



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

Sept. 15, 2017

Proposed Changes to Workers' Compensation Rules

Implementation of House Bills 2186 and 2336 (2017); other self-insurance regulations

The Workers' Compensation Division proposes changes to OAR:

- **436-050, Employer/Insurer Coverage Responsibility**

Please review the attached documents for more information about proposed changes and possible fiscal impacts.

The department welcomes public comment on proposed changes and has scheduled a public hearing.

When is the hearing?

Oct. 20, 2017, 9:30 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
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 closing date for written comments is Oct. 26, 2017.

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.

Blank page for two-sided printing

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING*
A Statement of Need and Fiscal Impact accompanies this form

FILED 9-15-17 2:15 PM ARCHIVES DIVISION SECRETARY OF STATE
--

Department of Consumer and Business Services, Workers' Compensation Division Agency and Division	436 Administrative Rules Chapter Number
Fred Bruyns Rules Coordinator	(503) 947-7717 Telephone
Department of Consumer and Business Services, Workers' Compensation Division, PO Box 14480, Salem, OR 97309-0405 Address	

RULE CAPTION

Implementation of House Bills 2186 and 2336 (2017); other self-insurance regulations
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

Hearing Date	Time	Location	Hearings Officer
10-20-17	9:30 a.m.	Room F, Labor & Industries Bldg, 350 Winter Street NE, Salem, Or	Fred Bruyns

RULEMAKING ACTION

Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

- ADOPT:**
- AMEND:**
436-050, 436-050-0150, 436-050-0170, 436-050-0175, 436-050-0180, 436-050-0190, 436-050-0195, 436-050-0260, 436-050-0280, 436-050-0290
- REPEAL:**
- RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.
- AMEND AND RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.
- Statutory Authority:**
ORS 656.407, 656.430, 656.726(4)
- Other Authority:**
- Statutes Implemented:**
ORS 656, primarily 656.407, 656.430 (2017 Oregon Laws, chapter 118 (HB 2186)), 656.443 (2017 Oregon Laws, chapter 69 (HB 2336)), and 656.614

RULE SUMMARY

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

- The agency proposes to amend OAR 436-050, "Employer/Insurer Coverage Responsibility," to:
- Revise, in OAR 436-050-0150, calculation instructions for the financial strength rating of public sector self-insured employers;
 - Establish, in OAR 436-050-0150, that a public self-insured employer with a municipal bond rating of Aa3, AA-, or higher will be considered to have a strong financial strength rating;
 - Clarify that the director may take one or more actions (not just a single action) under OAR 436-050-0150(5)(c) if a self-insured employer's financial strength rating is found to be weak;
 - Clarify in OAR 436-050-0170(1)(e) that a self-insured employer's excess insurance policy may not contain provisions or endorsements that do not comply with Oregon law;
 - Require in OAR 436-050-0175(3) that a self-insured employer's report of losses must include the medical reimbursement amounts applied to each claim, if applicable;
 - Correct a previous typographical error by deleting "annual" from OAR 436-050-0180(1)(e), "Under this section, 'Incurred but not reported' (IBNR) will be calculated by applying a loss development factor determined by the director against the employer's annual incurred losses";
 - Clarify that 436-050-0180(4)(c) applies to both self-insured employers and self-insured employer groups;

- Implement House Bill 2336 (2017) by explaining in OAR 436-050-0190(1)(b) that the director may refer a self-insured employer's or self-insured employer group's claims for processing to an assigned claims agent;
- Correct a previous typographical error by changing the reference to Form 1869 to Form 1865 in OAR 436-050-0195(2)(a);
- Implement House Bill 2186 by explaining in OAR 436-050-0260(1) and OAR 436-050-0280(1) that a self-insurance program under ORS 30.282(3) meets the organizational requirements to be certified as a self-insured employer group; and
- Clarify in OAR 436-050-0290(3) the procedures for cancellation and termination of members of a self-insured employer group and for reporting related information to the director.

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

10-26-2017 Close of Business Last Day (m/d/yyyy) and Time for public comment	Fred Bruyns Rules Coordinator Name	fred.h.bruyns@oregon.gov Email Address
--	---------------------------------------	---

*The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation.

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
A Notice of Proposed Rulemaking Hearing accompanies this form.

FILED
9-15-17 2:15 PM
ARCHIVES DIVISION
SECRETARY OF STATE

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

436
Administrative Rules Chapter Number

Implementation of House Bills 2186 and 2336 (2017); other self-insurance regulations

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Amendment of OAR 436-050, Employer/Insurer Coverage Responsibility

Statutory Authority:

ORS 656.407, 656.430, 656.726(4)

Other Authority:

Statutes Implemented:

ORS 656, primarily 656.407, 656.430 (2017 Oregon Laws, chapter 118 (HB 2186)), 656.443 (2017 Oregon Laws, chapter 69 (HB 2336)), and 656.614

Need for the Rule(s):

The agency has proposed rule changes to implement legislation passed by the Oregon Legislature in 2017, and to better align some recently adopted rules governing self-insurance with Oregon Revised Statutes.

Documents Relied Upon, and where they are available:

Rulemaking advisory committee records, written advice, and Enrolled House Bills 2186 and 2336. 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.

Fiscal and Economic Impact:

The agency projects that proposed rule changes will not have significant fiscal or economic impacts on the agency's costs to carry out its duties under ORS chapter 656.

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 have no direct impacts on the cost of compliance of state agencies.
- b. The agency estimates that proposed rule changes will have no direct impacts on the cost of compliance of units of local government unless the government unit is a self-insured employer. See relevant impacts under c. below.
- c. The agency estimates that proposed rule changes will have the following effects on the public:

The proposed amendments to calculation of the financial strength rating for public sector, self-insured employers may positively impact self-insured units of local government. Some public sector employers, such as school districts, have scored zero on the return-on-net assets ratio. However, because public employers typically are not designed (and sometimes not permitted) to generate profits from their asset base, a low score is not necessarily a sign of poor financial viability. In addition, recent changes to financial reporting requirements have had an adverse impact on some public employers' debt-to-equity ratio, despite no change in the employers' actual debt. In addition, the division will consider public employers with a high bond rating to be financially strong regardless of the ratio score. The revised scale for calculation of the financial strength rating should better reflect the financial viability of these self-insured employers.

The proposed requirement that a self-insured employer's report of losses include the medical reimbursement amounts (if applicable) may slightly increase self-insured employers' costs to report losses to the agency. However, most self-insured employers currently do report the specific amounts as requested by agency Bulletin 209, and the agency requests this information if it is not provided, so the proposal may reduce the associated frictional costs to the affected employers and the agency.

House Bill 2336 (2017) provides that the agency may refer a self-insured employer's or self-insured employer group's claims for processing to an assigned claims agent. This change may affect which processing agent continues to be the servicing company of a self-insured employer or group that is in default, but should not result in a net cost-of-compliance effect on service companies overall. However, the agency's decision to change the processing agent could result in a negative fiscal effect for the existing service company and a positive fiscal effect for the selected service company.

Other proposed rule amendments should not result in a significant increase or decrease in the cost of compliance for any person or

organization subject to the rules.

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

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

House Bill 2336 (2017) provides that the agency may refer a self-insured employer's or self-insured employer group's claims for processing to an assigned claims agent. This change may affect which processing agent continues to be the servicing company of a self-insured employer or group that is in default, but should not result in a net cost-of-compliance effect on service companies overall. However, the agency's decision to change the processing agent could result in a negative fiscal effect for the existing service company and a positive fiscal effect for the selected service company. We estimate that there are now five or fewer small businesses servicing Oregon workers' compensation claims.

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

House Bill 2336 (2017) provides that the agency may refer a self-insured employer's or self-insured employer group's claims for processing to an assigned claims agent. This change may affect which processing agent continues to be the servicing company of a self-insured employer or group that is in default, but should not result in a net cost-of-compliance effect on service companies overall. However, the agency's decision to change the processing agent could result in a negative fiscal effect for the existing service company and a positive fiscal effect for the selected service company. Otherwise, proposed rule changes should not increase costs for reporting, recordkeeping, other administrative activities required for compliance, or professional services.

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

The agency projects that proposed rule changes will not increase or decrease costs for equipment, supplies, labor, or administration required for compliance.

How were small businesses involved in the development of this rule?

The agency reached out to more than 3,500 stakeholders, including small businesses, asking for advisory committee volunteers. There was limited interest in attending, and committee participants did not include small business representatives.

Administrative Rule Advisory Committee consulted?: Yes

If not, why?:

<u>10-26-2017 Close of Business</u>	<u>Fred Bruyns</u>	<u>fred.h.bruyns@oregon.gov</u>
Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address



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

Proposed

TABLE OF CONTENTS

Rule	Page
SELF-INSURED EMPLOYERS	1
436-050-0150 Qualifications of a Self-Insured Employer	1
436-050-0170 Excess Insurance Requirements.....	6
436-050-0175 Annual Reporting Requirements.....	8
436-050-0180 Determination of Amount of Self-Insured Employer's Deposit; Effective Date of Order to Increase Deposit.....	11
436-050-0190 Using Self-Insured Employers' Security Deposit/Self-Insured Employer Adjustment Reserve/Self-Insured Employer Group Adjustment Reserve/Director-Ordered Assessments of Private Employer Members of Self-Insured Employer Groups	14
436-050-0195 Requirements for Changes in Self-Insured Employer Entity	15
436-050-0260 Qualifications of a Self-Insured Employer Group	16
436-050-0280 Applying for Certification as a Self-Insured Employer Group: Governmental Subdivisions	22
436-050-0290 Commencement/Termination /Cancellation of Employers with a Self- Insured Employer Group; Effect on Net Worth; Extension of Coverage; Change in Entity; Change of Address; Recordkeeping	24

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.

OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 050

SELF-INSURED EMPLOYERS

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

(1) General qualifications.

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

- (a) Establish proof that the employer has an adequate staff qualified to process claims;
- (b) Establish proof of the financial ability to make certain the prompt payment of all compensation and other payments due under ORS chapter 656;
- (c) Obtain excess insurance coverage in the amounts approved by the director; and
- (d) Be registered and authorized to do business in this state under ORS chapters 58, 60, 62, 63, 65, 67, 70, and 648, as applicable, or be a municipal or public corporation as defined in ORS 297.405.

(2) Claims processing staff.

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

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

(3) Proof of financial ability.

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

- (a) Providing a security deposit that the director determines is acceptable under OAR 436-050-0165, and in an amount as determined under OAR 436-050-0180; and
- (b) Demonstrate acceptable financial strength by maintaining a rating equal to "strong" or "moderate" as determined under sections (4) and (5) of this rule.

(4) Financial strength analysis.

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Except for employers described under subsection (c), the director will score the financial strength of an employer based on the following ratios:

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

Ratio	=	Points
At least 2	_____ =	6 points
At least 1.75	=	5 points
At least 1.6	=	4 points

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
 WORKERS' COMPENSATION DIVISION

Proposed EMPLOYER/INSURER COVERAGE RESPONSIBILITY

At least 1.4	=	3 points
At least 1.25	=	2 points
At least 1	=	1 points
Less than 1	=	0 points

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

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

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

Ratio		Points
At least 10%	=	6 points
At least 8%	=	5 points
At least 6%	=	4 points
At least 4%	=	3 points
At least 3%	=	2 points
At least 2%	=	1 points
Less than 2%	=	0 points

(c) The director will score the financial strength of an employer that is a municipal corporation as defined in ORS 297.405 that submits a Comprehensive Annual Financial Report, based on the following ratios:

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

<u>Ratio</u>	<u>=</u>	<u>Points</u>
<u>At least 2</u>	<u>=</u>	<u>6 points</u>

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

At least 1.75 = 5 points

At least 1.6 = 4 points

At least 1.4 = 3 points

At least 1.25 = 2 points

At least 1 = 1 points

Less than 1 = 0 points

(B) The **debt service ratio** is calculated by dividing total debt service by total revenue. A maximum of six points are possible for the debt service ratio, to be awarded as follows:

<u>Ratio</u>	<u>Points</u>
<u>10% or less =</u>	<u>6 points</u>
<u>12% or less =</u>	<u>5 points</u>
<u>14% or less =</u>	<u>4 points</u>
<u>16% or less =</u>	<u>3 points</u>
<u>18% or less =</u>	<u>2 points</u>
<u>20% or less =</u>	<u>1 points</u>
<u>More than 20% =</u>	<u>0 points</u>

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

<u>Ratio</u>	<u>Points</u>
<u>At least 5% =</u>	<u>6 points</u>
<u>At least 4% =</u>	<u>5 points</u>
<u>At least 3% =</u>	<u>4 points</u>
<u>At least 2% =</u>	<u>3 points</u>
<u>At least 1.5% =</u>	<u>2 points</u>
<u>At least 1% =</u>	<u>1 points</u>
<u>Less than 1% =</u>	<u>0 points</u>

(5) Rating of financial strength.

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

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

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

- (A) The director will approve initial or continued certification if the employer meets all of the requirements of this rule; and
- (B) The employer's security deposit amount will be determined based on OAR 436-050-0180(1) or (3);
- (b) A sum of 7 to 12 points is equal to a **moderate** rating:
- (A) The director will approve initial or continued certification if the employer meets all the requirements of this rule; and
- (B) The employer's security deposit amount will be determined based on OAR 436-050-0180 (1) and (2), or (3); and
- (c) A sum of 0 to 6 points is equal to a **weak** rating:
- (A) The director may not approve the application for initial self-insured employer certification; and
- (B) For an existing certified self-insured employer, the director may take one or more actions, including but not limited to:
- (i) Provideing the employer notice of the director's intent to revoke its self-insurance certification under OAR 436-050-0200 and this rule;
 - (ii) Increaseing the security deposit calculated under OAR 436-050-0180 by an amount based on factors including, but not limited to, the considerations identified in OAR 436-050-0180(4); ~~or~~
 - (iii) Allowing the amount of the security deposit to be determined based on a certified actuarial study under OAR 436-050-0180(3); or
 - (iv) ~~Request Requiring that~~ the employer to submit a financial correction plan that demonstrates the employer's ability to improve its rating, in a reasonable time period, without hampering the employer's ability to pay compensation and other amounts due under ORS chapter 656.;

(6) Financial strength based on municipal bond ratings.

Notwithstanding section (5) of this rule, a public self-insured employer with a municipal bond rating of Aa3, AA-, or higher will be considered to have a strong financial strength rating.

(67) Failure to maintain qualifications.

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

- (a) The director will give the employer 30 days written notice;
- (b) The revocation will be effective 30 days from the date the employer receives the director's revocation notice; and

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

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

Statutory authority: ORS 656.407 and 656.726(4)

Statutes implemented: ORS 656.407

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

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

[Amended xx/xx/xx as WCD Admin. Order 17-XXX, eff. 1/1/18](#)

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

436-050-0170 Excess Insurance Requirements

(1) Excess insurance requirements.

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

(a) Except for endorsements requiring pre-approval by the director under sections (3) and (4) of this rule, the policy providing such coverage and any subsequent endorsements must be filed with the director within 30 days after the effective date of the policy or endorsement;

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

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

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

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

(B) Coverage may include aggregate excess insurance; and

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

(e) Excess insurance obtained under this rule does not relieve any self-insured employer from full responsibility for claims processing and the payment of compensation required under ORS chapter 656 and OAR chapter 436. [The policy may not contain provisions or endorsements that do not comply with Oregon law, including but not limited to, provisions or endorsements that allow the excess carrier to process claims, pay compensation, or change the location where a claim is processed.](#)

(f) A self-insured employer may not transfer claims to any excess insurer or service company acting on behalf of an excess insurer for the processing of the employer's claims, regardless of the types and amounts of excess coverage; and

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

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

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

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

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

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

- (a) The employer's financial status;
- (b) The employer's financial strength as determined under OAR 436-050-0150 or OAR 436-050-0260;
- (c) The employer's risk and exposure;
- (d) The employer's claim history; and
- (e) The amount of the employer's required security deposit.

(4) Per-accident deductible endorsements.

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

- (a) In determining whether to approve a deductible endorsement, the director will consider the group's retention level, policy limits, and the items listed in section (3) of this rule; and
- (b) The director will not approve per-accident deductible endorsements in excess of the retention level that contain language allowing the excess insurer, at its discretion, to limit its obligations under subsection (1)(c) of this rule.

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

A self-insured employer must comply with an order of the director to reduce the self-insured retention level or increase the policy limitation or amounts and limits of liability of the excess insurance within 30 days after the order's mailing date.

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

If a self-insured employer does not comply with the requirements of this rule the director may assess civil penalties against the employer, revoke the employer's self-insurance

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

certification, or both. If the director intends to revoke the employer's self insurance certification under this rule:

- (a) The employer will be given written notice;
- (b) The revocation will be effective 30 days from the employer's receipt of the notice; and
- (c) If the employer complies with the requirements of this rule before the effective date of the revocation, the revocation will be canceled and certification will remain in effect.

Statutory authority: ORS 656.430, and 656.726(4)

Statutes implemented: ORS 656.430

Hist: Amended 8/15/14 as WCD Admin. Order 14-059, eff. 9/15/14

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

[Amended xx/xx/xx as WCD Admin. Order 17-XXX, eff. 1/1/18](#)

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

436-050-0175 Annual Reporting Requirements

(1) Annual Financial Report.

Every self-insured employer must file an annual financial report with the director, subject to the following:

- (a) The report must include the employer's audited financial statements or annual report with audited financial statement for the just completed fiscal year, and SEC Form 10K, if issued;
- (b) The report must be filed within the following time frames:
 - (A) A self-insured employer that is not a municipal or public corporation as defined in ORS 297.405 must make the filing within 120 days of the end of its fiscal year; or
 - (B) A self-insured employer that is a municipal or public corporation as defined in ORS 297.405 must make the filing within 180 days of the end of its fiscal year;
- (c) If audited financial statements are not available for filing within the time frames of subsection (b), the self-insured employer may file a financial statement that is certified by the self-insured employer that the financial statement is true and accurate and presents the self-insured employer's financial condition and results of operations as of the date of the statement. The director may require a self-insured employer to submit an audited financial statement if the certified financial statement submitted is insufficient to evaluate the self-insured employer's financial status;
- (d) The financial statements and reports must include information sufficient to determine the self-insured employer's financial viability under OAR 436-050-0150 or OAR 436-050-0260; and
- (e) All financial statements and annual financial reports filed under this section will be retained by the director for a period of at least three years.

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

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

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

- (a) A statement certifying the group meets or exceeds the combined net worth requirement under OAR 436-050-0260(3)(a), as of the date of the statement;
- (b) A copy of the fidelity bond furnished to the group by the administrator or a copy of the comprehensive crime policy obtained by the group, in an amount sufficient to protect the group against the misappropriation or misuse of any moneys or securities. If the group previously filed a copy of a fidelity bond or policy that covers more than one year, and that fidelity bond or policy is still in effect, the group may include a statement in their annual report referring the director to the copy on file in place of providing an additional copy; and
- (c) If the self-insured employer group consists of private employer members:
 - (A) A statement certifying that each member of the group meets the individual net worth requirement under OAR 436-050-0260(3)(b), as of the member's most recent fiscal year end; and
 - (B) A list of the group's current board members and their professional affiliations.

(3) Claims loss data reporting.

The self-insured employer must report claim loss data [to the director](#) by March 1 of each year for the purposes of experience rating modification, retrospective rating calculations, and determining deposits. Bulletin 209 provides guidelines for self-insured employers and their authorized representatives to use in submitting the required data. The report must be certified to be true and accurate by an authorized representative of the self-insured employer, and must include:

- (a) A report of losses for each year in the experience rating period. The report must cover all claims incurred during the reporting period and must be valued as of January 1 of the current year, and must include:
 - (A) Contract medical expenses;
 - (B) Total ~~maximum~~ medical reimbursement amount;
 - (C) The number of claims for which the maximum medical reimbursement amount is claimed; and
 - (D) Separate lists including all claims with total incurred losses above and below the National Council on Compensation Insurance split point published in Bulletin 209. The lists must include:
 - (i) The worker's name, listed in alphabetical order;
 - (ii) The date of injury;
 - (iii) The claim number;
 - (iv) The total amount paid;
 - [\(v\) The medical reimbursement amount claimed, if applicable;](#)
 - ~~(vi)~~ Outstanding reserves; and

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

(~~v~~iv) Total incurred losses;

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

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

(B) The date of injury;

(C) The claim number;

(D) The total amount paid;

(E) The medical reimbursement amount claimed, if applicable;

~~(E)~~ Outstanding reserves; and

~~(F)~~ Total incurred losses;

(c) Identification of claims involving:

(A) Catastrophes;

(B) The Workers with Disabilities Program;

(C) Permanent total disability;

(D) Fatal benefits;

(E) Third party recoveries; and

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

(d) If the self-insured employer is a self-insured city, county, or qualified self-insured employer group that is exempted from the security deposit requirements under ORS 656.407(3) and OAR 436-050-0185:

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

(B) Upon the director's request, an actuarial study that demonstrates its loss reserve account is actuarially sound and adequately funded under OAR 436-050-0185(2)(a)(D).

(4) Director's requests for additional information.

The director may require a self-insured employer to provide additional information, or submit financial statements, reports, or claims loss data more frequently.

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

(A) Changes in the financial status or viability of a self-insured employer or group; and

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

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

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

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

If a self-insured employer does not comply with the requirements of this rule, the director may:

- (a) Require the self-insured employer to increase its deposit and premium assessments by 25 percent;
- (b) Conduct an audit to obtain the necessary loss information at the self-insured employer's expense;
- (c) Assess civil penalties of up to \$250 per day that the information is not provided beyond the deadline; or
- (d) Revoke the employer's certification for self-insurance under OAR 436-050-0200 or OAR 436-050-0340.

(6) Claims reserve audits.

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

- (a) The values determined at audit will be used to calculate the self-insured employer's security deposit, experience rating factor, and retrospective rating adjustment.
- (b) If there is a 10 percent or greater difference between the values determined by the director at audit and the values that were reported by the self-insured employer, the director may assess civil penalties against the employer.

Statutory authority: ORS 656.407, 656.430, and 656.726(4)

Statutes implemented: ORS 656.407 and 656.430

Hist: Amended 12/24/15 as WCD Admin. Order 15-067, eff. 1/1/16

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

[Amended xx/xx/xx as WCD Admin. Order 17-XXX, eff. 1/1/18](#)

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

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

(1) Indicated security deposit.

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

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

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

- (A) \$100,000;
- (B) Future claim liability, including losses incurred but not reported (IBNR), a claims processing administrative cost, and the anticipated assessments payable to the director for the employer's next fiscal year; or
- (C) The annual incurred losses for the self-insured employer's last fiscal year, including IBNR, a claims processing administrative cost, and anticipated assessments payable to the director for the employer's next fiscal year;
- (b) If the employer is applying for self-insurance, the amount of the initial deposit must not be less than the greater of:
- (A) The anticipated assessments payable to the director for the employer's next fiscal year, plus an amount equal to 65 percent of the annual premium the employer would pay if carrier-insured using the applicable occupational base rate premium, as such rate is applied to the anticipated payroll of the employer's Oregon operations for the employer's next fiscal year;
- (B) \$300,000 plus \$30,000 additional for each \$100,000 the employer's net worth is below \$2 million; or
- (C) The amount of the approved self-insured retention level for the employer's excess workers' compensation insurance;
- (c) Assessments payable to the director referred to in this section include moneys and assessments due under ORS 656.506, 656.612, and 656.614;
- (d) Claims processing administrative costs will be determined by developing a percentage rate to be applied against the employer's unpaid losses;
- (A) The rate will be based on the information contained in Schedule P, Part ID of the Annual Statement for the previous calendar year as reported to the Insurance Commissioner by SAIF Corporation and the 20 private insurers who had the highest earned premium reported for the preceding calendar year; and
- (B) The rate will be computed annually to be effective for the subsequent fiscal year. The rate will be 105 percent of the median of ratios determined as follows for each of these insurers:
- (i) "Loss expenses unpaid" for losses incurred in the latest eight years, divided by
- (ii) "Losses unpaid" for losses incurred in the latest eight years; and
- (e) Under this section, "Incurred but not reported" (IBNR) will be calculated by applying a loss development factor determined by the director against the employer's [annual](#) incurred losses.

(2) Financial strength adjustment.

If the self-insured employer received a financial strength rating equal to "moderate" under OAR 436-050-0150(5) or OAR 436-050-0260(12), the amount of the deposit determined under section (1) will be increased by the following percentage factors:

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

- (a) 12 total combined points = no change in calculated deposit;
- (b) 11 total combined points = no change in calculated deposit;
- (c) 10 total combined points = 5%;
- (d) 9 total combined points = 10%;
- (e) 8 total combined points = 15%; or
- (f) 7 total combined points = 20%.

(3) Certified actuarial study.

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

- (a) The actuarial study must be certified by an actuary who is a member in good standing of the American Academy of Actuaries;
- (b) The actuarial study must be submitted to the director within seven days after the date of the director's notice establishing the security deposit amount calculated under sections (1) and (2) of this rule;
- (c) The actuarial study must include an estimate or range of estimates of future claim liability and state what provisions for adverse claim development are included in these estimates;
- (d) The actuarial study must identify the confidence levels associated with the recommended loss reserve level or loss reserve range;
- (e) The actuarial study must include a statement of future claim liability, including the employer's incurred but not reported (IBNR) losses;
- (f) Subject to the minimum requirements of ORS 656.407 and this rule, upon the director's review and acceptance of the study the amount of the employer's security deposit will be based on:
 - (A) The actuarially sound recommended loss reserve level if a single estimate is provided; or
 - (B) The 75% confidence level estimate, if an actuarially sound loss reserve range is provided; and
- (g) If there is probable cause to believe the recommended loss reserve level or range is not actuarially sound, the director will determine the security deposit under sections (1) and (2) of this rule. Probable cause includes, but is not limited to:
 - (A) The actuarial study not containing a statement by the actuary that the recommended loss reserve level or range is actuarially sound;

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

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

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

(4) Additional factors for security deposit amount.

In determining the amount of [the self-insured employer's security](#) deposit the director will take the following factors into consideration:

- (a) The financial ability of the employer to pay compensation and other payments due;
- (b) The employer's probable continuity of operation;
- (c) ~~A self-insured~~[The](#) employer ~~group~~'s financial viability, as determined by the director under OAR 436-050-0150 or OAR 436-050-0260;
- (d) Retention and limitation levels of the employer's excess insurance in relation to the employer's financial status;
- (e) Changes in the employer's business including, but not limited to, mergers or acquisitions, changes in employment level, nature of employment, incurred claims costs, or material growth in self-insured exposure;
- (f) The balance of the Self-Insured Employer Adjustment Reserve or the Self-Insured Employer Group Adjustment Reserve; and
- (g) The employer's credit rating issued by a nationally recognized statistical ratings organization;

(5) Time frame for compliance.

A self-insured employer must comply with an order of the director to the self-insured employer to increase the amount of its deposit within 30 days of the order. Failure to comply with this rule may result in the assessment of civil penalties, revocation of the employer's certification of self-insurance, or both.

Statutory authority: ORS 656.407, and 656.726(4)

Statutes implemented: ORS 656.407

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

Amended 12/22/16 as WCD Admin. Order 16-060, eff. 1/1/17 (Correction)

[Amended xx/xx/xx as WCD Admin. Order 17-XXX, eff. 1/1/18](#)

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

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

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

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

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

(a) The director will, on behalf of the self-insured employer, assure continued payments in accordance with ORS 656.407, 656.443, and 656.614 and in such a manner as to ensure minimum delay in the processing of injured workers' claims.

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

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

~~(B) If a self-insured employer defaults and is self-administering, the director may negotiate to have the employer's claims processed on the employer's behalf.~~

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

(2) Changes in liability or financial viability.

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

Statutory authority: ORS 656.407, 656.434, and 656.726(4)

Statutes implemented: ORS 656.407, 656.443, and 656.614

Hist: Amended 8/15/14 as WCD Admin. Order 14-059, eff. 9/15/14

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

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

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

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

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

(2) Adding or deleting entities.

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

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

- (a) The self-insured employer must submit a completed Form [48691865](#), "Endorsement to Include Legal Entity in Self-Insured Certification," signed by an officer of the self-insured employer;
- (b) Each entity must enter into an agreement, signed by an officer of the entity, making the entity jointly and severally liable for the payment of any compensation and moneys due to the director by the certified self-insured employer or any other entity included in the self-insured employer's certification; and
- (c) The director will determine, based on the information provided, the effect of the change on the deposit required and whether the entities can be combined for experience rating purposes.

(3) Failure to provide notification.

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

Statutory authority: ORS 656.407, 656.430, and 656.726(3)

Statutes implemented: ORS 656.407 and 656.430

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

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

[Amended xx/xx/xx as WCD Admin. Order 17-XXX, eff. 1/1/18](#)

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

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

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

(1) Organization

The employers group must be organized as:

[\(a\) ~~a~~ A corporation or cooperative under ORS chapter 60, 62, or 65.](#)

[\(b\) ~~If the group is a governmental subdivision, it must have formed a An intergovernmental entity as provided~~ under ORS 190.003 to 190.110-; or](#)

[\(c\) A public entity self-insurance program under ORS 30.282\(3\).](#)

(2) Designation of responsible parties.

The employers must designate:

- (a) A board of trustees; and
- (b) An administrator, subject to section (9) of this rule.

(3) Group net worth requirements.

The employers must demonstrate and maintain:

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

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

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

(4) Excess insurance.

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

(5) Claims processing staff.

The employers must establish proof of an adequate staff qualified to process claims by:

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

(6) Changes in group membership.

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

- (a) The commencement or termination of membership by employers in the group, and the effect on the remaining combined net worth of the employers in the group; and
- (b) If a member who terminates membership in the group will continue to be a subject employer, and if so, what arrangements have been made to continue coverage.

(7) Safety and health loss prevention program.

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

(8) Commons claims fund.

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

(9) Designation of administrative entity.

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

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

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

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

- (A) File, with the director, a copy of the agreement entered into between the employer group and each company; and
- (B) Give the director notice of the location, mailing address, telephone number, email address, and any other contact information for each service company.

(10) Proof of financial ability.

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

- (a) Providing a security deposit that the director determines is acceptable under OAR 436-050-0165, and in an amount determined under OAR 436-050-0180;
- (b) Demonstrating financial viability based on factors including, but not limited to:
 - (A) The group meeting the combined net worth requirements in subsection (3)(a) of this rule;
 - (B) For private employers that are members of a self-insured group, meeting the individual net worth requirements in subsection (3)(b) of this rule; and
- (c) Demonstrating acceptable financial strength by maintaining a rating equal to “strong” or “moderate” as determined under section (11) and (12) of this rule.

(11) Financial strength analysis.

The financial reports submitted by the self-insured employer group under OAR 436-050-0175(1) must contain information sufficient to calculate the financial ratios described in this section. The points awarded for each ratio will be used to determine the self-insured employer group’s financial strength under section (12) of this rule.

- (a) For the purposes of calculating the financial ratios under this section:
 - (A) The face value of a self-insured employer’s irrevocable standby letter of credit (ISLOC) used to satisfy the director’s requirement for a security deposit, may not be included in the self-insured employer group’s reported assets;
 - (B) **Current assets** include all assets that may be reasonably expected to be converted into cash, or could become the equivalent of cash, within one year in the normal course of business;
 - (i) **Cash** must include all readily available and unrestricted funds such as bills, coin, or checking account balances. Cash does not include funds held in special deposit or escrow accounts where some degree of legal constraint against their use exists;
 - (ii) Current assets include, but are not limited to, cash, accounts receivable, inventory, prepaid expenses, and investments, marketable securities and bonds

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

that mature within one year or may be converted to cash without penalties or fees; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) The **premium-to-surplus ratio** is calculated by dividing earned contributions by the group's adjusted net worth. A maximum of six points are possible for the premium-to-surplus ratio, to be awarded as follows:

Ratio		Points
Less than 1	=	6 points
Less than 1.5	=	5 points
Less than 2	=	4 points
Less than 2.25	=	3 points
Less than 2.5	=	2 points
Less than 2.75	=	1 point
2.75 or more	=	0 points

(12) Rating of financial strength.

The self-insured employer group's financial strength will be rated based on the sum of the points awarded under section (11) of this rule.

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

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

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

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

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

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

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

- (c) A sum of 0 to 6 points is equal to a **weak** rating:
- (A) The director may not approve the application for initial self-insured employer group certification;
 - (B) For an existing certified self-insured employer group, the director may:
 - (i) Provide the group notice of the director's intent to revoke its self-insurance certification under OAR 436-050-0340(1); or
 - (ii) Increase the security deposit calculated in OAR 436-050-0180 by an amount based on factors including, but not limited to, the considerations identified in OAR 436-050-0180(4);
 - (iii) Allow the amount of the security deposit to be determined based on a certified actuarial study under OAR 436-050-0180(3); or
 - (iv) Request that the group submit a financial correction plan that demonstrates the group's ability to improve its rating, in a reasonable time period, without hampering the group's ability to pay compensation and other amounts due under ORS chapter 656; or
 - (C) The director may request additional information or financial reports to verify the employer's financial strength.

(13) Compliance with rules.

The employer group must comply with the requirements of ORS chapter 656 and OAR chapter 436.

(14) Claims processing location.

The self-insured employer group must maintain at least one place of business in this state where the member's claims will be processed and written records of claims and other records kept as required by OAR 436-050-0210 and 436-050-0220.

(15) Failure to maintain qualifications.

The employer group and its members must maintain the qualifications required under this rule.

- (a) Failure of a private employer that is a member of a self-insured employer group to maintain individual net worth of at least \$150,000 will result in cancellation of that member's participation in the group under OAR 436-050-0290.
- (b) Failure of a certified self-insured employer group to maintain the qualifications required in this rule will result in revocation of the self-insured employer group's certification. If the director intends to revoke the self-insured employer group's certification:
 - (A) The director will give the group 30 days written notice of the intent to revoke the self-insured certification;

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

(B) The revocation will be effective 30 days from the date the group receives the revocation notice; and

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

Statutory authority: ORS 656.407, 656.430, and 656.726(4)

Statutes implemented: ORS 656.407 and 656.430

Hist: Amended 8/15/14 as WCD Admin. Order 14-059, eff. 9/15/14

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

[Amended xx/xx/xx as WCD Admin. Order 17-XXX, eff. 1/1/18](#)

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

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

(1) Required information.

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

(a) A completed Form 1867, "Application ~~to Become a~~for Self-Insured Employer Group";

(b) Proof that the governmental subdivisions have formed:

[\(A\) an An](#) intergovernmental entity as provided under ORS 190.003 to 190.110; [or](#)

[\(B\) A self-insurance program under ORS 30.282\(3\);](#)

(c) An intergovernmental agreement that includes:

(A) Designation of specific individuals as trustees for the group and naming an administrator to administer the financial affairs of the group; and

(B) The criteria to be used by the trustees and administrator when approving applications for new membership and requests for withdrawal by members of the group;

(d) A copy of the fidelity bond provided to the group by the administrator or a copy of the comprehensive crime policy obtained by the group, in an amount sufficient to protect the group against the misappropriation or misuse of any moneys or securities;

(e) The current financial statements of each member making application, demonstrating the members meet the combined net worth requirement under OAR 436-050-0260;

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

(g) A resolution by the governing body of each governmental subdivision binding it to be liable for the payment of any compensation and other amounts due to the director under ORS Chapter 656 incurred by that governmental subdivision during the period of group self-insurance;

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

- (h) Evidence of a safety and health loss prevention program designed to demonstrate that accident prevention will improve due to self-insurance;
- (i) Proof of an adequate staff qualified to process claims under OAR 436-050-0260(5);
- (j) If applicable, a service agreement between the employer and service company that has been signed by both parties that meets the requirements of OAR 436-050-0210(2). The agreement must:
 - (A) Be submitted at least 14 days before the desired date of certification, and approved by the director before the service company begins processing claims, regardless of the effective date established in the agreement; and
 - (B) Contain the location, mailing address, telephone number, and any other contact information of the service company;
- (k) The type, retention and limitation levels of excess insurance the employers as a group are planning to obtain in accordance with OAR 436-050-0170;
- (l) A procedure for notifying the director of:
 - (A) The commencement or termination of governmental subdivisions within the group and the effect on the remaining combined net worth of the group; and
 - (B) Arrangements made by a governmental subdivision leaving the group to continue insurance coverage;
- (m) If applicable, A program whereby each employer within the group contributes to a common claims fund under OAR 436-050-0300, or specification that the amount calculated under OAR 436-050-0300(3) or (6) is to be included in the self-insured employer group's security deposit; and
- (n) The type and amount of security deposit the group wishes to provide, with appropriate justification. In no case will the security deposit amount be less than \$300,000.

(2) Audited or certified financial statements.

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

(3) Review of application.

Within 60 days of receipt of all information required in section (1) of this rule, the director will review the application and notify the group that the request for certification as a self-insured employer group is approved or denied.

- (a) If the request is denied, the notice will include the reasons for denial; or
- (b) If the request is approved, the notice will include:
 - (A) The amount of the security deposit required; and
 - (B) Approval of the type, retention and limitation levels of the excess insurance as determined under OAR 436-050-0170; and
 - (C) Approval of the service agreement submitted under subsection (1)(j) of this

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

rule.

(4) Issuance of certification.

The certification of self-insurance will be issued upon receipt of the security deposit, and the appropriate excess insurance binder. The effective date of certification will be the date the certification is issued, or a later date specified by the applicant,.

Statutory authority: ORS 656.407, 656.430, and 656.726(4)

Statutes implemented: ORS 656.407 and 656.430

Hist: Amended 8/15/14 as WCD Admin. Order 14-059, eff. 9/15/14

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

[Amended xx/xx/xx as WCD Admin. Order 17-XXX, eff. 1/1/18](#)

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

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

(1) Addition of new members.

Prospective new members of a self-insured employer group must submit an application to the board of trustees, or its administrator. The administrator of a group consisting of private employer members may not be a member of the group. The trustees, or administrator, may approve the application for membership under the bylaws of the self-insured employer group. Once approved, the administrator or board of trustees must submit to the director, within 30 days of the effective date of membership, a completed Form 1869, "Endorsement to Self-Insured Group Application" or a form approved by the director, which must be accompanied by:

- (a) A current financial statement of the employer applying;
- (b) Evidence of at least \$150,000 individual net worth if the prospective new member is a private employer;
- (c) An agreement signed by the administrator of the self-insured employer group and the employer, making the employer jointly and severally liable for the payment of any compensation and moneys due to the director by the group or any member of the group; or, if a governmental subdivision self-insured employer group, a resolution by the governing body of each governmental subdivision binding it to be liable for the payment of any compensation and other amounts due to the director under ORS chapter 656 incurred by that governmental subdivision during the period of group self-insurance;
- (d) A statement showing the effect on the new combined net worth of the group; and
- (e) The employer's payroll by class and description and loss information for the last four fiscal or calendar years.

(2) Incomplete or incorrect submissions.

Incomplete submissions or incorrectly completed endorsements to add new members received by the director will not be considered filed, and the employer will not be included in the self-insurance of the self-insured employer group. Failure to file a correct and complete

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

endorsement with the required supporting documentation within 30 days of the effective date of membership may result in the assessment of civil penalties.

(3) Termination or cancellation of membership.

~~An Individual~~-individual employer members may elect to terminate ~~their~~-its membership in a self-insured group or be subject to cancellation by the group under the bylaws of the group~~;~~
subject to the following:

(a) Groups consisting of private employer members must ~~also~~ cancel the membership of any private employer member that fails to maintain the minimum individual net worth required under OAR 436-050-0260(15). ~~Such a~~Cancellation under this subsection must occur within 30 days of the group's receipt of the employer member's most recent fiscal year end financial data demonstrating insufficient net worth.

(b) The self-insured employer group must submit the following information to the director no later than 10 days before the effective date of the member's cancellation, or immediately following the date of the member's termination ~~or cancellation~~:

(aA) A statement, without disclaimers or qualifying language as to the accuracy of the information provided:

(Ai) Showing the effect of the employer member's termination or cancellation on the remaining combined net worth of the group; and

(Bii) Certifying that the group continues to meet the combined net worth requirements in OAR 436-050-0260;

(bB) Evidence that the employer member requesting termination or being cancelled has made alternate arrangements for coverage if the employer member continues to employ subject workers;

(eC) Evidence that the employer member requesting termination or being cancelled has been provided a written reminder about its potential future liability as described in section (1)(c) of this rule; and

(dD) The expected date of cancellation or termination.

(4) Revocation of certification due to change in membership.

If the director determines the cancellation or termination of an employer member adversely affects the self-insured employer group to the extent that the group no longer qualifies for self-insurance certification, the director may revoke the self-insured employer group's certification under OAR 436-050-0340(3).

(5) Change in entity.

If there is a change in the entity of an employer member, the employer member must reapply for membership within the self-insured employer group under this rule. A change in entity includes, but is not limited to:

(a) A partner joining or leaving a partnership;

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

- (b) A sole proprietorship, partnership, or corporation, changing to another of those ownership structures; or
- (c) An employer selling an existing business to another person, except in the case of a corporation.

(6) Change in name or address.

An employer member of a group must, within 10 days after there is a change of address or assumed business name, notify the board of trustees or administrator of the change.

- (a) A change of address includes, but is not limited to:
 - (A) Establishment of a new or additional location; or
 - (B) Termination of an existing location.
- (b) The administrator or board of trustees must, within 10 days, submit to the director an endorsement as notice of the change. The endorsement must state specifically which location is being deleted or which is being added and identify if address is the mailing, operating, or the principal place of business of the location.

(7) Maintenance of coverage records.

The self-insured employer group is responsible for maintaining coverage records relating to each employer member, to include:

- (a) The employer member's application for membership in the self-insured employer group, with original signatures;
- (b) The employer member's liability agreement under OAR 436-050-0270(1)(g), or resolution under OAR 436-050-0280(1)(g), with original signatures;
- (c) Cancellation or termination notices;
- (d) Reinstatement applications and notices; and
- (e) Records on the locations of employers that have been canceled or have terminated their participation in the group.

Statutory authority: ORS 656.726(4)

Statutes implemented: ORS 656.434 and 656.440

Hist: Amended 8/15/14 as WCD Admin. Order 14-059, eff. 9/15/14

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

[Amended xx/xx/xx as WCD Admin. Order 17-XXX, eff. 1/1/18](#)

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