



# Oregon

Kate Brown, Governor

Department of Consumer and Business Services  
Workers' Compensation Division  
350 Winter St. NE  
P.O. Box 14480  
Salem, OR 97309-0405  
1-800-452-0288, 503-947-7810  
[www.wcd.oregon.gov](http://www.wcd.oregon.gov)

Sept. 20, 2018

## Proposed Changes to Workers' Compensation Rules

**Caption: Workers' compensation claims processing locations, reporting, recordkeeping; employer coverage requirements and effects of noncompliance**

The Workers' Compensation Division proposes changes to OAR:

- [OAR 436-050, Employer/Insurer Coverage Responsibility](#)
- [OAR 436-080, Noncomplying Employers](#)

**When is the hearing?** Oct. 22, 2018, 11 a.m.

**Where is the hearing?** Labor & Industries Building  
350 Winter Street NE, Room F  
Salem, Oregon 97301

**How can I make a comment?** Come to the hearing and speak, send written comments, or do both. Send written comments to:  
Email – [fred.h.bruyns@oregon.gov](mailto:fred.h.bruyns@oregon.gov)  
Fred Bruyns, rules coordinator  
Workers' Compensation Division  
350 Winter Street NE (for courier or in-person delivery)  
PO Box 14480, Salem, OR 97309-0405  
Fax – 503-947-7514

The public may also listen to the hearing or testify by telephone: Dial-in number is 1-213-787-0529; Access code is 9221262#.

**The closing date for written comments is Oct. 29, 2018.**

**How can I get copies of the proposed rules and view testimony?**

On the Workers' Compensation Division's website –  
<http://wcd.oregon.gov/laws/Pages/proposed-rules.aspx>.  
Or call 503-947-7717 to get free paper copies

**Questions?** Contact Fred Bruyns, 503-947-7717.

*Auxiliary aids for persons with disabilities are available upon advance request.*

**Summary of proposed changes in OAR 436-050:**

- Amended rule 0005 defines “claims processing location” as a place of business maintained or operated by an insurer, self-insured employer, self-insured employer group, or service company to process claims and keeps records as required by ORS 731.475 and 656.455. The rule excludes a post office box, commercial mail receiving agency, virtual office, or an employee’s place of residence from the definition.
- Amended rule 0045 restores the definition of “adult foster home” removed from the rule by Administrative Order 16-054, effective 1/1/17.
- Amended rule 0110 clarifies the requirements for in-state claims processing by insurers, and for registration of claims processing locations. The rule clarifies notification requirements for insurers that use service companies, and specifies what elements must be included in the agreement between the insurer and each service company. The rule also adds references to optional forms for use by insurers.
- Amended rule 0120 includes minor clarifying wording changes regarding the requirements for maintenance, removal, and disposition of Oregon claim records.
- Amended rule 0210 clarifies the requirements for in-state claims processing by self-insured employers, and for registration of claims processing locations. The rule clarifies notification requirements for self-insured employers that use service companies, and specifies what elements must be included in the agreement between the employer and each service company. The rule also adds references to optional forms for use by self-insured employers.
- Amended rule 0220 includes minor clarifying wording changes regarding the requirements for maintenance, removal, and disposition of Oregon claim records, and replaces reference to “claim records” with “claims records.”

**Summary of proposed changes in OAR 436-080:**

- Repealed rule 0001 included a statement of the director’s authority for promulgating rules – removed because this authority is provided under ORS chapter 656, and it does not need to be stated in rule.
- Repealed rule 0002 included a statement of purpose that has been moved, with wording changes, to rule 0003.
- Amended rule 0003 includes a statement of purpose to replace the statement in repealed rule 0002, and the rule explains that the director may waive procedural rules as justice requires, unless otherwise obligated by statute.
- Amended rule 0005 defines “noncomplying employer order,” and removes definitions of certain terms no longer used in these rules or that are defined in ORS chapter 656.
- Repealed rule 0006 explained that orders issued by the division are considered to be orders of the director; however, all orders under these rules are orders of the director.
- Amended rule 0010 describes the procedure for an employer to contest a noncomplying employer order and the consequence of not appealing the order within the time allowed.
- Repealed rule 0020 explained the consequences if an employer does not appeal a noncomplying employer order within the time allowed, and this provision has been moved to rule 0010.
- Repealed rule 0030 explained procedures for an employer to contest a noncomplying employer order, and this provision has been moved and reworded to rule 0010. The provisions of rule 0030 related to the agency’s participation in hearing are replaced with a reference to OAR 436-001-0030.
- Amended rule 0040:

## Notice of proposed rulemaking hearing

- Provides for the director's discretion to impose civil penalties under ORS 656.735(2) in amounts less than \$250 per day, consistent with statute;
  - Specifies methods that may be used for the calculation of premium amounts that would have been paid if the employer had obtained coverage, to include estimation of payroll when necessary, and application of assigned risk rates established by the National Council on Compensation Insurance; and
  - Has clearer wording and is reorganized to enhance clarity.
- Amended rule 0060 has clearer wording and includes a statement that OAR 436-001-0030(2) to (5) apply to hearings regarding nonsubjectivity determinations.
  - Amended rule 0065 has clearer wording regarding determination of an assigned claims agent.
  - Amended rule 0070 has clearer wording regarding reimbursement of the assigned claims agent.
  - Amended rule 0080 has clearer wording and removes a provision explaining which section within the Department of Consumer and Business services is responsible for collection of moneys owed by noncomplying employers.

**The agency requests public comment** on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

**Need for the Rule(s):** The proposed rule changes are needed to improve general understanding of the rules and to provide the director more effective options to promote compliance with requirements affecting: workers' compensation coverage; claims processing locations; recordkeeping; and reporting. In particular, providing that the director may impose civil penalties under ORS 656.735(2) in amounts less than \$250 per day may more effectively promote compliance if employers perceive the penalty amounts to be payable.

**Documents Relied Upon, and where they are available:** Rulemaking advisory committee records and written advice. These documents are available for public inspection upon request to the Workers' Compensation Division, 350 Winter Street NE, Salem, Oregon 97301-3879. Please contact Fred Bruyns, rules coordinator, 503-947-7717, [fred.h.bruyns@oregon.gov](mailto:fred.h.bruyns@oregon.gov).

**Fiscal and Economic Impact:** The agency projects that the proposed rule amendments may improve the agency's ability to collect civil penalties against noncomplying employers under ORS 656.735(2). Current rules require that such a civil penalty accrue at \$250 per day, and by providing the director discretion to impose a smaller penalty, the affected employer may be better able to pay the amount due.

### **Statement of Cost of Compliance:**

- 1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):**
- a. The agency estimates that proposed rule changes will not affect state agencies' costs for compliance with these rules.
  - b. The agency estimates that proposed rule changes will not significantly affect costs for units of local government for compliance with these rules. Although government units that are self-insured employers or members of self-insured employer groups are potentially affected by amendments to OAR 436-050, the agency expects that those impacts will not be significant.
  - c. The agency estimates that proposed rule changes will affect costs to the public for compliance with these rules, limited to effects on employers that are assessed a civil penalty when found not to be in compliance with workers' compensation coverage requirements. The effects of the rule changes on civil penalties are expected to be mixed. Because the director would have discretion to impose civil penalties under ORS 656.735(2) in amounts less than \$250 per day, some employers

may be assessed civil penalties in smaller amounts. Under current rules, the civil penalty amount must accrue at \$250 per day, and this can rather quickly become impossible to pay and result in business insolvency. The employer may be more likely to pay a lesser amount and remain a viable business. The reduction in penalty amounts may be mitigated, in part, by amending the rules to only use assigned risk rates when calculating penalties. The prior rule allowed some penalties to be calculated using voluntary market rates, which are typically less than 50 percent of the assigned risk rates. The agency believes the assigned risk rates may more accurately reflect the premium that would be paid by employers that are not in compliance with workers' compensation coverage requirements.

Although workers' compensation insurers and service companies are potentially affected by amendments to OAR 436-050, the agency expects that those impacts will not be significant.

Although the assigned claims agent is potentially affected by amendments to OAR 436-080, the agency expects that those impacts will not be significant.

**2. Cost of compliance effect on small business (ORS 183.336):**

**a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:**

Oregon employers number approximately 116,000. At least 90 percent of employers are small businesses (50 or fewer employees). Noncomplying employers are usually small businesses.

**b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:**

The agency projects there will be no increased costs for reporting, recordkeeping, other administrative activities required for compliance, or for professional services.

**c. Equipment, supplies, labor and increased administration required for compliance:**

The agency projects there will be no increased costs for equipment, supplies, labor, or increased administration required for compliance.

**How were small businesses involved in the development of this rule?** Invitation to the rulemaking advisory committee meeting was sent to more than 3,000 stakeholders, including small business representatives. The Small Business Ombudsman attended the meeting.

**Administrative Rule Advisory Committee consulted?:** Yes. **If not, why?**

*/s/ Louis Savage*  
Authorized Signer

Louis Savage  
Printed name

Sept. 20, 2018  
Date

**Mailing distribution:** US Mail – WCD - S, U, AT, CE, EG, NM, EC | agency email lists

Full text of proposed rules with marked revisions is available on the Workers' Compensation Division's website: <http://wcd.oregon.gov/laws/Pages/proposed-rules.aspx>, or request a copy (at no cost to you) from Fred Bruyns, 503-947-7717.



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

*Proposed*

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**NOTE:** Revisions are marked as follows: new text | ~~deleted text~~.

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

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OREGON ADMINISTRATIVE RULES  
CHAPTER 436, DIVISION 050

**436-050-0005 Definitions**

Unless a term is defined elsewhere in these rules, the definitions of ORS chapter 656 are incorporated by reference and made a part of these rules. For the purpose of these rules, unless the context requires otherwise:

- (1) **“Assigned claims agent”** means an entity selected by the director to process the claims of a non-complying employer under ORS 656.054.
- (2) **“Audited financial statement”** means a financial statement audited by an outside accounting firm.
- (3) **“Cancel”** or **“cancellation”** in relation to an insurance policy means ending the policy at a date before its expiration date.
- (4) **“Claims processing location”** means a place of business maintained or operated by an insurer, self-insured employer, self-insured employer group, or service company to process claims and keeps records as required by ORS 731.475 and 656.455. **“Claims processing location”** does not include a post office box, commercial mail receiving agency, virtual office, or the place of residence of an employee of the insurer, self-insured employer, self-insured employer group, or service company.
- (45) **“Days”** means calendar days unless otherwise specified.
- (56) **“Default”** means failure of an employer, insurer, or self-insured employer to pay the moneys due the director under ORS 656.506, 656.612, and 656.614 at such intervals as the director directs.
- (67) **“Director”** means the director of the Department of Consumer and Business Services or the director’s designee.
- (78) **“Governmental subdivision”** means cities, counties, special districts defined in ORS 198.010, intergovernmental agencies created under ORS 225.050, school districts as defined in ORS 255.005, public housing authorities created under ORS chapter 456, or regional council of governments created under ORS chapter 190.
- (89) **“Hearings Division”** means the Hearings Division of the Workers’ Compensation Board.
- (910) **“Insurer”** means the State Accident Insurance Fund Corporation or an insurer authorized under ORS chapter 731 to transact workers’ compensation insurance in Oregon.
- (1011) **“Nonrenewal”** means the insurer’s decision not to renew a policy at its expiration date.
- (1112) **“Person”** means an individual, partnership, corporation, joint venture, limited liability company, association, government agency, sole proprietorship, or other business entity allowed to do business in the State of Oregon.

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- ~~(4213)~~ **“Premium”** means the monetary consideration for an insurance policy.
- ~~(4314)~~ **“Premium assessments”** means moneys due the director under ORS 656.612 and 656.614.
- ~~(4415)~~ **“Process claims”** is the determination of compensability and management of compensation by an Oregon certified claims examiner.
- ~~(4516)~~ **“Proof of coverage”** has the same meaning as defined in OAR 436-162-0005.
- ~~(4617)~~ **“Reinstatement”** means the continuation or reestablishing of workers’ compensation insurance coverage, as noted by the effective date of the reinstatement, under a workers’ compensation insurance policy that was previously canceled.
- ~~(4718)~~ **“Renewal”** or **“renew”** means the issuance of a policy succeeding a previously issued policy or the issuance of a certificate or notice extending the terms of an existing policy for a specified period beyond its expiration date.
- ~~(4819)~~ **“Self-insured employer”** means an employer ~~who~~ that has been certified under ORS 656.430 as having met the qualifications of a self-insured employer set out by ORS 656.407.
- ~~(4920)~~ **“Self-insured employer group”** means five or more employers certified under ORS 656.430 as having met the qualifications of a self-insured employer set out by ORS 656.407 and OAR 436-050-0260 through 436-050-0340.
- ~~(2021)~~ **“Service company”** means the contracted agent for an insurer, self-insured employer, or self-insured employer group authorized to process claims and make payment of compensation on behalf of the insurer, self-insured employer, or self-insured employer group.
- ~~(2122)~~ **“State”** means the State-state of Oregon.
- ~~(2223)~~ **“Substantial ownership”** means a percentage of ownership equal to or greater than the average percentage of ownership of all the owners, or ten percent, whichever is less.
- ~~(2324)~~ **“Written”** means information communicated in writing, and includes electronic records.

Statutory authority: ORS 656.726(4)  
 Statutes implemented: ORS 656.726(4)  
 Hist: Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17  
 Amended 6/7/18 as WCD Admin. Order 18-056, eff. 7/1/18  
 See also: [http://wcd.oregon.gov/laws/Documents/Rule\\_history/436\\_history.pdf](http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf)

## COVERAGE

### 436-050-0045      **Nonsubject Workers**

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

~~(a1)~~ A **“worker engaged in household domestic service by private employment contract”** includes a worker in the direct employment of the owner of the private home. As used in this rule, **“owner of the private home”** means:

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- (Aa) Any person who occupies and owns, leases, or rents the private home;
- (Bb) Any person related by blood, marriage, or Oregon registered domestic partnership to ~~that a~~ person described under subsection (a); or
- (Cc) Any person who, by direction of ~~that a~~ person described under subsection (a), or by order of a court, has become responsible for managing the household affairs of that person;
- (b2) A “person performing foster parent or adult foster care duties” means:
- (a) A “person performing foster parent duties,” means including:
- (A) Any person certified as a foster parent by the Oregon Department of Human Services under ORS chapter 418; or
- (B) Any person employed by ~~thea certified~~ foster parent in the operation of a foster home as defined in ORS chapter 418; ~~and/or~~
- (eb) A “person performing adult foster care duties” means, including:
- (A) Any person operating an adult foster home licensed under ORS 443.705 to 443.825; or
- (B) Any person employed by the operator to perform services that assist the residents of the adult foster home-; and
- (3) As used in this rule, “adult foster home” means any family home or facility, licensed under ORS 443.705 to 443.825, in which room, board, and 24-hour care services are provided, for compensation, to five or fewer adults who are not related to the operator by blood or marriage.

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

## INSURERS

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

(1) Oregon Claims-claims processing location requireds.

Except as described in section (4) of this rule, Every-every insurer that is authorized to issue workers’ compensation policies to Oregon subject employers must ~~comply with the following~~; establish and maintain at least one designated Oregon claims processing location as required by ORS 731.475, subject to the following:

- (a) The insurer must conduct all claims processing activities necessary to meet the requirements of ORS chapter 656 and OAR chapter 436 from its designated claims processing locations, including, but not limited to:

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(A) Processing claims;

(B) Maintaining all records required under OAR 436-050-0120; and

(C) Responding to specific claims processing inquiries;

(b) At the director's request, the claims processing locations must be made accessible during regular business hours or other reasonable times to accommodate periodic audits and examination of records; and

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

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

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

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

**(2) Notification of insurer's business in Oregon.**

~~(e)~~ The insurer must give the director notice of its business in Oregon, subject to the following:

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

(b) The notice must include:

(A) The insurer's:

(i) Legal name;

(ii) Federal Employer Identification Number;

(iii) Identification numbers assigned by the National Association of Insurance Commissioners and the National Council on Compensation Insurance; and

(iv) Certificate of Authority number issued by the director;

~~(B) the The insurer's principal place of business, including its street and ~~location~~, mailing addresses, telephone number, and a general email address that is monitored on a regular basis, where the director can direct general inquiries; ~~and any other contact information requested by the director,~~ of any location in this state where the insurer processes claims or keeps written records of claims and proof of coverage as required by ORS 731.475;~~

(C) A primary contact at the insurer's principal place of business, including the contact's name, title, phone number, fax number, and email address;

(D) If the insurer maintains an Oregon claims processing location:

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(i) The street and mailing addresses, and telephone number of the claims processing location;

(ii) The name, title, phone number, fax number, and email address of a primary contact for the claims processing location;

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

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

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

~~(BE) The notice must also include eContact information for:~~

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

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

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

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

(F) If the insurer uses more than one claims processing location, or locations operated by service companies as described in section (4) of this rule:

(i) The name of each service company, if applicable;

(ii) The street and mailing addresses of the claims processing locations; and

(iii) The name, title, phone number, and email address of a contact person at each claims processing location; and

(G) Any other information requested by the director;

(c) The information provided under subsection (a) must reasonably lead an inquirer to an Oregon certified claims examiner who can respond to inquiries regarding workers' compensation policies, claim filing, claims processing, and claims processing location information within 48 hours, not including weekends or legal holidays; and

(d) The insurer may use Form 1352, "Insurer's notification of business in Oregon," to satisfy the requirement of this section.

**(3) Changes in information.**

An insurer must notify the director of a change in any of the information required under section (2) of this rule, subject to the following:

(a) The notice must be filed at least 30 days before the effective date of the change; and

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(b) The insurer may use Form 5188, "Insurer Contact Update" to satisfy the requirements of this section.

**(24) Service companies.**

In lieu of, or in addition to, establishing and maintaining its own claims processing locations in Oregon, the insurer may use Oregon claims processing locations operated by service companies to satisfy the requirements of section (1) of this rule. If an insurer elects to use claims processing locations operated by one or more service companies with respect to all or any portion of its business:

(a) Each service company must be incorporated in or authorized to do business in Oregon;

~~(ab)~~ The insurer must provide the director with a copy of the service agreement between the insurer and each service company for approval, ~~and must give the director notice of the location and mailing address of each service company;~~

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

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

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

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

(C) Identify the service company by name;

(D) Describe the claims processing services to be provided;

(E) Identify the effective date of the agreement;

(F) Identify the termination date of the agreement, if any;

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

(i) The power of attorney must be effective the same date of the service agreement;

(ii) The power of attorney must not be revocable before all claims processing services provided under the service agreement have concluded;

(iii) The power of attorney must be applicable to all claims processed under the agreement, and may not have unspecified limitations; and

(iv) The service agreement must use language that clearly grants power of attorney to the service company such as the words "power of attorney" or

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“attorney-in-fact”; and

(~~E~~H) Contain only those provisions for workers' compensation activities that are allowed in Oregon, subject to the following:

~~(i)~~ The director may approve an agreement that contains provisions for activities not allowed in Oregon if the agreement or an addendum provides that any services or provisions not allowed under Oregon workers' compensation law will not be applied when processing Oregon claims~~;~~ and

~~(ii)~~ The director may require existing agreements that contain provisions for activities not allowed in Oregon to be amended accordingly~~;~~ and;

(c) Each service company must notify the director of its business in Oregon, subject to the following:

(A) The notice must include the service company's location, mailing address, telephone number, email address, and any other contact information requested by the director;

(B) The notice must be filed before the insurer begins using a place of business operated by the service company as a claims processing location; and

(C) The service company may use Form 4929, “Service company's notification of business in Oregon,” to satisfy the requirements of this subsection; and

(d) The insurer or service company must notify the director of a change in any of the information required under subsection (4)(c) of this rule, subject to the following:

(A) The notice must be filed at least 30 days before the effective date of the change; and

(B) The insurer may use Form 5215, “Service Company Contact Update” to satisfy the requirements of this subsection.

**(5) Limit on claims processing locations.**

The insurer may not have more than eight Oregon claims processing locations at any time. For the purposes of this section:

(a) Each of the following is considered to be one claims processing location:

(A) Each physical location where the insurer processes claims or maintains records; and

(B) Each physical location where a service company processes the insurer's claims or maintains records; and

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

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**(3) Changes in place of business.**

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

**(4) Changes in claims processing locations.**

~~If an insurer intends to change the location where claims are processed or records of claims are stored, the insurer must, at least 10 days before the change is effective, insurer changes claims processing locations; or service companies:~~

~~(a) At least 10 days before the change is effective, the insurer must provide notice of the change to any worker, the estate of any deceased worker, or any workers' beneficiary, with an open or active claim that will be processed at the new location, subject to the following; and provide~~

~~(A) The notice must include contact information for the new claims processing location, including the name and title of a contact person for, telephone number, email address, and mailing address of the new location to; and~~

~~(B) The insurer must send a copy of the notice to the worker's attorney, if the worker is represented, and to the worker's attending physician;~~

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

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

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

~~(D) Any beneficiaries receiving benefits under the claims;~~

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

~~(A) The notice must include:~~

~~(i) Contact information for the current claims processing location, including the name of the claims processor, the name and title of a contact person, mailing address, telephone number, and email address; and mailing address for both the sending processor and receiving processor of the claims;~~

~~(Bii) Contact information for the new claims processing location, including the name of the claims processor, the name and title of a contact person, street and mailing address, if different, telephone number, and email address; The physical address where the claims will be processed;~~

~~(Ciii) The effective date of the transfer; and~~

~~(iv) Any other information requested by the director;~~

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~~(B) The notice must specify if Verification of whether all or a portion of the insurer's claims will be transferred, and if the claims to be transferred include closed and denied claims will be included;~~

~~(D) If only a portion of the insurer's claims will be transferred, a-the notice must include a listing of the claims being transferred that identifies, for each claim:~~

- ~~(i) The underwriting insurer;~~
- ~~(ii) The employer;~~
- ~~(iii) The claimant's name;~~
- ~~(iv) The date of injury; and~~
- ~~(v) The sending processor's claim number; and~~

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

~~(c) The insurer may use Form 5042, "Claim Move Notice" to satisfy the requirements of this section.~~

**(e7) Civil penalties.**

~~If the insurer does not provide notice as required by this section, the~~ The director may assess a civil penalty against ~~the an~~ insurer ~~that does not meet the requirements of this rule.~~

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

~~The following activities must be conducted at a designated in-state location by an authorized representative of the insurer:~~

- ~~(a) Processing claims for compensation;~~
- ~~(b) Responding to specific claims processing inquiries;~~
- ~~(c) Maintaining records required under OAR 436-050-0120;~~
- ~~(d) Accommodating periodic audits by the director; and~~
- ~~(e) Any other activity necessary to meet the requirements of ORS chapter 656 and OAR chapter 436.~~

Statutory authority: ORS 731.475 and 656.726(4)

Statutes implemented: ORS 731.475

Hist: Amended 10/4/12 as WCD Admin. Order 12-056, eff. 1/1/13

Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17

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

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

**(1) Claims records insurers must keep in Oregon.**

Each insurer is required to keep the following records of Oregon claims for compensation in this state, and make those records available to the director upon request:

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

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

- (A) The amount of the payment;
- (B) The date the payment was issued;
- (C) The date the payment was mailed or delivered; and
- (D) An explanation of the time period between the date the payment was issued and the date the payment was mailed or delivered, if any;

(c) Written records of the approval or denial of claims for supplemental temporary disability benefits under ORS 656.210(5);

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

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

**(2) ~~Claims records the insurer may remove from Oregon~~ Removal of claims records.**

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

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

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

**(3) Destruction of claims records.**

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

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

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

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

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

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

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**(5) Disposal of proof of coverage records.**

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

- (a) The next examination of the insurer by the Division of Financial Regulation under ORS 731.300; or
- (b) January 1 of the year following three calendar years after the cancellation or nonrenewal of the workers' compensation insurance policy.

Statutory authority: ORS 731.475, and 656.726(4)

Statutes implemented: ORS 731.475

Hist: Amended 10/4/12 as WCD Admin. Order 12-056, eff. 1/1/13

Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17

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

### SELF-INSURED EMPLOYERS

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

**(1) Oregon Claims-claims processing location required.**

Except as described in section (4) of this rule and OAR 436-050-0230, Every-every self-insured employer is subject to the following: must establish and maintain at least one designated Oregon claims processing location as required by ORS 656.455; subject to the following:

(a) The self-insured employer must conduct all claims processing activities necessary to meet the requirements of ORS chapter 656 and OAR chapter 436 from its designated claims processing locations. These activities include:

(A) Processing claims;

(B) Maintaining all records required under OAR 436-050-0220; and

(C) Responding to specific claims processing inquiries;

(b) At the director's request, the claims processing locations must be made accessible during regular business hours or at other reasonable times to accommodate periodic audits and examination of records; and

(c) The self-insured employer may not process ~~and or~~ maintain records of claims subject to ORS chapter 656 at any location outside of this state; subject to the following:

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

(B) ~~The act of making p~~Payments may be ~~done-made~~ from outside of ~~the state~~ Oregon as directed from the Oregon place of business claims processing location; and

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(C) The self-insured employer may, with prior approval of the director, have one location, in or out of state, for maintaining payroll records pertaining to premium assessments and other assessments and contributions.

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

**(2) Notice of self-insured employer's claims processing location.**

~~(e) The self-insured employer must give the director notice of its designated claims processing locations, subject to the following:~~

~~(a) The notice must be provided upon application for certification as a self-insured employer; and~~

~~(b) The notice must identify:~~

~~(A) the self-insured employer's principal place of business, including location, street and mailing addresses, telephone number, and a general email address that is monitored on a regular basis, where the director can direct general inquiries; and any other contact information requested by the director, of any location in this state where the self-insured employer processes claims and keeps written records of claims upon application for certification;~~

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

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

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

~~(B) The notice must include:~~

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

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

(C) If the self-insured employer uses more than one claims processing location, or locations operated by service companies as described in section (4) of this rule:

(i) The name of each service company, if applicable;

(ii) The street and mailing addresses of the claims processing locations; and

(iii) The name, title, phone number, and email address of a contact person at each claims processing location; and

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- (D) Any other information requested by the director; and
- (c) The information provided under subsection (a) must reasonably lead an inquirer to an Oregon certified claims examiner who can respond to inquiries regarding workers' compensation policies, claim filing, claims processing, and claims processing location information within 48 hours, not including weekends or legal holidays.

**(3) Changes in place of business.**

The self-insured employer must notify the director of a change in any of the information required under section (2) of this rule, subject to the following:

- (a) The notice must be filed at least 30 days before the effective date of the change; and
- (b) The self-insured employer may use Form 5188, "Insurer Contact Update" to satisfy the requirements of this section.

**(24) Service companies.**

In lieu of, or in addition to, A self-insured employer may use one or more service companies as authorized by ORS 656.455 instead of establishing its own place of business claims processing locations in this state, the self-insured employer may use Oregon claims processing locations operated by service companies to satisfy the requirements of section (1) of this rule. -If a self-insured employer elects to use claims processing locations operated by one or more service companies with respect to all or any portion of its business; under the following conditions:

- (a) Each service company must be incorporated in or authorized to do business in Oregon, and must comply with ORS 744.505;
- (ab) ~~To change or add service companies,~~ The self-insured employer must file with provide the director with a copy of the service agreement entered into between the self-insured employer and each service company for approval. , and must give the director notice of the location, mailing address, telephone number, and any other contact information of each service company;
- (b) The director must approve the service agreement between the self-insured employer and each service company before the service company begins processing the self-insured employer's Oregon claims, regardless of the processing effective date established in the agreement; agreement's effective date.;
- (e) To be approved, the service agreement must:
- (A) Be an agreement for claims processing services between the self-insured employer and a service company that is incorporated in or authorized to do business in Oregon, and must not be between any other third parties; and
- (B) Identify the self-insured employer by company name, and specify the self-insured employer's legal or assumed business name as registered with the Oregon Secretary of State;
- (C) Identify the service company by name;

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(D) Describe the claims processing services to be provided;

(E) Identify the effective date of the agreement;

(F) Identify the termination date of the agreement, if any;

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

(i) The power of attorney must be effective as of the same date of the service agreement;

(ii) The power of attorney must not be revocable before all claims processing services provided under the service agreement have concluded;

(iii) The power of attorney must be applicable to all claims processed under the agreement, and may not have unspecified limitations; and

(iv) The service agreement must use language that clearly grants power of attorney to the service company, such as the words "power of attorney" or "attorney-in-fact"; and

(EH) Contain only those provisions for workers' compensation activities that are allowed in Oregon; subject to the following:-

(i) The director may approve an agreement that contains provisions for activities not allowed in Oregon if the agreement or an addendum provides that any services or provisions not allowed under Oregon workers' compensation law will not be applied when processing Oregon claims-; and

(ii) The director may require existing agreements that contain provisions for activities not allowed in Oregon to be amended accordingly; and

(c) Each service company must notify the division of its business in Oregon, subject to the following:

(A) The notice must include the service company's location, mailing address, telephone number, email address, and any other contact information requested by the director;

(B) The notice must be filed before the self-insured employer begins using a place of business operated by the service company as a claims processing location; and

(C) The service company may use Form 4929, "Service company's notification of business in Oregon," to satisfy the requirements of this subsection; and

(d) The self-insured employer or service company must notify the director of a change in any of the information required under subsection (4)(c) of this rule; subject to the following:

(A) The notice must be filed at least 30 days before the effective date of the change; and

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(B) The self-insured employer or service company may use Form 5215, "Service Company Contact Update" to satisfy the requirements of this subsection.

**(5) Limit on claims processing locations.**

The self-insured employer may not have more than three claims processing locations at any time. For the purposes of this section:

(a) Each of the following is considered to be one claims processing location:

(A) Each physical location where the self-insured employer processes claims or maintains records; and

(B) Each physical location where a service company processes the self-insured employer's claims or maintains records; and

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

**(3) Changes in contact information.**

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

**(4) Change in claims processing locations.**

If a self-insured employer intends to changes the location where claims are processed or records of claims are stored, the self-insured employer must, claims processing locations, service companies, or self-administration:

(a) At least 10 days before the change is effective,;

(a) the employer must provide notice of the change, to any worker, or the estate of any deceased worker, or any worker's beneficiary with an open or active claim that will be processed at the new location, subject to the following:

(A) The notice must include contact information for the new claims processing location, including including the name and title of a contact person, telephone number, email address, and mailing address of the new claim processor to; and

(B) The self-insured employer must send a copy of the notice to the worker's attorney, if the worker is represented, and to the worker's attending physician.

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

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

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

~~(D) Any beneficiaries receiving benefits under the claims;~~

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

(A) The notice must include:

(i) Contact information for the current claims processing location, including the name of the claims processor, A the name and title of a contact person, mailing address, telephone number, and email address, and mailing address for both the sending processor and receiving processor of the claims;

~~(B) The physical address where the claims will be processed;~~(ii) Contact information for the new claims processing location, including the name of the claims processor, the name and title of a contact person, street and mailing address, if different, telephone number, and email address;

(iii) The effective that of the transfer; and

(iv) Any other information requested by the director;

~~(CB) Verification of whether~~The notice must specify if all or a portion of the self-insured employer's claims will be transferred, the claims to be transferred includeand if closed and denied claims will be included.;

~~(D)~~If only a portion of the self-insured employer's claims will be transferred, the notice must include a listing of the claims being transferred that identifies, for each claim:

(i) The claimant's name;

(ii) The date of injury; and

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

~~(E) Any other information requested by the director; and~~(c) The self-insured employer may use Form 5042, "Claim Move Notice" to satisfy the requirements of this section.

**(7) Civil penalties.**

~~(e) If the self-insured employer does not provide notice as required by this section, t~~The director may assess a civil penaltiesy against the a self-insured employer that does not meet the requirements of this rule.-

**(5) In-state activities.**

~~For the purpose of this rule, those activities conducted at designated in-state locations and by the authorized representatives of the self-insured employer must include, but are not limited to:~~

~~(a) Processing claims for compensation;~~

~~(b) Responding to specific claims processing inquiries;~~

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

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

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

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

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

~~(a) The self-insured employer must demonstrate:~~

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

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

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

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

~~**(7) Payment location.**~~

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

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

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

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

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

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

Statutory authority: ORS 656.455, and 656.726(4)

Statutes implemented: ORS 656.455

Hist: Amended 10/4/12 as WCD Admin. Order 12-056, eff. 1/1/13

Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17

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

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

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

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

- (a) Written records necessary to ensure compliance with ORS 656.506, 656.612, 656.614, and 656.622 including:
  - (A) A record of payroll by National Council on Compensation Insurance classification; and
  - (B) Complete records of all assessments, employer and employee contributions, and all such money due the director;
- (b) Written records relating to its safety and health program as required by ORS 656.430(10) and OAR 437-001;
- (c) Written records used and relied upon in processing claims;
- (d) A written record of all payments made as a result of any claim, including documentation of:
  - (A) The amount of the payment;
  - (B) The date the payment was issued;
  - (C) The date payment was mailed or delivered; and
  - (D) An explanation of the time period between the date the payment was issued and the date the payment was mailed or delivered, if any;
- (e) A written record of all reimbursements and recoveries received on each claim;
- (f) A written record of the approval or denial of claims for supplemental temporary disability benefits under ORS 656.210(5);
- (g) A summary sheet for each claim showing all payments made, separated into disability, medical, and vocational assistance payments showing all reimbursements made and cumulative totals, subject to the following:
  - (A) The record of disability payments should be limited to statutory benefits and not include any additional employer obligations; and
  - (B) Expenses must not be included in any of the three columns required on the summary sheet. "Expenses" are defined in National Council on Compensation Insurance, Workers' Compensation Statistical Plan, Part IV (available from NCCI, [www.ncci.com](http://www.ncci.com), 800-622-4123); and
- (h) Written records, or copies of records, of claims processed by prior service companies.

**(2) Removal of claims records.**

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

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

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

(c) If administrative or judicial review is requested, the claim records may not be removed from this state or disposed of until the review is concluded and the time for an appeal from such review has expired, or at least one year after final payment of compensation has been made, whichever is the last to occur.

**(3) Destruction of claims records.**

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

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

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

Statutory authority: ORS 656.455, and 656.726(4)

Statutes implemented: ORS 656.455

Hist: Amended 10/4/12 as WCD Admin. Order 12-056, eff. 1/1/13

Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17

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



# Noncomplying Employers Oregon Administrative Rules Chapter 436, Division 080

*Proposed*

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**NOTE:** Revisions are marked as follows: new text | ~~deleted text~~.

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*Proposed Rules: NONCOMPLYING EMPLOYERS*

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**OREGON ADMINISTRATIVE RULES**  
**CHAPTER 436, DIVISION 080**

**436-080-0001 Authority for Rules (*Repeal*)**

~~These rules are promulgated under the director's authority contained in ORS 656.726 and 656.054.~~

Stat. Auth.: ORS 656.054, ORS 656.726  
Stats. Implemented: ORS 656.726  
Hist: Amended 12/3/03 as WCD Admin Order 03-065, eff. 1/1/04

**436-080-0002 Purpose (*Repeal*)**

~~It is the purpose of the director that under ORS 656.726(4) and ORS 656.054 rules be established to ensure the requirements of ORS 656.017 are met. To meet that responsibility the director has delegated to the division the responsibility of ensuring the requirements of the statutes, rules, and bulletins of the department are complied with as they relate to employer coverage.~~

Stat. Auth.: ORS 656.054, ORS 656.726  
Stats. Implemented: ORS 656.726  
Hist: Amended 12/3/03 as WCD Admin Order 03-065, eff. 1/1/04

**436-080-0003 Applicability and Purpose of Rules**

**(1) Purpose.**

These rules carry out the provisions of ORS 656.017, 656.052, 656.054, 656.407, 656.735, and 656.740.

**(2) Applicability.-**

These rules are effective January 1, 2004 and apply to all orders issued under ORS 656.052, 656.735, or 656.740 on or after the effective date of these rules. carry out the provisions of:

~~—(1) ORS 656.017—Employer required to pay compensation and perform other obligations and duties.~~

~~—(2) ORS 656.052—Prohibition against employment without coverage; proposed order declaring noncomplying employer; effect of failure to comply.~~

~~—(3) ORS 656.054—Claim of injured worker of noncomplying employers; notice of proposed penalty; recovery of costs from noncomplying employer.~~

~~—(4) ORS 656.735—Civil penalty for noncomplying employers; amount; liability of corporate officers; effect of final order; penalty as preferred claim; disposition of moneys collected.~~

~~—(5) ORS 656.740—Review of proposed order declaring noncomplying employer; proposed assessment or civil penalty; insurer as party; hearing.~~

**(3) Director's discretion.**

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

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Stat. Auth.: ~~ORS 656.054~~, ORS 656.726  
 Stats. Implemented: ~~ORS 656.017; 656.052; 656.054; 656.735 and 656.740~~ ORS 656.726  
 Hist: Amended 12/3/03 as WCD Admin Order 03-065, eff. 1/1/04

**436-080-0005 Definitions**

Unless a term is defined in these rules or the context otherwise requires, the definitions of ORS chapter 656 are incorporated by reference and made part of these rules. For the purpose of these rules, unless the context requires otherwise:

- ~~(1) "Department" means the Department of Consumer and Business Services.~~
- (1) "Board" means the Workers' Compensation Board and includes its Hearings Division.
- ~~(2) "Director" means the director of the Department of Consumer and Business Services or the director's designee/legate.~~
- ~~(3) "Division" means the Workers' Compensation Division of the Department of Consumer and Business Services.~~
- (3) "Noncomplying employer order" means an order issued under these rules declaring an employer to be a noncomplying employer, and containing the amount of civil penalty assessed under ORS 656.735, if any. — (4) "Hearings Division" means the Hearings Division of the Workers' Compensation Board.

Stat. Auth.: ~~ORS 656.054~~, ORS 656.726  
 Stats. Implemented: ORS 656.726  
 Hist: Amended 12/3/03 as WCD Admin Order 03-065, eff. 1/1/04

**436-080-0006 Administration of Rules (Repeal)**

~~Any order issued by the division in carrying out the director's authority to enforce ORS chapter 656 and the rules adopted pursuant thereto is considered an order of the director.~~

Stat. Auth.: ORS 656.054, ORS 656.726  
 Stats. Implemented: ORS 656.052, ORS 656.054, ORS 656.726  
 Hist: Amended 12/3/03 as WCD Admin Order 03-065, eff. 1/1/04

**436-080-0010 Initiation of Proceedings; Issuance of Noncomplying Employer Order; Requests for Hearing.****(1) Issuance of Noncomplying employer order.**

~~If an employer has failed to comply with ORS 656.017, the division will investigate. If the division director finds/determines that a person has engaged as the employer is a subject employer without qualifying as that has failed to file proof of qualification in the manner required by ORS 656.407, as either a carrier-insured employer or a self-insured employer as provided in ORS 656.017 and 656.407, the division director will issue a Proposed and Final Order declaring the employer to be a noncomplying employer, and assess a civil penalty pursuant to ORS 656.735(1) for violation of ORS 656.052-noncomplying employer order.~~

**(2) Request for hearing.**

An employer may contest a noncomplying employer order by requesting a hearing under ORS 656.740, subject to the following:

- (a) The request for hearing must be made in writing;

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- (b) The request must specify the grounds upon which the employer contests the order;  
(c) The request must be filed with the director within 60 calendar days after the mailing of the order; and  
(d) OAR 436-001-0030(2) through (5) apply to hearings requested under this section.

**(3) Proceedings to enjoin employer.**

The director may request the Department of Justice to commence proceedings to enjoin an employer that does not request a hearing within the timeframe specified under subsection (2)(b) of this rule from employing subject workers without complying with ORS 656.017.

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.017, ~~ORS 656.052, 656.407, ORS 656.735, ORS 656.740~~

Hist: Amended 12/3/03 as WCD Admin Order 03-065, eff. 1/1/04

**436-080-0020 When a Hearing on the Order Is Not Requested (*Repeal*)**

~~If the employer does not request a hearing on the order within the 60 days allowed by ORS 656.740, the division may request the Department of Justice to commence proceedings to enjoin the employer under ORS 656.052(3).~~

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.052, ORS 656.735, ORS 656.740 (section 9, chapter 170, Oregon Laws 2003)

Hist: Amended 12/3/03 as WCD Admin Order 03-065, eff. 1/1/04

**436-080-0030 When a Hearing on the Order Is Requested (*Repeal*)**

~~(1) A request for hearing on an order issued under OAR 436-080-0010 or 436-080-0040 must specify the grounds upon which the employer contests the order and must be mailed or delivered to the division within 60 calendar days after the mailing of the order.~~

~~(2) When a person who is served with an order timely files a request for a hearing, the division will forward the request and other pertinent information to the Hearings Division.~~

~~(3) A division officer or employee is authorized to appear (but not make legal argument) on behalf of the director in a hearing or in a class of hearings in which the Attorney General or the Deputy Attorney General has given written consent for such representation. A copy of the list of contested case hearings for which the Attorney General or the Deputy Attorney General has given consent is maintained by the division and the Department of Justice.~~

~~(4) "Legal argument" as used in ORS 183.452 and this rule has the same meaning as in the Attorney General's Model Rule of Procedure 137-003-0008 (1) (c) and (d), which is hereby adopted by reference.~~

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.052, ORS 656.735, ORS 656.740

Hist: Amended 12/3/03 as WCD Admin Order 03-065, eff. 1/1/04

**436-080-0040 Assessment of Civil Penalties Against Non-complying Employer; ~~Hearing on Proposed Assessment~~**

**(1) Calculation of premium amounts.**

For the purpose of this rule, "premium for the period of noncompliance" means the estimated premium the employer would have paid during the period of noncompliance if

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insurance had been provided. The director will estimate the premium for the period of noncompliance, subject to the following:

(a) The director will use the applicable assigned risk rates established by the National Council on Compensation Insurance effective during the period of noncompliance. The rates may be purchased at [www.ncci.com](http://www.ncci.com), or are available for review during regular business hours at the Workers' Compensation Division, 350 Winter Street NE, Salem OR 97301;

(b) If the employer provides payroll information that is adequate to determine actual payroll amounts and duties performed by workers, the director will assign the payroll amounts to the applicable assigned risk rates; and

(c) If the employer does not provide payroll information that is adequate to determine actual payroll amounts and duties performed by workers:

(A) The director may estimate payroll by multiplying the total number of workers employed during the period of noncompliance by the state average weekly wage; and

(B) The director may assign all estimated payroll to the classification that best describes the employer's type of business.

**(12) Assessment of civil penalties under ORS 656.735(1).**

The director will assess a civil penalty under ORS 656.735(1) in an amount equal to ~~the~~ accordance with ORS 656.735(1), the amount of penalty for a person's first violation of ORS 656.052(1) shall be the greater of:

(a) \$1,000; or

(b) ~~twice~~200 percent of the premium for the period of noncompliance the employer would have paid during the non-complying period if insurance had been provided.

**(3) Assessment of civil penalties under ORS 656.735(2).**

If an employer continues to violate ORS 656.052(1) after an order under OAR 436-080-0010 has become final, the director will assess an additional civil penalty of not more than \$250 for each calendar day the violation continues, commencing with the first day of noncompliance after the initial noncomplying period. To determine the amount of a civil penalty assessed under this section, the director may use factors including, but not limited to:

(a) The number of subject workers employed by the noncomplying employer;

(b) The nature of the noncomplying employer's business;

(c) The premium for the period of noncompliance; and

(d) The employer's compliance history.

**(4) Penalty reductions.**

The director may reduce the amount of a civil penalty assessed under section (1) or (2) of this rule, subject to the following:

(a) To be eligible for a reduced penalty, the employer must:

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~~(a) The division may reduce the amount of the penalty due, to 105% of the amount of premium the employer would have paid during the noncomplying period if insurance had been provided if, prior to the penalty order becoming final, the employer:~~

~~(A) Agrees to not contest the penalty order;~~

~~(B) Provides evidence that the employer has complied with ORS 656.017, or satisfactory to the division that it is no longer a subject employer ~~or, if it is still a subject employer, that it has now complied with ORS 656.052(1)~~;~~

~~(C) Provides adequate payroll information to enable the division director to calculate the amount of the premium for the ~~the employer would have paid during the noncomplying period of noncompliance under subsection (1)(b) of this rule if insurance had been provided~~; and~~

~~(D) Makes arrangements satisfactory to the division for prompt payment of the reduced penalty amount.;~~

(b) The director will not reduce a civil penalty if the employer fails to comply with subsection (a) before the order assessing the penalty becomes final, unless the director determines there was good cause for the delay;

(bc) A penalty assessed under section (1) of this rule may be reduced to the greater of:

(A) \$500; or

(B) If 105% percent of the amount of premium for the employer would have paid during the period of noncompliance is less than \$500, the reduced penalty will be \$500.; and

(2d) A penalty assessed under section (2) of this rule may be reduced to the greater of:

~~The amount of penalty, when assessed against the employer pursuant to ORS 656.735(2), shall be \$250 per day for each calendar day the employer has continued to violate ORS 656.052(1), commencing with the first day of such violation:~~

~~(aA) \$1,000; or~~

~~(B) The division may reduce the amount of the penalty due to 150% percent of the amount of premium for the employer would have paid during the non-complying period of noncompliance. if insurance had been provided if, prior to the penalty order becoming final, the employer:~~

~~(A) Agrees to not contest the penalty order;~~

~~(B) Provides evidence satisfactory to the division that it is no longer a subject employer ~~or, if it is still a subject employer, that is has now complied with ORS 656.052(1)~~;~~

~~(C) Provides adequate payroll information to enable the division to calculate the amount of premium the employer would have paid during the noncomplying period if insurance had been provided; and~~

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- ~~(D) Makes arrangements satisfactory to the division for prompt payment of the reduced penalty amount.~~
- ~~(b) If 150% percent of the amount of premium the employer would have paid during the noncomplying for the period of noncompliance is equal to or greater than \$250 per calendar day of noncompliance, there will be no reduction of the penalty amount.~~
- ~~(c) If 150% of the amount of premium the employer would have paid during the noncomplying period is less than \$1000, the reduced penalty will be \$1000.~~
- ~~(3) For the purpose of this rule, "premium the employer would have paid during the noncomplying period" means: (a) If payroll records are available, actual premium using the applicable occupational base rate premium applied to the payroll of the employer during the period of noncompliance; or~~
- ~~(b) If payroll records are not available, estimated premium based upon the number of workers employed during the noncomplying period times the average weekly wage as defined in ORS 656.005(1), using the applicable assigned risk base rated premium during the period of noncompliance.~~
- ~~(4) The division will mail or otherwise serve an order assessing a civil penalty, with a notice to the employer of rights under ORS 656.740.~~
- ~~(5) When a penalty order becomes final, the division will transfer the matter to Fiscal and Business Services of the department to collect the penalty.~~

Stat. Auth.: ~~ORS 656.052, ORS 656.726, ORS 656.735~~

Stats. Implemented: ~~ORS 656.052, 656.054 (section 1, chapter 170, Oregon Laws 2003), ORS 656.735, ORS 656.740~~

Hist.: Amended 12/3/03 as WCD Admin Order 03-065, eff. 1/1/04

**436-080-0060      When a Worker Files a Claim for an Injury**

**(1) Referral of claim to assigned claims agent.**

~~If When the division issues an order under OAR 436-080-0010 declaring an employer a noncomplying employer, and a subject worker has filed a claim for an injury sustained during the period of noncompliance while the worker was employed by such a noncomplying employer, the division director will:~~

~~(a) Refer the claim, with a copy of the noncomplying employer order and the results of its the compliance investigation, to the assigned claims agent for processing as required by ORS 656.054; and~~

~~(b) Issue a Notice of Referral and~~

~~(b) Inform to the worker, the worker's representative, if represented, and the employer that the claim has been referred to the assigned claims agent;~~

~~(2) The notice to the employer will inform the employer of the its right to object to the claim.~~

**(32) Request for hearing to object to a claim.**

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~~If the An~~ employer ~~wishes to~~ may request a hearing to object to ~~the a~~ claim referred to the assigned claims agent under this rule, ~~the employer shall request a hearing.~~ The request for hearing must be filed ~~with the board~~ within 60 ~~calendar~~ days ~~from after~~ the mailing date of ~~the mailing~~ of the Notice of Referral issued under subsection (1)(b) of this rule.

—(43) Processing of claim.

When the assigned claims agent accepts or denies the claim, it ~~shall~~ must notify the worker, employer, and the ~~division director of its action~~ within the time provided by ORS 656.262.

(54) Nonsubjectivity determinations.

~~When~~ If a worker files a claim for an injury and the ~~division director finds~~ determines that ~~at the time of the injury, either~~ the worker was not a subject worker, or the employer was not a subject employer, the ~~director will notify the~~ worker and the employer ~~shall be notified of such determination~~ by issuing a nonsubjectivity determination.

(5) Request for hearing on nonsubjectivity determination.

The ~~A~~ worker may request a hearing on a nonsubjectivity determination, subject to the following:

(a) ~~The request for hearing must be filed by filing a hearing request~~ within 60 days after the date of mailing of the determination;

(b) ~~The request for hearing request~~ must be sent to the director Workers' Compensation Division administrator;

(c) The worker and employer ~~shall be~~ parties to ~~any such~~ the hearing, ~~and will be notified by the Hearings Division of the time and place set for hearing;~~ and

(d) OAR 436-001-0030(2) through (5) apply to hearings requested under this section.

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.054; 656.740

Hist: Amended 12/3/03 as WCD Admin Order 03-065, eff. 1/1/04

**436-080-0065 Determination ~~O~~ of Assigned Claims Agent**

—(1) When selecting an assigned claims agent, the director will consider:

(a) ~~claims processing performance data collected by the division. That data and data provided by potential assigned claims agents will be used to determine w~~ Which claims agent can deliver the most timely and appropriate benefits to injured workers and can best control claim costs and administrative costs, based on claims processing performance and other available data; and

(b) ~~In addition, the director may use a~~ any other factors the director considers appropriate.

—(2) If no qualified entity agrees to be an assigned claims agent, the director may require one or more of the three highest premium producing insurers to be assigned claims agents, based on the. ~~In addition to the premium consideration, the~~ criteria described in ~~under~~ section (1) of this rule, ~~will be used to make that determination.~~

Stat. Auth.: ~~ORS 656.054,~~ ORS 656.726

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Stats. Implemented: ORS 656.054  
 Hist: Amended 12/3/03 as WCD Admin Order 03-065, eff. 1/1/04

**436-080-0070      Reimbursement of Assigned Claims Agent for Claims Costs for Injured Workers of Noncomplying Employers**

**(1) Reimbursement of incurred claims costs.**

The director will reimburse ~~When an~~ assigned claims agent for all claims costs the assigned claims agent incurs under ~~pays compensation to a claimant or incurs other costs on a claim referred to it under~~ ORS 656.054, under the terms of the contract between the assigned claims agent and the director. ~~the~~ To request reimbursement, the assigned claims agent ~~shall~~ must report ~~the payment~~ all claim costs to the ~~department~~ director, subject to the following:

~~(a) as established by contract with the assigned claims agent. Any amounts received by the assigned claims agent and reported to the department under subsections (5) and (6) of this rule will be offset against such expenditures. Subject to section (3) of this rule, e~~ Claims costs ~~osts~~ incurred by the assigned claims agent for which reimbursement will be allowed include, but are not limited to:

~~(aA)~~ All compensation ~~provided~~ paid to ~~claimant~~ a subject worker or beneficiary;

~~(b)~~ All expenses incurred for medical services.

~~(eB)~~ Attorney fees ~~paid to the claimant in addition to any compensation, and sums assessed under ORS 656.382(3) and paid by the assigned claims agent, but not fees and sums paid under ORS 656.262-(11) and 656.382(1); and~~

~~(dC)~~ A reasonable amount for administrative costs at a rate proposed by the assigned claims agent and approved by the director. The assigned claims agent must propose the rate ~~prior to before~~ June 30 of each year. Late ~~requests~~ proposals ~~for a rate increase on the rate of reimbursement, if approved, shall will~~ be effective on the date the request was received by the director;

(b) If the assigned claims agent is the paying agency in any action to recover damages from a noncomplying employer or third party under ORS 656.576 to 656.595, the assigned claims agent must report to the director:

(A) The commencement and termination of each action;

(B) The status of all pending actions at the end of each calendar year; and

(C) The amount of the recovery retained by the assigned claims agent under ORS 656.593(1)(c), within thirty days after an action is settled or damages are recovered; and

(c) The amount reported under paragraph (1)(b)(C) will be offset against the amount of incurred costs reported under subsection (a).

**(2) Approval or denial of request.**

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The ~~department director~~ will review the request and ~~issue will approve or disapprove~~ the reimbursement ~~out of from~~ the Workers' Benefit Fund ~~under the terms of the contract~~ ~~between the assigned claims agent and the director.~~

**(3) Audit of reimbursed amounts.**

The ~~department director~~ will ~~annually conduct an annual~~ audit of the noncomplying employer claim files processed by the assigned claims agent to validate the amount reimbursed ~~pursuant to under~~ section (42) of this rule. ~~The director will disapprove Reimbursement reimbursement shall not be allowed, if, upon such audit, any of the conditions described under ORS 656.054(3) following are found to apply upon audit:~~

- ~~(a) Compensation has been paid as a result of untimely, inaccurate, or improper claims processing;~~
- ~~(b) Compensation has been paid negligently for treatment of any condition unrelated to the compensable condition;~~
- ~~(c) The compensability of an accepted claim is questionable and the rationale for acceptance has not been reasonably documented in accordance with generally accepted claims management procedures;~~
- ~~(d) The separate payments of compensation have not been documented in accordance with generally accepted accounting procedures; or~~
- ~~(e) The payments were made pursuant to a disposition agreement as provided by ORS 656.236 without the prior approval of the department.~~

**(4) Review of disapproval.**

~~Under ORS 656.054 and 656.704(2),~~ ~~the assigned claims agent may request review of appeal any disapproval of reimbursement made by the department director under as p~~ this rule as provided in OAR 436-001.

~~(5) When a damage action is brought against a noncomplying employer or an action is brought against a third party by an employee of a noncomplying employer or the employee's beneficiaries, or by the assigned claims agent as the paying agency for such an employee, as authorized by ORS 656.576 to 656.595, the assigned claims agent shall report the commencement and termination of such action to the department. Thereafter, at the end of each calendar year, the assigned claims agent shall report the status of all such actions that are pending.~~

~~(6) When an action against an employer, or third party is settled or if damages are recovered, the assigned claims agent shall report within (30) days to the department the amount of the recovery retained by the assigned claims agent under ORS 656.593(1)(c).~~

**(7) Collection of reimbursed costs.**

~~Fiscal and Business Services of the department is responsible for~~ ~~collecting from noncomplying employers those costs incurred by~~ ~~reimbursed from~~ ~~the Workers' Benefit Fund for which the assigned claims agent is entitled to reimbursement from the department under this rule~~ The director will collect all reimbursed from the Workers' Benefit Fund for which the assigned claims agent is entitled to reimbursement from the responsible noncomplying employer. Fiscal and

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~~Business Services~~ The director will inform each noncomplying employer of ~~the-its~~ liability under ORS 656.054(3) and ~~keep advise~~ the employer ~~advised~~ of costs incurred by the assigned claims agent.

Stat. Auth.: ~~ORS 656.054~~, ORS 656.726  
 Stats. Implemented: ORS 656.054, 656.704, ~~OL 2005 ch 26~~  
 Hist.: Amended 10/19/05 as WCD Admin. Order 05-066, eff. 1/2/06

**436-080-0080      Collection of ~~Subject Worker's Payment~~ Monies Withheld from Subject Workers**

~~—(1) When the division~~ The director will collect ~~finds the noncomplying employer has any unremitted monies withheld by a noncomplying employer withheld monies~~ from subject workers ~~pursuant to~~ under ORS 656.506, ~~it will collect such money from the noncomplying employer as~~ described under OAR 436-070.

~~—(2) Fiscal and Business Services is responsible for collecting from noncomplying employers those workers' payments not collected by the Workers' Compensation Division and referred to it by the Workers' Compensation Division.~~

Stat. Auth.: ORS 656.726  
 Stats. Implemented: ORS 656.506  
 Hist.: Amended 12/3/03 as WCD Admin Order 03-065, eff. 1/1/04