

**DEPARTMENT OF INSURANCE AND FINANCE
WORKERS' COMPENSATION DIVISION
CHAPTER 436, DIVISION 50**

EMPLOYER/INSURER COVERAGE RESPONSIBILITY

EFFECTIVE FEBRUARY 1, 1992

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**EXHIBIT "A"
OREGON ADMINISTRATIVE RULES
OAR 436, DIVISION 50**

436-50-001 Authority for Rules

These rules are promulgated under the Director's authority contained in ORS 656.407, 656.430, 656.455, 656.726, 731.475 and Oregon Laws 1989, c 762 Sect. 1a (House Bill 2320).

Hist: Filed 12/19/75 as WCB Admin. Order 18-1975, eff. 1/1/76 as Rules 436-51-001 and 436-51-201
Amended 4/12/76 as WCB Admin. Order 2-1976, eff. 4/12/76
(Temporary) as Rule 436-51-130, (436-55-060)
Amended 6/15/76 as WCB Admin. Order 3-1976, eff. 6/15/76
as Rule 436-51-130, (436-55-060)
Amended 4/20/80 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
Renumbered from OAR 436-51-001, 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

436-50-002 Purpose

It is the purpose of the Director that under the provision of ORS 656.726(3) rules be established to ensure the requirements of ORS 656.017 are met. One of the general charges to the Director under the Workers' Compensation Law is the "providing of compensation, regulation and enforcement in connection with ORS 656.001 to 656.794." To meet that responsibility the Director has delegated to Compliance the responsibility of ensuring the requirements of the statutes, rules and bulletins of the Department are complied with as they relate to employer coverage.

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Amended 4/12/76 as WCB Admin. Order 2-1976, eff. 4/12/76 (Temporary as Rule 436-51-130)
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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
Renumbered from OAR 436-51-008, 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

436-50-003 Applicability of Rules

These rules are effective February 2, 1992, to carry out the provisions of:

- (1) ORS 656.017 - Employer required to pay compensation and perform other obligations and duties.
- (2) ORS 656.029 - Independent contractor status.
- (3) ORS 656.126 - Coverage while temporarily in or out of state.
- (4) ORS 656.407 - Qualifications of insured employers.
- (5) ORS 656.419 - Guaranty contracts.
- (6) ORS 656.423 - Cancellation of coverage by employer; notice required; exception.
- (7) ORS 656.427 - Termination of guaranty contract or surety bond liability by insurer.

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- (8) ORS 656.430 - Certification of self-insured employer; effective date.
- (9) ORS 656.434 - Certification effective until canceled or revoked; revocation of certificate.
- (10) ORS 656.443 - Procedure upon default by employer.
- (11) ORS 656.447 - Sanctions against insurer for failure to comply with contracts, orders or rules.
- (12) ORS 656.455 - Records location and inspection.
- (13) ORS 656.745 - Civil penalty for inducing failure to report claims; failure to pay assessments; failure to comply with director rules or orders; amount; procedure.
- (14) ORS 731.475 - Insurer's Instate Location.

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Amended 12/18/87 as WCD Admin. Order 9-1987, eff. 1/1/88
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

436-50-005 Definitions

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

- (1) "Assessments/Contributions" means moneys due the Department under ORS 656.506, ORS 656.532, ORS 656.538, and Oregon Laws 1981, c 535 Sect. 15 (House Bill 2600).
- (2) "Audited Financial Statement" means a financial statement audited by an outside accounting firm.
- (3) "Board" means the Workers' Compensation Board of the Department of Insurance and Finance.
- (4) "Complete Records" means 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, assessment/contributions and any other moneys due the Department.
- (5) "Compliance" means the Compliance Section of the Workers' Compensation Division of the Department of Insurance and Finance.
- (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 Department under ORS 656.506, 656.532, 656.538, 656.612, 656.614, or Oregon Laws 1981, c 535 Sect. 15 (House Bill 2600) at such intervals as the Director shall direct.

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- (8) "Department" means the Department of Insurance and Finance.
- (9) "Director" means the Director of the Department of Insurance and Finance or the Director's delegate for the matter.
- (10) "Division" means the Workers' Compensation Division of the Department of Insurance and Finance, consisting of Compliance Section, Evaluation Section and Rehabilitation Review Section.
- (11) "Double Coverage" means more than one guaranty contract in effect with the Department for the same period of time.
- (12) "Employment Division" means the Employment Division within the State of Oregon Department of Human Resources.
- (13) "Fiscal Year" means the twelve-month period beginning July 1 and ending June 30.
- (14) "Governmental Subdivision" means cities, counties, special districts created under ORS 198.010, intergovernmental agencies created under ORS 225.050, school districts as defined in ORS 255.005, public housing authorities created under ORS chapter 456 or regional council of governments created under ORS chapter 190.
- (15) "Hearings Division" means the Hearings Division of the Workers' Compensation Board.
- (16) "Insurer" means a guaranty contract insurer.
- (17) "Premium Assessments" means moneys due the Department under ORS 656.612 and 656.614.
- (18) "Process Claims" means the receipt, review and payment of compensation of claims of a worker.
- (19) "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.
- (20) "Self-Insured Employer Group" means five (5) or more employers in the same industry certified under ORS 656.430 as having met the qualifications of a self-insured employer set out by ORS 656.407 and OAR 50-260 through 50-340.
- (21) "State" means the State of Oregon.

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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436-50-006 Administration of Rules

Any orders issued by the Division in carrying out the Director's authority to enforce ORS chapter 656 and the rules adopted pursuant thereto, are considered orders of the Director.

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Renumbered from OAR 436-51-010, 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

436-50-008 Administrative Review and Contested Cases

(1) Any party as defined by ORS 656.005(20), including SAIF Corporation as a designated processing 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 person requesting said hearing contests the proposed order or assessment.

(b) The request for hearing must be filed with the administrator of the Workers' Compensation Division within twenty (20) days of receipt by the aggrieved person of notice of the proposed order or assessment. No hearing shall be granted unless the request is received by the administrator within said twenty (20) days of receipt of notice.

(3) 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 183.315(1). 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 thirty (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.

(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

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proposed order to be filed for the director's consideration within thirty (30) days of issuance of the proposed order.

(4) 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 ninety (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 ninety (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 183.310.

(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) above.

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436-50-010 Assessment of Civil Penalties

(1) The Director, through Compliance and pursuant to ORS 656.745 and 656.750, may assess a civil penalty against an employer, insurer, self-insured employer or self-insured employer group.

(2) A self-insured employer or self-insured employer group may be assessed a civil penalty of up to \$250 a day for each day a violation continues, for failure to comply with ORS 656.455 or 50-175, 50-210, 50-220, or 50-300 of these rules.

(3) An employer, insurer, self-insured employer or self-insured employer group may be assessed a civil penalty of up to \$1,000 for violation of Oregon Administrative Rules 50-060, 50-070, 50-080, 50-100, 50-110, 50-150, 50-170, 50-175, 50-195, 50-200, 50-230, 50-260, 50-290 and 50-340.

(4) Notwithstanding section (3) of this rule, an insurer, self-insured employer or self-

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insured employer group who does not comply with the coverage requirements of the statutes, Rules and Orders of the Director relating thereto may be assessed a civil penalty of up to \$2,000 for each violation or \$10,000 in the aggregate for all violations within any three-month period.

(5) For the purpose of section (4), statutory coverage requirements include, but are not limited to, ORS 656.017, 656.031, 656.033, 656.039, 656.128, 656.135, 656.138, 656.140, 656.403, 656.407, 656.419, 656.423, 656.427, 656.430, 656.434, 656.443 and Oregon Laws 1981, c 535 Sect. 15 (House Bill 2600).

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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

436-50-015 Suspension and Revocation of Authorization to Issue Guaranty Contracts

(1) Pursuant to ORS 656.447, the Director may suspend or revoke the insurer's authority to issue guaranty contracts upon a determination that the insurer has failed to comply with its obligations under such contract or that it has failed to comply with the rules or orders of the Director.

(2) For the purpose of this rule:

(a) "Suspension" and its variations means a stopping by the Director of the insurer's authority to issue new guaranty contracts for a specified period of time.

(b) "Revocation" and its variations means a permanent revocation by the Director of an insurer's authority to issue guaranty contracts.

(c) "Show-cause hearing" means an informal meeting with the Director or designee in which the insurer shall be provided an opportunity to be heard and present evidence regarding any proposed orders by the Director to suspend or revoke an insurer's authority to issue guaranty contracts.

(3) Suspension or revocation under this rule will not be made until the insurer has been given notice and the opportunity to be heard through a show cause hearing before the Director and "show cause" why it should be permitted to continue to issue guaranty contracts.

(4) A show-cause hearing may be held at any time the Director finds that an insurer has failed to comply with its obligations under a guaranty contract or that it failed to comply with rules or orders of the Director

(5) Following a show-cause hearing, the Director may rescind the proposed order if the insurer establishes to the Director's satisfaction its ability and commitment to comply with ORS Chapter 656 and these rules.

(6) A suspension may be in effect for a period of up to 18 months. A suspended insurer may continue to serve existing accounts and renew any existing policy, unless the policy lapses

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or is canceled during the period of suspension.

(7) After 12 months of the suspension has elapsed, the division may audit the performance of the insurer. If the insurer is in compliance, the administrator may request the Director to lift the suspension before the 18 months has elapsed. If the insurer is not in compliance, the administrator may request the Director revoke the insurer's authority to issue guaranty contracts.

(8) When an insurer's authority to issue guaranty contracts has been revoked, the insurer may serve an existing account only until the policy lapses, is canceled or until the next renewal date, whichever first occurs.

(9) After a revocation of an insurer's authority to issue guaranty contracts has been in effect for five years or longer, it may petition the Director to restore its authority by submitting a plan in the form prescribed by the Director, demonstrating its ability and commitment to comply with the workers' compensation law, these rules and orders of the Director.

(10) Appeal of proposed and final orders of suspension and revocation issued under this rule may be made as provided in OAR 436-50-008.

(11) Any order of suspension or revocation issued by a referee or other person pursuant to ORS 656.447 and this rule is a preliminary order subject to revision by the Director.

Hist: Filed 11/29/90 as WCD Admin. Order 27-1990, eff. 12/26/90

436-50-020 Service of Order; Notice

(1) When Compliance imposes a penalty under provisions of OAR 50-010, 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 of Compliance issued pursuant to these rules shall contain the following notice:

"IF YOU DISAGREE WITH THIS ORDER, YOU ARE ENTITLED TO A HEARING AS PROVIDED BY ORS 656.704(2), OAR 436-50-008, AND THE CONTESTED CASE PROVISIONS OF THE ADMINISTRATIVE PROCEDURES ACT (ORS CHAPTER 183). IF YOU DESIRE A HEARING, YOU MUST NOTIFY THE ADMINISTRATOR IN WRITING WITHIN TWENTY (20) DAYS OF THE DATE OF RECEIPT OF THIS NOTICE TO YOU.

YOUR REQUEST MUST BE SENT TO THE DEPARTMENT OF INSURANCE AND FINANCE, WORKERS' COMPENSATION DIVISION, LABOR AND INDUSTRIES BUILDING, SALEM, OREGON 97310. YOU WILL BE NOTIFIED OF THE TIME AND PLACE OF HEARING BY THE WORKERS' COMPENSATION DIVISION. IF YOU

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REQUEST A HEARING, YOU WILL BE GIVEN INFORMATION ON PROCEDURES, RIGHT OF REPRESENTATION, AND THE RIGHTS OF PARTIES RELATING TO THE CONDUCT OF THE HEARING. IF YOU FAIL TO REQUEST A HEARING WITHIN TWENTY (20) DAYS, THIS ORDER WILL BECOME FINAL BY OPERATION OF LAW AND THEREAFTER SHALL NOT BE SUBJECT TO REVIEW BY ANY AGENCY OR COURT.”

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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436-50-030 Independent Contractors

(1) An individual or business entity that performs labor or services for remuneration shall be considered to perform the labor or services as an “independent contractor” if:

(a) The individual or business entity providing the labor or services is free from direction and control over the means and manner of providing the labor or services, subject only to the right of the person for whom the labor or services are provided to specify the desired results;

(b) The individual or business entity providing labor or services is responsible for obtaining all assumed business registrations or professional occupation licenses required by state law or local government ordinances for the individual or business entity to conduct the business;

(c) The individual or business entity providing labor or services furnishes the tools or equipment necessary for performance of the contracted labor or services;

(d) The individual or business entity providing labor or services has the authority to hire and fire employees to perform the labor or services;

(e) Payment for the labor or services is made upon completion of the performance of specific portions of the project or is made on the basis of an annual or periodic retainer;

(f) The individual or business entity providing labor or service is registered under ORS chapter 701, if the individual or business entity provides labor or services for which such registration is required:

(g) Federal and state income tax returns in the name of the business or a business Schedule C or farm Schedule F as part of the personal income tax return were filed for the previous year if the individual or business entity performed labor or services as an independent contractor in the previous year: and

(h) The individual or business entity represents to the public that the labor or services are to be provided by an independently established business. Except when an individual or business entity files a Schedule F as part of the personal income tax returns and the individual or business entity performs farm labor or services that are reportable on Schedule C, an individual or business entity is considered to be engaged in an independently established business when four or more of the following circumstances exist:

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(A) The labor or services are primarily carried out at a location that is separate from the residence of an individual who performs the labor or services, or are primarily carried out in a specific portion of the residence, which portion is set aside as the location of the business;

(B) Commercial advertising or business cards as is customary in operating similar businesses are purchased for the business, or the individual or business entity has a trade association membership;

(C) Telephone listing and service are used for the business that is separate from the personal residence listing and service used by an individual who performs the labor or services;

(D) Labor or services are performed only pursuant to written contracts;

(E) Labor or services are performed for two or more different persons within a period of one year; or

(F) The individual or business entity assumes financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

(2) For the purposes of subsection (1)(b) of this rule, "assumed business registrations or professional occupation licenses" do not include certificates or permits required pursuant to ORS chapter 767 (commonly known as PUC permits).

Hist: Filed 12/22/89 as WCD Admin. Order 5-1989, eff. 1/1/90

436-50-040 Responsibility for Providing Coverage when a Contract Is Awarded

(1)(a) When a person awards a contract, that person is responsible for providing workers' compensation coverage on all individuals performing labor under the contract if the labor under the contract is a normal and customary part or process of that person's trade or business; unless

(A) The individuals performing labor under the contract are exempt as nonsubject workers under ORS 6S6.027;

(B) The person to whom the contract was awarded is registered pursuant to ORS 701.075 and is performing work described by ORS chapter 701; or

(C) At the time work commences, the person to whom the contract was awarded provides workers' compensation insurance for those individuals performing labor under the contract.

(b) As used in ORS 656.021 and in this section, "registered pursuant to ORS 701.075" means registered with the Construction Contractors Board and, if registered as exempt, having no employees. A person registered pursuant to ORS 701.075 as exempt, but having employees shall be deemed to be operating in violation of such registration. Notwithstanding ORS 656.021, a person awarding a contract to another person who is operating in violation of such registration remains responsible for providing coverage for any employees of the person to whom the contract is awarded, in accordance with the provisions of ORS 656.029(1).

(2) If a person awards a contract to a person who is exempt under ORS 656.027 to perform labor under the contract without the assistance of others and that person engages subject

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workers to meet the conditions of the contract, the person to whom the contract was awarded becomes a subject employer and must provide workers' compensation insurance for those subject workers. If such coverage is not provided, such person would be a noncomplying employer.

(3) In the operation of ORS 656.029 and notwithstanding sections (1) and (2) of this rule, a subject employer who fails to comply with ORS 656.017 is a "noncomplying employer" as defined in ORS Chapter 656.

(4) For the purposes of this rule:

(a) "Person" includes individuals, partnerships, corporations, joint ventures, associations, governmental agencies and sole proprietorships.

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

(c) "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.

(5) Notwithstanding sections (1) through (4) of this rule, a person contracting to pay remuneration for professional real estate activity as defined in ORS Chapter 696, to a qualified real estate agent is not an employer of the qualified real estate agent if:

(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.

(6) If, at any time, the conditions of section (5) of this rule are not met, the real estate agent is a worker subject to ORS Chapter 656.

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Amended 2/10/82 as WCD Admin. Order 4-1982, eff. 2/15/82
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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 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

436-50-045 Non-Subject Workers

(1) As used in ORS 656.027(1):

(a) "Private employment contract" means direct employment of the worker by the owner

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of the private home.

(b) As used in this rule, "owner of the private home" means any person who occupies and either owns or rents the private home, or any person related by blood or marriage to that person, or any person who by direction of that person or by order of a court has become responsible for managing the household affairs of that person.

(2) As used in ORS 656.027(18):

(a) "A person performing foster parent duties" means any person certified by the Children's Services Division under ORS Chapter 418 as a foster parent, or any person employed by that person in the operation of a foster home as defined in ORS Chapter 418 and any rules promulgated thereunder.

(b) "A person performing adult foster care duties" means any person licensed by the Senior and Disabled Services Division or the Mental Health and Developmental Disability Services Division to operate an adult foster home, or any person employed by the operator to perform services of assistance to the residents of the adult foster home.

(3) As used in this rule, "adult foster home" means any family home or facility, licensed under ORS 443.705 to 443.825, in which room, board, and 24-hour care services are provided, for compensation, to five or fewer adults who are not related to the operator by blood or marriage.

Hist: Filed 10/4/91 as WCD Admin. Order 8-1991, eff. 10/7/91 (Temporary)
Amended 1/10/92 as WCD Admin. Order 2-1992, eff. 2/1/92

436-50-050 Corporate Officers, Partnerships; Subjectivity

(1) A corporate officer who is also a director of the corporation and has a substantial ownership interest in the corporation, regardless of the nature of the work performed by such officer, is a nonsubject worker pursuant to ORS 656.027(9).

(2) Notwithstanding section (1) of this rule, if the activities of the corporation involve the commercial harvest of timber or building and construction, the following provisions apply:

(a) If every corporate officer is also a director of the corporation, has a substantial ownership interest in the corporation, and is a qualifying member of the same family, then the corporation shall not be limited as to the number of eligible officers it may designate as nonsubject workers.

(b) In all other circumstances, the maximum number of exempt corporate officers for the corporation shall be whichever is greater of the following:

(A) Two eligible officers; or

(B) One eligible officer for each 10 corporate employees.

(c) If a corporation has a variable or fluctuating number of employees, the number of corporate employees for purposes of section (2)(b)(B) of this rule is the average number of full time equivalent corporate employees on the last day of each calendar month of the preceding calendar year.

(d) Each corporation shall designate in writing which of its eligible officers are to be

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exempt from coverage. Such designations shall remain in effect until the corporation files a revised written designation, to be effective upon receipt. An insured corporation shall file this designation with its insurer. A self-insured corporation shall file this designation with the Department. If a corporation does not file its initial designation, or if a corporation is noncomplying, then the corporation's exempt officers shall be determined in the order of the following list:

- (A) President;
- (B) Secretary, if any;
- (C) Vice President, if any;
- (D) Secretary/Treasurer, if any;
- (E) Treasurer, if any;
- (F) All other Officers, if any.

(e) If there is more than one person in any of the offices listed in section (2)(d)(A) through (F) of this rule, the sequence of those persons will be determined by order of birth, with the youngest first and the oldest last.

(f) Noncomplying corporations, regardless of the number of employees, are limited to two (2) exempt officers, to be determined in accordance with section (2)(d) of this rule.

(g) A corporation without workers' compensation coverage, of which every corporate officer is also a director of the corporation, has a substantial ownership interest in the corporation, and is a qualifying member of the same family shall not be considered noncomplying. All such officers shall be presumed to have elected to be nonsubject workers.

(h) For purposes of sections (1) and (2) of this rule:

(A) "Building and construction" includes any work included in the definition of "Contractor" contained in ORS 701.005.

(B) "Commercial harvest of timber" means all commercial activities relating to harvest of timber from a parcel of property including, but not limited to, road building, marking of trees to be cut, timber falling, slash removal, and transportation of timber to the location where it will be processed into lumber or other products.

(C) "Director" means a person authorized to serve as a Director by the incorporators in the Articles of Incorporation or elected and qualified as a Director in accordance with the Articles of Incorporation or bylaws.

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

(E) "Noncomplying" means an employing corporation of subject workers which is in violation of ORS 656.017(1).

(F) "Qualifying member of the same family" means persons who are members of the same family and who each bear one of the following relationships to one of the others: parent, daughter, son, daughter-in-law, son-in-law, grandchild, spouse, or sibling.

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(G) "Substantial ownership" means a percentage of ownership equal to or greater than the average percentage of ownership of all stockholders or 10 percent, whichever is less.

(3) Notwithstanding section (1) of this rule, if the activities of the corporation are conducted on land that receives farm use tax assessment, all individuals identified as directors in the corporate bylaws are nonsubject workers pursuant to ORS 656.027(9), regardless of ownership interest, provided the directors are members of the same family, whether related by blood, marriage or adoption.

(4) Partners, when engaged in work in direct connection with the construction, alteration, repair, improvement, moving or demolition of an improvement on real property or appurtenances thereto, are subject workers. For the purposes of this section:

(a) "Engaged" means to physically take part in the work involved.

(b) "Direct connection" means any activity which must be accomplished before the project on the real property is completed.

(5) Nothing in this rule requires coverage for a corporate officer who is not a "worker", as defined in ORS 656.005.

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Amended 12/18/87 as WCD Admin. Order 9-1987, eff. 1/1/88
Amended 6/18/90 as WCD Admin. Order 9-1990, eff. 7/1/90 (Temp)
Amended 11/29/90 as WCD Admin. Order 27-1990, eff. 12/26/90
Amended 10/4/91 as WCD Admin.. Order 8-1991, eff. 10/7/91 (Temp)
Amended 1/10/92 as WCD Admin. Order 2-1992, eff. 2/1/92

436-50-055 Extraterritorial Coverage

(1) Employers from other states may bring their workers into Oregon to work without providing Oregon workers' compensation coverage if:

(a) The employer has obtained workers' compensation insurance in that other state to cover those persons while working in Oregon;

(b) The extraterritorial provisions of ORS 656.001 to 656.794 are recognized in that other state;

(c) Oregon employers are likewise exempted from providing coverage in that other state;
and

(d) The work at a single location does not exceed 30 work days in a calendar year.

(2) An employer which will have employees from another state working at a single location within Oregon on more than 30 days in a calendar year must provide Oregon workers' compensation coverage for employees working at that location. Such coverage shall be effective prior to the work commencing.

(3) For the purposes of this section, "single location" means a location within this state where a single project will be completed, i.e. a project where several buildings are being constructed on adjoining property or construction of a logging road regardless of length, but does

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not include a location on a sales or delivery route.

(4) Within 30 days after an Oregon employer's coverage is effective, the insurer providing the coverage shall notify the employer in writing of the provisions of ORS 656.126 and OAR 50-055.

(5) Notwithstanding sections (1) through (3) of this rule, all employers working under public contract are subject employers and must comply with ORS 656.017.

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

436-50-060 Guaranty Contract Filing Requirements; Evidence of Authority

(1) Every guaranty contract issued by an insurer shall:

- (a) Be filed in accordance with the requirements of ORS 656.419;
- (b) Be submitted in a form and format prescribed by the Director;
- (c) Include the employer's reporting frequency period, and
- (d) Be completed in its entirety prior to submission to Compliance.

(2) An insurer must submit a guaranty contract as prescribed by the Director pursuant to subsection (1)(b) of this rule, or submit another form as a guaranty contract if:

- (a) The form contains the same information as the Guaranty Contract;
- (b) The required information is legible and accessible for ease of data entry by Compliance;
- (c) The form has been certified by the insurer as a guaranty contract as set forth in ORS 656.419, and
- (d) The form has been approved by Compliance as a Guaranty Contract prior to submission.

(3) Every guaranty contract filed with Compliance pursuant to ORS 656.419 shall have a signature by an officer of the insurer or a designated representative of the insurer. The insurer shall inform Compliance of any such designated representative by filing with Compliance:

- (a) A power of attorney with no monetary limit, signed by a corporate officer of the insurer, authorizing the attorney to sign guaranty contracts for the insurer; or
- (b) A letter of authorization with no monetary limit, signed by a corporate officer of the insurer, designating the individual who is its representative and authorized to sign guaranty contracts for the insurer.

(4) The insurer shall inform Compliance within 10 days after a person having a power of attorney or letter of authorization has been changed.

(5) Incomplete or incorrect guaranty contracts received by Compliance may not be considered filed.

Hist: Filed 12/19/75 as WCB Admin. Order 18-1975, eff. 1/1/76

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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

436-50-070 Requalifying Required when Employer Entity Changes

(1) An employer shall, if there is any change in the employing legal entity, requalify with Compliance in accordance with ORS 656.017. An employer shall, within 10 days after a change in legal entity occurs, notify its insurer of such change. A change in legal entity includes, but is not limited to:

- (a) When a partner joins or leaves the partnership;
- (b) When a member joins or leaves the joint venture or association;
- (c) When the employer is a sole proprietorship, partnership or corporation and changes to a sole proprietorship, partnership or corporation.

(2) When a change in the legal entity of an insured employer occurs, the insurer shall, within 30 days, file a guaranty contract with Compliance as evidence of the change.

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 7-1983, eff. 12/27/83
Renumbered from OAR 436-51-105, 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

436-50-080 Personal Elections

(1) When a person makes an election under ORS 656.039, 656.128 or 656.140, the insurer shall 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 cancellation of such an 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.

(3) If a person desires elective coverage and has no subject employees, that person may apply to the SAIF Corporation or other guaranty contract insurer for coverage. The SAIF Corporation shall accept any written notice filed and provide coverage. An insurer other than the SAIF Corporation may provide such coverage.

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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 12/18/87 as WCD Admin. Order 9-1987, eff. 1/1/88

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436-50-090 Notice to Compliance of Change of Name or Address of Insured Employer

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

- (a) A change in the employer's mailing address, and
- (b) A change in the employer's principal place of business in Oregon.

(2) The endorsement required by section (1) of this rule shall identify the type of address whether it is mailing, or principal place of business.

Hist: Filed 12/19/75 as WCB Admin. Order 18-1975, eff. 1/1/76
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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
Amended 12/18/87 as WCD Admin. Order 9-1987, eff. 1/1/88

436-50-100 Cancellation of Coverage by Employer; Reinstatement of Guaranty Contract; Carrier Liability

(1) An insured employer may cancel coverage effective less than 30 days after written notice is received by an agent of the insurer by providing other coverage or by becoming a self-insured employer. A cancellation under this section shall be effective immediately upon the effective date of the other coverage or the effective date of certification as a self-insured employer so that there is no lapse of or double coverage.

(2) A guaranty contract terminated pursuant to ORS 656.427 may be reinstated provided the insurer submits notice to Compliance stating that the termination notice is being rescinded. Notice under this section shall be in writing and include the name of the insurer, legal name of the insured, insured's address, WCD #, date termination was requested and mail date of the termination letter.

(3) Coverage under a guaranty contract issued by an insurer pursuant to ORS 656.419 continues until the guaranty contract is terminated pursuant to ORS 656.423 or 656.427.

(4) When there is a double coverage situation, the preceding insurer's responsibility will terminate with the effective date of a guaranty contract issued by the subsequent insurer.

(5) An insurer, whose coverage responsibility is terminated by the filing of a guaranty contract by a subsequent insurer, must file a notice of termination as required by ORS 656.423 or 656.427 within 30 days after becoming aware of the need to terminate the guaranty contract.

Hist: Filed 12/19/75 as WCB Admin. Order 18-1975, eff. 1/1/76
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Amended 12/18/87 as WCD Admin. Order 9-1987, eff.. 1/1/88

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436-50-110 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 Compliance notice of location and mailing address of at least one location in this state where the insurer processes claims and keeps records of claims and guaranty contracts as required by OAR 436-50-110 to 436-50-120.

(2) Notice under section (1) of this rule shall be filed with Compliance within 30 days after the insurer becomes authorized.

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

(4) At least one authorized representative of the insurer, designated in accordance with OAR 436-50-060 shall be located at the insurer's designated place(s) of business in the state.

(5) Compliance may approve up to a total of eight service companies or service company locations within this state where the insurer may process claims and maintain records.

(6) An insurer shall not enter into a service agreement contract with one of their insureds unless the insured has service contracts and is providing services to other insurers, self-insured employers or self-insured employer groups.

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

- (a) Processing claims;
- (b) Recording, filing and maintaining guaranty contracts, cancellations and endorsements thereto;
- (c) Resolving discrepancies relating to the filing of guaranty contracts and related documents; and
- (d) Recording and remittance of premium assessments and assessments/contributions.

(8) If its place of business or that of a service company is changed, the insurer shall notify Compliance of the new location and mailing address of the place of business 30 days prior to the effective date of the change. The place of business an insurer is required to maintain in Oregon shall be maintained in this state for as long as the insurer is required to keep records in this state.

(9) 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 Compliance of which claims, if any, will be transferred at least 10 days prior to the date of transfer. Notice to Compliance shall be in a form and format as prescribed by the Director.

(10) Records every insurer is required to keep in this state include all the records of the

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insurer that show its insured employers have complied with ORS 656.017, 656.506, 656.538 and 656.612 including but not limited to the records described by OAR 436-50-120.

(11) Notwithstanding section (1) of this rule, Compliance may approve up to two additional locations within this state where the insurer itself may process claims, if the insurer can show:

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

(b) That the auditing functions of Compliance can be met without unnecessary expense to the Department.

(12) Approval of additional locations as provided in section (11) of this rule will be reviewed annually. If the insurer's claims processing performance has not remained at or above the levels as described in OAR 436 Division 060, such approval shall be withdrawn.

(13) An insurer shall not make payment of compensation to a worker from a location outside Oregon.

Hist: Filed 12/19/75 as WCB Admin. Order 18-1975, eff. 1/1/76
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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 12/22/89 as WCD Admin. Order 5-1989, eff. 1/1/90

436-50-120 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) All letters, reports and other forms of written information relating to every claim; and

(b) A record of all payments made as a result of any claim.

(2) 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.

(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 for denied claims and records of claims for nondisabling compensable injuries may be disposed of or destroyed whenever sections (2) to (4) of this rule permit their removal from this state. Claim records for disabling compensable injuries shall not be disposed of or destroyed, however, until at least one year after either aggravation rights under ORS 656.273 have expired or the final payment of compensation has been made, whichever is the last to occur.

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

- (a) A copy of each guaranty contract, cancellations and endorsements issued under the Workers' Compensation Law;
- (b) Complete 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) Complete records of all employer assessments, employee contributions, and other money due and all such money collected from insured employers for the Department and required to be remitted to the Department.

(7) Records regarding any guaranty contract may, subject to section (9) of this rule, be removed from this state at the end of one full calendar year after the calendar year in which the guaranty contract terminates or after all remittance due to the Department have been made, whichever is the last to occur.

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

(9) An insurer shall provide records which have been removed from this state to Compliance within a reasonable time after requested.

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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 12/22/89 as WCD Admin. Order 5-1989, eff. 1/1/90

436-50-150 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;
- (c) Obtaining excess insurance coverage in the amounts approved by the Department.

(2) An employer shall establish 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 that is certified 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 employer's claims processing that is certified in accordance with OAR 436-055-0070.

(3) An employer shall establish proof of financial ability by depositing, in a depository,

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designated by the Director, money, government securities or other surety the Director may determine acceptable and in an amount as determined in accordance with OAR 436-50-180.

(4) Failure of a certified self-insured employer to maintain the qualifications required in this section shall result in revocation of the employers self-insured certification. The employer will be given 30 days written notice of the intent to revoke the self-insured certification which will 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 canceled and the certification remains in effect.

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 11/29/90 as WCD Admin. Order 27-1990, eff. 12/26/90

436-50-160 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;

(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, Compliance 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 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 insurance the employer is planning to obtain as required by OAR 436-50-170;

(f) If applicable, a service agreement between the employer and each service company that has been signed by both parties. The agreement shall also contain the location and mailing address of each service company;

(g) The type of surety deposit the employer wishes to provide, with appropriate justification;

(h) Evidence of an occupational safety and health loss control program in accordance

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with OAR 437-01 as required by ORS 656.430 (10).

(2) Within 30 days of receipt of all information required in section (1) of this rule, Compliance 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 amount of surety 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) The certification of self-insurance will be issued upon receipt of the surety 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.

(4) Unless a date is specified by the applicant, the effective date of certification will be the first day of the calendar quarter 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 submit certified financial statements in lieu of audited financial statements or annual reports if the employer:

- (a) Deposits surety in the form of a surety bond approved by Compliance, or
- (b) Increases the surety deposit, in a form approved by Compliance, by \$100,000 over the amount as determined pursuant to OAR 436-50-180.

Hist: Filed 4/2/80 as WCD Admin. Order 3-1980, eff. 4/2/80
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Amended 12/22/83 as WCD Admin. Order 7-1983, eff. 12/27/83
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Amended 12/18/87 as WCD Admin. Order 9-1987, eff. 1/1/88
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

436-50-170 Excess Insurance Requirements

(1) A self-insured employer must have excess 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 Compliance 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 Department of all expenses paid by the Department on behalf of the employer pursuant to section (1) or ORS 656.614 and ORS 656.443 in the same manner as if the Department were the insured employer, subject to the

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policy limitations or amounts and limits of liability to the insured employer;

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

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

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

(5) The retention and limitation amount of the excess insurance required may be increased from time to time by the Director. 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;

(c) Claim history.

(6) A self-insured employer will be allowed a period, not to exceed 30 days, within which to comply with a Department order to the employer to increase the policy limitation or amounts and limits of liability of the excess insurance.

(7) Excess insurance obtained under this section does not relieve any self-insured employer from full responsibility for claims processing and the payment of compensation required under ORS 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) If a self-insured employer fails to comply with the requirements of this section, 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 cancelled and certification remains in effect.

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Amended 12/18/87 as WCD Admin. Order 9-1987, eff. 1/1/88
Amended 12/22/89 as WCD Admin. Order 5-1989, eff. 1/1/90

436-50-175 Annual Reporting Requirements

(1) In order to determine the financial status of a self insured employer and to evaluate the employer's continuity of operation, annually a self-insured employer shall 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 Division for a period of at least 3 years. In lieu of an audited financial

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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 employers 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 Compliance, or
- (b) Increases the surety deposit, in a form approved by Compliance, by \$100,000 over the amount as determined pursuant to OAR 436-50-180.

(2) In order to ensure continuity of coverage, each 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 (1)(a) and (b) of this rule or section (5) of OAR 436-50-160, Compliance may require an employer to submit an audited financial statement.

(4) The self-insured employer shall report the claim loss data necessary for the purposes of experience rating modification, retrospective rating calculations and determining deposits as requested by the Department by April 1, 1990, and by March 1, of each successive year.

(a) The Director will, by bulletin, prescribe guidelines for self-insured employers and their authorized representatives to use in providing the required data.

(b) Each self-insured city or county that is exempted from the security deposit requirements in accordance with ORS 656.407(3) and OAR 436-50-185 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), 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 beyond the deadline; or

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

(6) In order to ensure each self-insured's claims are valued appropriately for use in deposit, experience rating, and retrospective rating calculations, the Compliance Section will perform routine test audits. If a self-insured's total claims values are found to be 10% or more below the Department's determined values, the current experience rating will be recalculated using the department's determined values and will be used in the security deposit and retrospective rating calculations. In addition, penalties may be assessed.

Hist: Filed 12/22/89 as WCD Admin. Order 5-1989, eff. 1/1/90

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Amended 11/29/90 as WCD Admin. Order 27-1990, eff. 12/26/90
Amended 10/4/91 as WCD Admin. Order 8-1991, eff. 10/7/91 (Temp)
Amended 1/10/92 as WCD Admin. Order 2-1992, eff. 2/1/92

**436-50-180 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 Department shall be in an amount not less than the greater of:

(a) \$100,000; or

(b) Future claim liability, including a claims processing administrative cost plus the anticipated assessments payable to the Department for the employer's next fiscal year; or

(c) The annual incurred losses for the self-insured's last fiscal year, including a claims processing administrative cost plus anticipated assessments payable to the Department 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 Department 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 employers' net worth is below \$2 million.

(3) In determining the amount of deposit Compliance may also take into consideration:

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

(b) Employer's probable continuity of operation;

(c) Retention's and limitation levels of the employer's excess insurance, and

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

(4) Assessments payable to the Department referred to in this section include moneys and assessments due pursuant to ORS 656.506, 656.532, 656.538, 656.612, 656.614, and Oregon Laws 1981, c 535 Sect. 15 (House Bill 2600).

(5) A self-insured employer will be allowed a period, not to exceed 30 days, within which to comply with a Department order 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 the 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.

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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.

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 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
Amended 12/18/87 as WCD Admin. Order 9-1987, eff. 1/1/88

436-50-185 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 436-50-180 as an independently self-insured employer for the three consecutive years immediately prior to making application for the exemption.

(b) The city or county has in effect a workers' compensation loss reserve account that is actuarially sound and that is adequately funded as determined by the annual audit under ORS 297.405 to 297.740 to pay all compensation to injured workers and amounts due the director 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 subsection (2) of ORS 656.407 shall be submitted to Compliance 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 436-50-175(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

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workers' compensation loss reserve account required to pay the present discounted value of all present and future claims under ORS Chapter 656.

(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, Compliance 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 436-50-008.

(b) If approved, the notice shall include:

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

(B) Authorization for cancellation of any surety bond held as security pursuant to ORS 656.407(2) and OAR 436-50-180.

(C) Procedures for release of any Government Securities or Time Deposits held as security pursuant to ORS 656.407(2) and OAR 436-50-180.

(4) Probable cause to believe the workers' compensation loss reserve account is not 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 auditors qualifications or ability to determine adequacy of the loss reserve account.

(5) A city or county that has been exempted from subsection (2) of ORS 656.407 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 Compliance 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 436-50-200. Prior to the effective date of termination the city or county shall provide surety, as required by the Director, in an amount determined pursuant to OAR 436-50-180 and ORS 656.443.

(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 as required by the director pursuant to ORS 656.407(2) and OAR 436-50-180. Pursuant to ORS 656.407(3)(e) failure to

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deposit the required surety with Compliance 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.

Hist: Filed 10/4/91 as WCD Admin. Order 8-1991, eff. 10/7/91 (Temporary)
Amended 1/10/92 as WCD Admin. Order 2-1992 eff. 2/1/92

436-50-190 Using Self-Insured Employers Surety Deposit/Self-Insured Employers Adjustment Reserve

(1) In the event a self-insured employer fails to or is unable to make all payments due under ORS Chapter 656, Compliance 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, Compliance will, on behalf of the employer, designate those service companies to continue processing claims in accordance with the contracts in effect. Prior to the time the contract expires, bids will be solicited from interested insurers and service companies to process the claims of the self-insured employer. Upon receipt of all bids, Compliance will negotiate a contract for the administration of the claims.

(3) If a self-insured employer defaults and is self-administering, Compliance shall, on behalf of the employer, negotiate to have the employer's claims processed for an interim period not to exceed six months. Thereafter, responsibility for administering the claims will be determined in the same manner as prescribed in section (2) of this rule.

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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
Amended 12/18/87 as WCD Admin. Order 9-1987 eff. 1/1/88

436-50-195 Notification Required when Self-Insured Entity Changes

(1) If there is any change in the legal entity involving the additions or deletions of entities or ownership changes, a self-insured employer shall notify Compliance within 30 days after the change occurs.

(2) Notification is to be made in narrative form on the letterhead of the self-insured, signed by an officer of the company.

(3) Compliance 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.

Hist: Filed 12/22/89 as WCD Admin. Order 5-1989, eff. 1/1/90

436-50-200 Self-Insured Certification Cancellation; Revocation

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

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- (a) Revoked as provided by OAR 436-50-150 through 436-50-230 and ORS 656.440; or
- (b) Canceled by the employer with the approval of Compliance.

(2) If a self-insured employer wishes to cancel certification as a self-insured, the employer shall make written request to Compliance. Such a request shall be submitted 60 days prior to the desired date of cancellation and include:

(a) What arrangements have been made to comply with ORS 656.017 and with whom if the employer will remain an employer;

(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, 656.532, 656.538, 656.612, 656.614, and Oregon Laws 1981, c 535 Sect. 15 (House Bill 2600).

(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 436-50-170(10), notice of certificate revocation will be issued in accordance with the provision of ORS 656.440.

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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

436-50-205 Notice of Self-Insurer's Personal Elections

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

Hist: Filed 12/22/89 as WCD Admin. Order 5-1989, eff. 1/1/90

436-50-210 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 maintain at least one place of business in this state where the employer processes claims, keeps records of claims and other records as required by OAR 436-50-210 to 436-50-220. The employer shall give notice of the location and mailing address upon application for certification.

(2) If a self-insured employer uses one or more service companies as authorized by

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subsection (1) of ORS 656.455 instead of establishing its own place of business in this state, the employer shall file with Compliance a copy of the agreement entered into between the employer and each company, and shall give Compliance notice of the location and mailing address of each service company.

(3) If its place of business, or that of a service company, is changed, the employer shall notify Compliance of the new location and the mailing address of the place of business 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 Compliance of which claims, if any, will be transferred at least 10 days prior to the date of transfer. Notice to Compliance shall be in a form and format as prescribed by the Director.

(5) Records every self-insured employer is required to keep in this state include, but are not limited to, the records described by OAR 436-50-220.

(6) Notwithstanding section (1) of this rule, Compliance 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 Compliance can be met without unnecessary expense to the Department.

(7) Approval of additional locations as provided in section (6) of this rule will be reviewed annually. If the employer's claims processing performance has not remained at the levels as described in OAR 436 Division 060, such approval shall be withdrawn.

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

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

(b) Copies of compensation checks are found not to be in the claim file at the authorized claims processing location; or

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

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

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436-50-220 Records Self-Insured Employer Must Keep in Oregon; Period to be Retained, Removal and Disposition

(1) The records self-insured employers are required to keep in this state to ensure compliance with ORS 656.506, 656.532, 656.538, 656.612, 656.614, 656.622, and Oregon Laws 1981, c 535 Sect. 15 (House Bill 2600) 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 Department.

(2) The self-insured employer must maintain at a place of business in this state those 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) All letters, reports and other forms of written information relating to every claim, and

(b) A record of all payments made as a result of any claim.

(c) A summary sheet available at audit in each claim showing all payments made, separated into vocational assistance, disability, and medical payments with cumulative totals. The record of disability payments should be limited to statutory benefits and not include any additional employer obligations. Expenses shall not be included in any of the three columns required on the summary sheet. "Expenses" are defined in National Council on Compensation Insurance, Workers' Compensation Statistical Plan, Part IV. The Department shall, by bulletin, prescribe the method and manner of determining and recording vocational assistance costs chargeable as a claims cost. For the purpose of this subsection "Statutory Benefits" means any benefits payable to or on behalf of the injured worker in accordance with the law in effect at the time of the injury.

(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) Claims records for denied claims and records of claims for nondisabling compensable injuries may be disposed of or destroyed whenever sections (4) to (6) of this rule permit their removal from this state. Claims records for disabling compensable injuries shall not be disposed of or destroyed, however, until at least one year after either aggravation rights under ORS 656.273 have expired or the final payment of compensation has been made, whichever is the last to occur.

(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.

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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 12/22/89 as WCD Admin. Order 5-1989, eff. 1/1/90

436-50-230 Out-of-State Recordkeeping and Claims Processing by Self-Insured Employer; Conditions and Procedure for Permit; Revocation

(1) If a self-insured employer wishes to keep the claims records described by OAR 436-50-220 and to process claims, at a location outside this state, the employer shall apply to Compliance for permission to do so. The application shall contain the reasons for the request and the address where the records will be kept and the claims processed. Upon receipt, Compliance will review the application and notify the employer that the request has been denied and the reason therefor; or, that the employer will be allowed to process claims from outside this state.

(2) Compliance may grant permission to the self-insured employer unless the employer has committed acts or engaged in a course of conduct that would be grounds for revocation of permission or that are contrary to any of the provisions of section (3) of this rule.

(3) A self-insured employer that keeps claims records and processes claims at a location outside this state shall:

- (a) Process claims in an accurate and timely manner;
- (b) Make reports to the Department promptly as required by ORS Chapter 656 and the Department's Administrative Rules;
- (c) Pay to the Department promptly all assessments, employer and employee contributions, and other money as it becomes due;
- (d) Increase or decrease its security deposit promptly when directed to do so by the Department pursuant to section (2) of ORS 656.407; and
- (e) Comply with the rules and orders of the Director in processing and paying claims for

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compensation.

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

(5) A self-insured employer shall provide records which have been removed from this state to Compliance within a reasonable time after requested.

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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 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

436-50-260 Qualifications of a Self-Insured Employer Group

Five (5) or more employers in the same industry 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 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 qualified to process claims;

(7) Develop a method approved by the Director to notify the Department 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.

(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

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contributions and making such other reports as the Director may require. If one or more service companies are utilized to perform these functions, a service agreement between the employer and each service company that has been signed by both parties must be submitted to Compliance. The agreement shall contain the location and mailing address of the service company;

(11) Establish proof of financial ability by depositing, in a depository designated by the Director, money, government securities or other surety the Director may determine acceptable. The account of deposit will be determined in accordance with OAR 436-50-180; and

(12) Comply with the requirements of OAR 436-50-210 and 436-50-220.

(13) Every self-insured employer group shall maintain at least one place of business in this state where the employer processes claims, keeps records of claims and other records as required by OAR 436-50-210 to 436-50-220.

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Amended 12/18/87 as WCD Admin. Order 9-1987 eff. 1/1/88
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

436-50-270 Applying for Certification as a Self-Insured Employer Group: Private Employers

(1) Employers applying for certification as a self-insured employer group must submit:

(a) 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;

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(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 Department by the group and/or any member of the group. The agreement shall be in a form and format prescribed by the 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 that is certified 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 employer's claims processing that is certified in accordance with OAR 436-055-0070. 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 436-50-260(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 436-50-170;

(j) A procedure for notifying the Department 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 436-50-300.

(l) The type of surety deposit the employer group wishes to provide, with appropriate justification.

(2) Notwithstanding subsection (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, Compliance 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 deposit required;

(b) Approval of the type, retention and limitation levels of the excess insurance as determined pursuant to OAR 436-50-170; and

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(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 deposit, the appropriate excess insurance binder and modification to the occupational safety and health loss control program.

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

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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

**436-50-280 Applying for Certification as a Self-Insured Employer Group:
Governmental Subdivisions**

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

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

(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 Department under ORS Chapter 656 incurred by that governmental subdivision during the period of group self-insurance;

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(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 the claims location, at least one person that is actually involved in the self-insured group's claims processing function, that is certified 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 436-50-260(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 436-50-170.

(j) A procedure for notifying the Department of:

(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 436-50-300.

(1) The type and amount of surety 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, Compliance 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 deposit required;

(b) Approval of the type, retention and limitation levels of the excess insurance as determined pursuant to OAR 436-50-170; 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 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.

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Amended 11/29/90 as WCD Admin. Order 27-1990, eff. 12/26/90

436-50-290 Commencement/Termination of Employers with a Self-Insured Employer Group; Effect on Net Worth; Extension of Coverage; Change in Entity; Change of Address

(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 Compliance 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;

(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 Department 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 Department under ORS Chapter 656 incurred by that governmental subdivision during the period of group self-insurance;

(c) A statement showing the effect on the new 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 Compliance 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 Compliance 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

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(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 OAR 436-50-290. 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 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 Compliance 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 responsible for maintaining records on the whereabouts of employers that have been canceled or have terminated their participation in the group.

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Amended 12/18/87 as WCD Admin. Order 9-1987 eff. 1/1/88
Amended 11/29/90 as WCD Admin. Order 27-1990, eff. 12/26/90

436-50-300 Self-Insured Employer Group, Common Claims Fund

(1) A self-insured employer group shall establish under the direction and control of the board of trustees and administrator, a common claims fund for the sole purpose of ensuring the availability of funds to make certain the prompt payments of all compensation and all other payments that may become due from such self-insured employer group under the workers' compensation law.

(2) Except as provided in section (5) of this rule, the balance of the common claims fund shall be maintained in an amount at least equal to 30 percent of the average of the group's paid losses for the previous four years.

(3) The self-insured group may, from time to time, be required by the Director to increase

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the amount maintained in the common claims fund.

(4) By March 1 of each year, a self-insured employer group shall provide Compliance with adequate documentation to allow the division to validate the balance in the common claims fund.

(5) For governmental subdivisions certified as a self-insured employer group, the balance of the common claims fund shall be maintained in an amount at least equal to 60 percent of the average of the group's yearly paid losses for the previous four years.

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Amended 12/18/87 as WCD Admin. Order 9-1987, eff. 1/1/88
Amended 12/22/89 as WCD Admin. Order 5-1989, eff. 1/1/90

436-50-330 Employers in Same Industry; Basis for Determination

(1) The Director shall use the procedure outlined in section (2) of this rule when determining if employers applying as a self-insured employee group are in the same industry.

(2) Utilizing the "Manual Classification by Industrial Schedules and Group", published by the National Council on Compensation Insurance, each classification code assigned an employer during the last policy year will be matched to the corresponding code listed in the manual. A "schedule" number will be determined for each code. The annual gross payroll will then be calculated for all classifications under a "schedule" number. A schedule number having the largest gross payroll will determine the type of industry.

Hist: Filed 2/10/82 as WCD Admin. Order 4-1982, eff. 2/15/82
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Amended 12/18/87 as WCD Admin. Order 9-1987, eff. 1/1/88

436-50-340 Group Self-Insurance Revocation

Notwithstanding ORS 656.440, the certification of a self-insured employer group may be revoked by the Director after giving 30 days notice if:

(1) The employer group fails to comply with section (7) and/or (8) of ORS 656.430, or the requirements contained in OAR 436-50-260, 270, 280, 290, 300 or 330;

(2) The employers within a group number less than 5;

(3) The net worth of the group falls below that required by OAR 436-50-260(3);

(4) The employer group commits any violation for which a civil penalty could be assessed under ORS 656.745; or

(5) Any false or misleading information is submitted by the employer group or any member of the group.

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