

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
EMPLOYER/INSURER COVERAGE RESPONSIBILITY**

EFFECTIVE JULY 18, 2003

**EXHIBIT "A"
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 050
TEMPORARY RULES 0150, 0160, and 0165**

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

- (1) An employer shall qualify as a self-insured employer by:
- (a) Establishing proof that the employer has an adequate staff qualified to process claims;
 - (b) Establishing proof of the financial ability to make certain the prompt payment of all compensation and other payments due under ORS 656; and
 - (c) Obtaining excess insurance coverage in the amounts approved by the director.
- (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 qualified in accordance with OAR 436-055-0070 and is actually involved in the claims processing function; or
 - (b) Contracting the services of one or more service companies that employ at each claims processing location, at least one person qualified in accordance with OAR 436-055-0070 and that is actually involved in the self-insured employer's claims processing
- (3) An employer shall establish proof of financial ability by depositing[,] in a depository[,] designated by the director, money, government securities or [other] surety **as a security deposit that** the director [may] determines **is acceptable in accordance with OAR 436-050-0165** and in an amount as determined in accordance with OAR 436-050-0180.
- (4) Failure of a certified self-insured employer to maintain the qualifications required in this [section] **rule** shall result in revocation of the employer's self-insured certification. The employer will be given 30 days[.] written notice of the intent to revoke the self-insured certification, to be effective 30 days from the date of receipt of the revocation notice. If the employer complies with the qualification requirements within the 30-day period, the revocation is canceled and the certification remains in effect.

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

Stats. Implemented: ORS 656.407

Hist: Filed 4/2/80 as WCD Admin. Order 3-1980, eff. 4/2/80
Amended 2/10/82 as WCD Admin. Order 4-1982, eff. 2/15/82
Amended 12/22/83 as WCD Admin. Order 7-1983, eff. 12/27/83
Renumbered from OAR 436-51-305, January 1, 1986
Amended 12/12/85 as WCD Admin. Order 9-1985, eff. 1/1/86
Amended 12/22/89 as WCD Admin. Order 5-1989, eff. 1/1/90
Amended 11/29/90 as WCD Admin. Order 27-1990, eff. 12/26/90
Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01
Amended 7/18/03 as WCD Admin. Order 03-058, eff 7/18/03 (Temporary)

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
EMPLOYER/INSURER COVERAGE RESPONSIBILITY**

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

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

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

(b) Proof of the employer's claims processing ability employing and retaining at each claims processing location, at least one person that is actually involved in the claims processing function and is qualified in accordance with OAR 436-055-0070;

(c) The employer's audited financial statements or audited annual reports for the last three fiscal or calendar years. If the audited financial statements of a parent company are provided in lieu of statements for the employer, the director will not authorize the individual employer to be self-insured under it[']s own program, unless a parental company guarantee can be obtained. Otherwise, it will be necessary for the parent company to be the self-insured 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 436-050-0170;

(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, mailing address, telephone number, and any other contact information of each service company;

(g) Evidence from a surety bond company that they will issue a surety bond for the employer, as Principal, and the Workers' Compensation Division, as Oblige; **or evidence from a qualified bank that they will issue an irrevocable standby letter of credit for the employer with the Department of Consumer and Business Services, Workers' Compensation Division as the beneficiary;** and

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

(2) Within 30 days of receipt of all information required in section (1) of this rule, the director will review the application and notify the employer that the request for certification as a self-insured employer is denied and the reason therefore; or, that the employer is qualified as a self-insured employer. If the employer qualifies as a self-insured employer, the notice shall include:

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

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

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
EMPLOYER/INSURER COVERAGE RESPONSIBILITY**

(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] **security** deposit, the appropriate excess insurance binder and if applicable, a service agreement between the employer and service company that has been signed by both parties.

(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 (l)(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] **Provides** [in the form of] a surety bond **or irrevocable standby letter of credit that is approved by the director as the security deposit;** or

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

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

Stats. Implemented: ORS 656.430

Hist: Filed 4/2/80 as WCD Admin. Order 3-1980, eff. 4/2/80
Amended 2/10/82 as 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 436-51-310, January 1, 1986
Amended 12/12/85 as WCD Admin. Order 9-1985, eff. 1/1/86
Amended 12/18/87 as WCD Admin. Order 9-1987, eff. 1/1/88
Amended 12/22/89 as WCD Admin. Order 5-1989, eff. 1/1/90
Amended 11/29/90 as WCD Admin. Order 27-1990, eff. 12/26/90
Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01
Amended 7/18/03 as WCD Admin. Order 03-058, eff 7/18/03 (Temporary)

436-050-0165 Security Deposit Requirements

(1) For the purposes of this rule:

(a) "Employer" includes employer groups

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

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

(2) An employer is required to provide a security deposit that is acceptable to the director, to establish proof of its financial ability, and to be qualified and certified as a self-insured employer or to be certified as a self-insured employer group. In accordance with ORS 656.407, surety bonds, irrevocable standby letters of credit, government securities, money, or time deposits may be accepted for the required security deposit if they comply with the following conditions and requirements:

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

(A) The ISLOC shall be issued by or confirmed by an Oregon state chartered bank

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
 WORKERS' COMPENSATION DIVISION
 EMPLOYER/INSURER COVERAGE RESPONSIBILITY

or a federally chartered bank with an Oregon branch office from which funds will be immediately payable on demand. The bank issuing an ISLOC shall have at the time of issuance a credit rating as set forth below:

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

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

(iii) An "AAA", "AA+" or "AA" credit quality rating along with a CD/Debt Credit Limit Code above the dollar amount of the ISLOC found in the current annual edition of "GFI Credit Ratings" or the latest monthly "GFI Bank Letter" supplement thereto.

(B) Federally chartered instrumentalities of the United States operating under authority of the Farm Credit Act of 1971 as amended, are not rated, and are acceptable without rating.

(C) An ISLOC issued by a bank that does not meet the credit rating set forth in paragraph (A) at the time of issuance shall only be accepted with a confirming ISLOC issued by an Oregon state chartered bank or federally chartered bank with an Oregon branch office meeting the credit criteria of paragraph (A). The confirming ISLOC shall state that the confirming bank is primarily obligated to pay on demand the full amount of the ISLOC regardless of reimbursement from the bank whose ISLOC is being confirmed.

(D) The issuing bank will utilize the Irrevocable Standby Letter of Credit, Form 440-3640, approved by the director.

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

(F) If the issuing bank or any confirming bank is closed at the time of expiry of the ISLOC for any reason that would prevent delivery of a demand notice during its normal hours of operation, the ISLOC will be automatically extended for a period of 30 days commencing on the next day of operation.

(G) The ISLOC can be called immediately if:

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

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

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

(iv) the beneficiary has determined the existing security is deemed inadequate, that

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
EMPLOYER/INSURER COVERAGE RESPONSIBILITY

additional or replacement security must be provided by the self-insured employer, and that neither has been provided, notwithstanding written notice to the self-insured employer.

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

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

(J) All ISLOCs shall include a statement that the funds provided by the ISLOC are not construed to be an asset of the self-insurer and a statement that if legal proceedings are initiated by any party with respect to the payment of any ISLOC, it is agreed that such proceedings shall be subject to the jurisdiction of Oregon courts and Oregon Law.

(K) Payment of any amount under an ISLOC shall be made only by wire transfer in the name of the "Department of Consumer and Business Services In Trust For [the legal name of the certified self-insured employer]" to a department account, with the State Treasurer, at a designated bank.

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

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

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

(O) If a bank's rating subsequent to the issuance of the ISLOC falls below the acceptable rating level as set forth in paragraph (A), the self-insured employer shall be required within 60 days of the publication of the lower credit rating to:

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

(ii) Confirm the ISLOC by an Oregon state chartered bank or a federally chartered bank with an Oregon branch office that has an acceptable credit rating; or

(iii) Replace the ISLOC with a policy of insurance or a surety bond of equal amount that is approved by the director, as substitute security for the ISLOC, if the policy of insurance or surety bond covers all workers' compensation liabilities and obligations that would have been covered by the ISLOC.

(P) Each self-insured employer that submits an acceptable ISLOC as its security deposit, shall furnish a memorandum of understanding with the ISLOC, on the

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
EMPLOYER/INSURER COVERAGE RESPONSIBILITY

department's Form 440-3529, which affirms the self-insured employer's acceptance of all of the following requirements:

(i) An ISLOC is furnished to the director instead of a surety bond or other forms of security that may be determined to be acceptable for certification as a self-insured employer or for continuing as a certified self-insured employer;

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

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

(iv) The self-insured employer shall affirm that the ISLOC, in the amount required, is being offered with the understanding that the ISLOC can be called immediately, at the director's discretion, if the director receives notice that the ISLOC will not be renewed; if the self-insured employer fails to pay its workers' compensation liabilities, obligations or payments due to the director under ORS 656; or the self-insured employer files bankruptcy; or the self-insured employer fails to renew or provide acceptable substitute security by fifteen (15) days prior to the expiry date of the ISLOC; or the director has determined the existing security is deemed inadequate; that additional or replacement security must be provided by the self-insured employer and that neither has been provided, notwithstanding written notice to the self-insured employer; and

(v) If legal proceedings are initiated by any party with respect to payment of any ISLOC, then it is agreed that the proceedings shall be subject to the jurisdiction of Oregon courts and application of Oregon Law(s).

(b) A surety bond may be accepted by the director as a security deposit or substitute security deposit for an ISLOC, government securities, monies, or time deposits. A surety bond may be accepted as all or part of the security deposit. The director, in each particular case, will determine if the surety bond submitted is acceptable, if the issuing Surety is acceptable, and if its language and format are acceptable.

Stat. Auth: ORS656.430, 656.704, and 656.726(4)

Stats. Implemented: ORS656.430

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

Secretary of State
Certificate and Order for Filing
TEMPORARY ADMINISTRATIVE RULES
A Statement of Need and Justification accompanies this form

I certify that the attached copies* are true, full and correct copies
of the TEMPORARY Rule(s) adopted on

July 18, 2003 by the
Date prior to or same as filing date.

Department of Consumer and Business Services,
Workers Compensation Division
Agency and Division

OAD 436-050
Administrative Rules Chapter No.

Fred Bruyns
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to become effective July 18, 2003 through January 13, 2004

Date upon filing or later

A maximum of 180 days including the effective date.

RULEMAKING ACTION

List each rule number separately, 000-000-0000.

Adopt: OAR 436-050-0165

Amend: OAR 436-050-0150, 436-050-0160

ORS 656.407, 656.430, 656.704, 656.726(4)
Statutory Authority

OAR Chapter 137, OAR 436-001
Other Authority

ORS 656.407, 656.430
Statutes being Implemented

RULE SUMMARY

These rules affect self-insured employers and self-insured employer groups, or employers and groups applying to the director of the Department of Consumer and Business Services for self-insurance certification. These adopted and amended rules:

- Provide that an irrevocable standby letter of credit may be accepted by the director as an alternative to a surety bond as a security deposit;
- List required provisions of an irrevocable standby letter of credit and require that the letter be issued in a format provided by the director;
- Require the self-insured employer or prospective self-insured employer to submit a memorandum of understanding with the irrevocable standby letter of credit;
- List the elements that must be included in the memorandum of understanding and require use of a memorandum of understanding form provided by the director.
- List the criteria the director will use to determine if an irrevocable standby letter of credit is an acceptable security deposit.
- State the conditions under which an irrevocable standby letter of credit will be extended;
- State the conditions under which an irrevocable standby letter of credit will be called; and
- Incorporate by reference, *International Standby Practices, ICC Publication No. 590*.

/s/ John L. Shilts
Authorized Signer

7/18/03
Date

John L. Shilts, Administrator, Workers' Compensation Division
Printed name

*Copies include a photocopy of this certificate with paper and electronic copies of each rule listed in the Rulemaking Action.

Secretary of State
STATEMENT OF NEED AND JUSTIFICATION
A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Dept. of Consumer and Business Services,
Workers' Compensation Division
Agency and Division

OAR CHAPTER 436-050
Administrative Rules Chapter Number

In the Matter of the temporary adoption of:)	
OAR 436-050-0165 &)	
the temporary amendment of:)	Statutory Authority,
OAR 436-050-0150, 0160)	Statutes Implemented,
)	Statement of Need,
Employer/Insurer Coverage Responsibility)	Principal Documents Relied Upon
)	

Statutory Authority: ORS 656.407, 656.430, 656.704, 656.726(4)

Other Authority: OAR Chapter 137, OAR 436-001

Statutes Implemented: ORS 656.407, 656.430

Need for the Temporary Rule(s): These rules affect self-insured employers and self-insured employer groups, or employers and groups applying to the director of the Department of Consumer and Business Services for self-insurance certification. There is an urgent need for an alternative to the surety bond as a security deposit. Surety bonds have become harder to obtain – more expensive, or in some cases, unavailable – since the terrorist attacks of 9/11/2001. These rules provide that an irrevocable letter of credit may be accepted by the director as an alternative security deposit to a surety bond.

Documents Relied Upon: ORS Chapter 656; ORS Chapter 183; OAR Chapter 436; and OAR Chapter 137

These documents are available for public review from the Administrator's Office, Department of Consumer and Business Services, Workers' Compensation Division, Labor & Industries Building, 350 Winter Street NE, PO Box 14480, Salem, Oregon 97309-0405, during regular business hours, between 8:00 am and 5:00 pm, Monday through Friday.

Justification of Temporary Rule(s): Failure to act promptly will result in serious prejudice to the public interest or the interest of the parties concerned, primarily Oregon employers. These temporary rules are needed to ensure Oregon employers can qualify for, or continue to qualify for, self-insurance certification. Because irrevocable letters of credit are a substantially less costly form of security deposit than surety bonds, these rules should have a positive effect on Oregon's business climate.

/s/ John L. Shilts	7/18/03

Signature and Date	

John L. Shilts, Administrator, Workers' Compensation Division	

Printed name	