workers' compensation loss reserve account is adequately funded, or containing a disclaimer regarding the auditor's qualifications or ability to determine adequacy of the loss reserve account; or

(b) For qualified self-insured employer groups required by the director to conduct an actuarial study under OAR 436-050-0175(~~6~~3)(~~c~~d) and section (2)(~~d~~a)(~~B~~D) of this rule, the actuarial study not containing a statement by the actuary that the loss reserve account is actuarially sound, or containing a disclaimer regarding the actuary's qualifications or ability to determine the adequacy of the reserves for current or future liabilities.

(~~5~~4) Cancellation of self-insurance certification or loss reserve.

A city, county, or qualified self-insured employer group that has been exempted from ORS 656.407(2) and desires to ~~terminate~~ cancel its self-insurance certification or elects to discontinue maintaining an actuarially sound and adequately funded workers' compensation loss reserve account must:

(a) Submit a written request to the director at least 60 days ~~prior to~~before:

(A) ~~the~~ The desired ~~effective~~ cancellation date of the self-insured certification ~~is requested to be terminated~~; or ~~60 days prior to~~

(B) ~~the~~ The effective date ~~that~~ of discontinuation of the qualifying workers' compensation loss reserve account ~~is to be discontinued~~;

(b) If the city, county or qualified self-insured employer group desires to cancel its self-insurance certification:

(A) ~~is to be terminated, t~~The request under section (a) ~~for termination~~ must comply with OAR 436-050-0200; and

(B)~~.~~ ~~Prior to~~Before the effective date of ~~termination~~ cancellation the city, county, or qualified self-insured employer group must provide a security deposit, as required by the director, in an amount determined under OAR 436-050-0180 and ORS 656.443; and

(c) If the city, county, or qualified self-insured employer group elects to discontinue maintaining an actuarially sound and adequately funded workers' compensation loss reserve account:

(A) ~~desires to remain self-insured, the city, county, or qualified self-insured employer group must requalify for self-insurance certification by depositing, prior to~~Before the effective date of discontinuation of ~~-~~the qualifying workers' compensation loss reserve account ~~is to be discontinued~~, the city, county, or qualified self-insured employer group must provide a security deposit as required by the director under ORS 656.407(2) and OAR 436-050-0180; and~~.~~

(B) ~~Under ORS 656.407(3)(c) f~~Failure to provide ~~deposit~~ the required security deposit as required under paragraph (A) ~~with the director prior to the date of discontinuance of the qualifying workers' compensation loss reserve account~~ will result in revocation ~~cause~~ of the city's, county's, or qualified self-insured employer group's self-insurance certification ~~to be automatically revoked~~ as of that date.

Statutory authority: ORS 656.407~~, 656.704~~, and 656.726(4)
Statutes implemented: ORS 656.407
Hist: Amended 8/15/14 as WCD Admin. Order 14-059, eff. 9/15/14
Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf

436-050-0190 Using Self-Insured Employers' Security Deposit/Self-Insured Employer Adjustment Reserve/Self-Insured Employer Group Adjustment Reserve/Director-Ordered Assessments of Private Employer Members of Self-Insured Employer Groups

(1) Default, decertification, or cancellation of self-insurance certification.

In the event a self-insured employer defaults, or is unable to make all payments due under ORS chapter 656~~,~~:

(a) ~~t~~The director will, on behalf of the self-insured employer, assure continued payments in accordance with ORS 656.407, 656.443, and 656.614 and in such a manner as to ensure minimum delay in the processing of injured workers' claims.

(~~2~~b) The director may refer the self-insured employer's claims for processing to an assigned claims agent selected under ORS 656.054, or designate the service company responsible for continuing to process the employer's claims, subject to the following:

~~-~~(A) If an individual self-insured employer ~~defaults and~~ is being serviced by one or more service companies, the director will ~~, on behalf of the employer,~~ designate th~~ose~~ service companies to continue processing claims in accordance with the contracts in effect. At least 90 days ~~prior~~ before ~~to~~ the ~~time~~ date the contract expires, the service company ~~can~~ may submit a proposal to continue processing the claims. The director will consider ~~such~~ the proposal along with other options and inform the service company of its decision; and

~~which may include referral of the claims for processing to an assigned claims agent selected under ORS 656.054.~~

(~~3~~B) -If a self-insured employer defaults and is self-administering, the director ~~will~~may~~, on behalf of the employer,~~ negotiate to have the employer's claims processed on the employer's behalf. ~~or may refer the claims for processing to an assigned claims agent as secured under ORS 656.054.~~

~~(4) In the event a self-insured employer reorganizes its business, assumes additional liability, acquires new operations, buys an additional business, merges with another business, files bankruptcy, emerges from bankruptcy, or otherwise changes its operation in any manner that affects its workers' compensation claims liability, the self-insured employer must notify the director of the modification of business within 30 days of the event.~~

~~(5) In the event a self-insured employer group defaults or is unable to make all payments due under ORS chapter 656, is decertified by the director under ORS 656.434, or cancels its self-insurance certification, the director will, on behalf of the employer, assure continued payments in accordance with ORS 656.407, 656.443, and 656.614 and in such a manner as to ensure minimum delay in the processing of injured workers' claims.~~

~~(6) In the event a self-insured employer group reorganizes its business, assumes additional liability, acquires new operations, buys an additional business, merges with another business, files bankruptcy, emerges from bankruptcy, or otherwise changes its operation in any manner that affects its workers' compensation claims liability, or financial viability as determined under OAR 436-050-0260, the self-insured employer group must notify the director of the modification of business within 30 days of the event. Failure to comply with this rule may result in revocation of the self-insured employer group's certification.~~

~~(7) If a self-insured employer group defaults, cancels its self-insurance certification, or is decertified by the director under ORS 656.434, the director may designate the service company responsible for continuing to process the group's claims. The director's designation may include referral of the claims for processing to an assigned claims agent selected under ORS 656.054.~~

(~~8~~c) If a self-insured employer group consisting of private employer members defaults, cancels its self-insurance certification, or is decertified by the director under ORS 656.434, the director may order private employer members of the group to pay an assessment for the group's continuing claim liabilities, under ORS 656.430(7)(a)(D)(i). Failure of the group's members to pay director-ordered assessments under this rule will subject members to civil penalties under ORS 656.745.

(2) Changes in liability or financial viability.

In the event a self-insured employer reorganizes its business, assumes additional liability, acquires new operations, buys an additional business, merges with another business, files bankruptcy, emerges from bankruptcy, or otherwise changes its operation in any manner that affects its workers' compensation claims liability, or financial viability as determined under OAR 436-050-0150 or OAR 436-050-0260, the self-insured employer must notify the director of the modification of business within 30 days of the event. Failure to comply with

this rule may result in the assessment of civil penalties, revocation of the self-insured employer's certification, or both.

Statutory authority: ORS 656.407, 656.434, ~~656.704,~~ and 656.726(4)
Statutes implemented: ORS 656.407, 656.443, and 656.614
Hist: Amended 8/15/14 as WCD Admin. Order 14-059, eff. 9/15/14
Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf

436-050-0195 Requirements for Changes in Self-Insured Employer Entity ~~Changes~~

(1) Notification of changes in entity, contact information, or ownership.

If there is any change in the ~~legal~~ entity, changes in addresses, telephone numbers, and points of contact, or ownership of a self-insured employer~~changes~~, ~~a~~ the self-insured employer must notify the director in writing within 30 days after the change occurs.

(2) Adding or deleting entities.

If a self-insured employer wishes to add or delete entities to a self-insured employer's certification:

(a) The~~A~~ self-insured employer must submit ~~requests to add or delete entities under its self-insured certification by submitting~~ a completed Form 1869, "Endorsement to Include Legal Entity in Self-Insured Certification," ~~"Endorsement to Self-Insured Group Application" (Form 440-1869)~~ signed by an officer of the ~~company~~self-insured employer;~~.~~

(b) Each entity ~~to be approved for inclusion in a self-insured employer's certification~~ must enter into an agreement, signed by an officer of the entity, ~~being included in the self-insured employer's certification,~~ making the entity jointly and severally liable for the payment of any compensation and moneys due to the director by the certified self-insured employer or any other entity included in the self-insured employer's certification~~.~~; and

(~~3~~c) The director will determine, based on the information provided, the effect of the change on the deposit required and whether the entities can be combined for experience rating purposes.

(~~4~~3) Failure to provide notification.

Failure to provide notification as required ~~by this section~~under this rule may result in assessment of penalties, ~~or~~ revocation of self-insurance certification, or both.

Statutory authority: ORS 656.407, ~~ORS~~ 656.430, ~~ORS 656.704~~ and ~~ORS~~ 656.726(3)
Statutes implemented: ORS 656.407 and ~~ORS~~ 656.430
Hist: Amended 10/4/12 as WCD Admin. Order 12-056, eff. 1/1/13
Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf

436-050-0200 Self-Insured Certification Cancellation; Revocation

(1) Effective period of self-insurance certification.

A self-insured employer's certification ~~to a self-insurer issued by the director~~ remains in effect until:

(a) Revoked as provided by OAR 436-050-0150 to~~hrough~~ 436-050-0195~~230~~, 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 ~~as a self-insured~~ or cancel the self-insurance coverage of ~~for~~ any ~~legal~~ entity included under its ~~the~~ self-insurance certification:~~,~~

(a) ~~t~~The employer must ~~make~~submit a written request to the director.~~. Such a request must be submitted at least 60 days prior to the desired date of cancellation~~ The request must ~~and~~ include~~e~~:

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

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

(~~c~~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;~~.~~

(~~3~~c) If the self-insured employer will continue to have subject workers after the cancellation date t~~, t~~he employer must provide the director, ~~prior to~~before the desired date of cancellation, one of the following:

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

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

(~~c~~C) An assigned risk binder that demonstrates compliance with ORS 656.052; and~~.~~

(~~4~~d) If the self-insured employer fails to provide the director evidence of ~~subsequent~~ coverage under ~~section~~ subsection (~~3~~c) ~~prior to~~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.

(~~5~~3) Responsibility for processing claims.

If a workers' compensation insurance policy is in effect and an active self insurance certification is on file with the director for the same employer for the same time period, the self- insured employer has the responsibility of processing claims occurring during the time period as provided under the self insurance certification.

(~~6~~4) Revocation of self-insurance certification.

The director may revoke t~~T~~he self-insurance certification of any self-insured ~~self-insured~~ employer that ~~may be revoked if:~~

~~(a) The employer f~~fails to comply with ORS 656.407, ~~or~~ 656.430 and these rules ~~applicable rules~~;

~~(b) The employer d~~defaults~~,~~ under ORS 656.443; or

~~(c) The employer c~~commits any violation for which a civil penalty could be assessed under ORS 656.745.

~~(7)~~ Except as provided in O~~AR 436-050-0170 (9)~~RS 656.430(9), notice of certificate revocation will be issued in accordance with the provisions of ORS 656.440.

Statutory authority: ORS ~~656.704 and~~ 656.726(4)
Statutes implemented: ORS 656.434 and 656.440
Hist: Amended 8/15/14 as WCD Admin. Order 14-059, eff. 9/15/14
Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf

436-050-0205 Notice of Self-Insurer's Personal Elections

When a person makes an election under ORS 656.039, 656.128, or 656.140, the self-insured must notify the director in writing of the election and of any cancellation of the election within 30 days of the effective date.

Statutory authority: ORS ~~656.704 and~~ 656.726(4)
Statutes implemented: ORS 656.039, 656.128 and 656.140
Hist: Amended 10/4/12 as WCD Admin. Order 12-056, eff. 1/1/13
Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf

436-050-0210 Notice of Self-Insurer's Place of Business in State; Records Self-Insured Must Keep in Oregon

(1) Claims processing location.

Every ~~employer certified as a~~ self-insured employer ~~must give the director notice of the location, mailing address, telephone number, and any other contact information of at least one location in this state where claims will be processed and claim records kept as well as other records as required by this rule and OAR 436-050-0220.~~is subject to the following:

(a) The self-insured employer may not process and maintain records of claims subject to ORS chapter 656 at any location outside of this state;

(A) The self-insured employer may receive claims reports at locations outside of the state as long as claims are forwarded to an Oregon location for processing; and

(B) The act of making payment may be done from outside of the state as directed from the Oregon place of business;

(b) The self-insured employer may not have more than three locations at any time where its claims are processed or its claims records are maintained. The self-insured employer must count each physical location where its claims are processed or its records maintained as one location;

(c) The self-insured employer must give the director notice of the location, mailing address, telephone number, email address, and any other contact information requested by the director, of any location in this state where the self-insured employer processes claims and keeps written records of claims upon application for certification~~.~~;

~~The employer may not have at any one time more than three locations where claims are processed or records are maintained.~~

(A) The information provided to the director in the notice must reasonably lead an inquirer to:

(i) A person who can respond to inquiries as to workers' compensation coverage, claim filing, and claims processing location information; and

(ii) An Oregon certified claims examiner who can respond to reasonable claims processing inquiries within 48 hours, not including weekends or legal holidays;

(~~2~~B) The ~~N~~notice ~~under section (1) of this rule~~ must include:

(i) ~~c~~Contact information for a designated person or position within the company who will assure payment of penalties and resolution of collections issues resulting from orders issued by the director; and~~.~~

(ii) A company email address that is monitored on a regular basis, where the director can direct general inquiries.

(~~3~~2) Service companies.

~~With the approval of the director, a~~ A self-insured employer may use one or more service companies as authorized by ORS 656.455 instead of establishing its own place of business in this state under the following conditions: ~~.~~

(a) To ~~obtain approval or to~~ change or add service ~~locations~~companies, the self-insured employer must file with the director a copy of the agreement entered into between the self-insured employer and each service company, and must give the director notice of the location, mailing address, telephone number, and any other contact information of each service company~~.~~;

(b) The director must approve the agreement between the self-insured employer and each service company before the service company begins processing the self-insured employers claims, regardless of the processing effective date established in the agreement;

(c) To be approved, the service agreement must:

(A) Be between the self-insured employer and a service company that is incorporated in or authorized to do business in Oregon, and must not be between any other third parties; and

(B) Identify the self-insured employer by company name and specify the self-insured employer's legal or assumed business name as registered with the Oregon Secretary of State;

(C) Identify the service company by name;

(D) Grant the service company a power of attorney to act for the self-insured employer in workers' compensation coverage and claims proceedings under ORS chapter 656; and

(E) Contain only those provisions for workers' compensation activities that are allowed in Oregon. The director may approve an agreement that contains provisions for activities not allowed in Oregon if the agreement or an addendum provides that any services or provisions not allowed under Oregon workers' compensation law will not be applied when processing Oregon claims. The director may require existing agreements that contain provisions for activities not allowed in Oregon to be amended accordingly; and

(d) The self-insured employer must count each service company that processes the self-insured employer's claims as one of the eight claims processing locations allowed under subsection (1)(b) of this rule. Each service company at a physical location must be counted as a separate claims processing location.

(~~4~~3) Changes in contact information.

If a self-insured employer~~'s~~ or its service company~~'s~~ will change its primary place of business or contact information ~~will change~~, the self-insured employer must notify the director of the new location, mailing address, telephone number, email address and any other contact information at least 30 days before the effective date of the change.

(~~5~~4) Change in claims processing locations.

~~When~~ If a self-insured employer changes claims processing locations, service companies, or self-administration~~,~~ :

(a) At least 10 days before the change is effective, ~~the~~ the employer must provide notice of the change, including the name of a contact person, telephone number, email address and mailing address of the new claim processor ~~at least 10 days prior notice~~ to:

(~~a~~A) Any ~~W~~workers~~s~~, or the estate of any deceased worker, who has an ~~with~~ open or active claim~~s~~ that will be processed at the new location~~,~~ ;

(B) Each worker's~~their~~ attorney~~s~~, if any~~,~~;

(C) Each worker's ~~and~~ attending physician~~s~~; and

(D) Any beneficiaries receiving benefits under the claims~~. The notice must provide the name of a contact person, telephone number, and mailing address of the new claim processor~~;

(b) At least 10 days before the change is effective, the employer must provide notice to ~~T~~the director of which claims will be transferred. The notice to the director must include:

(A) ~~Contact information for both the sending processor and receiving processor of the claims to include a~~ A contact person, telephone number, email address, and mailing address~~, and~~ for both the sending processor and receiving processor of the claims;

(B) The physical address where the claims ~~are to~~will be processed;

(~~B~~C) Verification of whether the claims to be transferred include closed claims; ~~and~~

(~~C~~D) If only a portion of the self-insured employer's claims will be transferred, ~~A~~ a listing of the claims being transferred that identifies:

(i) ~~the sending processor's claim number,~~ The claimant's name~~,~~; ~~and~~

(ii) The date of injury~~.~~; and

(iii) The sending processor's claim number; and

(E) Any other information requested by the director; and

(c) If the self-insured employer does not provide notice as required by this section, the director may assess civil penalties against the employer.

(~~6~~5) In-state activities.

For the purpose of this rule, those activities conducted at designated in-state location~~(s)~~ and by the authorized representative~~(s)~~ of the self-insured employer must include, but ~~need not be~~are not limited to:

(a) Processing ~~and keeping complete records of~~ claims for compensation;

(b) Responding to specific claims processing inquiries;

(c) Keeping records required by OAR 436-050-0220;

~~of payments for compensation;~~

~~(d) Keeping records, including records of claims processed by prior service companies, in a written form, not necessarily original form, and making those records available upon request; and,~~

(~~e~~d) Accommodating periodic in-state audits by the director; and

(e) Any other activity necessary to meet the requirements of ORS chapter 656 and OAR chapter 436.~~.~~

~~(7) Written records every self-insured employer is required to keep in this state include, but are not limited to, the records described by OAR 436-050-0220.~~

(~~8~~6) Additional processing locations.

Notwithstanding section (1) of this rule, the director may approve up to two additional claims processing locations, under the following conditions:

(a) ~~if t~~The self-insured employer ~~can show~~must demonstrate:

(~~a~~A) That meeting the requirements of section (1) of this rule will impose a financial or operational hardship on the employer;

(~~b~~B) That such additional locations will result in improved claims processing performance of the employer; and

(~~c~~C) That the auditing functions of the director can be met without unnecessary expense to the director; and~~.~~

(~~9~~b) If, upon ~~review~~ audit, ~~of~~ a self-insured employer's claims processing performance~~, the performance~~ has not remained at the levels as described in OAR 436-060, the approval for additional locations ~~provided in section (6)~~ will be withdrawn.~~.~~

(~~10~~7) Payment location.

Notwithstanding section (1) of this rule, a self-insured employer may, with the prior approval of the director, make compensation payments from a single location other than the designated claims processing location. Approval of such a location may be revoked if at any time:

(a) Timeliness of compensation payment falls below the minimum standards as established in OAR 436-060;

(b) Written record of compensation payments is not available; or

(c) There is not sufficient written documentation to support the issuance of a check for compensation.

(~~11~~8) Maintenance of payroll records.

Notwithstanding section (1) of this rule, a self-insured employer may, with prior approval of the director, have one additional location, in or out of state, for maintaining payroll records pertaining to premium assessments and assessment/contributions.

Statutory authority: ORS 656.455, ~~656.704~~ and 656.726(4)
Statutes implemented: ORS 656.455
Hist: Amended 10/4/12 as WCD Admin. Order 12-056, eff. 1/1/13
Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf

436-050-0220 Records Self-Insured Employer Must Keep in Oregon; Period to be Retained, Removal and Disposition

(1) Claims records self-insured employers must keep in Oregon.

Each self-insured employer is required to keep the following records in this state, and make those records available to the director upon request:

(a) ~~The w~~Written records ~~self-insured employers are required to keep in this state~~ necessary to ensure compliance with ORS 656.506, 656.612, 656.614, and 656.622 including~~e~~:

(~~a~~A) A record of payroll by National Council on Compensation Insurance classification; and

(~~b~~B) Complete records of all assessments, employer and employee contributions, and all such money due the director~~.~~;

(~~2~~b) ~~The self-insured employer must maintain at a place of business in this state those w~~Written records relating to its safety and health program as required by ORS 656.430(10) and OAR 437-001~~.~~;

~~(3) The records of claims for compensation that each self-insured employer is required to keep in this state include, but are not limited to:~~

(~~a~~c) Written records used and relied upon in processing claims;

(~~b~~d) A written record of all payments made as a result of any claim, including documentation of:

(A) The amount of the payment;

(B) ~~t~~The date the payment was issued;

(C) The date payment was mailed or delivered; and~~.~~

(D) ~~Documentation may be the actual mailing date or a~~An explanation of the time period between the date ~~of issuance~~the payment was issued and the date the payment was mail~~ing~~ed or delivered, if any;

(e) A written record of all reimbursements and recoveries received on each claim;

(~~e~~f) A written record ~~as to whether~~of the approval or denial of claims for supplemental temporary disability benefits ~~, as required~~ under ORS 656.210(5)~~ for workers employed in more than one job, were approved or denied; and~~

(~~d~~g) A summary sheet for each claim showing all payments made, separated into disability, medical, and vocational assistance payments ~~with~~ showing all reimbursements made and cumulative totals.

(A) The record of disability payments should be limited to statutory benefits and not include any additional employer obligations.

(B) Expenses must not be included in any of the three columns required on the summary sheet. "Expenses" are defined in National Council on Compensation Insurance, Workers' Compensation Statistical Plan, Part IV(available from NCCI, www.ncci.com, 800-622-4123)~~.~~; and

(h) Written records, or copies of records, of claims processed by prior service companies.

(4~~2~~) Removal of claim records.

A self-insured employer may remove the following records, under the conditions described in this section:

(a) Records of a denied claim may be removed from this state after all the appellate procedures have been exhausted and the denial is final by operation of law.

(~~5~~b) Records of any claim for a compensable injury, including a denied claim that is found to be compensable, may be removed from this state after the expiration of the aggravation rights or not less than one year following the final payment of compensation, whichever is the last to occur.

(~~6~~c) ~~Notwithstanding sections (4) and (5) of this rule, i~~If administrative or judicial review is requested, the claim records may not be removed from this state or disposed of until ~~after either~~ the review is concluded and the time for an appeal from such review has

expired, or at least one year after final payment of compensation has been made, whichever is the last to occur.

~~(7) During administrative or judicial review, if a denied claim is found to be compensable the records of the claim are subject to section (5) of this rule.~~

(~~8~~3) Destruction of claims records.

The self-insured employer may destroy claim records when the self-insured employer can verify that all potential for benefits to the injured worker or the worker's beneficiaries is gone.

(~~9~~4) Retention of payroll records required under this rule.

Payroll ~~R~~records retained ~~as required by~~under section (1)(a) of this rule may be removed from the state or destroyed at the end of three full calendar years after the calendar year in which the money was remitted.

Statutory authority: ORS 656.455, ~~656.704~~ and 656.726(4)
Statutes implemented: ORS 656.455
Hist: Amended 10/4/12 as WCD Admin. Order 12-056, eff. 1/1/13
Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf

436-050-0230 Out-of-State Recordkeeping and Claims Processing by Self-Insured Employer; Conditions and Procedure for Permit; Revocation

(1) Permission to keep records and process claims outside of Oregon.

Notwithstanding OAR 436-050-0220, with the prior approval of the director ~~if~~ a self-insured employer may keep claims records and process claims at a location outside this state, under the following conditions:

(a) ~~wishes to keep the claims records and process claims at a location outside this state, t~~The self-insured employer ~~may~~ must submit a written ~~apply~~ application to the director; ~~for permission to do so.~~

(A) The application ~~shall~~ must contain the reasons for the request and the ~~location,~~ mailing address, telephone number, email address and any other contact information of the location~~where~~ where the records will be kept and the claims processed;~~.~~ and

(B) The application must provide the director contact information for a designated person or position within the company who will assure payment of penalties and resolution of collections issues resulting from orders issued by the director~~.~~, and a company email address that is monitored on a regular basis;

(b) Upon receipt, the director will review the application and notify the employer if the request has been approved or denied. If the ~~that the~~ request has been denied, the director will notify the employer of the reasons for the denial ~~and the reason therefor; or, that the employer will be allowed to process claims from outside this state~~; and~~.~~

(~~2~~c) The director ~~may~~ will not grant permission to ~~the~~ any self-insured employer ~~unless the employer~~that has committed acts or engaged in a course of conduct that would be

grounds for revocation of permission or that are contrary to any of the provisions of ~~section (3) of~~ this rule.~~.~~

(~~3~~2) Requirements.

A self-insured employer that keeps claims records and processes claims at a location outside this state must:

(a) Process claims and make payment of compensation in an accurate and timely manner;

(b) Make reports to the director promptly as required by ORS chapter 656 and the director's administrative rules;

(c) Pay to the director promptly all assessments and other money as it becomes due;

(d) Increase or decrease its security deposit promptly when directed to do so by the director under ORS 656.407(2);~~ and~~

(e) Comply with the rules and orders of the director in processing and paying claims for compensation;~~.~~ and

(f) Provide written records which have been removed from this state to the director as requested within a reasonable time not to exceed 14 days or as otherwise negotiated.

(~~4~~3) Revocation of permission.

After notice given as required by ORS 656.455(2), permission granted under this ~~section~~ rule will be revoked by the director if the employer has committed acts or engaged in a course of conduct that are in violation of any provisions of ~~section (3) of~~ this rule.

~~(5) A self-insured employer must provide written records which have been removed from this state to the director as requested within a reasonable time not to exceed 14 days or as otherwise negotiated.~~

Statutory authority: ORS 656.455,~~ 656.704~~ and 656.726(4)
Statutes implemented: ORS 656.455
Hist: Amended 10/4/12 as WCD Admin. Order 12-056, eff. 1/1/13
Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf

436-050-0260 Qualifications of a Self-Insured Employer Group

The director may certify ~~Five~~ five or more employers ~~may qualify~~ as a self-insured employer group if the employers, as a group, meet all the requirements of this rule.~~:~~

(1) Organization

The employers must be organized as a ~~In~~corporate~~e~~ion or ~~are a~~ cooperative under ORS chapter 60, 62, or 65. If the group is a governmental subdivision, it must have formed a governmental entity as provided under ORS 190.003 to 190.110~~;~~.

(2) Designation of responsible parties.

The employers must ~~Designate~~designate:

(a) A board of trustees; and

(b) An administrator, subject to section (~~10~~9) of this rule~~;~~.

(3) Group net worth requirements.

The employers must ~~D~~demonstrate and maintain:

(a) That the ~~A~~ combined total of the individual members net worth ~~of~~ is at least $3 million; and

(b) For private employer groups, that each individual member's net worth ~~of~~ is at least $150,000. Private employer groups must obtain annual financial data from all members regarding their individual fiscal year-~~-~~end net worth~~;~~.

(4) Excess insurance.

The employers must ~~Have~~obtain excess insurance coverage of the type and amounts approved by the director, including a self-insured retention of at least $300,000~~;~~.

~~**(5)** Demonstrate that accident prevention is likely to improve through self-insurance;~~

(~~6~~5) Claims processing staff.

The employers must establish proof of an ~~Engage an~~ adequate staff ~~under OAR 436-055-0070~~ qualified to process claims~~;~~ by:

(a) Employing and retaining at each claims processing location, at least one claims examiner that is certified under OAR 436-055-0070 to process claims in this state, and is actually involved in the claims processing function; or

(b) Contracting the services of one or more service companies that employ at each claims processing location in this state, at least one claims examiner that is certified under OAR 436-055-0070 to process claims in this state, and that is actually involved in processing the group's claims.

(~~7~~6) Changes in group membership.

The employers must ~~D~~develop a method approved by the director to notify the director of:

(a) The commencement or termination of membership by employers in the group, and the effect on the remaining combined net worth of the employers in the group; and

(b) ~~Whether~~ If ~~an employer~~ member who terminates membership in the group will continue~~s~~ to be a subject employer,~~;~~ and if so, ~~the employer remains a subject employer~~ what arrangements have been made to continue coverage~~;~~.

(~~8~~7) Safety and health loss prevention program.

The employers must ~~E~~establish a safety and health loss prevention program as required by OAR 437-001~~;~~, and demonstrate that accident prevention is likely to improve through self-insurance.

(~~9~~8) Commons claims fund.

If applicable, the employers must ~~C~~create a common claims fund approved by the director under OAR 436-050-0300, or specify that the amount calculated under OAR 436-050-0300(3) or (6) is to be included in the self-insured employer group's security deposit under OAR 436-050-0180.~~;~~

(~~10~~9) Designation of administrative entity.

The employers must ~~D~~designate an entity for the group responsible for centralized claims processing, payroll records, safety requirements, recording and submitting assessments and contributions and making such other reports as the director may require.

(a) For groups consisting of private employer members, the designated entity may not be a member of the group or the group's board, or a trustee for the group.

(b) With the approval of the director, a self-insured employer group may use service companies as authorized by ORS 656.455 instead of establishing its own place of business in this state. To obtain approval or to change or add service locations, the employer group must:

(A) ~~file~~ File, with the director, a copy of the agreement entered into between the employer group and each company~~,~~; and

(B) ~~must g~~Give the director notice of the location, mailing address, telephone number, email address, and any other contact information ~~of~~ for each service company~~;~~.

(1~~1~~0) Proof of financial ability.

Unless exempt under OAR 436-050-0185, the employers must ~~E~~establish proof of financial ability by:

(a) Providing a security deposit that the director determines is acceptable under OAR 436-050-0165, and in an amount determined under OAR 436-050-0180; ~~and~~

(b) Demonstrating financial viability based on factors including, but not limited to:

(A) The group meeting the combined net worth requirements in subsection (3)(a) of this rule;

(B) For private employers that are members of a self-insured group, meeting the individual net worth requirements in subsection (3)(b) of this rule; and

(~~C~~c) Demonstrating acceptable financial strength by maintaining a rating equal to "strong" or "moderate" as determined ~~based on the total combined points for the group's financial ratios, in~~ under section (~~12~~11) and (12) of this rule.

(1~~2~~1) Financial strength analysis.

~~Self-insured employer groups must demonstrate and maintain acceptable financial strength in the following three financial ratios. "Acceptable financial strength" means the group has total combined points for the three ratios equaling "strong" or "moderate" ratings, under section (13) of this rule.~~The financial reports submitted by the self-insured employer group under OAR 436-050-0175(1) must contain information sufficient to calculate the financial ratios described in this section. The points awarded for each ratio will be used to determine the self-insured employer group's financial strength under section (12) of this rule.

(a) For the purposes of calculating the financial ratios under this section:

(A) The face value of a self-insured employer's irrevocable standby letter of credit (ISLOC) used to satisfy the director's requirement for a security deposit, may not be included in the self-insured employer group's reported assets;

(B) **Current assets** include all assets that may be reasonably expected to be converted into cash, or could become the equivalent of cash, within one year in the normal course of business;

(i) **Cash** must include all readily available and unrestricted funds such as bills, coin, or checking account balances. Cash does not include funds held in special deposit or escrow accounts where some degree of legal constraint against their use exists;

(ii) Current assets include, but are not limited to, cash, accounts receivable, inventory, prepaid expenses, and investments, marketable securities and bonds that mature within one year or may be converted to cash without penalties or fees; and

(iii) Current assets must not include fixed assets, accumulated depreciation, intangible assets, or investments, marketable securities, or bonds with maturity dates of one year or longer;

(C) **Current liabilities** are debts and obligations expected to be due within the next year;

(i) Examples of such liabilities include accounts payable, notes payable, accrued taxes, and wages and salaries owed to workers; and

(ii) Current liabilities do not include debts or claims on assets that will be due a year or more in the future or long-term liabilities intended to provide more permanent funds for the business, including bank loans and long-term bonds;

(D) **Earned contributions** are the net revenues from group members' contributions;

(i) Financial statements and reports may otherwise refer to this component as net premium, member contributions, or operating revenue; and

(ii) At the director's discretion, excess insurance premiums may be deducted from earned contributions when there is a reasonable likelihood of performance by the excess insurance carrier; and

(E) **Adjusted net worth** is the net worth reported in the financial statement of the self-insured employer group less disallowed assets;

(i) Disallowed assets are prepaid expenses, inventory, and accounts receivable over 90 days old; and

(ii) Financial statements and reports may otherwise refer to adjusted net worth as net position, net assets, surplus, owner's equity, or shareholders' equity. The adjusted net worth is the total assets minus the sum of the total liabilities and the disallowed assets.

(~~a~~b) The **current ratio** ~~equals~~ is calculated by dividing current assets ~~divided~~ by current liabilities.

~~(A) For purposes of calculating this ratio:~~

~~(i) Current assets identified in the financial statements and reports provided annually to the director under OAR 436-050-0175(1) through (3) must reasonably be expected to be converted into cash, or could become the equivalent of cash, within one year in the normal course of business. Examples of such assets include readily available cash, investments, marketable securities, and bonds where maturity occurs within one year and their value upon conversion to cash is not reduced by penalties or fees, accounts receivable, inventory, and prepaid expenses. Current assets must not include fixed assets, accumulated depreciation, intangible assets, or investments, marketable securities, or bonds with maturity dates of one year or longer.~~

~~(ii) The face value of a self-insured group's irrevocable standby letter of credit (ISLOC) used to satisfy the director's requirement for a security deposit must not be included in the self-insured group's reported assets, since funds provided by an ISLOC are not construed to be an asset of the group under OAR 436-050-0165(2)(a)(J) and the required language in the ISLOC, Form 440-3640.~~

~~(iii) Current liabilities identified in the financial statements and reports provided annually to the director under OAR 436-050-0175(1) through (3) are obligations expected to be due within the next year. Examples of such liabilities include accounts payable, notes payable, accrued taxes, and wages and salaries owed to workers. Current liabilities must not include debts or claims on assets that will be due a year or more in the future or longer-term liabilities intended to provide more permanent funds for the business, including bank loans and long-term bonds.~~

~~(B)~~ A maximum of six points are possible for ~~this~~ the current ratio, ~~with a 2:1 ratio the desired standard. Points for the current ratio are determined~~to be awarded as follows:

Ratio		**Points**
At least 2 ~~:1~~	=	6 points
At least 1.75 ~~:1~~	=	5 points
At least 1.6 ~~:1~~	=	4 points
At least 1.4 ~~:1~~	=	3 points
At least 1.25 ~~:1~~	=	2 points
At least 1 ~~.1:1~~	=	1 point
~~At least~~Less than 1 ~~:1~~	=	0 points

(~~b~~c) The ~~**liquidity**~~ **cash ratio** is calculated by ~~equals~~ dividing cash ~~divided~~ by current liabilities.

~~(A) For purposes of calculating this ratio:~~

~~(i) Cash identified in the financial statements and reports provided annually to the director under OAR 436-050-0175(1) through (3) must include all readily available funds such as bills, coin, or checking account balances. Cash funds exclude those held in~~

~~special deposit or escrow accounts where some degree of legal constraint against their use exists.~~

~~(ii) Current liabilities identified in the financial statements and reports provided annually to the director under OAR 436-050-0175(1) through (3) are obligations expected to be due within the next year. Examples of such liabilities include accounts payable, notes payable, accrued taxes, and wages and salaries owed to workers. Current liabilities must not include debts or claims on assets that will be due a year or more in the future or longer-term liabilities intended to provide more permanent funds for the business, including bank loans and long-term bonds.~~

~~(B)~~ A maximum of six points are possible for ~~this~~ the cash ratio, ~~ratio, with 40% the desired standard. Points for the liquidity ratio are determined~~to be awarded as follows:

Ratio		**Points**
At least 50%	=	6 points
At least 40%	=	5 points
At least 30%	=	4 points
At least 25%	=	3 points
At least 20%	=	2 points
At least 10%	=	1 point
At least 5%	=	0 points

(~~c~~d) The **premium-to-surplus ratio** is calculated by dividing ~~equals~~ earned contributions ~~divided~~ by the group's adjusted net worth.

~~(A) For purposes of calculating this ratio:~~

~~(i) Earned contributions identified in the financial statements and reports provided annually to the director under OAR 436-050-0175(1) through (3) are the net revenues from group members' contributions. Financial statements and reports may otherwise refer to this component as net premium, member contributions, or operating revenue. At the director's discretion, excess insurance premiums may be deducted from earned contributions when there is a reasonable likelihood of performance by the excess insurance carrier.~~

~~(ii) Adjusted net worth is the net worth identified in the certified statement provided annually to the director under OAR 436-050-0175(4)(a) less disallowed assets, which are prepaid expenses, inventory, and accounts receivable over 90 days old. Financial statements and reports may otherwise refer to net worth as net position, net assets, surplus, owner's equity, or shareholders' equity. The adjusted net worth is the total assets minus the sum of the total liabilities and the disallowed assets.~~

~~(B)~~ A maximum of six points are possible for ~~this~~ the premium-to-surplus ratio, ~~, with up to 1.00 the desired standard. Points for the premium to surplus ratio are determined~~to be awarded as follows:

Ratio		**Points**
~~0.00 – 0.99~~Less than 1	=	6 points
~~1.00 – 1.49~~Less than 1.5	=	5 points
~~1.50 – 1.99~~Less than 2	=	4 points
~~2.00 – 2.24~~Less than 2.25	=	3 points
~~2.25 – 2.49~~Less than2.5	=	2 points
~~2.50 – 2.74~~Less than 2.75	=	1 point
2.75 ~~and over~~or more	=	0 points

(~~13~~12) Rating of financial strength.

~~The sum of the three ratios equals a maximum of 18 points.~~ Tha~~t~~e self-insured employer group's financial strength will be rated based on the sum of the points awarded under section (11) of this rule. ~~determines the rating for a self-insured employer group's financial strength and the potential consequences, as follows:~~

(a) A sum of 13 to 18 points is equal to a~~:~~ **strong** rating~~.~~:

(A) ~~Based on meeting all requirements of this rule,~~T~~ t~~he director will approve initial or continued self-insured group certification if the group meets all the requirements of this rule; and~~.~~

(B) The group's security deposit amount will be determined based on OAR 436-050-0180-(1) ~~through~~ or (3)~~.~~;

(b) A sum of 7 to 12 points~~:~~ is equal to a **moderate** rating~~.~~:

(A) ~~Based on meeting all requirements of this rule, t~~The director will approve initial or continued self-insured group certification if the group meets all the requirements of this rule~~.~~; and

(B) The group's security deposit amount will be determined based on OAR 436-050-0180(1) and (2), or (3); and

~~The director will increase the security deposit amount calculated in OAR 436-050-0180 (1) through (3) by the percentage factor indicated for the sum of the group's ratio points, under section (4) of that rule.~~

(c) A sum of 0 to 6 points~~:~~ is equal to a **weak** rating~~.~~:

(A) The director ~~will~~ may not approve the application for initial self-insured employer group certification~~.~~;

(B) For an existing certified self-insured employer group, the director may:

(~~A~~i) Provide the group notice of the director's intent to revoke its self-insurance certification under OAR 436-050-0340(1); or

(~~B~~ii) Increase the security deposit calculated in OAR 436-050-0180 by an amount based on factors including, but not limited to, t~~:~~

~~(i) T~~he considerations identified in OAR 436-050-0180(~~3~~4);

~~or~~

(iii) Allow the amount of the security deposit to be determined based on a certified actuarial study under OAR 436-050-0180(3); or

(iv) ~~(ii) T~~Request that the group submit~~he determination that~~ a financial correction plan ~~submitted by the group~~that demonstrates the group's ability to improve its ~~improve its financial viability sufficient to achieve the moderate financial~~ rating, in ~~subsection (b) of this rule in~~ a reasonable time period, ~~and~~ without hampering the group's ability to pay compensation and other amounts due under ORS chapter 656; or ~~.~~

(C) The director may request additional information or financial reports to verify the employer's financial strength.

(~~14~~13) Compliance with rules.

The employer group must ~~C~~comply with the requirements of ORS chapter 656 and OAR chapter 436~~-050-0165, 436-050-0170, 436-050-0175, 436-050-0180, 436-050-195, 436-050-0200, 436-050-0205, 436-050-0210 and 436-050-0220. Failure to comply with these requirements will result in the actions prescribed in those rules~~.

(~~15~~14) Claims processing location.

The ~~Every~~ self-insured employer group must maintain at least one place of business in this state where the member's claims will be processed and ~~employer processes claims, keeps~~ written records of claims and other records kept as required by OAR 436-050-0210 ~~to~~ and 436-050-0220.

(~~16~~15) Failure to maintain qualifications.

The employer group and its members must maintain the qualifications required under this rule.

(a) Failure of a private employer that is a member of a self-insured employer group to maintain individual net worth of at least $150,000 will result in cancellation of that member's participation in the group~~,~~ under OAR 436-050-0290.

(~~17~~b) Failure of a certified self-insured employer group to maintain the qualifications required in this rule will result in revocation of the self-insured employer group's certification. If the director intends to revoke the self-insured employer group's certification:

(A) The director ~~group~~ will ~~be~~ give~~en~~ the group 30 days written notice of the intent to revoke the self-insured certification~~,~~;

(B) The revocation will ~~to~~ be effective 30 days from the date ~~of receipt~~the group receives ~~of~~ the revocation notice; and ~~.~~

(C) If the self-insured employer group complies with the qualification requirements within the 30-day period, the revocation will be canceled and the certification will remain in effect.

Statutory authority: ORS 656.407, 656.430, ~~656.704~~ and 656.726(4)
Statutes implemented: ORS 656.407 and 656.430
Hist: Amended 8/15/14 as WCD Admin. Order 14-059, eff. 9/15/14
Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf

436-050-0270 Applying for Certification as a Self-Insured Employer Group: Private Employers

(1) Employers applying for certification as a self-insured employer group must submit:

(a) A completed Form 1867, "Application to Become a Self-Insured Employer Group: Private Employers;" ~~(Form 440-1867);~~

(b) Proof in the form of a certificate from the Secretary of State's Corporation Division showing the employer group as a corporation or cooperative;

(c) A copy of the bylaws or corporate minutes ~~which~~ that include:

(A) Designation of specific individuals as trustees for the corporation or cooperative;

(B) Naming an administrator to administer the financial affairs of the group who may not be a member of the group or the group's board, or a trustee for the group; and

(C) The criteria ~~utilized~~ used by the trustees and administrator when approving applications for new membership and requests for withdrawal by members of the group;

(d) A copy of the fidelity bond ~~furnished~~ provided to the group by the administrator or a copy of the comprehensive crime policy obtained by the group, in an amount sufficient to protect the group against the misappropriation or misuse of any moneys or securities;

(e) ~~A~~ The current financial statements of each member making application demonstrating ~~which shows~~ that the members meet the requirements of OAR 436-050-0260~~individual net worth of at least $150,000 and taken collectively shows the following:~~

~~(A) A combined net worth of all members making application for coverage of at least $3 million; and~~

~~(B) Working capital in an amount establishing financial strength, liquidity, and viability of the business, based on OAR 436-050-0260~~;

(f) An individual report by employer showing the employer's payroll by class and description and loss information for the last four calendar years;

(g) A completed Form 1866, "Group Self-Insured Indemnity Agreement," ~~(Form 440-1866),~~ or another form authorized by the director, that jointly and severally binds each member for the payment of any compensation and moneys due to the director by the group or any member of the group. Government subdivisions do not need to submit this agreement;

(h) Evidence of a safety and health loss prevention program designed to demonstrate that accident prevention will improve due to self-insurance;

(i) Proof of an adequate staff qualified to process claims ~~by:~~under OAR 436-050-0260(5);

(j) If applicable, a service agreement between the employer and service company that has been signed by both parties that meets the requirements of OAR 436-050-0210(2). The agreement must:

(A) Be submitted at least 14 days before the desired date of certification, and approved by the director before the service company begins processing claims, regardless of the effective date established in the agreement; and

(B) Contain the location, mailing address, telephone number, and any other contact information of the service company;

~~(A) Employing and retaining at each claims processing location, at least one person that is actually involved in the claims processing function and is qualified in accordance with OAR 436-055-0070; or~~

~~(B) Contracting the services of one or more service companies that employ, at each claims processing location, at least one person that is qualified in accordance with OAR 436-055-0070 and is actually involved in the self-insured employer's claims processing. If one or more service companies are used, a service agreement between the employer group and each service company, that meets the requirements of OAR 436-050-0260(10), must be submitted for approval of the director;~~

(~~j~~k) The type, retention and limitation levels of excess insurance the employers as a group are planning to obtain in accordance with OAR 436-050-0170;

(~~k~~l) A procedure for notifying the director of:

(A) The commencement or termination of employers within the group and the effect on the remaining combined net worth of the group; and

(B) Arrangements made by an employer leaving the group to continue insurance coverage.

(~~l~~m) A program whereby each employer within the group contributes to a common claims fund in accordance with OAR 436-050-0300~~;~~, ~~and~~or specification if the amount calculated under OAR 436-050-0300(3) or (6) is to be included in the self-insured employer group's security deposit; and

(~~m~~n) The type of security deposit the employer group wishes to provide, with appropriate justification.

(2) Audited financial statements.

Notwithstanding subsection (1)(e) of this rule, the director may require an audited financial statement before considering an application by a group for self-insurance.

(3) Review of application.

Within 60 days of receipt of all information required ~~in~~ under~~section~~ ~~(1) of~~ this rule, the director will review the application and notify the employer group that the request for certification as a self-insured employer group is approved or denied: ~~and~~

(a) If the request is denied, the employers will be notified of the reasons for denial~~therefore~~; or~~,~~

(b) If ~~that~~ the request is approved, ~~group is qualified as a self-insured employer group. T~~the notice ~~must~~ will include:

(~~a~~A) The amount of security deposit required;

(~~b~~B) Approval of the type, retention and limitation levels of the excess insurance as determined under OAR 436-050-0170; and

~~(c) The type, retention and limitation levels of excess insurance required.~~

(C) Approval of the service agreement submitted under subsection (1)(j) of this rule.

(4) Issuance of certification.

If approved, ~~The~~ the certification of self-insurance will be issued upon receipt of the security deposit and the appropriate excess insurance binder.

~~(5) Unless a later date is specified by the applicant, t~~The effective date of certification will be the first day of the month following the date the certification is issued, or a later date specified by the applicant ~~date the requirements of section (4) of this rule are met~~.

Statutory authority: ORS 656.407, 656.430, ~~656.704~~ and 656.726(4)
Statutes implemented: ORS 656.407 and 656.430
Hist: Amended 8/15/14 as WCD Admin. Order 14-059, eff. 9/15/14
Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf

436-050-0280 Applying for Certification as a Self-Insured Employer Group: Governmental Subdivisions

(1) Required information.

Governmental subdivisions applying for certification as a self-insured employer group must submit:

(a) ~~An application for the group applying for self-insurance in a form and format prescribed by the director;~~A completed Form 1867, "Application to Become a Self-Insured Employer Group;"

(b) Proof that the governmental subdivisions have formed an intergovernmental entity as provided under ORS 190.003 to 190.110;

(c) An intergovernmental agreement ~~which~~ that includes:

(A) Designation of specific individuals as trustees for the group and naming an administrator to administer the financial affairs of the group; and

(B) The criteria to be used by the trustees and administrator when approving applications for new membership and requests for withdrawal by members of the group;

(d) A copy of the fidelity bond ~~furnished~~ provided to the group by the administrator or a copy of the comprehensive crime policy obtained by the group, in an amount sufficient to protect the group against the misappropriation or misuse of any moneys or securities;

(e) ~~A~~ The current financial statements of each member making application, ~~which~~ demonstrating ~~taken collectively shows~~ the members meet the combined net worth requirement under OAR 436-050-0260~~of all members making application for coverage must not be less than $3 million~~;

(f) An individual report by employer showing the governmental subdivision's payroll by class and description and loss information for the last four calendar years;

(g) A resolution by the governing body of each governmental subdivision binding it to be liable for the payment of any compensation and other amounts due to the director under ORS Chapter 656 incurred by that governmental subdivision during the period of group self-insurance;

(h) Evidence of a safety and health loss prevention program designed to demonstrate that accident prevention will improve due to self-insurance;

(i) Proof of an adequate staff qualified to process claims ~~by~~under OAR 436-050-0260(5);

~~:~~

~~(A) Employing and retaining at each claims processing location, at least one person that is actually involved in the claims processing function and is qualified in accordance with OAR 436-055-0070; or~~

~~(B) Contracting the services of one or more service companies that employ, at each claims processing location, at least one person that is actually involved in the self-insured group's claims processing, that is certified in accordance with OAR 436-055-0070. If service companies are used, a service agreement between the group and each service company, that meets the requirements of OAR 436-050-0260(10), must be submitted;~~(j) If applicable, a service agreement between the employer and service company that has been signed by both parties that meets the requirements of OAR 436-050-0210(2). The agreement must:

(A) Be submitted at least 14 days before the desired date of certification, and approved by the director before the service company begins processing claims, regardless of the effective date established in the agreement; and

(B) Contain the location, mailing address, telephone number, and any other contact information of the service company;

(~~j~~k) The type, retention and limitation levels of excess insurance the employers as a group are planning to obtain in accordance with OAR 436-050-0170;

(~~k~~l) A procedure for notifying the director of:

(A) The commencement or termination of governmental subdivisions within the group and the effect on the remaining combined net worth of the group; and

(B) Arrangements made by a governmental subdivision leaving the group to continue insurance coverage;

(~~L~~m) If applicable, A program whereby each employer within the group contributes to a common claims fund ~~in accordance~~under ~~with~~ OAR 436-050-0300, or specification that the amount calculated under OAR 436-050-0300(3) or (6) is to be included in the self-insured employer group's security deposit; and

(~~m~~n) The type and amount of security deposit the group wishes to provide, with appropriate justification. In no case will the security deposit amount be less than $300,000.

(2) Audited or certified financial statements.

Notwithstanding subsection (l)(e) of this rule, the director may require an audited or certified financial statement before considering an application by a group for self-insurance.

(3) Review of application.

Within 60 days of receipt of all information required in section (1) of this rule, the director will review the application and notify the group that the request for certification as a self-insured employer group is approved or denied.

(a) If the request is denied, ~~and~~ the notice will include the reasons ~~therefore~~ for denial; or~~,~~

(b) If the request is approved, ~~that the group is qualified as a self-insured employer group. T~~the notice ~~must~~ will include:

(~~a~~A) The amount of the security deposit required; and

(~~b~~B) Approval of the type, retention and limitation levels of the excess insurance as determined under OAR 436-050-0170; ~~and the type, retention and limitation levels of excess insurance required.~~and

(C) Approval of the service agreement submitted under subsection (1)(j) of this rule.

(4~~4~~) Issuance of certification.

The certification of self-insurance will be issued upon receipt of the security deposit, and the appropriate excess insurance binder ~~and if applicable, a service agreement between the employer and service company that has been signed by both parties~~.

~~(5) Unless a subsequent date is specified by the applicant, t~~The effective date of certification will be the date the certification is issued, or a later date specified by the applicant,.

Statutory authority: ORS 656.407, 656.430, ~~656.704~~ and 656.726(4)
Statutes implemented: ORS 656.407 and 656.430
Hist: Amended 8/15/14 as WCD Admin. Order 14-059, eff. 9/15/14
Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf

436-050-0290 Commencement/Termination /Cancellation of Employers with a Self-Insured Employer Group; Effect on Net Worth; Extension of Coverage; Change in Entity; Change of Address; Recordkeeping

(1) Addition of new members.

Prospective new members of a self-insured employer group must submit an application to the board of trustees, or its administrator. The administrator of a group consisting of private employer members may not be a member of the group. The trustees, or administrator, may approve the application for membership under the bylaws of the self-insured employer group. Once approved, the administrator or board of trustees must submit to the director, within 30 days of the effective date of membership, a completed Form 1869, "Endorsement to Self-Insured Group Application" ~~(440-1869)~~ or a form approved by the director, which must be accompanied by:

(a) A current financial statement of the employer applying;

(b) Evidence of at least $150,000 individual net worth if the prospective new member is a private employer;

(c) An agreement signed by the administrator of the self-insured employer group and the employer, making the employer jointly and severally liable for the payment of any compensation and moneys due to the director by the group or any member of the group; or, if a governmental subdivision self-insured employer group, a resolution by the governing body of each governmental subdivision binding it to be liable for the payment of any compensation and other amounts due to the director under ORS ~~C~~chapter 656 incurred by that governmental subdivision during the period of group self-insurance;

(d) A statement showing the effect on the new combined net worth of the group; and

(e) The employer's payroll by class and description and loss information for the last four fiscal or calendar years.

(2) Incomplete or incorrect submissions.

Incomplete submissions or incorrectly completed endorsements to add new members received by the director will not be considered filed, and the employer will not be included in the self-insurance of the self-insured employer group. Failure to file a correct and complete endorsement with the required supporting documentation within 30 days of the effective date of membership may result in the assessment of civil penalties.

(3) Termination of membership.

Individual employer members may elect to terminate their ~~participation~~ membership in a self-insured group or be subject to cancellation by the group under the bylaws of the group. Groups consisting of private employer members must also cancel the membership of any private employer member that fails to maintain the minimum individual net worth required~~,~~ under OAR 436-050-0260-(1~~6~~5). Such cancellation must occur within 30 days of the group's receipt of the employer member's most recent fiscal year end financial data demonstrating insufficient net worth. The self-insured employer group must submit the following

information to the director no later than 10 days before the effective date of the member's termination or cancellation:

(a) A statement, without disclaimers or qualifying language as to the accuracy of the information provided:

(A) Showing the effect of the employer member's termination or cancellation on the remaining combined net worth of the group; and

(B) Certifying that the group continues to meet the combined net worth requirements in OAR 436-050-0260;

(b) Evidence that the employer member requesting termination or being cancelled has made alternate arrangements for coverage if the employer member continues to employ subject workers;

(c) Evidence that the employer member requesting termination or being cancelled has been provided a written reminder about its potential future liability as described in section (1)(c) of this rule; and

(d) The expected date of cancellation or termination.

(4) Revocation of certification due to change in membership.

~~In the event~~ If the director determines the cancellation or termination of an ~~group~~ employer member adversely affects ~~the net worth of~~ the self-insured employer group to the extent that the group no longer qualifies for self-insurance certification, the director may revoke the self-insured employer group's certification under OAR 436-050-0340(3).

(5) Change in entity.

~~An employer within a group must, if~~ If there is a change in the ~~employing legal~~ entity of an employer member, the employer member must ~~again~~ reapply for membership within the self-insured employer group~~, in accordance with~~ under this rule. A change in ~~legal~~ entity includes, but is not limited to:

(a) ~~When a~~A partner joining~~s~~ or leaving~~es~~ ~~the~~ a partnership;

(b) ~~When~~ A~~the employer is a~~ sole proprietorship, partnership, or corporation, ~~and changes to a sole proprietorship, partnership, or corporation~~changing to another of those ownership structures; or

(c) ~~When a~~An employer selling~~s~~ an existing business to another person~~(s)~~, except in the case of a corporation.

(6) Change in name or address.

An employer ~~within~~member of a group must, within 10 days after there is a change of address or assumed business name, notify the board of trustees or administrator of the change. ~~The administrator or board of trustees must, within 10 days, submit to the director an endorsement as notice of the change.~~

(a) A change of address includes, but is not limited to:

(~~a~~A) Establishment of a new or additional location; or

(~~b~~B) Termination of an existing location.

(b) The administrator or board of trustees must, within 10 days, submit to the director an endorsement as notice of the change.

~~(7)~~ The endorsement ~~required by section (6) of this rule~~ must state specifically which location is being deleted or which is being added~~. It must also~~ and identify if ~~the type of~~ address~~, whether it~~ is the mailing, operating, or the principal place of business of the location.

~~(8)~~(7) Maintenance of coverage records.

The self-insured employer group is responsible for maintaining coverage records relating to each employer member, to include:

(a) The employer member's application for membership in the self-insured employer group, with original signatures;

(b) The employer member's liability agreement under OAR 436-050-0270(1)(g), or resolution under OAR 436-050-0280(1)(g), with original signatures;

(c) Cancellation or termination notices;

(d) Reinstatement applications and notices; and

(e) Records on the ~~whereabouts~~ locations of employers that have been canceled or have terminated their participation in the group.

Statutory authority: ORS ~~656.704 and~~ 656.726(4)
Statutes implemented: ORS 656.434 and 656.440
Hist: Amended 8/15/14 as WCD Admin. Order 14-059, eff. 9/15/14
Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf

436-050-0300 Self-Insured Employer Group, Common Claims Fund

(1) Except for qualified self-insured employer groups approved by the director as exempt from security deposit requirements under OAR 436-050-0185, ~~A~~a self-insured employer group must establish, under the direction and control of the board of trustees and administrator, a common claims fund for the sole purpose of ensuring the availability of funds to make certain the prompt payment of all compensation and all other payments that may become due from such self-insured employer group under the workers' compensation law. This requirement does not apply in any year in which the director applies an incurred but not reported (IBNR) factor of greater than zero percent in the determination of the self-insured employer group's security deposit under OAR 436-050-0180.

(2) The common claims fund must be maintained in an account held by an Oregon state chartered or a federally chartered bank. Government subdivisions certified as a self-insured employer group may also maintain the common claims fund in a "Local Government Investment Pool" account held by the Office of the State Treasurer.

(3) Except as provided in section (6) of this rule, the balance of the common claims fund must be maintained in an amount at least equal to 30 percent of the average of the group's

paid losses for the previous four years. The full sum of the required common claims fund balance must be maintained at all times.

(4) The director may require the self-insured group to increase the amount maintained in the common claims fund.

(5) By March 1 of each year, a self-insured employer group must provide the director with adequate documentation to validate the balance in the common claims fund or notice that the amount calculated ~~in~~ under section (3) or (6) of this rule must be included in the determination of the self-insured employer group's security deposit under OAR 436-050-0180. The director may require a self-insured employer group to provide documentation of the common claims fund balance more frequently.

(6) For governmental subdivisions certified as a self-insured employer group, the balance of the common claims fund must be maintained in an amount at least equal to 60 percent of the average of the group's yearly paid losses for the previous four years.

Statutory authority: ORS ~~656.704 and~~ 656.726(4)
Statutes implemented: ORS 656.430
Hist: Amended 8/15/14 as WCD Admin. Order 14-059, eff. 9/15/14
Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf

436-050-0340 Group Self-Insurance Revocation

Notwithstanding ORS 656.440, the certification of a self-insured employer group may be revoked by the director after giving 30 days notice if:

(1) The employer group does not comply with ORS 656.430(7) or (8), ~~or~~ OAR 436-050-0170 to 436-050-0190, 436-050-0260, or 436-050-~~,~~ ~~0270, 0280,~~ 0290~~, or 0300~~;

(2) There are fewer than five employers within a group;

(3) The net worth of the group falls below that required by OAR 436-050-0260(3);

(4) The employer group defaults in payment of compensation or other payments due the director;

(5) The employer group commits any violation for which a civil penalty could be assessed under ORS 656.745; or

(6) The employer group or any member of the group submits any false or misleading information.

Statutory authority: ORS ~~656.704 and~~ 656.726(4);
Statutes implemented: ORS 656.434 and 656.440
Hist: Amended 8/15/14 as WCD Admin. Order 14-059, eff. 9/15/14
Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf

WORKER LEASING COMPANIES

436-050-0400 Responsibility for Providing Coverage under a Lease Arrangement

(1) Every worker leasing company providing workers to a client must satisfy the requirements of ORS 656.017, 656.407, or 656.419.

(2) Every worker leasing company providing leased workers to a client must also provide workers' compensation insurance coverage for any subject workers of the client, unless the client has an active workers' compensation insurance policy proof of coverage on file with the director or is certified under ORS 656.430 as a self-insured employer. In the latter circumstance, the client's insurer or the self-insured employer will be deemed to provide insurance coverage for all leased workers and subject workers of the client.

(3) If an insured client allows its workers' compensation insurance policy to cancel or does not obtain a renewal of the policy, or if a self-insured client allows its certification to terminate, and the client continues to employ subject workers or has leased workers, the client will be considered a noncomplying employer unless the worker leasing company has made the filing with the director under OAR 436-050-0410(1).

(4) A client can obtain leased workers from only one worker leasing company at a time unless the client has an active workers' compensation insurance policy proof of coverage on file with the director or is certified under ORS 656.430 as a self-insured employer.

(5) A worker leasing company must not provide workers' compensation coverage for another worker leasing company doing business in Oregon whether or not any of the worker leasing companies involved is licensed for worker leasing in Oregon.

(6) A client employer may not obtain workers by contract and for a fee on a non-temporary basis from an unlicensed worker leasing company.

Statutory: ORS ~~656.704,~~ 656.726(4), 656.850 and 656.855
Statutes implemented: ORS 656.850 and 656.855
Hist: Amended 9/17/08 as WCD Admin. Order 08-061, eff. 7/1/09
Amended 10/4/12 as WCD Admin. Order 12-056, eff. 1/1/13
Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf

436-050-0410 Notice to Director of Lease Arrangement; Termination

(1) Within 14 days after the effective date of the lease arrangement or contract, a worker leasing company must file written notice with the director and its insurer, using Form ~~440-~~2465, "Worker Leasing Notice to the Department of Consumer and Business Services," that it is providing leased workers to a client and workers' compensation coverage. The notice must be correct and complete, and must include:

(a) The client's:

(A) Legal name;

(B) FEIN or other tax reporting number;

(C) Type of ownership;

(D) Primary nature of business;

(E) Mailing address; and

(F) Street address in Oregon;

(b) The worker leasing company's:

(A) Legal name;

(B) Mailing address;

(C) FEIN or other tax reporting number;

(D) WCD worker leasing license number, if any;

(E) Workers' compensation insurer's name (or "self-insured");

(F) Effective date of leasing contract;

(G) Contact name and phone number; and

(H) A signature of a representative of the worker leasing company.

(2) A worker leasing company may terminate its obligation to provide workers' compensation coverage by giving to its insurer, its client, and the director written notice of the termination. A notice of termination must state the effective date and hour of termination, but the termination will be effective not less than 30 days after the notice is received by the director. Notice to the client under this section must be given by mail, addressed to the client at its last-known address.

Statutory authority: ORS ~~656.704,~~ 656.726(4), 656.850 and 656.855
Statutes implemented: ORS 656.850 and 656.855
Hist: Amended 11/1/07 as WCD Admin. Order 07-063, eff. 11/28/07
Amended 10/4/12 as WCD Admin. Order 12-056, eff. 1/1/13
Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf

436-050-0420 Temporary Worker Distinguished from Leased Worker

(1) A person who provides a worker to work for a client will be considered to be providing the worker on a "temporary basis" only if there is contemporaneous written documentation that indicates the duration of the work to be performed and that the worker is provided for a client's special situation under ORS 656.850(1)(b). Contemporaneous documentation means documents that are created at the time the temporary service provider and the client employer make the arrangements for placement of the worker. Upon the director's request, the documentation must be provided to the director by either the temporary service provider or the client. Contemporaneous documentation in support of workers being provided on a temporary basis includes one or more of the following conditions:

(a) To cover employee absences or employee leaves, including but not limited to such things as maternity leave, vacation, jury duty, or illness from which the permanent worker will return to work;

(b) To fill a professional skill shortage, including but not limited to, professionals such as engineers, architects, electricians, plumbers, pharmacists, nurses, or other professions, whether licensed or not, to supplement or satisfy a shortage of that skill for a known duration. Supporting documentation may include license information and whether the worker is supplementing or satisfying a client employer's need for the skill;

(c) To staff a seasonal or sporadic increase in workload, indicated by a temporary increase in demand upon an employer's normal workload that requires additional assistance to meet the demand. When the increased demand ends, the additional positions are eliminated. Documentation must include what constitutes the demand establishing why this special situation is beyond the norm;

(d) To staff a special assignment or project outside of the routine activities of the business where the worker will be terminated or assigned to another temporary project upon completion. For example, a construction contractor may need assistance on a construction site to help clear branches and other debris after a windstorm so the regular construction crew can continue its work. Documentation must describe the project and why it is unusual;

(e) To hire a student worker that will be provided and paid by a school district or community college through a work experience program. Documentation must include the name of the school and the work experience program; or

(f) To cover special situations where the worker has a reasonable expectation of transitioning to permanent employment with the client employer and the client employer uses a pre-established probationary period in its overall employment selection program. Documentation must include copies of the client employer's written program or other evidence supporting the pre-established probationary period and overall employment selection program.

(2) If a person provides workers, by contract and for a fee, to work for a client and any such workers are not provided on a "temporary basis," that person will be considered a worker leasing company.

(3) If a person provides both leased workers and workers on a temporary basis, that person must maintain written records that show specifically which workers are provided on a temporary basis. If the written records do not specify which workers are provided on a temporary basis, all workers are deemed to be leased workers.

Statutory authority: ORS ~~656.704,~~ 656.726(4), 656.850 and 656.855
Statutes implemented: ORS 656.850 and 656.855
Hist: Amended 11/1/07 as WCD Admin. Order 07-063, eff. 11/28/07
Amended 10/4/12 as WCD Admin. Order 12-056, eff. 1/1/13
Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf

436-050-0440 Qualifications, Applications, and Renewals for License as a Worker Leasing Company

(1) Each person applying for initial license or renewal as a worker leasing company must:

(a) Be either an Oregon corporation or other legal entity registered with the Oregon Secretary of State, Corporations Division to conduct business in this state;

(b) Maintain workers' compensation coverage under ORS 656.017; and

(c) Upon application approval and ~~prior to~~before licensure, pay the required licensing fee of $2,050.

(2) Each person applying for initial license or renewal as a worker leasing company must submit a completed Form 2466,~~an~~ "Application for Oregon Worker Leasing License~~ Form 440-2466~~." The form and accompanying documentation must include:

(a) Legal name;

(b) Mailing address;

(c) In-state and out-of-state phone numbers;

(d) FEIN or other tax reporting number;

(e) Type of business;

(f) Physical address for Oregon principal place of business;

(g) Assumed business names;

(h) Name of workers' compensation insurer (or "self-insured") and policy number;

(i) Name~~(s)~~ and contact information of the representative~~(s)~~ at the Oregon location~~(s)~~;

(j) List of controlling persons, and in the case of privately held entities all owners, including their names, titles, residence addresses, telephone numbers, email addresses, and dates of birth;

(k) For a person applying for an initial license, a list of all states where the person operates as a leasing company or professional employer organization (PEO), copies of licenses, registrations, recognitions, or certifications from states that require those actions, and a verifiable statement that the remaining states of operation, if any, do not require licensure, registration, recognition, or certification to provide worker leasing or PEO services;

(l) Verification of compliance with tax laws from Oregon Employment Department, Oregon Department of Revenue, and the Internal Revenue Service, using Attachments A, B, and C of Form ~~440-~~2466~~, the worker leasing license application~~;

(m) A record of any present or prior experience of providing workers by contract and for a fee in any state, by the person or any controlling person, and an explanation of that experience;

(n) A record of any bankruptcies, liens, or any actions involving or demonstrating dishonesty or misrepresentation, including but not limited to: fraud, theft, burglary, embezzlement, deception, perjury, forgery, counterfeiting, bribery, extortion, money laundering, or securities, investments, or insurance violations on the part of the person or any controlling person. Records of such actions must include:

(A) Charges, guilty pleas, or pleas of no contest;

(B)Criminal convictions;

(C)Lawsuits;

(D) Judgments; or

(E) Discharges or permitted resignations based on allegations of these actions.

(o) Full details regarding any bankruptcy, liens, or action under subsection (n)~~ of this section~~, including:

(A) The nature and dates of the action~~(s)~~;

(B) Outcomes, sentences, and conditions imposed;

(C) Name and location of the court or jurisdiction in which any proceedings were held or are pending, and the dates of the proceedings; and

(D) The designation and license number for any actions against a license;

(p) Full details of any administrative actions against the person by a regulatory agency of any state regarding matters listed in subsection ~~(2)~~(n) or worker leasing activities;

(q) A plan of operation that demonstrates how the worker leasing company will meet the requirements of ORS chapter 654, The Oregon Safe Employment Act;

(r) A plan of operation that demonstrates how the worker leasing company will collect and report the information necessary to establish each client's separate experience rating to the insurer providing workers' compensation coverage for each client, or to the National Council on Compensation Insurance for a self-insured worker leasing company and

(s) A notarized signature of an authorized representative of the applicant.

(3) The director may request additional information to further clarify the information and documentation submitted with the application. Under ORS 656.850(2), no person may perform services as a worker leasing company in Oregon without first being licensed to do so.

(4) The director will review complete applications, and may conduct a background investigation of the person applying for a license, an owner, or any controlling person. Information learned through a background investigation, or other information submitted during the application process, may be the basis for the director to refuse to issue or renew a license, or to disqualify the person from making further application.

(5) If the application is approved, the director will issue a license. Each license issued under these rules will automatically expire two years after the date of issuance unless renewed by the licensee. To renew a license, the worker leasing company must submit a renewal application to the director at least 90 days before the expiration of the current worker leasing license. Any supplemental material, whether requested by the director or submitted by the worker leasing company to establish a complete application, must be received by the director at least 45 days before expiration of the current license.

(6) The director may refuse to issue or renew a license or may disqualify a person, controlling person, or worker leasing company from applying for a license in the future for misrepresentation, failure to meet any of the requirements of ORS 656.850, 656.855, or these rules, or for reasons including, but not limited to:

(a) Denial of a previous application for, or prior suspension or revocation of, a worker leasing license by the director;

(b) Denial, suspension, or revocation of a license, registration, or certification, or other discipline by any governmental agency or entity;

(c) Having exercised authority, control, or decision-making responsibility concerning any worker leasing company at the time that company had its authorization to provide worker leasing services denied, suspended, revoked, or restricted;

(d) Having been the subject of an order, adverse to the person, controlling person, or worker leasing company, by any governmental agency or entity in connection with any worker leasing activity;

(e) Having been found by any governmental agency or entity to have made a false or misleading statement, material misrepresentation, or material omission, or to have failed to disclose material facts;

(f) Violations of worker leasing statutes or regulations;

(g) Failure to establish minimum experience, training, or education that demonstrates competency in providing worker leasing services;

(h) Having been the subject of a complaint, investigation, or proceeding related to an action in subsection (2)(n) of this rule;

(i) Having been charged with, convicted of, or pleaded guilty or no contest to any felony or misdemeanor specified in subsection (2)(n) of this rule; or

(j) Having failed to provide documents the director has requested.

(7) "Disqualification," as used in this rule, means a person or a prospective worker leasing company may reapply no sooner than two years from the disqualification date.

(8) A disqualification may apply to any new worker leasing company created through the sale, transfer, or conveyance of ownership or of the worker leasing company's assets to another person, owner, or controlling person.

(9) A person may appeal the director's refusal to approve and issue or renew a license, or a disqualification, under this rule as provided in OAR 436-050-0008 and OAR 436-001.

Statutory authority: ORS ~~656.704,~~ 656.726(4), 656.850 and 656.855
Statutes implemented: ORS 656.850 and 656.855
Hist: Amended 11/1/07 as WCD Admin. Order 07-063, eff. 11/28/07
Amended 10/4/12 as WCD Admin. Order 12-056, eff. 1/1/13
Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf

436-050-0450 Recordkeeping and Reporting Requirements

(1) Every licensed worker leasing company must give notice to the director of one Oregon location where Oregon leasing records are kept and made available for review by the director. The notice must include the physical address, mailing address, telephone number, and any other contact information in this state.

(2) Every licensed worker leasing company must have at least one representative of the worker leasing company at the Oregon location authorized to respond to inquiries and make records available by the date specified in the director's request or demand for information regarding leasing arrangements and client contracts.

(3) The following records must be kept and made available for review at the Oregon location:

(a) Copies of signed worker leasing notices for the most recent three years;

(b) Copies of signed notices of termination of leasing arrangements for the most recent three years;

(c) Copies of signed contracts between the worker leasing company and clients for the most recent three years; and

(d) Payroll records for the most recent seven years for all workers that identify leased workers subject to coverage by the worker leasing company; leased workers not subject to coverage by the worker leasing company; and, written records for all regular and temporary employees of the worker leasing company.

(4) The worker leasing company must notify the director within 30 days of the effective date of a change in any items listed in OAR 436-050-0440(2).

Statutory authority: ORS ~~656.704,~~ 656.726(4), 656.850 and 656.855
Statutes implemented: ORS 656.850 and 656.855
Hist: Amended 11/1/07 as WCD Admin. Order 07-063, eff. 11/28/07
Amended 10/4/12 as WCD Admin. Order 12-056, eff. 1/1/13
Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf

436-050-0455 Reporting Requirements of a Self-Insured Worker Leasing Company

(1) A self-insured worker leasing company must maintain and report to the National Council on Compensation Insurance separate statistical data for each client whose coverage is provided by the self-insured employer. Reporting must be according to the uniform statistical plan prescribed by the director according to ORS 737.225(4).

(2) Records relating to the client statistical data for self-insured worker leasing companies must be made available for review by the National Council on Compensation Insurance upon request.

Statutory authority: ORS ~~656.704,~~ 656.726(4), 656.850 and 656.855
Statutes implemented: ORS 656.850 and 656.855
Hist: Amended 11/1/07 as WCD Admin. Order 07-063, eff. 11/28/07
Amended 10/4/12 as WCD Admin. Order 12-056, eff. 1/1/13
Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf

436-050-0460 Suspension or Revocation of License

(1) Reasons for suspension or revocation of a worker leasing license include, but are not limited to:

(a) Insolvency, whether the worker leasing company's liabilities exceed their assets or the worker leasing company cannot meet its financial obligations;

(b) Judgments against or convictions, within the last ten years, of any worker leasing company or controlling person for the reasons identified in OAR 436-050-0440(2)(n);

(c) Administrative actions involving worker leasing activities resulting from failure to comply with the requirements of any state;

(d) Nonpayment of taxes, fees, assessments, or any other ~~monies~~ moneys due the State of Oregon;

(e) If the worker leasing company or controlling person has failed to comply with any provisions of ORS chapters 654, 656, 659, 659A, 731 or 737; or any provisions of these rules; or

(f) If the worker leasing company or controlling person is permanently or temporarily enjoined by a court from engaging in or continuing any conduct or practice involving any aspect of the worker leasing business.

(2) For the purposes of this rule:

(a) "Suspension" means a stopping by the director of the worker leasing company's or controlling person's authority to provide leased workers to clients for a specified period of time. A suspension may be in effect for a period of up to two years. When the suspension expires, the worker leasing company or controlling person may petition the director to resume its worker leasing company activities.

(b) "Revocation" means a permanent stopping by the director of the worker leasing company's or controlling person's authority to provide leased workers to clients. After a revocation has been in effect for five years or longer, the worker leasing company or controlling person may reapply for license.

(c) "Show-cause hearing" means an informal meeting with the director in which the worker leasing company will be provided an opportunity to be heard and present evidence regarding any proposed actions by the director to suspend or revoke a worker leasing company's authority to provide leased workers to clients.

(3) The director may revoke a license upon discovery of a misrepresentation in the information submitted in the worker leasing application.

(4) Suspension or revocation under this rule will not be made until the worker leasing company has been given notice and the opportunity to be heard through a show-cause hearing before the director and "show cause" why it should be permitted to continue to be licensed as a worker leasing company.

(5) A show-cause hearing may be held at any time the director finds that a worker leasing company has failed to comply with its obligations under a leasing contract or that it failed to comply with the rules or orders of the director.

(6) Appeal of proposed and final orders of suspension or revocation issued under this rule may be made as provided in OAR 436-050-0008 and OAR 436-001.

(7) Notwithstanding section (4) of this rule, the director may immediately suspend or refuse to renew a license by issuing an "emergency suspension order" if the worker leasing company fails to maintain workers' compensation coverage; or if the director finds there is a serious danger to public health or safety.

(8) A suspension or revocation may apply to any new worker leasing company created through the sale, transfer, or conveyance of ownership or of the worker leasing company's assets to another person.

Statutory authority: ORS ~~656.704,~~ 656.726(4), 656.850 and 656.855
Statutes implemented: ORS 656.850 and 656.855
Hist: Amended 11/1/07 as WCD Admin. Order 07-063, eff. 11/28/07
Amended 10/4/12 as WCD Admin. Order 12-056, eff. 1/1/13
Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf

436-050-0470 Monitoring/Auditing

(1) The ~~division~~ director will monitor and conduct periodic audits of employers as necessary to ensure compliance with the worker leasing company licensing and performance requirements.

(2) All pertinent records of the worker leasing company required by these rules must be disclosed upon request of the director.

(3) Under ORS 656.726 and 656.758, the director may inspect the books, records and payrolls of employers pertinent to the administration of these rules. Employers must provide the director with all pertinent books, records and payrolls upon request.

(4) For the purposes of this rule, both the worker leasing company and its clients will be considered employers.

Statutory authority: ORS ~~656.704,~~ 656.726(4), 656.850 and 656.855
Statutes implemented: ORS 656.850 and 656.855
Hist: Amended 11/1/07 as WCD Admin. Order 07-063, eff. 11/28/07
Amended 10/4/12 as WCD Admin. Order 12-056, eff. 1/1/13
Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf

436-050-0480 Assessment of Civil Penalties

(1) Failure to provide timely notice to the director for proof of coverage and cancellation of workers' compensation insurance policies under ORS 656.419 or OAR 436-162, or failure to provide timely worker leasing notice to the director under ORS 656.850(5) and OAR 436-050-0410, may result in civil penalties under ORS 656.745.

(2) The director may assess a civil penalty under ORS 656.745 against an employer who fails to respond to requests for information or fails to meet the requirements of 436-050-0470.

Assessment of a penalty does not relieve the employer of the obligation to provide a response.

(3) An employer failing to meet the requirements set forth in OAR 436-050-0410, 436-050-0450, and 436-050-0455, may be assessed a civil penalty under ORS 656.745.

(4) An employer who is found to be operating a worker leasing company without having obtained a license or after having failed to renew a license, or who continues to operate in Oregon as a worker leasing company after a prior Oregon license expired, may be assessed a civil penalty for each violation under ORS 656.745.

(5) For the purposes of ORS 656.850(2), a violation is defined as any month or part of a month for each client in which an employer provides leased workers to a client without having first obtained a worker leasing license.

(6) An employer obtaining workers by contract and for a fee from an unlicensed worker leasing company on a non-temporary basis may be subject to penalties under ORS 656.745. Upon a subsequent or continuing violation where written notice of such violation has been served, penalties under ORS 656.745 will be assessed against the employer.

(7) Any person or controlling person may also be subject to penalties under ORS 656.990.

Statutory authority: ORS ~~656.704,~~ 656.726(4), 656.850 and 656.855;
Statutes implemented: ORS 656.850 and 656.855
Hist: Amended 9/17/08 as WCD Admin. Order 08-061, eff. 7/1/09
Amended 10/4/12 as WCD Admin. Order 12-056, eff. 1/1/13
Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf

BEFORE THE DIRECTOR
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION

In the Matter of the Amendment of Oregon Administrative Rules (OAR): **436-050, Employer/Insurer Coverage Responsibility**	))))	**ORDER OF ADOPTION No. 16-054**

The Director of the Department of Consumer and Business Services, under the general rulemaking authority in ORS 656.726(4), and in accordance with the procedures in ORS 183.335, amends OAR chapter 436, division 050.

On Sept. 15, 2016 , the Workers' Compensation Division filed with the Secretary of State a *Notice of Proposed Rulemaking Hearing* and *Statement of Need and Fiscal Impact*. The division mailed copies of the *Notice* and *Statement* to interested persons and legislators in accordance with ORS 183.335 and OAR 436-001-0009, and posted copies to its website. The Secretary of State included notice of the public hearing in its October, 2016 *Oregon Bulletin*. On Oct. 24, 2016, a public hearing was held as announced. The record remained open for written testimony through Oct. 28, 2016.

SUMMARY OF RULE AMENDMENTS

The agency has amended OAR 436-050, "Employer/Insurer Coverage Responsibility," to:

- Improve the clarity of the rules through improved organization, plain language, repeal of obsolete provisions, and definition of terms;
- Explain the applicability of rules to self-insured employer groups;
- Complete implementation of Senate Bill 1558 (2014) by establishing standards for acceptable financial viability of self-insured employers, primarily by:
  - Requiring a self-insured employer to demonstrate acceptable financial strength equal to "strong" or "moderate" under the rules;
  - Requiring a self-insured employer to submit financial reports to the director that contain information sufficient to calculate the financial ratios described in the rules;
  - Describing the financial ratios that will be used to determine a self-insured employer's financial strength; and
  - Explaining how the financial ratios will be used to determine the self-insured employer's financial strength;
- Clarify procedures for requesting administrative review by the director;
- Clarify procedures for show-cause hearings regarding suspension or revocation of an insurer's authorization to renew or issue workers' compensation policies;
- Specify that in determining compliance with the limitation on the number of claims processing locations, the insurer or self-insured employer must count each physical location and where its claims are processed or its records maintained as one location;
- Require the insurer or self-insured employer to give the director notice of an email address for each claims processing location;

- Clarify that the director must approve a service agreement before the service company begins processing the insurer's, self-insured employer's, or self-insured employer group's claims in Oregon, regardless of the agreement's effective date;
- Require the insurer or self-insured employer to notify the estates of deceased workers and any beneficiaries receiving benefits under a claim when the insurer changes claims processing location or service company;
- Specify the claim information that must be sent to the director when only a portion of an insurer's claims will be transferred to a new processing location or service company;
- Explain that failure to provide proper notice of a change in claims processing location or service company may result in the assessment of a civil penalty against the insurer or self-insured employer;
- Specify that each location where a service company processes an insurer's or self-insured employer's claims counts as one of the insurer's or self-insured employer's allowed claims processing locations;
- Clarify claims record-keeping requirements for insurers and self-insured employers;
- Specify that an ISLOC or 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;
- Require that a self-insured employer must submit proposed changes in the retention level and policy limits of an excess insurance policy at least 30 days before the effective date of the change;
- Require a self-insured employer to include in its report of losses separate lists that include all claims with total incurred losses above and below the National Council on Compensation Insurance split point published in Bulletin 209;
- Provide that the values determined at audit will be used to calculate the self-insured employer's security deposit, experience rating factor, and retrospective rating adjustment;
- Describe additional criteria the director will use to determine a self-insured employer's required deposit;
- Allow a self-insured employer to submit a certified actuarial study (subject to some limitations) for determination of the security deposit amount;
- Specify that a self-insured employer may not transfer claims to any excess insurer or service company acting on behalf of an excess insurer for the processing of the employer's claims;
- Provide that, if given probable cause, the director may order a self-insured employer who is exempt from providing a security deposit to increase the amount of its loss reserve account, and that the self-insured employer must comply within 30 days of the director's order;
- Provide that if a self-insured employer submits a request to cancel self-insurance certification fewer than 60 days before the desired date of cancellation, the actual termination date may be later than the date requested;
- List required elements of the service agreement between a self-insured employer and a service company;
- Provide that a self-insured employer may add an amount to its security deposit equal to what is required for a common claims fund instead of maintaining a common claims fund; and

- Provide that a self-insured employer group is not required to create a common claims fund in any year in which the director applies an incurred but not reported factor of greater than zero percent in the determination of the self-insured employer group's security deposit.

FINDINGS

Having reviewed and considered the record and being fully informed, I make the following findings:

a) The applicable rulemaking procedures have been followed.
b) These rules are within the director's authority.
c) The rules being adopted are a reasonable administrative interpretation of the statutes and are required to carry out statutory responsibilities.

IT IS THEREFORE ORDERED THAT

1) Amendments to OAR chapter 436, division 050 are adopted as **administrative order No. 16-054 on this 28th day of November, 2016, to be effective Jan. 1, 2017.**
2) A certified copy of the adopted rules will be filed with the Secretary of State.
3) A copy of the adopted rules with revision marks will be filed with the Legislative Counsel under ORS 183.715 within ten days after filing with the Secretary of State.

DATED this 28th day of November, 2016.

/s/ Louis Savage
Louis Savage, Administrator
Workers' Compensation Division

Under the Americans with Disabilities Act guidelines, alternative format copies of the rules will be made available to qualified individuals upon request.

If you have questions about these rules or need them in an alternate format, contact the Workers' Compensation Division, 503-947-7810.

Distribution: Workers' Compensation Division e-mail distribution lists, including advisory committee members and testifiers

Secretary of State
Certificate and Order for Filing

PERMANENT ADMINISTRATIVE RULES

FILED
11-28-16 1:20 PM
ARCHIVES DIVISION
SECRETARY OF STATE

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the

Department of Consumer and Business Services, Workers' Compensation Division — 436
Agency and Division — Administrative Rules Chapter Number

Fred Bruyns — (503) 947-7717
Rules Coordinator — Telephone

PO Box 14480, Salem, OR 97309-0405
Address

To become effective 01/01/2017 Rulemaking Notice was published in the October 2016 Oregon Bulletin.

RULE CAPTION

Amendments to rules governing workers' compensation insurance and self-insurance

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

RULEMAKING ACTION

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

ADOPT:

AMEND:
436-050-0003, 436-050-0005, 436-050-0008, 436-050-0015, 436-050-0025, 436-050-0040, 436-050-0045, 436-050-0050, 436-050-0055, 436-050-0110, 436-050-0120, 436-050-0150, 436-050-0160, 436-050-0165, 436-050-0170, 436-050-0175, 436-050-0180, 436-050-0190, 436-050-0195, 436-050-0200, 436-050-0205, 436-050-0210, 436-050-0220, 436-050-0230, 436-050-0260, 436-050-0270, 436-050-0280, 436-050-0290, 436-050-0300, 436-050-0340, 436-050-0400, 436-050-0410, 436-050-0420, 436-050-0440, 436-050-0450, 436-050-0455, 436-050-0460, 436-050-0470, 436-050-0480, 436-050-0185

REPEAL:
436-050-0001, 436-050-0002, 436-050-0006, 436-050-0060

RENUMBER:

AMEND AND RENUMBER:

Statutory Authority:
656.407, 656.430, 656.455, 656.726(4)

Other Authority:

Statutes Implemented:
ORS 656, primarily 656.017, 656.407, 656.430, 656.434, 656.443, 656.447, 656.455; ORS 731.475

RULE SUMMARY

The agency has amended OAR 436-050, "Employer/Insurer Coverage Responsibility," to:
- Improve the clarity of the rules through improved organization, plain language, repeal of obsolete provisions, and definition of terms;
- Explain the applicability of rules to self-insured employer groups;
- Complete implementation of Senate Bill 1558 (2014) by establishing standards for acceptable financial viability of self-insured employers, primarily by:
☐- - Requiring a self-insured employer to demonstrate acceptable financial strength equal to "strong" or "moderate" under the rules;
☐- - Requiring a self-insured employer to submit financial reports to the director that contain information sufficient to calculate the financial ratios described in the rules;
☐- - Describing the financial ratios that will be used to determine a self-insured employer's financial strength; and
☐- - Explaining how the financial ratios will be used to determine the self-insured employer's financial strength;
- Clarify procedures for requesting administrative review by the director;
- Clarify procedures for show-cause hearings regarding suspension or revocation of an insurer's authorization to renew or issue workers' compensation policies;
- Specify that in determining compliance with the limitation on the number of claims processing locations, the insurer or self-insured employer

must count each physical location and where its claims are processed or its records maintained as one location;
- Require the insurer or self-insured employer to give the director notice of an email address for each claims processing location;
- Clarify that the director must approve a service agreement before the service company begins processing the insurer's, self-insured employer's, or self-insured employer group's claims in Oregon, regardless of the agreement's effective date;
- Require the insurer or self-insured employer to notify the estates of deceased workers and any beneficiaries receiving benefits under a claim when the insurer changes claims processing location or service company;
- Specify the claim information that must be sent to the director when only a portion of an insurer's claims will be transferred to a new processing location or service company;
- Explain that failure to provide proper notice of a change in claims processing location or service company may result in the assessment of a civil penalty against the insurer or self-insured employer;
- Specify that each location where a service company processes an insurer's or self-insured employer's claims counts as one of the insurer's or self-insured employer's allowed claims processing locations;
- Clarify claims record-keeping requirements for insurers and self-insured employers;
- Specify that an ISLOC or 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;
- Require that a self-insured employer must submit proposed changes in the retention level and policy limits of an excess insurance policy at least 30 days before the effective date of the change;
- Require a self-insured employer to include in its report of losses separate lists that include all claims with total incurred losses above and below the National Council on Compensation Insurance split point published in Bulletin 209;
- Provide that the values determined at audit will be used to calculate the self-insured employer's security deposit, experience rating factor, and retrospective rating adjustment;
- Describe additional criteria the director will use to determine a self-insured employer's required deposit;
- Allow a self-insured employer to submit a certified actuarial study (subject to some limitations) for determination of the security deposit amount;
- Specify that a self-insured employer may not transfer claims to any excess insurer or service company acting on behalf of an excess insurer for the processing of the employer's claims;
- Provide that, if given probable cause, the director may order a self-insured employer who is exempt from providing a security deposit to increase the amount of its loss reserve account, and that the self-insured employer must comply within 30 days of the director's order;
- Provide that if a self-insured employer submits a request to cancel self-insurance certification fewer than 60 days before the desired date of cancellation, the actual termination date may be later than the date requested;
- List required elements of the service agreement between a self-insured employer and a service company;
- Provide that a self-insured employer may add an amount to its security deposit equal to what is required for a common claims fund instead of maintaining a common claims fund; and
- Provide that a self-insured employer group is not required to create a common claims fund in any year in which the director applies an incurred but not reported factor of greater than zero percent in the determination of the self-insured employer group's security deposit.

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