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EFFECTIVE JANUARY 1, 2004

**OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 050
EMPLOYER/INSURER COVERAGE RESPONSIBILITY**

NOTE: Only adopted, amended, and repealed rules are included in this document:

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**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
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**EXHIBIT "A"
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 050**

436-050-0003 Applicability of Rules

(1) These rules are effective [September 15, 2003] **January 1, 2004**, 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 - Guaranty contracts.
 - (f) ORS 656.423 - Cancellation of coverage by employer.
 - (g) ORS 656.427 - Termination of guaranty contract 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 contracts, orders or rules.
 - (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) Applicable to this chapter, the director may, unless otherwise obligated by statute, in the director's discretion waive any procedural rules as justice so requires.

Stat. Auth: 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

Stats. Implemented: ORS 656.704 and 656.726(4)

Hist: Filed 12/19/75 as WCB Admin. Order 18-1975, eff. 1/1/76, as Rule 436-51-001
Amended 4/12/76 as WCB Admin. Order 2-1976, eff. 4/12/76 (Temporary as Rule 436-51-130)
Amended 6/15/76 as WCB Admin. Order 3-1976
Amended 4/2/80 as WCD Admin. Order 3-1980, eff. 4/2/80
Amended 2/10/82 as WCD Admin. Order 4-1982, eff. 2/15/82
Amended 12/22/83 as WCD Admin. Order 7-1983, eff. 12/27/83
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Amended 12/22/89 as WCD Admin. Order 5-1989, eff. 1/1/90
Amended 11/29/90 as WCD Admin. Order 27-1990, eff. 12/26/90
Amended 4/1/94 as WCD Admin. Order 94-052, eff. 5/1/94
Amended 3/8/96 as WCD Admin. Order 96-057, eff. 4/1/96
Amended 1/9/98 as WCD Admin. Order 98-050, eff. 1/23/98

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Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01
Amended 8/28/03 as WCD Admin. Order 03-056, eff. 9/15/03
Amended 12/3/03 as WCD Admin. Order 03-062, eff. 1/1/04

436-050-0005 Definitions

For the purpose of these rules unless the context requires otherwise:

- (1) "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) "Client" means a person to whom workers are provided under contract and for a fee on a temporary or leased basis.
- (4) "Complete Records" means:
 - (a) written records that segregate and show specifically for each employer the amounts due from the employer and paid by the insurer or self-insured employer for premiums for insurance coverage, premium assessments, and any other moneys due the director;
 - (b) written records of claims for compensation made under ORS chapter 656; and
 - (c) written records of guaranty contracts issued as required by ORS chapter 656.
- (5) "Controlling Person" means an officer or [D]director of a corporation offering worker-leasing services, a shareholder holding 10 percent or more of the voting stock of a corporation offering worker-leasing services, or a partner of a partnership offering worker-leasing services; or an individual who possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of a company offering worker-leasing services through the ownership of voting securities, by contract or otherwise.
- (6) "Days" means calendar days unless otherwise specified.
- (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 shall direct.
- (8) "Department" means the Department of Consumer and Business Services.
- (9) "Director" means the [D]director of the Department of Consumer and Business Services or the [D]director's delegate for the matter, unless the context requires otherwise.
- (10) "Division" means the Workers' Compensation Division of the Department of Consumer and Business Services.
- (11) "Double Coverage" means more than one guaranty contract is on file with the director for the same period of time.
- (12) "Fiscal Year" means the twelve-month period beginning July 1 and ending June 30.
- (13) "Governmental Subdivision" means cities, counties, special districts defined in ORS 198.010, intergovernmental agencies created under ORS 225.050, school districts as defined in

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ORS 255.005, public housing authorities created under ORS chapter 456 or regional council of governments created under ORS chapter 190.

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

(15) "Insurer" means a guaranty contract insurer.

(16) "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) "Person" means an individual, partnerships, corporations, joint ventures, limited liability companies, associations, government agencies, sole proprietorships, or other business entities allowed to do business in the State of Oregon.

(18) "Premium Assessments" means moneys due the director under ORS 656.612 and 656.614.

(19) "Process Claims" and its variations is the determination of compensability and management of compensation by an Oregon certified claims examiner. Although determining compensability and managing compensation must be done from within this state pursuant to ORS 731.475 and this definition, the act of making payment may be done from out-of-state as directed from the Oregon place of business.

(20) "Reinstatement" means the continuation of workers' compensation insurance coverage without a gap under a guaranty contract.

(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.

(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) "State" means the State of Oregon.

(24) "Worker-Leasing Company" means a "person," as described in section (17) of this rule, who provides workers, by contract and for a fee, as established in ORS 656.850.

(25) "Written" and its variations means that which is expressed in writing, including electronic transmission.

Stat. Auth: ORS 656.704 and 656.726(4)

Stats. Implemented: ORS 656.704 and 656.726(4)

Hist: Filed 4/12/76 as WCB Admin. Order 2-1976, eff. 4/12/76 (Temporary) as Rule 436-51-135
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Amended 12/22/89 as WCD Admin. Order 5-1989, eff. 1/1/90
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436-050-0006 Administration of Rules

Any orders issued by the [D]ivision in carrying out the director's authority to enforce ORS chapter 656 and the rules adopted pursuant thereto, are considered orders of the director.

Stat. Auth: ORS 656.704 and 656.726(4)

Stats. Implemented: ORS 656.704 and 656.726(4)

Hist: Filed 12/19/75 as WCB Admin. Order 18-1975, eff. 1/1/76 as Rule 50-055
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Amended 12/18/87 as WCD Admin. Order 27-1987, eff. 1/1/88
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Amended 12/3/03 as WCD Admin. Order 03-062, eff. 1/1/04

436-050-0008 Administrative Review and Contested Cases

(1) Any party as defined by ORS 656.005, including an Assigned Claims Agent pursuant to ORS 656.054, aggrieved by an action taken pursuant to these rules in which a worker's right to compensation or the amount thereof is directly in issue may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with ORS Chapter 656 and the Board's Rules of Practice and Procedure for Contested Cases under the Workers' Compensation Law except where otherwise provided in ORS Chapter 656.

(2) Any party as described in section (1) aggrieved by a proposed order or proposed assessment of civil penalty of the director or division issued pursuant to ORS 656.254, 656.735, 656.745 or 656.750 may request a hearing by [the Hearings Division of the Workers' Compensation Board in accordance with ORS 656.740.

(a) The request for hearing must be sent in writing to the administrator of the Workers' Compensation Division. No hearing shall be granted unless the request specifies the grounds upon which the party requesting said hearing contests the proposed order or assessment.]

sending a written request to the Workers' Compensation Division's administrator within 60 days after the order was mailed.

[(b) The request for hearing must be filed with the administrator of the Workers' Compensation Division within sixty (60) days of receipt by the aggrieved party of notice of the proposed order or assessment. No hearing shall be granted unless the request is received by the administrator within said sixty (60) days of receipt of notice.]

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

(a) fails to state the specific grounds for which the party contests the proposed order or assessment; or

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

[(3)4] Any party as described in section (1) aggrieved by an action or order of the director or division pursuant to these rules, other than as described in section (2), where such action or order qualifies for review by hearing before the director as a contested case, may request review pursuant to ORS 183.310 through 183.550 as modified by these rules pursuant to ORS

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183.315(l). When the matter qualifies for review as a contested case, the process for review shall be as follows:

(a) The request for hearing must be sent in writing to the administrator of the Workers' Compensation Division. No hearing shall be granted unless the request specifies the grounds upon which the action or order is contested and is received by the administrator within 30 days of the action or from the date of mailing or other service of an order.

(b) The hearing shall be conducted by the [director or the director's designee] **Office of Administrative Hearings.**

(c) Any order in a contested case issued by another person on behalf of the director is a proposed order subject to revision by the director. The director may allow objections to the proposed order to be filed for the director's consideration within 30 days of issuance of the proposed order.

[~~(4)~~]**(5)** Any party described in section (1) aggrieved by an action taken pursuant to these rules by another person except as described in sections (1) through (3) above may request administrative review by the division on behalf of the director. The process for administrative review of such matters shall be as follows:

(a) The request for administrative review shall be made in writing to the administrator of the Workers' Compensation Division within 90 days of the action. No administrative review shall be granted unless the request specifies the grounds upon which the action is contested and is received by the administrator within 90 days of the contested action unless the director or his designee determines that there was good cause for delay or that substantial injustice may otherwise result.

(b) The review, including whether the request is timely and appropriate, may be conducted by the administrator, or the administrator's designee, on behalf of the director.

(c) In the course of said review, the person conducting the review may request or allow such input or information from the parties as he or she deems to be helpful.

(d) The determination by the person conducting the review will specify whether the determination constitutes a final order or whether an aggrieved party may request a contested case hearing before the director pursuant to ORS Chapter 183.

(e) Any request for a contested case hearing before the director regarding a review determination made pursuant to this section must comply with the procedures provided in section [~~(3)~~]**(4)** above.

Stat. Auth: ORS 656.704, 656.726(4), and 656.745

Stats. Implemented: ORS 656.254, 656.735, **656.740 (section 9, chapter 170, Oregon Laws 2003)**, 656.745, and 656.750

Hist: Filed 12/19/75 as WCB Admin. Order 1-1975, eff. 1/1/76 as Rule 436-58-055
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Amended 1/9/98 as WCD Admin. Order 98-050, eff. 1/23/98
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Amended 12/3/03 as WCD Admin. Order 03-062, eff. 1/1/04

[436-050-0020 Service of Order; Notice

- (1) When the director imposes a civil penalty, the Order, including a notice of the party's appeal rights, shall be served on the party.
- (2) The Order shall be served by:
- (a) Sending a copy of the Order to the party by certified mail return receipt requested. If the employer is a corporation, the certified mail may be addressed to any one of the persons named in Rule 7 of Oregon Rules of Civil Procedure subsection (D)(3)(b)(i); or
- (b) Delivering a copy to the party in the manner provided by Rule 7 of Oregon Rules of Civil Procedure, subsection (D)(2).
- (3) Orders issued pursuant to these rules shall contain a notice of rights pursuant to ORS 183.090 and 183.413 to 183.470.]

Stat. Auth: ORS 656.704 and 656.726(4)

Stats. Implemented: ORS 656.704, 656.726, and 656.740

Hist: Filed 12/19/75 as WCB Admin. Order 18-1975, eff. 1/1/76 as Rule 436-58-060
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Amended 12/18/87 as WCD Admin. Order 9-1987, eff. 1/1/88
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Amended 11/29/90 as WCD Admin. Order 27-1990, eff. 12/26/90
Amended 6/22/01 WCD Admin. Order 01-054, eff. 7/1/01

Repealed 12/3/03 as WCD Admin. Order 03-062, eff. 1/1/04

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

(1) In the operation of ORS 656.029 a subject employer who fails to comply with ORS 656.017 is 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) "Normal and customary part or process of the person's trade or business" refers to the day-to-day activities or operations which are necessary to successfully carry out the business or trade.

(3) Pursuant to ORS 656.037, a person contracting to pay remuneration for professional real estate activity as defined in ORS [C]chapter 696[,] to a qualified real estate [agent]**broker or qualified principal real estate broker, as defined in ORS 316.209,** is not an employer of the qualified [real estate agent if:]**broker.**

[(a) The real estate agent has a real estate license;

(b) Substantially all of the remuneration (whether or not paid in cash) for services performed by the individual as a real estate licensee is directly related to sales or other output rather than to the number of hours worked;

(c) The services performed by the individual are performed pursuant to a written contract between the individual and the real estate broker, real estate appraiser or real estate organization for whom the services are performed; and

(d) The contract provides that the individual will not be treated as an employee with respect to the services for Oregon tax purposes.]

Stat. Auth: ORS 656.704 and 656.726(4)

Stats. Implemented: ORS 656.029 and 656.037

Hist: Filed 4/2/80 as WCD Admin. Order 3-1980, eff. 4/2/80
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Amended 12/18/87 as WCD Admin. Order 9-1987 eff. 1/1/88
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Amended 11/29/90 as WCD Admin. Order 27-1990, eff. 12/26/90
Amended 3/8/96 as WCD Admin. Order 96-057, eff. 4/1/96
Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01
Amended 12/3/03 as WCD Admin. Order 03-062, eff. 1/1/04

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

(1) Pursuant to ORS 656.027, [certain officers, limited liability company members, and partners may be nonsubject workers. Each]a corporation, limited liability company, [and]or partnership [shall]must [designate]elect in writing [with]to its insurer to provide workers' compensation coverage for otherwise nonsubject workers.[which of its eligible officers, members, or partners are to be exempt from coverage]. Such [designations]election [shall]must be made at the inception of a coverage policy and remain in effect until a revised written designation is given to the insurer. A self-insured [entity]employer [shall]must file [this designation]the election with the director. If an entity does not file its initial [designation]election, or is not in compliance pursuant to ORS 656.017 and 656.407, then those exempt individuals shall be determined in the following order[of the following]:

(a) [The order of exempt officers for]For a corporation[if not otherwise designated pursuant to this rule is]:

- (A) President[:];
- (B) Secretary, if any;
- (C) Vice President, if any;
- (D) Secretary/Treasurer, if any;
- (E) Treasurer, if any;
- (F) All other [o]officers, if any.

(b) [The order of exempt members of]For a limited liability company or partners of a partnership:

(A) The member or partner with the largest ownership interest; [will fall first to the member or partner with the largest ownership interest]

(B) [then to t]The next largest ownership interest.

(c) If there is more than one person or 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) 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) of this rule.

(3) 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

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be cut, timber falling, slash removal, and transportation of timber to the location where it will be processed into lumber or other products.

(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 [D]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).

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

Stat. Auth: ORS 656.704 and ORS 656.726(3)

Stats. Implemented: ORS 656.027

Hist: Filed 2/10/82 as WCD Admin. Order 4-1982, eff. 2/15/82
Amended 12/22/83 as WCD Admin. Order 7-1983, eff. 12/27/83
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Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01
Amended 12/3/03 as WCD Admin. Order 03-062, eff. 1/1/04

436-050-0055 Extraterritorial Coverage

(1) Criteria to be used in determining whether a worker is temporarily in or out of state pursuant to ORS 656.126 may include, but are not limited to:

(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 the worker's employment status;

(c) The understanding of the worker in regard to 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 [contract]work in the state is of a temporary duration, established by a beginning date and expected ending date of the employer's [contract]work; and

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(i) Other information relevant to the determination.

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

Stat. Auth: ORS 656.704 and 656.726(4)

Stats. Implemented: ORS 656.126

Hist: Filed 12/22/89 as WCD Admin. Order 5-1989, eff. 1/1/90
Amended 11/29/90 as WCD Admin. Order 27-1990, eff. 12/26/90
Amended 3/8/96 as WCD Admin. Order 96-057, eff. 4/1/96
Amended 1/9/98 as WCD Admin. Order 98-050, eff. 1/23/98
Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01
Amended 12/3/03 as WCD Admin. Order 03-062, eff. 1/1/04

436-050-0060 Guaranty Contract Filing Requirements; Evidence of Authority

(1) Every guaranty contract issued by an insurer pursuant to ORS 656.419 shall:

(a) Contain information pursuant to, and be filed in accordance with, ORS 656.419 and this rule.

(b) Be in writing and shall include the employer FEIN or other federal tax reporting number; legal name of the employer; type of ownership; primary nature of business; [employer telephone number;] employer mailing address; employer principal place of business address; specific insurer providing coverage; policy number; effective date of coverage; insurer representative signature; and statement of assumption of liability pursuant to ORS 656.419(1).

(c) Be submitted in a form and format prescribed by the [D]director; and

(d) Be completed in its entirety prior to submission to the director.

(2) A [Standard Industrial Classification Code (SIC) or North American Industry Classification System (NAIC)]National Council on Compensation Insurance (NCCI) classification code [will satisfy]satisfies the required [required description of the]nature of [the]business description in which [the]an employer is engaged or proposes to engage.

(3) Incomplete, illegible, or incorrect guaranty contracts received by the director may not be considered filed.

Stat. Auth: ORS 656.704 and 656.726(4)

Stats. Implemented: ORS 656.419, 656.427

Hist: Filed 12/19/75 as WCB Admin. Order 18-1975, eff. 1/1/76
Amended 4/2/80 as WCD Admin. Order 3-1980, eff. 4/2/80
Amended 2/10/82 as WCD Admin. Order 4-1982, eff. 2/15/82
Amended 6/30/83 as WCD Admin. Order 1-1983, eff. 7/1/83
Amended 12/22/83 as WCD Admin. Order 7-1983, eff. 12/27/83
Renumbered from OAR 436-51-100, January 1, 1986
Amended 12/12/85 as WCD Admin. Order 9-1985 eff. 1/1/86
Amended 12/18/87 as WCD Admin. Order 9-1987 eff. 1/1/88
Amended 3/8/96 as WCD Admin. Order 96-057, eff. 4/1/96
Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01
Amended 3/17/03 as WCD Admin. Order 03-053, eff. 4/1/03
Amended 12/3/03 as WCD Admin. Order 03-062, eff. 1/1/04

436-050-0080 Personal Elections

(1) When a person makes an election under ORS 656.039, 656.128 or 656.140, the insurer [shall]must give [evidence of the election, and of any cancellation of the election, by issuance of an endorsement to the insured employer's guaranty contract. The endorsement shall be issued within 30 days after the effective date of the election or within 10 days after

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cancellation of such an election] **the director notice of the election and of cancellation of the election. The election notice may be included as a "flag" type notice in a guaranty contract filing but should not include specific names for whom election is made. Specifics of an election of coverage for persons defined as nonsubject workers or not defined as subject workers must be filed with the insurer, or in the case of self insurance with the director, by written notice identifying by position held or by specific name which otherwise nonsubject worker is being made subject by the election.**

(2) A personal election made under ORS 656.140 may be canceled by giving written notice to the insurer as provided by ORS 656.128.

Stat. Auth: ORS 656.704 and 656.726(4)
Stats. Implemented: ORS 656.039, 656.128, and 656.140
Hist: Filed 12/19/75 as WCB Admin. Order 18-1976, eff. 1/1/76
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 Amended 12/18/87 as WCD Admin. Order 9-1987, eff. 1/1/88
 Amended 3/8/96 as WCD Admin. Order 96-057, eff. 4/1/96
Amended 12/3/03 as WCD Admin. Order 03-062, eff. 1/1/04

436-050-0090 Notice to the Director of Change of Name or Address of Insured Employer

Notice to the director of change of name or address as required by ORS 656.419, shall be given by filing in a form and format, or manner as prescribed by the director, a guaranty contract endorsement with the director as evidence of the change. A change of address includes:

- (1) A change in the employer's mailing address, [and] **or**
- (2) A change in the employer's principal place of business in Oregon.

Stat. Auth: ORS 656.704 and 656.726(4)
Stats. Implemented: ORS 656.419
Hist: Filed 12/19/76 as WCB Admin. Order 18-1975, eff. 1/1/76
 Amended 4/2/80 as WCD Admin. Order 3-1980, eff. 4/2/80
 Amended 2/10/82 as WCD Admin. Order 4-1982, eff. 2/15/82
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 Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01
Amended 12/3/03 as WCD Admin. Order 03-062, eff. 1/1/04

436-050-0100 Cancellation of Coverage by Employer; Reinstatement of Guaranty Contract; Carrier Liability

(1) An employer may cancel coverage with an insurer pursuant to ORS 656.423. An employer's cancellation of coverage with an insurer does not terminate a guaranty contract. Liability of an insurer under a guaranty contract [or surety bond to an employer] under this chapter is terminated by an insurer taking action pursuant to ORS 656.427.

(2) [A guaranty contract terminated pursuant to ORS 656.427 may be reinstated provided the insurer submits notice to the director stating that the termination notice is being rescinded with no lapse in coverage. Notice under this section shall be in writing and include the name of the insurer, legal name of the insured, insured's address, insured's telephone number, insurance policy number, and the insured employer's Federal Employer Identification Number (FEIN).] **An insurer may terminate liability on its guaranty contract**

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or surety bond by giving the employer and director notice of termination in accordance with ORS 656.427 and this rule.

(3) Notice to the employer for terminating an insurer's guaranty contract filed with the director must be in writing and must state the effective date of termination. The termination is effective:

(a) if terminated for reasons other than in subsection (b) of this section, not less than 30 days after the insurer mails notice to the employer; or

(b) if terminated because the insurer decides not to offer insurance to employers within a specific premium category, not sooner than 90 days after the insurer mails notice to the employer.

(4) The insurer bears the burden of proof establishing that a termination notice was mailed to an employer. The notice and proof of mailing must be made available in Oregon upon request.

(5) Notice to the director of termination of a guaranty contract can be provided separately under OAR 436-160 or under this rule; or in a list if filing by hard copy submission under this rule. The notice under this rule must:

(a) be in writing;

(b) clearly identify the insurer;

(c) include the employer(s) legal name; Federal Employer Identification Number (FEIN) or other tax reporting number; and the effective date of termination; and

(d) be mailed or delivered to the director within seven calendar days after the effective date of the termination.

(6) Failure to provide timely notice to the director of termination of an insurer's guaranty contract may result in civil penalties pursuant to ORS 656.745.

(7) A guaranty contract termination notice may be rescinded and the guaranty contract reinstated if there will not be a lapse in the employer's coverage. If there is a lapse in the employer's coverage and the insurer reestablishes a policy for the employer, the insurer must file a new guaranty contract which reports the effective date of the new coverage.

([3]8) Pursuant to ORS 656.427(5), an employer may give notice to the insurer seeking continued coverage. The notice must be given before the effective date of the insurer guaranty contract termination and must be in writing. The notice must at least include a statement that other coverage has not been obtained and that the employer intends to become insured under the plan as established in ORS 656.730. Further application by the employer is not required. Pursuant to ORS 656.427(5), the insurer so notified must then insure continuing coverage and may take the additional steps to transfer the risk to the plan.

([4]9) [When there are] **If** two or more [effective] guaranty contracts **are in effect for one employer** [on file with the director covering] **for** the same **time** period, the insurer filing the **employer's**

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most recent **arrangement for coverage** [contract] shall have [all] responsibility for processing claims [of the employer for the period its guaranty contract is in effect] **occurring during the time period.**

(10) If a guaranty contract 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 shall have the responsibility of processing claims occurring during the time period as arranged under the self insurance certification.

Stat. Auth: ORS 656.704 and 656.726(4)

Stats. Implemented: ORS 656.423 and 656.427 (**sections 3 & 5, chapter 170, Oregon Laws 2003**)

Hist: Filed 12/9/75 as WCB Admin. Order 18-1975, eff. 1/1/76
Amended 4/2/80 as WCD Admin.. Order 3-1980, eff. 4/2/80
Amended 2/10/82 as WCD Admin.. Order 4-1982, eff.. 2/15/82
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Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01
Amended 12/3/03 as WCD Admin. Order 03-062, eff. 1/1/04

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

(1) Every insurer that is authorized to issue workers' compensation coverage to subject employers as required by ORS Chapter 656 shall give the director notice of the location, mailing address, telephone number, and any other contact information in this state where the insurer processes claims and keeps written records of claims and guaranty contracts as required by ORS 731.475. While the insurer may have more than one location in this state, the information provided to the director must reasonably lead an inquirer to a person who can respond to inquiries as to guaranty contract information and to access an in-state Oregon certified claims examiner who can respond within a reasonable time to specific claims processing inquiries. A response time of forty-eight (48) hours or less not including weekends or legal holidays would satisfy a reasonable expectation.

(2) Notice under section (1) of this rule shall be filed with the director within 30 days after the insurer becomes authorized and starts writing workers' compensation insurance policies for Oregon subject employers.

(3) If an insurer elects to use a service company to satisfy the purposes of ORS 731.475 with respect to all or any portion of its business, the insurer shall, prior to its effective date, file with the division a copy of the agreement between the insurer and each company, and shall give the division notice of the location and mailing address of each service company.

(4) For the purpose of this section, those activities conducted at designated in-state location(s) and by the authorized representative(s) of the insurer shall include, but not be limited to:

- (a) Processing claims and responding to specific claims processing inquiries;
- (b) Keeping of records in a written form, not necessarily original form, and making those records available upon request;
- (c) Accommodating in-state periodic audits of the director; and

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(d) Providing copies of guaranty contracts, related information, and responding to inquiries to resolve coverage issues.

(5) If its place of business or that of a service company elected in lieu of an in-state place of business is changed, the insurer shall notify the director of the new location, mailing address, telephone number, and any other contact information of the place of business at least 30 days prior to the effective date of the change.

(6) [When an insurer with respect to any portion of its business changes service companies, changes from self-administration to a service company or from a service company to self-administration, the insurer shall notify the director of which claims, if any, will be transferred at least 10 days prior to the date of transfer. Notice to the director shall include:] **When an insurer changes claims processing locations, service companies, or self-administration, the insurer must provide at least 10 days prior notice to workers with open or active claims, their attorneys, and attending physicians. The notice must provide the name of a contact person, telephone number, and mailing address of the new claim processor. The insurer must also notify 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 contact person, telephone number, mailing address, and physical address where the claims are to be processed; and

(b) A listing of the claims being transferred which identifies the sending processor's claim number, claimant name, claimant's social security number, and date of injury. The list should also include the employer's WCD number and WCD's claim number, if known.

(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 [but not limited to] the records described by OAR 436-050-0120.

Stat. Auth: ORS 731.475, 656.704, and 656.726(4)

Stats. Implemented: ORS 731.475

Hist: Filed 12/19/75 as WCB Admin. Order 18-1975, eff. 1/1/76
Amended 4/2/80 as WCD Admin. Order 3-1980, eff. 4/2/80
Amended 2/10/82 as WCD Admin. Order 4-1982, eff. 2/15/82
Amended 12/22/83 as WCD Admin. Order 71983, eff. 12/27/83
Renumbered from OAR 436-51-120, January 1, 1986
Amended 12/12/85 as WCD Admin. Order 9-1986, eff. 1/1/86
Amended 12/18/87 as WCD Admin. Order 91987, eff. 1/1/88
Amended 12/22/89 as WCD Admin. Order 51989, eff. 1/1/90
Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01
Amended 12/3/03 as WCD Admin. Order 03-062, eff. 1/1/04

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

(1) The records of claims for compensation that each insurer is required to keep in this state include:

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

(b) A written record of all payments made as a result of any claim **including documentation of the date the payment was mailed. Documentation may be the actual mailing date, or an explanation of the time period between the date of issuance and mailing.**

(2) Records of a denied claim may be removed from this state after all the appellate

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procedures have been exhausted and the denial has been affirmed by operation of law.

(3) Records of any claim for a compensable injury 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 such claim are thereafter subject to section (3) of this rule.

(5) Claims records may be destroyed when all potential for benefits to the injured worker is gone.

(6) The records relating to guaranty contracts that insurers are required to keep in the state include:

(a) A written record of each guaranty contract, termination, cancellation, reinstatement, and endorsement issued 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 of all money due and all such money collected from insured employers for the director and required to be remitted to the director.

(7) If all remittances have been made, guaranty contract records may be disposed of after the end of three full calendar years following the calendar year in which the guaranty contract terminates.

Stat. Auth: ORS 731.475, 656.704, and 656.726(4)

Stats. Implemented: ORS 731.475

Hist: Filed 12/19/75 as WCB Admin. Order 18-1975, eff. 1/1/76 as Rules 436-51-210 and 436-51-215
Amended 4/2/80 as WCD Admin. Order 3-1980, eff. 4/2/80
Amended 2/10/82 as WCD Admin. Order 4-1982, eff. 2/15/82
Amended 12/22/83 as WCD Admin. Order 7-1983, eff. 12/27/83
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Amended 12/12/85 as WCD Admin. Order 9-1985, eff. 1/1/86
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Amended 12/22/89 as WCD Admin. Order 5-1989, eff. 1/1/90
Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01
Amended 12/3/03 as WCD Admin. Order 03-062, eff. 1/1/04

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

(1) An employer shall qualify as a self-insured employer by:

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

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

(c) Obtaining excess insurance coverage in the amounts approved by the director[.]; **and**

(d) Being registered and authorized to do business in this state pursuant to ORS Chapters 58, 60, 62, 63, 65, 67, 70, and 648, as applicable.

(2) An employer shall establish proof of an adequate staff qualified to process claims by:

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(a) Employing and retaining 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 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 qualified in accordance with OAR 436-055-0070 and that is actually involved in the self-insured employer's claims processing.

(3) An employer shall establish proof of financial ability by [depositing, in a depository, designated by the director, money, government securities or other surety] **providing a security deposit that** the director [may] determines **is acceptable in accordance with OAR 436-050-0165**, and in an amount as determined in accordance with OAR 436-050-0180.

(4) Failure of a certified self-insured employer to maintain the qualifications required in this [section] **rule** shall result in revocation of the employer's self-insured certification. The employer will be given 30 days[.] written notice of the intent to revoke the self-insured certification, to be effective 30 days from the date of receipt of the revocation notice. If the employer complies with the qualification requirements within the 30-day period, the revocation [is] **will be** canceled and the certification **will** remain[s] in effect.

Stat. Auth: ORS 656.407, 656.704, and 656.726(4)

Stats. Implemented: ORS 656.407

Hist: Filed 4/2/80 as WCD Admin. Order 3-1980, eff. 4/2/80
Amended 2/10/82 as WCD Admin. Order 4-1982, eff. 2/15/82
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Renumbered from OAR 436-51-305, January 1, 1986
Amended 12/12/85 as WCD Admin. Order 9-1985, eff. 1/1/86
Amended 12/22/89 as WCD Admin. Order 5-1989, eff. 1/1/90
Amended 11/29/90 as WCD Admin. Order 27-1990, eff. 12/26/90
Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01
Amended 7/18/03 as WCD Admin. Order 03-058, eff. 7/18/03 (Temporary)
Amended 12/3/03 as WCD Admin. Order 03-062, eff. 1/1/04

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

(1) An employer applying for certification as a self-insured employer must submit the following information:

(a) An application in a form and format prescribed by the director to become a self-insured employer;

(b) Proof of the employer's claims processing ability **by** 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, pursuant to ORS 656.455(1);**

(c) The employer's audited financial statements or audited annual reports for the last three fiscal or calendar years. If the audited financial statements of a parent company are provided in lieu of statements for the employer, the director will not authorize the individual employer to be self-insured under it[.]s own program, unless a parental company guarantee can be obtained. Otherwise, it will be necessary for the parent company to be the self-insured

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employer or to separately insure the employer. In the context of this section, a parent company is a legal entity which owns a majority interest in the employer, or owns a majority interest in another entity or succession of entities which owns a majority interest in the employer;

(d) The employer's most recently promulgated 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 [each] service company that has been signed by both parties. The agreement shall also contain the location, mailing address, telephone number, and any other contact information of [each] **the** service company;

(g) 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 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;** [and]

(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 authorization to do business in this state pursuant to ORS chapters 58, 60, 62, 63, 65, 67, 70, and 648, as applicable.

(2) 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 denied and the reason therefore; or, that the employer is qualified as a self-insured employer. If the employer qualifies as a self-insured employer, the notice shall include:

(a) The **type and the** amount of **the** [surety] **security** deposit required;

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

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

(3) **If approved**, [T]the certification of self-insurance will be issued upon receipt of the [surety] **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].

(4) Unless a **later** date is specified by the applicant, the effective date of certification will be the first day of the [calendar quarter] **month** following the date the requirements of section (3) of this rule are met.

(5) Notwithstanding subsection (1)(c) of this rule, an employer making application may

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submit certified financial statements in lieu of audited financial statements or annual reports. [if the employer:] **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.**

(a) Deposits surety in the form of a surety bond approved by the director; or

(b) Increases the surety deposit, in a form approved by the director by \$100,000 over the amount as determined pursuant to OAR 436-050-0180.]

Stat. Auth: ORS 656.430, 656.704, and 656.726(4)

Stats. Implemented: ORS 656.430

Hist: Filed 4/2/80 as WCD Admin. Order 3-1980, eff. 4/2/80
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Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01
Amended 7/18/03 as WCD Admin. Order 03-058, eff. 7/18/03 (Temporary)
Amended 12/3/03 as WCD Admin. Order 03-062, eff. 1/1/04

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.

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

(a) An ISLOC may be approved by the director as all or part of the security deposit. The director may approve the ISLOC if the issuing bank and the ISLOC meet the requirements of this rule:

(A) The ISLOC shall be issued by or confirmed by an Oregon state chartered bank from which funds will be immediately payable on demand or a federally chartered bank that has an Oregon branch office, from which funds will be immediately payable on demand. The bank issuing an ISLOC shall have at the time of issuance a credit rating as set forth below:

(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

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current quarterly edition or monthly supplement of "Financial Institutions Ratings" prepared by Standard & Poors 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) An ISLOC issued by a bank that does not meet the credit rating set forth in paragraph (A) at the time of issuance shall only be accepted with a confirming ISLOC issued by an Oregon state chartered bank or federally chartered bank with an Oregon branch office meeting the credit criteria of paragraph (A). The confirming ISLOC shall 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.

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

(E) The ISLOC will be automatically extended without amendment for an additional one (1) year from the expiry date, or any subsequent expiry date unless, at least 60 days before the expiry 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) If the issuing bank or any confirming bank is closed at the time of expiry 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) The ISLOC can be called immediately if:

(i) The self-insured employer has defaulted in payment of its workers' compensation liabilities or obligations, or in payments due to the director under ORS 656;

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

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

(iv) 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) The credit shall 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)(G) signed by the director of the Department of Consumer and Business Services, or the administrator of the Workers' Compensation Division, or their designated authorized representative.

(I) 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) An ISLOC shall include a statement that the funds provided by the ISLOC are

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not construed to be an asset of the self-insurer 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 shall be subject to the jurisdiction of Oregon courts and Oregon Law.

(K) Payment of any amount under an ISLOC shall 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) An ISLOC shall be subject to the International Standby Practices 1998 (ISP98), ICC Publication No. 590, which is hereby incorporated by reference, and a reference to this publication shall be included in the text of the ISLOC. ICC Publication 590 may be obtained from the International Chamber of Commerce.

(M) All bank charges for the ISLOC are for the account of the applicant.

(N) 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 shall be required within 60 days of the publication of the lower credit rating to:

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

(ii) Confirm the ISLOC by an Oregon state chartered bank or a federally chartered bank with an Oregon branch office 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) Each self-insured employer that submits an acceptable ISLOC as its security deposit, shall furnish a memorandum of understanding with the ISLOC, on the department's Form 440-3529, which affirms the self-insured employer's acceptance of all of the following requirements:

(i) An ISLOC is furnished to the director instead 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) The self-insured employer understands the ISLOC will be automatically extended without amendment for an additional one (1) year from the expiry date, or any subsequent expiry date, unless, at least 60 days before the expiry date the director is notified in writing by the bank that the irrevocable standby letter of credit will not be renewed;

(iii) The ISLOC may be replaced with an ISLOC or surety bond of equal amount or

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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) The self-insured employer shall affirm 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 656; or the self-insured employer files bankruptcy; or the self-insured employer fails to renew or provide acceptable substitute security by fifteen (15) days prior to the expiry 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) If legal proceedings are initiated by any party with respect to payment of any ISLOC, then it is agreed that the proceedings shall be subject to the jurisdiction of Oregon courts and application of Oregon Law(s).

(b) A surety bond may be accepted by the director as a security deposit or substitute security deposit for an ISLOC, government securities, monies, 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.

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

(B) Surety Bond Form 440-824 shall be used for all surety bonds;

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

(D) 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 shall be effective. Such termination shall in no way limit the liability of the Surety for subsequent defaults of the Principal's liability and/or obligations incurred under ORS 656 prior to the effective date of such termination;

(E) Surety Bond Rider Form 440-1810 shall 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) Surety bonds and all riders to the surety bonds shall 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;

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

(i) 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 656 and covering all the Surety's liability under the surety bond to be released, in an amount required by the director; and

(ii) 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) 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) The surety company or its parent shall have and maintain an acceptable credit rating in accordance with the following:

(i) Standard and Poors Insurer Financial Strength Rating of A or better rating, or

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

(I) A surety bond shall 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, or is seized, or declares insolvency, or the current credit rating is below the ratings required in subsection (H).

(c) 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 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. A self-insured employer that has government securities, certificates of deposit, or time deposit accounts as all or part of its security deposit shall complete 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 is granted subsequent to January 1, 2004.

Stat. Auth: ORS 656.430, 656.704, and 656.726(4)

Stats. Implemented: ORS 656.430

Hist: Adopted 7/18/03 as WCD Admin. Order 03-058, eff 7/18/03 (Temporary)

Adopted 12/3/03 as WCD Admin. Order 03-062, eff. 1/1/04

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436-050-0170 Excess Insurance Requirements

(1) A self-insured employer must have excess workers' compensation insurance coverage appropriate for the employer's potential liability under ORS 656.001 to 656.990 with an insurer authorized to do business in the state [or with any other insurer from whom such insurance can be obtained pursuant to ORS 744.305 to 744.405]. The policy providing such coverage and any endorsements thereto must be filed with the director not later than 30 days after the date the coverage is effective.

(2) The excess insurance:

(a) Must include a provision for reimbursement to the director of all expenses paid by the director on behalf of the employer pursuant to 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) Coverage must be continuous and remain in effect from the date of certification until the certification is revoked or canceled[.]; **and**

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

(d) Coverage may include aggregate excess insurance.

(3) When an excess insurance policy is canceled by the excess insurer or the employer, **a** copy of such notice shall be filed with the director 30 days prior to the effective date of cancellation.

(4) [The employer may obtain specific excess, aggregate, umbrella insurance or any combination thereof.]

[5] **Changes in [T]the self-insured retention level and policy [limitation amount]limits of the excess insurance require[d] prior approval of the director.** [may be increased from time to time by the director] **The director may require a reduction in the self-insured retention level or an increase in the policy limits.** Those items considered in determining and approving the retention and limitation levels of the excess insurance will be the employer's:

(a) Financial status[.];

(b) Risk and exposure; [and]

(c) Claim history[.]; **and**

(d) The amount of the required security deposit.

[6] **(5)** A self-insured employer will be allowed a period, not to exceed 30 days, within which to 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.

[7] **(6)** 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 656 and these rules. Regardless of the types and amounts of excess coverage a self-insured employer shall not transfer claims to the excess insurer(s) for processing.

[8] **(7)** If a self-insured employer fails to comply with the requirements of this section,

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the employer's certification as a self-insured will be revoked. The employer will be given written notice of such revocation which will be effective 30 days from receipt of such notice. If the required excess insurance is obtained within the 30 days, the revocation is canceled and certification remains in effect.

Stat. Auth: ORS 656.430, 656.704, and 656.726(4)

Stats. Implemented: ORS 656.430

Hist: Filed 4/2/80 as WCD Admin. Order 3-1980, eff. 4/2/80
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Amended 12/22/89 as WCD Admin. Order 5-1989, eff. 1/1/90
Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01
Amended 12/3/03 as WCD Admin. Order 03-062, eff. 1/1/04

436-050-0175 Annual Reporting Requirements

(1) To determine the financial status of a self-insured employer and to evaluate the employer's continuity of operation, a self-insured employer shall annually file, within 120 days of the employer's fiscal year end, an audited financial statement or annual report with audited financial statement, including SEC Form 10K if issued, for the just completed fiscal year. All financial statements and annual financial reports filed, as required by this section, shall be retained by the director for a period of at least three years. In lieu of an audited financial statement or annual report, a self-insured employer may file a financial statement certified by the employer that the financial statement is true, accurate and presents the employer's financial condition and results of operations as of the date of the statement. [, if the employer also:]

[(a) Deposits and maintains the surety deposit in the form of a surety bond approved by the director; or]

[(b) Increases the surety deposit, in a form approved by the director, by \$100,000 over the amount as determined pursuant to OAR 436-050-0180.]

(2) [To ensure continuity of coverage, e] **E**ach self-insured employer shall submit an annual endorsement to their application for self-insurance in the form prescribed by the director. The endorsement shall be filed by March 1 of each year.

(3) Notwithstanding [subsections] **section** (1) [(a) and (b)] of this rule [or OAR 436-050-0160(5)], the director may require an employer to submit an audited financial statement **if the certified financial statement submitted is insufficient to evaluate the employer's financial status.**

(4) The self-insured employer shall report claim loss data necessary by March 1 of each year for the purposes of experience rating modification, retrospective rating calculations and determining deposits.

(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 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. Reports must include:

(i) Contract medical expenses;

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(ii) Total medical deductible;

(iii) Number of claims for which the medical deductible is claimed;

(iv) For claims with incurred losses of \$5,000 or less: total paid, outstanding reserves, and total incurred losses;

(v) Number of claims with incurred losses of \$5,000 or less; and

(vi) For each claim with incurred losses exceeding \$5,000: worker's name, date of injury, claim number, total paid, outstanding reserves, and total incurred losses. Claims must be listed in alphabetical order.

(B) A report of losses covering the self-insured 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 must include:

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

(ii) Date of injury;

(iii) Claim number;

(iv) Total paid;

(v) Outstanding reserves; and

(vi) Total incurred losses.

(C) Identification of claims involving catastrophes, Handicapped Worker Program, permanent total disability or fatal benefits, third party recoveries, and claims where the total incurred has or is expected to exceed the self-insured retention of the self-insured employer's excess insurance policy.

(b) The director will, by bulletin, [prescribe] **provide** guidelines for self-insured employers and their authorized representatives to use in [providing] **submitting** the required data.

[b]**(c)** Each self-insured city or county that is exempted from the security deposit requirements in accordance with ORS 656.407(3) and OAR 436-050-0185 shall, in addition to the above, provide 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.

(5) If a self-insured employer fails to comply with the requirements of sections (1), (2), **(3)** or (4) of this rule, the director may impose any or all of the following sanctions:

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

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

(c) Assess civil penalties for up to \$250 per day that the information is not provided

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beyond the deadline; or

(d) Revoke the employer's certification as a self-insured.

(6) 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 audits. If a self-insured **employer's** total claims values are found to be 10 percent or more below the director's determined values, the current experience rating will be recalculated using the director's determined values and will be used in the security deposit and retrospective rating calculations. In addition, penalties may be assessed.

Stat. Auth: ORS 656.407, 656.430, 656.704, and 656.726(4)

Stats. Implemented: ORS 656.407 and 656.430

Hist: Filed 12/22/89 as WCD Admin. Order 5-1989, eff. 1/1/90
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Amended 10/4/91 as WCD Admin. Order 8-1991, eff. 10/7/91 (Temp)
Amended 01/10/92 as WCD Admin. Order 2-1992, eff. 2/1/92
Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01
Amended 12/3/03 as WCD Admin. Order 03-062, eff. 1/1/04

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

(1) The deposit a self-insured employer is required by ORS 656.407 to maintain with the director shall be an amount not less than the greater of:

(a) \$100,000; **or**

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

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

(2) Notwithstanding section (1) of this rule, if the employer is applying for self-insurance, the amount of the deposit shall not be less than the greater of:

(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) \$300,000 plus \$30,000 additional for each \$100,000 the employer's net worth is below \$2 million[.]; **or**

(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 [may also] **will** take into consideration:

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

(b) Employer's probable continuity of operation;

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

(d) Balance of the Self-Insured Employers Adjustment Reserve.

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

(5) A self-insured employer will be allowed a period, not to exceed 30 days, within which to comply with an order of the director to the employer to increase the amount of its deposit.

(6) "Claims processing administrative cost" shall be determined by developing a percentage rate to be applied against the employer's "unpaid losses." The rate will be based upon 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.

(7) "Incurred but not reported" (IBNR) shall be calculated by applying a loss development factor against the employer's annual incurred losses. The loss development factor will be calculated annually by the director.

Stat. Auth: ORS 656.407, 656.704, and 656.726(4)

Stats. Implemented: ORS 656.407

Hist: Filed 4/12/76 as WCB Admin. Order 2-1976, eff. 4/12/76 (Temporary) as Rule 436-51-140
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Amended 12/18/87 as WCD Admin. Order 9-1987, eff. 1/1/88
Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01
Amended 12/3/03 as WCD Admin. Order 03-062, eff. 1/1/04

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

(1) A self-insured city or county may make application to be exempt from the security deposit requirements of ORS 656.407(2). Pursuant to ORS 656.407(3), the requirements to qualify for exemption are as follows:

(a) The city or county must be a certified self-insured employer, not a member of a self-insured employer group, in compliance with ORS 656.407(2) and OAR 436-050-0180 as an independently self-insured employer for the three consecutive years immediately prior to making application for the exemption; and

(b) The city or county 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

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director pursuant to ORS Chapter 656. The workers' compensation loss reserve account shall 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) A written application requesting exemption from ORS 656.407(2) shall be submitted to the director no later than 45 days prior to the date the exemption is desired to become effective. The application shall include the following supporting documentation for review and approval:

(a) A copy of the city's or county'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) A copy of the city's or county's current fiscal year's approved budget that states the budgeted amount for the funded workers' compensation loss reserve account;

(c) A resolution or ordinance passed by the city's or county'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 shall 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) A statement giving the amount of the current reserves for present and future liabilities, the amount funded in the workers' compensation loss reserve account, 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. The statement shall include the city's or county's certification that the loss reserve account is actuarially sound and adequately funded if an actuarial study is not available.

(3) Within 45 days of receipt of all information required in section (2) of this rule, the director will review the application and supporting documentation and notify the city or county that the request for exemption under ORS 656.407(3) is approved or denied.

(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) If approved, the notice shall include:

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

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

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

(4) Probable cause to believe the workers' compensation loss reserve account is not

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actuarially sound includes but is not limited to: 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.

(5) A city or county that has been exempted from ORS 656.407(2) and desires to terminate its self-insurance certification or elects to discontinue maintaining an actuarially sound and adequately funded workers' compensation loss reserve shall:

(a) Submit written request to the director at least 60 days prior to: the desired effective date the self-insured certification is requested to be terminated; or the effective date that the qualifying workers' compensation loss reserve account is to be discontinued;

(b) If the self-insured certification is to be terminated, the request for termination shall comply with the requirements of OAR 436-050-0200. Prior to the effective date of termination the city or county shall provide [surety] **a security deposit**, as required by the director, in an amount determined pursuant to OAR 436-050-0180 and ORS 656.443; and

(c) If the city or county desires to remain self-insured the city or county shall requalify for self-insurance certification by depositing prior to the date the qualifying workers' compensation loss reserve account is to be discontinued, [such surety] **a security deposit** as required by the director pursuant to ORS 656.407(2) and OAR 436-050-0180. Pursuant to ORS 656.407(3)(e) failure to deposit the required [surety] **security deposit** with the director prior to the date of discontinuance of the qualifying workers' compensation loss reserve account shall cause the city's or county's self-insurance certification to be automatically revoked as of that date.

Stat. Auth: ORS 656.407, 656.704, and 656.726(4)

Stats. Implemented: ORS 656.407

Hist: Filed 10/4/91 as WCD Admin. Order 8-1991, eff. 10/7/91 (Temporary)

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Amended 12/3/03 as WCD Admin. Order 03-062, eff. 1/1/04

436-050-0190 Using Self-Insured Employers [Surety] Security Deposit/Self-Insured Employers Adjustment Reserve/Self-Insured Employer Group Adjustment Reserve

(1) In the event a self-insured employer fails to or is unable to make all payments due under ORS Chapter 656, the director shall, 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.

(2) If a self-insured employer defaults and is being serviced by one or more service companies, the director will, on behalf of the employer, designate those service companies to continue processing claims in accordance with the contracts in effect. At least 90 days prior to the time the contract expires, the service company can submit a proposal to continue processing the claims. The director will consider such proposal along with other options which may include referral of the claims for processing to an Assigned Claims Agent as secured under ORS 656.054.

(3) If a self-insured employer defaults and is self-administering, the director shall, on behalf of the employer, negotiate to have the employer's claims processed or may refer the

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claims for processing to an Assigned Claims Agent as secured under ORS 656.054.

(4) For the purposes of this rule:

(a) "Employer" includes employer groups.

(b) "Self-insured employer" includes self-insured employer groups.

Stat. Auth: ORS 656.407, 656.704, and 656.726(4)

Stats. Implemented: ORS 656.407, 656.443, and 656.614

Hist: Filed 2/10/82 as WCD Admin. Order 4-1982, eff. 2/15/82
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Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01
Amended 12/3/03 as WCD Admin. Order 03-062, eff. 1/1/04

436-050-0195 [Notification Required when] **Requirements for Self-Insured Entity Changes**

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

(2) A self-insured employer shall submit requests to add or delete entities under its self-insured certification in the form and format, or manner, as prescribed by the director, and signed by an officer of the company. **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 and/or any other entity included in the self-insured employer's certification.**

(3) 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) Failure to provide notification as required by this section may result in assessment of penalties and/or self-insurance certification revocation.

Stat. Auth: ORS 656.407, ORS 656.430, ORS 656.704 and ORS 656.726(3)

Stats. Implemented: ORS 656.407 and ORS 656.430

Hist: Filed 12/22/89 as WCD Admin. Order 5-1989, eff. 1/1/90
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Amended 12/3/03 as WCD Admin. Order 03-062, eff. 1/1/04

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

(1) A certification to a self-insurer issued by the director remains in effect until:

(a) Revoked as provided by OAR 436-050-0150 through 436-050-0230 and ORS 656.440; or

(b) Canceled by the employer with the approval of the director.

(2) If a self-insured employer wishes to cancel certification as a self-insured, the employer shall make written request to the director. Such a request shall be submitted 60 days

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prior to the desired date of cancellation and include:

(a) What arrangements have been made to comply with ORS 656.017 if the employer continues to have one or more subject workers;

(b) What arrangements have been made to process present and future claims for which the employer is responsible;

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

(d) Any reports and/or moneys due the director pursuant to ORS 656.506, 656.612, and 656.614.

(3) The certification of a self-insured employer may be revoked if:

(a) The employer fails to comply with ORS 656.407 or 656.430 and the rules adopted pursuant thereto; or

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

(4) Except as provided in OAR 436-050-0170⁽⁸⁾~~(7)~~, notice of certificate revocation will be issued in accordance with the provision of ORS 656.440.

Stat. Auth: ORS 656.704 and 656.726(4)

Stats. Implemented: ORS 656.434 and 656.440

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Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01
Amended 12/3/03 as WCD Admin. Order 03-062, eff. 1/1/04

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

(1) Every employer certified as a self-insured employer shall give the director notice of 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. The employer shall give notice of the location, mailing address, telephone number, and any other contact information upon application for certification.

(2) With the approval of the director, 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. To obtain approval or to change or add service locations, the employer shall file with the director a copy of the agreement entered into between the employer and each company, and shall give the director notice of the location, mailing address, telephone number, and any other contact information of each service company.

(3) If a self insured employer or service company for a self insured employer changes [if]its place of business[, or that of a service company, is changed.], the self insured employer shall

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notify the director of the new location, mailing address, telephone number, and any other contact information 30 days prior to the effective date of the change.

(4) [When a self-insured employer changes service companies, changes from self-administration to a service company or from a service company to self-administration, the employer shall notify the director of which claims, if any, will be transferred at least 10 days prior to the date of transfer. Notice to the director shall include: **When a self-insured employer changes claims processing locations, service companies, or self-administration, the employer must provide at least 10 days prior notice to:**

(a) Workers with open or active claims, their attorneys, and attending physicians. The notice must provide the name of a contact person, telephone number, and mailing address of the new claim processor;

(b) The director of which claims will be transferred. The notice must include:

[a](A) Contact information for both the sending processor and receiving processor of the claims to include a contact person, telephone number, mailing address, and physical address where the claims are to be processed; and

[b](B) A listing of the claims being transferred which identifies the sending processor's claim number, claimant name, claimant's social security number, and date of injury. The list should also include the employer's WCD number and WCD's claim number, if known.

(5) 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.

(6) Notwithstanding section (1) of this rule, the director may approve up to two additional claims processing locations, if the self-insured employer can show:

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

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

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

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

(8) 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

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

(9) 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.

Stat. Auth: ORS 656.455, 656.704 and 656.726(4)

Stats. Implemented: ORS 656.455

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Amended 12/3/03 as WCD Admin. Order 03-062, eff. 1/1/04

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

(1) The written records self-insured employers are required to keep in this state to ensure compliance with ORS 656.506, 656.612, 656.614, and 656.622 include:

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

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

(2) The self-insured employer must maintain at a place of business in this state, those written records relating to their safety and health program as required by ORS 656.430(10) and in accordance with 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) Written records used and relied upon in processing claims; and

(b) A written record of all payments made as a result of any claim **including documentation of the date the payment was mailed. Documentation may be the actual mailing date, or an explanation of the time period between the date of issuance and mailing.**

(4) 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.

(5) Records of any claim for a compensable injury 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) Notwithstanding sections (4) and (5) of this rule, 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

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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 such claim are thereafter subject to section (5) of this rule.

(8) Claim records may be destroyed when all potential for benefits to the injured worker is gone.

(9) Records retained as required by section (1) 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.

Stat. Auth: ORS 656.455, 656.704 and 656.726(4)

Stats. Implemented: ORS 656.455

Hist: Filed 4/2/80 as WCD Admin. Order 3-1980 eff. 4/2/80
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436-050-0260 Qualifications of a Self-Insured Employer Group

Five or more employers may qualify as a self-insured employer group if the employers as a group:

(1) Incorporate or are a cooperative pursuant to 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) Designate a board of trustees and an administrator;

(3) Demonstrate a combined net worth of \$1 million or more and have excess insurance with a retention of \$100,000 **or more**; or the combined net worth of the employers as a group may be less than \$1 million if the employers as a group obtain excess insurance with less than a \$100,000 retention, in which case the net worth required may be reduced by the same percentage the retention is reduced below \$100,000;

(4) Obtain excess insurance coverage of the type and amounts approved by the director;

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

(6) Engage an adequate staff pursuant to OAR 436-055-0070 qualified to process claims;

(7) 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 thereof on the net worth of the employers in the group; and

(b) Whether an employer who terminates membership in the group continues to be a subject employer; and if the employer remains a subject employer what arrangements have been made to continue coverage;

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(8) Establish a safety and health loss prevention program as required by OAR 437-001;

(9) Create a common claims fund approved by the director;

(10) Designate an entity within or 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. 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 shall file with the director a copy of the agreement entered into between the employer group and each company, and shall give the director notice of the location, mailing address, telephone number, and any other contact information of each service company;

(11) Establish proof of financial ability by [depositing, in a depository designated by the director, money, government securities or other surety] **providing a security deposit that the director [may] determines is acceptable[.] in accordance with OAR 436-050-0165; [The account of deposit will be] and in an amount as determined in accordance with OAR 436-050-0180; and**

(12) Comply with the requirements of OAR **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[; and]. Failure to comply with these requirements will result in the actions prescribed in those rules.**

(13) Every self-insured employer group shall maintain at least one place of business in this state where the employer processes claims, keeps written records of claims and other records as required by OAR 436-050-0210 to 436-050-0220.

(14) Failure of a certified self-insured employer group to maintain the qualifications required in this rule shall result in revocation of the self-insured employer group's certification. The group will be given 30 days written notice of the intent to revoke the self-insured certification, to be effective 30 days from the date of receipt of the revocation notice. 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.

Stat. Auth: ORS 656.407, 656.430, 656.704 and 656.726(4)

Stats. Implemented: ORS 656.407 and 656.430

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Amended 12/3/03 as WCD Admin. Order 03-062, eff. 1/1/04

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:

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- (a) An application for the group applying for self-insurance in a form and format prescribed by the director;
- (b) Proof in the form of a certificate from the Corporation Division showing the employer group as a corporation or cooperative;
- (c) A copy of the bylaws or corporate minutes which include:
- (A) Designation of specific individuals as trustees for the corporation or cooperative and naming an administrator to administer the financial affairs of the group who, as obligee, shall furnish a fidelity bond with the group in an amount sufficient to protect the group against the misappropriation or misuse of any moneys or securities; and
- (B) The criteria utilized by the trustees and administrator when approving applications for new membership and requests for withdrawal by members of the group;
- (d) A current financial statement of each member making application which taken collectively shows the following:
- (A) The combined net worth of all members making application for coverage shall not be less than \$1 million unless the employers as a group have obtained excess insurance coverage with less than a \$100,000 retention in which case the net worth will be reduced by the same percentage the retention is reduced below \$100,000; and
- (B) Working capital in an amount establishing financial strength and liquidity of the business;
- (e) An individual report by employer showing the employer's payroll by class and description and loss information for the last four calendar years;
- (f) With the exception of governmental subdivisions, an agreement jointly and severally binding each member for the payment of any compensation and moneys due to the director by the group and/or any member of the group. The agreement shall be in a form and format prescribed by the [D]director;
- (g) Evidence of a safety and health loss prevention program designed to demonstrate that accident prevention will improve due to self-insurance;
- (h) Proof of an adequate staff qualified to process claims by:
- (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;

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(i) 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;

(j) A procedure for notifying the director of:

(A) The commencement or termination of employers within the group and the effect on the net worth of the group; and

(B) Arrangements made by an employer leaving the group to continue insurance coverage.

(k) A program whereby each employer within the group contributes to a common claims fund in accordance with OAR 436-050-0300; and

(L) The type of [surety] **security** deposit the employer group wishes to provide, with appropriate justification.

(2) Notwithstanding subsection (1)(d) of this rule, the director may require an audited financial statement before considering an application by a group for self-insurance.

(3) Within 60 days of receipt of all information required in 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 denied and the reason therefore; or, that the group is qualified as a self-insured employer group. The notice shall include:

(a) The amount of [surety] **security** deposit required;

(b) Approval of the type, retention and limitation levels of the excess insurance as determined pursuant to OAR 436-050-0170; and

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

(4) The certification of self-insurance will be issued upon receipt of the [surety] **security** deposit[,] **and** the appropriate excess insurance binder [and modification to the occupational safety and health loss control program].

(5) Unless a **later** date is specified by the applicant, the effective date of certification will be the first day of the [calendar quarter] **month** following the date the requirements of section (4) of this rule are met.

Stat. Auth: ORS 656.407, 656.430, 656.704 and 656.726(4)

Stats. Implemented: ORS 656.407 and 656.430

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**436-050-0280 Applying for Certification as a Self-Insured Employer Group:
Governmental Subdivisions**

(1) Governmental subdivisions applying for certification as a self-insured employer group

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must submit:

(a) An application for the group applying for self-insurance in a form and format prescribed by the director;

(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 includes:

(A) Designation of specific individuals as trustees for the group and naming an administrator to administer the financial affairs of the group who, as obligee, shall furnish a fidelity bond with the group in an amount sufficient to protect the group against the misappropriation or misuse of any moneys or securities; 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 current financial statement of each member making application which taken collectively shows the combined net worth of all members making application for coverage shall not be less than \$1 million unless the employers as a group have obtained aggregate excess insurance coverage with less than a \$100,000 retention in which case the net worth will be reduced by the same percentage the retention is reduced below \$100,000;

(e) An individual report by employer showing the governmental subdivision's payroll by class and description and loss information for the last four calendar years;

(f) 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;

(g) Evidence of a safety and health loss prevention program designed to demonstrate that accident prevention will improve due to self-insurance;

(h) Proof of an adequate staff qualified to process claims by:

(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;

(i) 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;

(j) A procedure for notifying the director of:

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(A) The commencement or termination of governmental subdivisions within the group and the effect on the net worth of the group; and

(B) Arrangements made by a governmental subdivision leaving the group to continue insurance coverage;

(k) A program whereby each employer within the group contributes to a common claims fund in accordance with OAR 436-050-0300; and

(L) The type and amount of [surety]**security** deposit the group wishes to provide, with appropriate justification. In no case shall the amount be less than \$300,000.

(2) Notwithstanding subsection (1)(d) of this rule, the director may require an audited or certified financial statement before considering an application by a group for self-insurance.

(3) 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 denied and the reason therefore; or, that the group is qualified as a self-insured employer group. The notice shall include:

(a) The amount of [surety]**the security** deposit required; and

(b) Approval of the type, retention and limitation levels of the excess insurance as determined pursuant to OAR 436-050-0170; and the type, retention and limitation levels of excess insurance required.

(4) The certification of self-insurance will be issued upon receipt of the [surety]**security** deposit, 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, the effective date of certification will be the date the certification is issued.

Stat. Auth: ORS 656.407, 656.430, 656.704 and 656.726(4)

Stats. Implemented: ORS 656.407 and 656.430

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436-050-0290 Commencement/Termination of Employers with a Self-Insured Employer Group; Effect on Net Worth; Extension of Coverage; Change in Entity; Change of Address; Recordkeeping

(1) Prospective new members of a self-insured employer group shall submit an application to the board of trustees, or its administrator. The trustees, or administrator, may approve the application for membership pursuant to the bylaws of the self-insured group. Once approved, the administrator or board of trustees shall submit to the director an endorsement, within 30 days of the effective date of membership, in a form and format as approved by the director which shall be accompanied by:

(a) A current financial statement of the employer applying;

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(b) An agreement signed by the administrator of the self-insured 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 and/or any member of the group; or, if a governmental subdivision self-insured 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 Chapter 656 incurred by that governmental subdivision during the period of group self-insurance;

(c) A statement showing the effect on the net worth of the group; and

(d) The employer's payroll by class and description and loss information for the last four fiscal or calendar years.

(2) Incomplete submissions or incorrectly completed endorsements to add new members received by the director will not be considered filed. 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) Individual members may elect to terminate their participation in a self-insured group or be subject to cancellation by the group pursuant to the bylaws of the group. Such cancellation or termination shall not be effective prior to approval by the director and only after the self-insured group has submitted the following information for review:

(a) A statement showing the effect of said termination on the net worth of the group;

(b) Evidence that the employer requesting termination has made alternate arrangements for coverage if the employer continues to employ; and

(c) The requested date of cancellation or termination.

(4) Upon receipt of the required information, the director may approve the cancellation or termination of the employer provided:

(a) Such cancellation or termination does not adversely affect the net worth of the group to the extent that the group would no longer qualify for a self-insured status; and

(b) Sufficient evidence has been presented to insure that the employer, if employing, retains workers' compensation coverage.

(5) Once approved, the group will be notified in writing of the effective date of cancellation or termination.

(6) An employer within a group shall, if there is a change in the employing legal entity, again apply for membership within the group, in accordance with this rule. A change in legal entity includes, but is not limited to:

(a) When a partner joins or leaves the partnership;

(b) When the employer is a sole proprietorship, partnership or corporation, and changes to a sole proprietorship, partnership or corporation; or

(c) When an employer sells an existing business to another person(s), except in the case

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of a corporation.

(7) An employer within a group shall, 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 shall, within 10 days, submit to the director an endorsement as notice of the change. A change of address includes, but is not limited to:

- (a) Establishment of a new or additional location; or
- (b) Termination of an existing location.

(8) The endorsement required by section (7) of this rule shall state specifically which location is being deleted and/or which is being added. It shall also identify the type of address, whether it is mailing, operating, or the principal place of business.

(9) The employer group [will be] **is** responsible for maintaining **coverage records relating to each member, to include:**

(a) The employer's application for membership in the group, with original signatures;

(b) The employer's liability agreement pursuant to OAR 436-050-0270(1)(f), or resolution pursuant to OAR 436-050-0280(1)(f), with original signatures;

(c) Cancellation or termination notices;

(d) Reinstatement applications and notices; and

(e) R[ecords] on the whereabouts of employers that have been canceled or have terminated their participation in the group.

Stat. Auth: ORS 656.704 and 656.726(4)

Stats. Implemented: ORS 656.434 and 656.440

Hist: Filed 2/10/82 as WCD Admin. Order 4-1982, eff. 2/15/82
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Renumbered from OAR 436-51-415, January 1, 1986
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Amended 12/18/87 as WCD Admin. Order 9-1987 eff. 1/1/88
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Amended 12/22/89 as WCD Admin. Order 5-1989, eff. 1/1/90
Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01
Amended 12/3/03 as WCD Admin. Order 03-062, eff. 1/1/04

436-050-0400 Responsibility for Providing Coverage under a Lease Arrangement

(1) Every worker-leasing company providing workers to a client shall satisfy the requirements of ORS 656.017 and 656.407.

(2) Every worker-leasing company providing leased workers to a client shall also provide workers' compensation insurance coverage for any subject workers of the client, unless the client has an active guaranty contract on file with the director or is certified under ORS 656.430 as a self-insured employer. In the latter circumstance, the client's guaranty contract insurer or self-insured employer will be deemed to provide insurance coverage for all leased workers and subject workers of the client.

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(3) If an insured client allows its guaranty contract to terminate 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 shall be considered a noncomplying employer unless the worker leasing company has made the filing with the director as provided in 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 guaranty contract on file with the director or is certified under ORS 656.430 as a self-insured employer.

(5) A worker leasing company shall not provide workers' compensation coverage for another worker leasing company.

Stat Auth: ORS 656.704, 656.726(4), 656.850 and 656.855

Stats. Implemented: ORS 656.850 and 656.855

Hist: Filed 4/1/94 as Admin. Order 94-052, eff. 5/1/94
Amended 12/23/94 as WCD Admin. Order 94-063, eff. 2/1/95
Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01
Amended 12/3/03 as WCD Admin. Order 03-062, eff. 1/1/04

436-050-0440 Qualifications, Applications, and Renewals for License as a Worker-Leasing Company

(1) Each applicant for initial license or renewal as a worker-leasing company shall:

(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 pursuant to ORS 656.017; and

(c) Pay the required licensing fee of \$1,250.

(2) Each applicant for initial license or renewal as a worker-leasing company must submit an application for license on 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) WCD employer number, if any;

(j) Names and titles of authorized representatives, including the Oregon representative;

(k) List of controlling persons holding or controlling 10 percent or more interest in the company, including their names, titles, residence addresses, and dates of birth;

(l) A record of any present or prior worker leasing company services provided in any

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state and an explanation of those services;

(m) A letter of verification or good-standing from the controlling regulatory agency of those states in which a worker leasing license or certification is currently held;

(n) Verification of compliance with tax laws from Oregon Employment [Division] **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;

(o) A record of any actions in which an essential element of the action involved fraud, theft, or embezzlement of monies on the part of the applicant or any controlling person; such actions may include:

(A) Criminal convictions;

(B) Lawsuits;

(C) Guilty pleas;

(D) Judgments; or

(E) Administrative actions;

(p) Full details regarding any action taken under subsection (o) of this section, including:

(A) The nature and dates of the action(s);

(B) Outcomes, sentences, and or 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/or license number for any actions against a license;

(q) A plan of operation which demonstrates how the worker-leasing company will meet the requirements of ORS chapter 654, *The Oregon Safe Employment Act*, and collect the information necessary to establish each client's experience rating; and

(r) A notarized signature of an authorized representative of the applicant.

(3) Incomplete or incorrectly completed application packages will be rejected and returned to the applicant. The applicant will not be authorized to lease employees until the director has issued a license.

(4) Upon receipt of a completed application package, the application will be reviewed. The department may conduct a background investigation of each individual applicant and controlling person. If the application is approved, the director will issue a license.

(5) Each license issued under these rules shall automatically expire two years after the date of issuance unless renewed by the licensee.

Stat Auth: ORS 656.704, 656.726(4), 656.850 and 656.855
Stats. Implemented: ORS 656.850 and 656.855
Hist: Filed 4/1/94 as Admin. Order 94-052, eff. 5/1/94
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Amended 12/3/03 as WCD Admin. Order 03-062, eff. 1/1/04

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436-050-0480 Assessment of Civil Penalties

(1) The director may assess a civil penalty against an employer who fails to respond to requests for information and fails to meet the requirements of 436-050-0470. The matrix attached to these rules in Appendix "A" will be used in assessing these penalties. Assessment of a penalty does not relieve the employer of the obligation to provide a response.

(2) 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 based on the matrix in Appendix "B", attached to these rules.

(3) An employer who is found to be operating a worker leasing company without having obtained a license or having failed to renew a license pursuant to ORS 656.850(2), may be assessed a civil penalty based on the matrix attached to these rules in Appendix "C".

(4) For the purposes of ORS 656.850(2), a violation is defined as any month or part of a month in which an employer provides leased workers to a client without having first obtained a worker leasing license.

Stat Auth: ORS 656.704, 656.726(4), 656.850 and 656.855
Stats. Implemented: ORS 656.850 and 656.855
Hist: Filed 12/3/03 as WCD Admin. Order 03-062, eff. 1/1/04

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APPENDIX A

OAR 436-050-0480

Penalty Matrix For Failure To Respond To Information Requests

NUMBER OF VIOLATIONS

	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5+</u>
<u>NUMBER OF DAYS LATE</u>					
<u>1-7</u>	<u>\$0</u>	<u>\$50</u>	<u>\$100</u>	<u>\$200</u>	<u>\$300</u>
<u>8-14</u>	<u>\$50</u>	<u>\$100</u>	<u>\$200</u>	<u>\$400</u>	<u>\$800</u>
<u>15-21</u>	<u>\$100</u>	<u>\$200</u>	<u>\$400</u>	<u>\$800</u>	<u>\$1000</u>
<u>22+</u>	<u>\$200</u>	<u>\$400</u>	<u>\$800</u>	<u>\$1000</u>	<u>\$1250</u>

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APPENDIX B

OAR 436-050-0480

Penalty Matrix For Recordkeeping Violations

NUMBER OF COMPLIANCE REVIEWS/AUDITS

<u>TYPE OF RECORD</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>
<u>Signed client contract</u>	<u>\$50 each violation</u>	<u>\$100 each violation</u>	<u>\$150 each violation</u>	<u>\$200 each violation</u>
	<u>\$250 max</u>	<u>\$500 max</u>	<u>\$750 max</u>	<u>\$1000 max</u>
<u>Worker Leasing Notice Filed With WCD In 14 Days</u>	<u>\$100 each violation</u>	<u>\$150 each violation</u>	<u>\$200 each violation</u>	<u>\$300 each violation</u>
	<u>\$500max</u>	<u>\$750 max</u>	<u>\$1000 max</u>	<u>\$1500 max</u>
<u>Worker Leasing Notice In File</u>	<u>\$50 each violation</u>	<u>\$100 each violation</u>	<u>\$150 each violation</u>	<u>\$200 each violation</u>
	<u>\$250 max</u>	<u>\$500 max</u>	<u>\$750 max</u>	<u>\$1000 max</u>
<u>Effective Date On Worker Leasing Notice Same As On Client Contract</u>	<u>\$50 each violation</u>	<u>\$100 each violation</u>	<u>\$150 each violation</u>	<u>\$200 each violation</u>
	<u>\$250 max</u>	<u>\$500 max</u>	<u>\$750 max</u>	<u>\$1000 max</u>
<u>Cancellation of Worker Leasing Notice In File</u>	<u>\$50 each violation</u>	<u>\$100 each violation</u>	<u>\$150 each violation</u>	<u>\$200 each violation</u>
	<u>\$250 max</u>	<u>\$500 max</u>	<u>\$750 max</u>	<u>\$1000 max</u>

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APPENDIX C

OAR 436-050-0480

ORS 656.850 (2)

Penalty Matrix For Operating as a Worker Leasing Company Without a License

MONTHS

<u>1 MONTH</u>	<u>2-3 MONTHS</u>	<u>4-6 MONTHS</u>	<u>7+ MONTHS</u>
<u>\$250</u>	<u>\$500</u>	<u>\$1000</u>	<u>\$2000</u>