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ARCHIVES DIVISION

STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 436
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION

FILED

09/26/2022 3:45 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Self-insurance security deposits; revocation of certification; termination of self-insured employer group members

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 10/21/2022 11:55 PM

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.

CONTACT: Fred Bruyns
971-286-0316
WCD.Policy@dcbs.oregon.gov

350 Winter Street NE
PO Box 14480
Salem, OR 97309

Filed By:
FREDERICK BRUYNS
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 10/17/2022

TIME: 10:00 AM

OFFICER: Fred Bruyns

ADDRESS: Labor & Industries Building

350 Winter Street NE

PO Box 14480

Salem, OR 97309

SPECIAL INSTRUCTIONS:

See instructions below under "Need for the Rule(s)" for video and telephone conference participation.

NEED FOR THE RULE(S)

To attend by video or telephone conference – ZoomGov:

<https://www.zoomgov.com/j/1612539250?pwd=Ui96L0tJenBFU1I1bk1TbnhWc3VXdz09>

Meeting ID: 161 253 9250 | Passcode: 644824 | Telephone: 1-833-568-8864 US Toll-free

Need for the rules: Rule amendments are needed primarily to ensure appropriate security deposits by self-insured employers and self-insured employer groups are available to pay workers' compensation benefits in the event the self-insured employer or group defaults or is unable to make payment.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Rulemaking advisory committee records. 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, 971-286-0316, WCD.Policy@dcbs.oregon.gov.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The proposed rule amendments affect procedures for self-insured employer and self-insured employer groups, and should not have any direct impacts on Oregon workers. However, workers are indirectly affected when a self-insured employer or group defaults or is unable to make payment. Interruptions in benefits may have a greater impact on some racial groups than others. To the extent the proposed rule amendments facilitate timely payment of benefits, the rules may promote racial equity in Oregon. The agency does not have sufficient data to estimate specific effects on racial equity, but invites public input.

FISCAL AND ECONOMIC IMPACT:

The agency projects the proposed rule amendments, if adopted, will not affect the agency's cost to carry out its responsibilities under ORS chapter 656 and OAR chapter 436. Possible impacts on stakeholders are included under "Statement of Cost of Compliance" below.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

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 increase or decrease costs to state agencies for compliance with the rules.

b. The agency estimates that proposed rule changes will not increase or decrease costs to units of local government for compliance with the rules, with the possible exception of public self-insured employer groups, which are addressed under part c. below."

c. The agency estimates that proposed rule changes should not significantly increase or decrease costs to the public for compliance with the rules. The proposed requirement that a self-insured employer group provide a departing member, upon request, the claim loss data for that member, would require the group to forward data already reported to the director. The cost to the group is projected to be minimal, but the agency invites testimony regarding costs.

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: The businesses affected by the proposed rule amendments are self-insured employers and self-insured employer groups, which are usually not small employers as defined in ORS 183.310.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services: The agency estimates that adoption of the proposed amendments will not increase or decrease costs to small businesses for reporting, recordkeeping, other administrative activities, or professional services required for compliance.

c. Equipment, supplies, labor and increased administration required for compliance: The agency estimates that adoption of the proposed amendments will not increase or decrease costs to small businesses for equipment, supplies, labor, or increased administration required for compliance.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The agency sent rule advisory committee invitations to more than 4,000 stakeholders, including representatives of small businesses.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

436-050-0003, 436-050-0150, 436-050-0160, 436-050-0165, 436-050-0170, 436-050-0175, 436-050-0180, 436-050-0185, 436-050-0190, 436-050-0195, 436-050-0200, 436-050-0205, 436-050-0210, 436-050-0220, 436-050-0260, 436-050-0270, 436-050-0280, 436-050-0290, 436-050-0340

AMEND: 436-050-0003

RULE SUMMARY: Rule 0003 is amended to update the "Statutes implemented" section – no changes to the rule text.

CHANGES TO RULE:

436-050-0003

Purpose and Applicability ¶¶

(1) Purpose. These rules carry out the workers' compensation law related to employers' and insurers' responsibilities to cover subject workers for compensable injuries and illnesses.¶¶

(2) Applicability.¶¶

(a) These rules apply to employers, self-insured employers, and insurers.¶¶

(b) The requirements of OAR 436-050-0165, 436-050-0170, 436-050-0175, 436-050-0180, 436-050-0190, 436-050-0200, 436-050-0205, 436-050-0210 and 436-050-0220 apply to both self-insured employers and self-insured employer groups. References in those rules to "employer" include employer groups, and references to "self-insured employer" include self-insured employer groups.¶¶

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

Statutory/Other Authority: ORS 656.726(4)

Statutes/Other Implemented: ORS ~~656.017, 656.029, 656.126, 656.407, 656.419, 656.423, 656.427, 656.430, 656.434, 656.443, 656.447, 656.455, 656.745, 731.475~~chapter 656

AMEND: 436-050-0150

RULE SUMMARY: Rule 0150 is amended to remove provisions for revocation of self-insurance certification, which are addressed under OAR 436-050-0200 and 436-050-0340.

CHANGES TO RULE:

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~~who is certified under OAR 436-055-0070 to process claims in this state, and who 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~~who is certified under OAR 436-055-0070 to process claims in this state, and ~~that~~who 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.¶

(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) of this section, the director will score the financial strength of an employer based on the following ratios:¶

(A) 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 points¶
Less than 1-----	= 0 points¶

(B) 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¶

(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:¶

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. 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 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:¶

Ratio -----	Points¶
10% or less-----	= 6 points¶
12% or less-----	= 5 points¶
14% or less-----	= 4 points¶
16% or less-----	= 3 points¶
18% or less-----	= 2 points¶
20% or less-----	= 1 points¶
More than 20%---	= 0 points¶

(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:¶

Ratio -----	Points¶
At least 5%-----	= 6 points¶
At least 4%-----	= 5 points¶
At least 3%-----	= 4 points¶
At least 2%-----	= 3 points¶
At least 1.5%-----	= 2 points¶
At least 1%-----	= 1 points¶

Less than 1%----- = 0 points¶¶

(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:-¶¶

(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) Providing the employer notice of the director's intent to revoke its self-insurance certification under OAR 436-050-0200 and this rule;¶¶

(ii) Increasing 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);-¶¶

(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) Requiring 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 that provides verifiable evidence of a municipal bond rating of Aa3, AA-, or higher will be considered to have a strong financial strength rating.¶¶

~~(7) 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¶¶~~

~~(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/Other Authority: ORS 656.407, ORS 656.726(4)

Statutes/Other Implemented: ORS 656.407

AMEND: 436-050-0160

RULE SUMMARY: Rule 0160 is amended for plain language to enhance clarity.

CHANGES TO RULE:

436-050-0160

Applying for Certification as a Self-Insured Employer ¶

(1) Required information. An employer applying for certification as a self-insured employer must submit:¶

(a) A completed Form 1868, "Application for Self-Insurance;"¶

(b) Proof of an adequate staff qualified to process the employer's claims under OAR 436-050-0150(2);¶

(c) The employer's audited financial statements or audited annual reports for the last three fiscal or calendar years, subject to the following:¶

(A) If the audited financial statements of a parent company are provided in place of statements for the employer, the director will not authorize the individual employer to be self-insured under its own program, unless a parental company guarantee can be obtained. Otherwise, it will be necessary for the parent company to be the self-insured employer or to separately insure the employer. In the context of this section, a parent company is a legal entity that owns a majority interest in the employer, or owns a majority interest in another entity or succession of entities that own a majority interest in the employer; or¶

(B) If audited financial statements are not available at the time of application, the employer may submit certified financial statements in place of audited financial statements or annual reports. However, if the certified financial statements submitted are insufficient to evaluate the employer's financial ability, the director may require the employer to submit audited financial statements;¶

(d) The employer's most recent experience rating modification worksheet and supporting documentation. Applicants with prior Oregon experience who do not submit this data will be assigned a 1.50 experience rating modification pending receipt of the data. All those without prior Oregon experience will be assigned a 1.00 experience rating modification;¶

(e) The type, retention, and limitation levels of excess workers' compensation insurance the employer is planning to obtain as required by OAR 436-050-0170;¶

(f) If applicable, 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. The agreement must:¶

(A) Be submitted at least 14 days before the desired date of certification, and be approved by the director before the service company begins processing claims, regardless of the effective date established in the agreement; and¶

(B) ~~The agreement must also~~ contain the location, mailing address, telephone number, and any other contact information of the service company;¶

(g) Proof of the employer's ability to provide an acceptable security deposit, including either:¶

(A) Evidence from a surety bond company admitted to do surety business in this state that they will issue a surety bond for the employer, as Principal, and the Oregon Department of Consumer and Business Services, Workers' Compensation Division, as Obligee; or¶

(B) Evidence from a qualified bank that they will issue an irrevocable standby letter of credit for the employer with the Oregon Department of Consumer and Business Services as the beneficiary;¶

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

(i) Evidence of:¶

(A) The employer's authorization to do business in this state under ORS chapters 58, 60, 62, 63, 65, 67, 70, and 648, as applicable; or¶

(B) The employer's status as a municipal or public corporation as defined in ORS 297.405.¶

(2) Review of application. Within 30 days of receipt of all information required in section (1) of this rule, the director will review the application and notify the employer that the request for certification as a self-insured employer is approved or denied.¶

(a) If the request is denied, the notice will include the reason for denial; or¶

(b) If the request is approved, the notice will include:¶

(A) Confirmation of the type and the amount of the security deposit required;¶

(B) Approval of the type, retention, and limitation levels of the excess insurance required; and¶

(C) Approval of a service agreement submitted under OAR 436-050-0110, if applicable.¶

(3) Issuance of certification. If approved, the ~~certification of self-insurance~~ certification will be issued upon receipt of the security deposit and the appropriate excess insurance binder. The effective date of certification will be the first day of the month following the date the certificate is issued, or a later date specified by the applicant.

Statutory/Other Authority: ORS 656.430, ORS 656.726(4)

Statutes/Other Implemented: ORS 656.430

AMEND: 436-050-0165

RULE SUMMARY: Rule 0165 is amended to clarify and revise requirements for use of irrevocable standby letters of credit (ISLOCs) and surety bonds, including that:

- The ISLOC must name the State of Oregon, acting by and through the Department of Consumer and Business Services, as its beneficiary;
- If the director demands payment under an ISLOC, the proceeds will be deposited with the State Treasurer in an account separate and distinct from the General Fund; and
- Form 3529, "Memorandum of Understanding," that accompanies the ISLOC, must affirm that:
 - If the director demands payment under an ISLOC, the proceeds will be deposited with the State Treasurer in an account separate and distinct from the General Fund; and
 - By cross reference to OAR 436-050-0190, the self-insured employer accepts that if the director demands payment under the ISLOC, the director may use the proceeds of the ISLOC to the extent necessary to assure continued payments.

CHANGES TO RULE:

436-050-0165

Security Deposit Requirements ¶¶

(1) Adoption of standards. The director adopts, by reference, the International Standby Practices 1998 (ISP98), ICC Publication No. 590.¶¶

(a) This publication may be purchased from the International Chamber of Commerce website at <https://2go.iccwbo.org/>; and¶¶

(b) Copies of this publication are available for review during regular business hours at the Workers' Compensation Division, 350 Winter Street NE, Salem OR 97301.¶¶

(2) Required security deposit. Each self-insured employer is required to provide a security deposit that is acceptable to the director as detailed in Bulletin 147. Under the conditions and requirements of this rule, the director may accept:¶¶

(a) An irrevocable standby letter of credit (ISLOC); or¶¶

(b) A surety bond.¶¶

(3) Irrevocable standby letters of credit. An ISLOC may be ~~approved~~accepted by the director as all or part of the security deposit.¶¶

(a) The director may ~~approve~~accept the ISLOC under the following conditions:¶¶

(aA) The ISLOC ~~must be~~is issued or confirmed by an Oregon state-chartered bank or a federally chartered bank from which funds will be immediately payable on demand;¶¶

(AB) Except for federally chartered instrumentalities of the United States operating under the authority of the Farm Credit Act of 1971, as amended, the ~~bank issuing the ISLOC must, at the time of issuance, have~~bank has a long-term certificate of deposit rating of:¶¶

(i) "Aaa", "Aa", or "A" in the current monthly edition of "Moody's Statistical Handbook" ~~prepared~~or better issued by Moody's Investors Service Inc., ~~New York~~; or¶¶

(ii) "AAA", "AA" or "A" in the current quarterly edition or monthly supplement of "Financial Institutions Ratings" ~~prepared by Standard & Poor's Corporation, New York~~or better issued by S&P Global Ratings;¶¶

(BC) An ISLOC issued by a bank that does not meet the rating requirement of paragraph (AB) at the time of issuance will only be accepted with a confirming ISLOC issued by an Oregon state-chartered bank or federally chartered bank that meets the rating requirement of paragraph (AB). The confirming ISLOC must state that the confirming bank is primarily obligated to pay on demand the full amount of the ISLOC regardless of reimbursement from the bank whose ISLOC is being confirmed;¶¶

(C) ~~If a bank's rating falls below the rating requirement of paragraph (A) subsequent to the issuance of the ISLOC, the self-insured employer must, within 60 days of the publication of the lower rating:~~¶¶

(i) ~~Replace the ISLOC with a new ISLOC issued by an Oregon state-chartered bank or a federally chartered bank with an acceptable rating;~~¶¶

(ii) ~~Have the ISLOC confirmed by an Oregon state-chartered bank or a federally chartered bank that has an acceptable rating;~~¶¶

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

~~(iv) Obtain a policy of paid-up insurance that is accepted by the director in accordance with OAR 436-050-0200(5), if the certification of the self-insured employer has been canceled or revoked;¶~~

~~(bD) Form 3640, "Irrevocable Standby Letter of Credit," must be used for the ISLOC;¶~~

~~(eE) The ISLOC must be issued under the legal name or assumed business name of the self-insured employer as registered with the Oregon Secretary of State;¶~~

~~(dF) The ISLOC must state that it will be automatically extended, without amendment, for one year from the expiration date or any subsequent expiration date, unless the bank gives the director written notice, by registered mail or overnight delivery, at least 60 days before the expiration date, that the bank has elected not to extend the ISLOC for another period names the State of Oregon, acting by and through the Department of Consumer and Business Services, as its beneficiary;¶~~

~~(eG) The ISLOC must state that if the issuing bank or any confirming bank is closed at the time of expiration of the ISLOC for any reason that would prevent delivery of a demand notice during its normal hours of operation, the ISLOC will be automatically extended for a period of 30 days commencing on the next day of operation;¶~~

~~(f) The ISLOC must be able to be called allows the beneficiary to demand payment immediately if:¶~~

~~(A) T the self-insured employer has d:¶~~

~~(i) Defaulted in payment of its workers' compensation liabilities or obligations, or in payments due to the director under ORS chapter 656;¶~~

~~(B) The self-insured employer has filed for bankruptcy;¶~~

~~(C) The self-insured employer has fii) Filed for bankruptcy;¶~~

~~(iii) Failed to renew the ISLOC or provide acceptable substitute security at least 15 days before the expiration date of the ISLOC; or¶~~

~~(D) The self-insured employer has fiv) Failed to provide additional or replacement security after being ordered to do so by the director, notwithstanding written notice to the self-insured employer;¶~~

~~(gH) The ISLOC states that:¶~~

~~(i) The funds provided by the ISLOC must will be available by presentation of the beneficiary's sight draft drawn on the issuing bank, payable within three business days, when accompanied by one of the statements contained in paragraph (G) of this subsection-(f), signed by the director;¶~~

~~(hii) The ISLOC must is not be subject to any qualifications or conditions by the issuing bank or confirming bank and must state that it is each bank's individual obligation, which is in no way contingent upon reimbursement;¶~~

~~(iii) The ISLOC must state that:¶~~

~~(A) The funds provided by the ISLOC are not construed to be an asset of the self-insured employer; and¶~~

~~(B) If legal proceedings are initiated by any party with respect to the payment of any ISLOC, it is agreed will be automatically extended without amendment for one year from the expiration date or any subsequent expiration date, unless, at least 60 days before the expiration date, the bank gives the director written notice by registered mail or overnight delivery that the bank has elected not to extend the ISLOC for another period;¶~~

~~(iv) If the issuing bank or any confirming bank is closed at the time of expiration of the ISLOC for any reason that such proceedings will be subject to Oregon courts and Oregon law;¶~~

~~(j) The ISLOC must state that p would prevent delivery of a demand notice during its normal hours of operation, the ISLOC will be automatically extended for a period of 30 days commencing on the next day of operation;¶~~

~~(v) Payment of any amount under the ISLOC will be made by wire transfer to a department account with the State Treasurer at a designated bank. Wire transfers must, as instructed in the demand notice;¶~~

~~(vi) All bank charges for the ISLOC will be infor the name account of the "Department of Consumer and Business Services In Trust For [the legal name of the certified applicant];¶~~

~~(vii) Any amendment to the ISLOC must be approved by the beneficiary before the amendment is effective;¶~~

~~(viii) The funds provided by the ISLOC are not construed to be an asset of the self-insured employer";¶~~

~~(k) The ISLOC must conform to and reference the International Standby Practices 1998 (ISP98), ICC Publication No. 590;¶~~

~~(l) Theix) If legal proceedings are initiated by any party with respect to the payment of any ISLOC must state that all bank charges for the ISLOC will be for the account of the applicant, it is agreed that such proceedings will be subject to Oregon courts and Oregon law;¶~~

~~(m) The ISLOC must state that any amendment to the ISLOC must be approved by the beneficiary before the amendment is effective conforms to and references the International Standby Practices 1998 (ISP98), ICC Publication No. 590;¶~~

~~(n) The self-insured employer that submits the ISLOC must provides an accompanying Form 3529, "Memorandum of Understanding," affirming the self-insured employer's acceptance of employer's agreement to the following:¶~~

~~(Ai) The ISLOC is provided to the director in place of, or in addition to, a surety bond or other form of security acceptable to the director under this rule;¶~~

~~(Bii) The ISLOC will be automatically extended without amendment for one year from the expiration date, or any~~

subsequent expiration date, unless, at least 60 days before the expiration date, the bank notifies the director in writing that the ISLOC will not be renewed;¶

~~(C) remain in force without amendment unless canceled by the issuing bank as provided in (H)(iii) of this subsection;¶~~

~~(iii) The ISLOC may be replaced with an ISLOC or surety bond of equal amount that is accepted by the director as substitute security, or a policy of paid-up insurance that is accepted by the director in accordance with OAR 436-050-0200(5), if the new ISLOC, surety bond, or policy of paid-up insurance covers all workers' compensation liabilities and obligations that would have been covered by the ISLOC;¶~~

~~(D) The ISLOC can be called immediately, at the director's discretion, if the director receives notice that;¶~~

~~(iv) The director may immediately demand payment under the ISLOC as provided in paragraph (G) of this subsection;¶~~

~~(v) The funds provided from demanding payment under the ISLOC will be administered as provided in subsection (b) of this section and OAR 436-050-0190(1)(b); and¶~~

~~(vi) If legal proceedings are initiated by any party with respect to payment of any ISLOC, the proceedings will be subject to the jurisdiction of Oregon courts and application of Oregon law.¶~~

~~(b) If the director demands payment under an ISLOC, the funds provided by the ISLOC will not be renewed; if the self-insured employer fails to pay its workers' compensation liabilities, obligations, or payments due to the director under ORS chapter 656; if be deposited with the State Treasurer in an account separate and distinct from the General Fund.¶~~

~~(c) If a bank's rating falls below the ratings required in (a)(B) of this section subsequent to the issuance of the ISLOC, the self-insured employer files bankruptcy; if the self-insured employer must, within 60 days of the publication of the lower rating, fail to renew the ISLOC or provide acceptable substitute security at least fifteen days before the expiration date of the ISLOC; or if the director has ordered the self-insured employer to provide additional or replacement security, and neither has been provided, notwithstanding written notice to the self-insured employer; and rating;¶~~

~~(A) Have the ISLOC confirmed by an Oregon state-chartered bank or a federally chartered bank that has an acceptable rating;¶~~

~~(B) Replace the ISLOC with a security deposit that is accepted by the director in accordance with this rule and that covers all workers' compensation liabilities and obligations that would have been covered by the ISLOC; or¶~~

~~(EC) If legal proceedings are initiated by any party with respect to payment of any ISLOC, the proceedings will be subject to the jurisdiction of Oregon courts and application of Oregon law; the self-insured employer obtains a policy of paid-up insurance that is accepted by the director in accordance with OAR 436-050-0200(5), if the certification of Oregon courts and application of Oregon law the self-insured employer has been canceled or revoked.¶~~

~~(4) Surety bonds. A surety bond may be approved by the director as all or part of the security deposit.¶~~

~~(a) The director may approve accept the surety bond under the following conditions:¶~~

~~(A) The surety bond must be issued by a surety company authorized under ORS chapter 731 to transact surety business in Oregon;¶~~

~~(B) The surety company or its parent must have and maintain an acceptable credit rating in accordance with the following:¶~~

~~(i) Standard and Poor's has:¶~~

~~(i) An Insurer Financial Strength Rating of A or better; or¶~~

~~(ii) A.M. Best Company issued by S&P Global Ratings ; or¶~~

~~(ii) A Financial Strength Rating of B+ or better issued by A.M. Best Rating Services, Inc.;¶~~

~~(C) Form 824, "Surety Bond," must be used for the surety bond;¶~~

~~(D) The surety bond must be issued under the legal name or assumed business name of the self-insured employer as registered with the Oregon Secretary of State;¶~~

~~(E) The surety bond must be continuous in form;¶~~

~~(F) The surety bond must state that it may only be terminated by the surety company by giving the director and the Principal written notice. The notice must state that the termination will be effective on a date not less than thirty days after the date the notice is received by the director. Termination of a surety bond in no way limits the liability of the surety for defaults of the Principal's liability or obligations under ORS chapter 656 before the effective date of the termination;¶~~

~~(G) The surety bond must state that the liability of the surety company may only be discharged in the event that the surety bond is released in writing by the director. The director may release a surety bond when:¶~~

~~(i) The Principal provides substitute security that is accepted by the director in lieu of the surety bond to be released, covering all past, present, existing, and potential liability of the Principal under ORS chapter 656, in an amount required by the director; or¶~~

~~(ii) If the certification of the self-insured employer has been canceled or revoked, the self-insured employer obtains a policy of paid-up insurance that is accepted by the director in accordance with OAR 436-050-0200(5).¶~~

(H) The surety bond and all surety bond riders ~~must be~~ executed by the surety company's attorney-in-fact. The attorney-in-fact's appointment and power of attorney must accompany the surety bond and all riders submitted. The power of attorney must authorize the attorney-in-fact to execute the surety bond in the amount of the penal sum of the bond.¶

(b) Form 1810, "Surety Bond Rider" must be used for all department-required increases or authorized decreases in the penal sum of the surety bond and all changes to the name of the Principal. The surety bond rider is not effective until it is accepted by the department.¶

(c) ~~If the surety bond must be replaced by the self-insured employer with an acceptable type of security deposit company is placed in conservatorship, is seized, declares insolvency, or has a current credit rating below the ratings required in (a)(B) of this section, the self-insured employer must, within 30 days after of receiving notice from the department that:~~¶

~~(A) Replace the Ssurety has been placed in conservatorship, is seized, declares insolvency, or has a current credit rating below the ratings required in subsection (a)(B) bond with a security deposit that is accepted by the director in accordance with this rule and that covers all workers' compensation liabilities and obligations that would have been covered by the surety bond; or~~¶

~~(B) Obtain a policy of paid-up insurance that is accepted by the director in accordance with OAR 436-050-0200(5), if the certification of the self-insured employer has been canceled or revoked.~~¶

(5) Government securities, certificates of deposit, or time deposit accounts. Government securities, certificates of deposit, or time deposit accounts will not be accepted as security deposits for certified self-insured employers who must increase their security deposit or for employers whose self-insurance certification was granted after January 1, 2004.¶

(a) Government securities, certificates of deposit, or time deposit accounts that were accepted by the director as a self-insured employer's or a self-insured employer group's required security deposit before January 1, 2004, may remain as the security deposit until the maturity date of those investments. At that time, the government securities, certificates of deposit, or time deposit accounts pledged to the department as security deposits must be replaced by a surety bond or ISLOC acceptable to the director.¶

(b) A self-insured employer that has government securities, certificates of deposit, or time deposit accounts as all or part of its security deposit must complete Form 4023, "Security Agreement and Notice to Intermediary," granting the department a security interest in and control over those financial assets.

Statutory/Other Authority: ORS 656.430, ORS 656.726(4)

Statutes/Other Implemented: ORS 656.430

AMEND: 436-050-0170

RULE SUMMARY: Rule 0170 is amended to remove provisions for revocation of self-insurance certification, which are addressed under OAR 436-050-0200 and 436-050-0340.

CHANGES TO RULE:

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 excess insurance 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 insurer 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¶¶

(g) 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 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/Other Authority: ORS 656.430, ORS 656.726(4)

Statutes/Other Implemented: ORS 656.430

RULE SUMMARY: Rule 0175 is amended for plain language to enhance clarity.

CHANGES TO RULE:

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:¶¶
- (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) Claim 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 medical reimbursement amount;¶¶
 - (C) The number of claims for which medical reimbursement 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¶¶
 - (vii) 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) 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¶¶
 - (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~~ certification 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/Other Authority: ORS 656.407, ORS 656.430, ORS 656.726(4)

Statutes/Other Implemented: ORS 656.407, ORS 656.430

RULE SUMMARY: Rule 0180 is amended to clarify that "additional factors" for determining the amount of a security deposit are applied after calculating minimum security and applying a financial strength adjustment, if any.

CHANGES TO RULE:

436-050-0180

Determination of Amount of Self-Insured Employers Deposit; Effective Date of Order to Increase Deposit ¶

(1) ~~Indicated~~ Minimum 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:¶

(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~~ will 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 (Workers' Compensation) 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 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:¶

(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 a 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 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 based on the calculations 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;¶

(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 based on the calculations under sections (1) and (2) of this rule, or a certified actuarial study under section (3) of this rule, 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) The employer'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~~ certification of self-insurance, certification, or both.

Statutory/Other Authority: ORS 656.407, ORS 656.726(4)

Statutes/Other Implemented: ORS 656.407

RULE SUMMARY: Rule 0185 is amended for plain language to enhance clarity.

CHANGES TO RULE:

436-050-0185

Qualifications for Deposit Exemption for Self-Insured Cities, Counties, and Qualified Self-Insured Employer Groups, Application Procedures, Conditions and Requirements, Revocation and Requalification

(1) Requirements to qualify for deposit exemption. A self-insured city, county, or self-insured employer group that is a municipal or public corporation under ORS 297.405; may apply to be exempt from the security deposit requirements of ORS 656.407(2) and OAR 436-050-0150, if it meets the following requirements:¶

(a) The city, county, or qualified self-insured employer group must be in compliance with ORS 656.407(2) and OAR 436-050-0180 as an independently self-insured employer or self-insured employer group for the three consecutive years immediately before applying for the exemption; and¶

(b) The city, county, or qualified self-insured employer group must have in effect a workers' compensation loss reserve account that is actuarially sound and that is adequately funded as determined by the annual audit under ORS 297.405 to 297.740 to pay all compensation to injured workers and amounts due the director under ORS chapter 656. The workers' compensation loss reserve account must also be dedicated to and expended only for payment of compensation and amounts due the director by the city or county under ORS chapter 656.¶

(2) Application for security deposit exemption. To apply for exemption from ORS 656.407(2), the city, county, or qualified self-insured employer group must submit a written application to the director no later than 45 days before the date the exemption is desired to become effective.¶

(a) The application must include the following supporting documentation for review and approval:¶

(A) A copy of the city's, county's, or qualified self-insured employer group's most recent annual audit as filed with the Secretary of State under ORS 297.405 to 297.740 that identifies the actuarially sound funded amount in the dedicated workers' compensation loss reserve if not previously filed as required by OAR 436-050-0175(1);¶

(B) A copy of the city's, county's, or qualified self-insured employer group's current fiscal year's approved budget documents for internal service funds that state the budgeted amount for the funded workers' compensation loss reserve account;¶

(C) A resolution or ordinance passed by the city's, county's, or qualified self-insured employer group's governing body that establishes an actuarially sound and adequately funded workers' compensation loss reserve account that dedicates the workers' compensation loss reserve account to and limits expenditures to only the payment of compensation and amounts due the director under ORS chapter 656. The resolution must also include the director's first lien and priority rights to the full amount of the workers' compensation loss reserve account required to pay the present discounted value of all present and future claims under ORS chapter 656; and¶

(D) A statement giving the amount of the current reserves for present and future liabilities, the amount funded in the workers' compensation loss reserve account, and the procedures, methods, and criteria used in the process of determining the amount funded in their actuarially sound workers' compensation loss fund, including procedures for determining the amount for injuries incurred but not reported.¶

(i) The statement must include the city's, county's, or qualified self-insured employer group's certification that the loss reserve account is actuarially sound and adequately funded if an actuarial study is not available.¶

(ii) The director may require a city, county, or qualified self-insured employer group to demonstrate its loss reserve account is actuarially sound and adequately funded based on an actuarial study requested under OAR 436-050-0175(3)(d). The actuarial study must include an IBNR estimate and a copy of the study must be provided to the director.¶

(b) Within 45 days of receipt of all application materials required under this section, the director will review the application and supporting documentation and notify the city, county, or qualified self-insured employer group that the request for exemption is approved or denied.¶

(A) If denied, the notice will provide the reasons for the denial, any requirements for reconsideration, and the right to administrative review as provided by OAR 436-050-0008.¶

(B) If approved, the notice will include:¶

(i) The confirmation of the effective date of exemption;¶

(ii) Authorization for cancellation of any surety bond or ISLOC held as security under ORS 656.407(2) and OAR 436-050-0180; and¶

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

(3) Inadequately funded loss reserve accounts. If the director has probable cause to believe the employer's workers' compensation account is inadequately funded, the director may order a city, county, or qualified self-insured employer group to increase the amount of its workers' compensation loss reserve account and to provide

documentation of the increase. The city, county, or qualified self-insured employer group must comply within 30 days of the director's order. Probable cause to believe the workers' compensation loss reserve account is not actuarially sound includes, but is not limited to:¶¶

(a) The annual audited financial statement under ORS 297.405 to 297.740 not containing a statement by the auditor that the workers' compensation loss reserve account is adequately funded, or containing a disclaimer regarding the auditor's qualifications or ability to determine adequacy of the loss reserve account; or¶¶

(b) For qualified self-insured employer groups required by the director to conduct an actuarial study under OAR 436-050-0175(3)(d) and ~~section~~(2)(a)(D) of this rule, the actuarial study not containing a statement by the actuary that the loss reserve account is actuarially sound, or containing a disclaimer regarding the actuary's qualifications or ability to determine the adequacy of the reserves for current or future liabilities.¶¶

(4) Cancellation of self-insurance certification or loss reserve. A city, county, or qualified self-insured employer group that has been exempted from ORS 656.407(2) and desires to cancel its self-insurance certification or elects to discontinue maintaining an actuarially sound and adequately funded workers' compensation loss reserve account must:¶¶

(a) Submit a written request to the director at least 60 days before:¶¶

(A) The desired cancellation date of the self-insured certification; or¶¶

(B) The effective date of discontinuation of the qualifying workers' compensation loss reserve account;¶¶

(b) If the city, county or qualified self-insured employer group desires to cancel its self-insurance certification:¶¶

(A) The request under section (a) must comply with OAR 436-050-0200; and¶¶

(B) Before the effective date of cancellation the city, county, or qualified self-insured employer group must provide a security deposit, as required by the director, in an amount determined under OAR 436-050-0180 and ORS 656.443; and¶¶

(c) If the city, county, or qualified self-insured employer group elects to discontinue maintaining an actuarially sound and adequately funded workers' compensation loss reserve account:¶¶

(A) Before the effective date of discontinuation of the qualifying workers' compensation loss reserve account, the city, county, or qualified self-insured employer group must provide a security deposit as required by the director under ORS 656.407(2) and OAR 436-050-0180; and¶¶

(B) Failure to provide the required security deposit as required under paragraph (A) will result in revocation of the city's, county's, or qualified self-insured employer group's self-insurance certification as of that date.

Statutory/Other Authority: ORS 656.407, ORS 656.726(4)

Statutes/Other Implemented: ORS 656.407

AMEND: 436-050-0190

RULE SUMMARY: Rule 0190 is amended to provide that in the event a self-insured employer defaults or is unable to make all payments due under ORS chapter 656, and an ISLOC is used as all or part of the security deposit, if the director demands payment under that ISLOC, the director may use the proceeds of the ISLOC to the extent necessary to assure continued payments.

CHANGES TO RULE:

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:¶¶

(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) If the self-insured employer provides an ISLOC as all or part of its security deposit, and the director demands payment under that ISLOC as provided in OAR 436-050-0165(3)(a)(G), the director may use the funds provided by the ISLOC to the extent necessary to assure continued payments and in such a manner as to ensure minimum delay in the processing of injured workers' claims.¶¶

(c) 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.¶¶

(ed) 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/Other Authority: ORS 656.407, ORS 656.434, ORS 656.726(4)

Statutes/Other Implemented: ORS 656.407, ORS 656.443 [~~OL 2017, ch. 69~~], ORS 656.614

AMEND: 436-050-0195

RULE SUMMARY: Rule 0195 is amended to:

- Clarify how a self-insured employer must give notice to the division to remove an entity from its certification; and
- Remove warnings about the consequences of failure to provide notice of changes in the self-insured employer entity, because the possible consequences are addressed elsewhere in OAR 436-050.

CHANGES TO RULE:

436-050-0195

Requirements for Changes in Self-Insured Employer Entity ¶¶

(1) Notification of deletion of entity or 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, or if the self-insured employer wishes to delete an entity from the employer's certification, the employer must notify the director in writing within 30 days after the change occurs.¶¶

(2) ~~Adding or deleting~~ entities. If a self-insured employer wishes to add ~~or delete~~ entities to a self-insured the employer's certification:¶¶

(a) The self-insured employer must submit a completed Form 1865, "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/Other Authority: ORS 656.407, ORS 656.430, ORS 656.726~~(34)~~

Statutes/Other Implemented: ORS 656.407, ORS 656.430

AMEND: 436-050-0200

RULE SUMMARY: Rule 0200 is amended to:

- Specify that cancellation or revocation of a self-insured employer's certification does not relieve the employer from full and primary responsibility for claims administration and payment of compensation under ORS chapter 656 for the period the self-insured employer's certification was in effect, unless the director accepts a policy of paid-up insurance;
- Limit instructions for cancellation of self-insurance certification by removing provision for cancellation of an entity included under a group self-insurance certification, which is addressed under OAR 436-050-0290; and
- Provide that the director may revoke the certification of a self-insured employer after giving 10 days written notice under specified conditions; but, notwithstanding this provision, the director may revoke the certification after giving 30 days written notice under ORS 656.430(9).

CHANGES TO RULE:

436-050-0200

Self-Insured Certification Cancellation; Revocation ¶¶

- (1) Effective period of self-insurance certification. A self-insured employer's certification remains in effect until:¶¶
- (a) Revoked as provided under OAR 436-050-0150 to 436-050-0195, ORS 656.434, and ORS 656.440; or¶¶
 - (b) Canceled by the self-insured employer with the approval of the director.¶¶
- (2) Cancellation of self-insurance certification. If a self-insured employer wishes to cancel its self-insurance certification or cancel the self-insurance coverage of any entity included under its self-insurance certification:¶¶
- (a) The employer must submit a written request to the director. The request must include:¶¶
- (A) The arrangements that have been made to process present and future claims for which the employer is responsible;¶¶
 - (B) A statement of all present and future claims liabilities for all liabilities incurred during the period of self-insurance; and¶¶
 - (C) Any reports and moneys due the director under ORS 656.506, 656.612, and 656.614.¶¶
- (b) The request under subsection (a) must be submitted at least 60 days before the desired date of cancellation. If the request to cancel is submitted fewer than 60 days before the desired date of cancellation, or otherwise does not meet the requirements of this section, the director may set a cancellation date later than the date requested.¶¶
- (c) If the self-insured employer will continue to have subject workers after the cancellation date, the employer must demonstrate compliance with ORS 656.017, before the desired date of cancellation, by causing one of the following to be filed with the director:¶¶
- (A) Proof of coverage provided by an insurer under ORS 656.407, filed by the insurer;¶¶
 - (B) Notice of client coverage provided by a worker leasing company under OAR 436-180-0110, filed by the worker leasing company; or¶¶
 - (C) A copy of an assigned risk binder issued by the Plan Administrator of the Oregon Workers' Compensation Insurance Plan under OAR 836-043-0044, filed by the Plan Administrator.¶¶
- (d) If the self-insured employer fails to provide the director evidence of coverage under subsection (c) before the desired date of cancellation, the self-insurance certification, including reports and moneys due the director under ORS 656.506, 656.612, and 656.614, will remain in effect.¶¶
- (3) Responsibility for processing claims. If a workers' compensation insurance policy and a self-insurance certification on file with the director are both in effect for the same employer for the same time period, the self-insured employer is responsible for processing claims that occur during the time period.¶¶
- (4) Revocation of self-insurance certification. The director may revoke the self-insurance certification of any self-insured employer that fails to comply with ORS 656.407, 656.430, and/or these rules; defaults under ORS 656.443; or commits any violation for which a civil penalty may be assessed under ORS 656.745. ~~Except as provided in ORS 656.430(9), notice of certificate revocation will be is~~ Notice of revocation will be given as provided in ORS 656.440, except that the director may revoke the certification of a self-insured in accordance employer after giving 30 days with the provisions of ten notice as provided in ORS 656.440(9).¶¶
- (5) Release of security after self-insured certification cancellation; revocation. If the certification of a self-insured employer has been canceled or revoked, the director may accept a policy of paid-up insurance in lieu of the self-insured employer's security deposit.¶¶
- (a) The director may accept a policy of paid-up insurance under the following conditions:¶¶
- (A) The policy must be issued by an insurer, as defined in OAR 436-050-0005;¶¶
 - (B) The policy must provide that the insurer agrees to assume, without monetary limit, all responsibilities and liability of the self-insured employer under ORS chapter 656 for the period the self-insured employer's

certification was in effect;¶

(C) The policy must not be subject to cancellation; and¶

(D) The policy must not contain provisions or endorsements that do not comply with ORS chapter 656 or OAR chapter 436, including provisions that limit when a claim may be reported.¶

(b) The director may consider the following factors when determining whether to accept a policy of paid-up insurance:¶

(A) The amount of the insurer's surplus, as reported on column 1, line 37 of the Liabilities, Surplus, and Other Funds page of the insurer's Annual Statement under OAR 836-011-0000, relative to the amount of security the self-insured employer is required to maintain under OAR 436-050-0180; and¶

(B) The amount of the insurer's total adjusted capital relative to the insurer's authorized control level risk-based capital, as reported on column 1, lines 28 and 29 of the Five-Year Historical Data page of the insurer's Annual Statement under OAR 836-011-0000.¶

(c) Upon accepting a policy of paid-up insurance, the director will release the self-insured employer's security deposit in writing.¶

(6) Responsibility of self-insured employer after cancellation or revocation. Cancellation or revocation of a self-insured employer's certification does not relieve the employer from full and primary responsibility for claims administration and payment of compensation under ORS chapter 656 for the period the employer's certification was in effect, unless the director accepts a policy of paid-up insurance under section (5) of this rule.

Statutory/Other Authority: ORS 656.726(4)

Statutes/Other Implemented: ORS 656.434, ORS 656.440

AMEND: 436-050-0205

RULE SUMMARY: Rule 0205 is amended to remove references to statutes that are not relevant and for plain language to enhance clarity.

CHANGES TO RULE:

436-050-0205

Notice of Self-Insurers Personal Elections ¶

When a person makes an election under ORS 656.039, 656.128, or 656.140, the self-insured self-insured employer elects to provide coverage for a nonsubject worker under ORS 656.039, the employer must notify the director in writing of the election and of any cancellation of the election within 30 days of the effective date.

Statutory/Other Authority: ORS 656.726(4)

Statutes/Other Implemented: ORS 656.039, 656.128, 656.140

AMEND: 436-050-0210

RULE SUMMARY: Rule 0210 is amended for plain language to enhance clarity.

CHANGES TO RULE:

436-050-0210

Notice of Self-Insurers Place of Business in State; Records Self-Insured Must Maintain ¶

(1) Oregon claims processing location required. Except as described in section (4) of this rule and OAR 436-050-0230, every self-insured employer 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, including, but not limited to:¶

(A) Processing claims;¶

(B) Making available all records required under OAR 436-050-0220; and¶

(C) Responding to specific claims processing inquiries;¶

(b) At the director's request, the self-insured employer must:¶

(A) Make claims processing locations accessible during regular business hours or other reasonable times to accommodate periodic audits and examination of records; or¶

(B) Provide the director electronic access to the records to be audited or examined.¶

(c) The self-insured employer may process claims subject to ORS chapter 656 remotely. As used in this subsection, to "process claims remotely" means to process claims outside of a self-insured employer's Oregon claims processing location, including at the place of residence of an employee of the ~~self-insured~~ employer, as directed from the Oregon claims processing location.¶

(A) The self-insured employer may not process claims at places of business outside of Oregon that are maintained or operated by the ~~self-insured~~ employer or a service company, except as follows:;¶

(i) The self-insured employer may receive claims reports at locations outside of the state if claims are forwarded to an Oregon claims processing location for processing;¶

(ii) Payments may be made from outside of Oregon as directed from the Oregon claims processing location; and¶

(iii) 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 director may suspend a self-insured employer's authority to process claims remotely from its designated claims processing locations, subject to the following:¶

(i) The director may suspend a self-insured employer's authority to process claims remotely when:¶

(I) The director finds the self-insured employer has repeatedly violated ORS chapter 656 or OAR chapter 436; and¶

(II) The director has reason to believe that the violations are related to the self-insured employer's practice of processing claims remotely.¶

(ii) The director will not suspend a self-insured employer's authority to process claims remotely until the ~~self-insured~~ employer has been given notice and the opportunity to be heard through a show-cause hearing with the director. During the show-cause hearing, the ~~self-insured~~ employer will be provided an opportunity to:¶

(I) Present evidence regarding the proposed order to suspend the self-insured employer's authority to process claims remotely; and¶

(II) Give reason why the ~~self-insured~~ employer should be permitted to continue processing claims remotely.¶

(iii) If the director suspends a self-insured employer's authority to process claims remotely, the ~~self-insured~~ employer may not process claims remotely for a specified period of time, up to two years.¶

(iv) The self-insured employer may request the director restore its authorization by submitting a plan demonstrating its ability and commitment to comply with ORS chapter 656 and OAR chapter 436.¶

(v) A proposed and final order of suspension issued under this rule is a preliminary order subject to revision by the director, and may be appealed under OAR 436-050-0008.¶

(2) Notice of self-insured employer's claims processing location. 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 its 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;¶

(B) Contact information for a designated person or position within the company who will assure payment of

penalties and resolution of collections issues;¶¶

(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 each claims processing location; and¶¶

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

(D) Any other information requested by the director; and¶¶

(c) The information provided under this section 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.¶¶

(4) Service companies. In lieu of, or in addition to, establishing its own 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:¶¶

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

(b) The self-insured employer must provide the director with a copy of the service agreement between the ~~self-insured~~ employer and each service company for approval. The director must approve the service agreement before the service company begins processing the ~~self-insured~~ employer's Oregon claims, regardless of the agreement's effective date. To be approved, the service agreement must:¶¶

(A) Be an agreement for claims processing services between the self-insured employer and a service company, and must not be between any other third parties;¶¶

(B) Identify the self-insured employer by 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;¶¶

(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;¶¶

(G) 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 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¶¶

(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;¶¶

(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¶¶

(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, each entity must be counted as a separate claims processing location.¶¶

(6) Change in claims processing locations. If a self-insured employer intends to change the location where claims are processed or records of claims are stored, the self-insured employer must, at least 10 days before the change is effective:¶¶

(a) Provide notice of the change to any worker, 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 the name and title of a contact person, telephone number, email address, and mailing address; 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.¶¶

(b) Provide notice of the change to the director, subject to the following:¶¶

(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;¶¶

(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 date of the transfer; and¶¶

(iv) Any other information requested by the director; and¶¶

(B) The notice must specify if all or a portion of the self-insured employer's claims will be transferred, and if closed and denied claims will be included. 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¶¶

(c) The self-insured employer may use Form 5042, "Claim Move Notice," to satisfy the requirements of this section.

Statutory/Other Authority: ORS 656.455, ORS 656.726(4)

Statutes/Other Implemented: ORS 656.455

AMEND: 436-050-0220

RULE SUMMARY: Rule 0220 is amended for plain language to enhance clarity.

CHANGES TO RULE:

436-050-0220

Records Self-Insured Employer Must Maintain; Period to be Retained, Removal and Disposition ¶

(1) Records self-insured employers must maintain. Each self-insured employer is required to maintain the following records in Oregon, to make the records available at an Oregon claims processing location, and to provide the director access to the records 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 each claim;¶

(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, 800-622-4123); and¶

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

(2) Availability of records. A self-insured employer must make records available by one or more of the following methods:¶

(a) By making the records electronically accessible from an Oregon claims processing locations in real time;¶

(b) By keeping physical copies of the records at an Oregon claims processing location; or¶

(c) By archiving physical copies of the records at a location other than an Oregon claims processing location, under the following conditions:¶

(A) Records of a denied claim may be archived after all the appellate procedures have been exhausted and the denial is final by operation of law;¶

(B) Records of any claim for a compensable injury, including a denied claim that is later found to be compensable, may be archived 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 archived 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 ~~subsection (1)(a)~~ of this rule may be archived or destroyed at the end of three full calendar years after the calendar year in which the money was remitted.

Statutory/Other Authority: ORS 656.455, ORS 656.726(4)

Statutes/Other Implemented: ORS 656.455

AMEND: 436-050-0260

RULE SUMMARY: Rule 0260 is amended to replace specific procedures for revocation of a self-insured employer group's certification with a cross-reference to OAR 436-050-0340.

CHANGES TO RULE:

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 employer group must be organized as:¶¶

(a) A corporation or cooperative under ORS chapter 60, 62, or 65;¶¶

(b) An intergovernmental entity 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¶¶

(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.¶¶

(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 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¶
- (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-¶

(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);-;¶

(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; and¶

(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~~ If a private employer that is a member of a self-insured employer group fails to maintain individual net worth of at least \$150,000 ~~will result in cancellation of~~, the group must cancel that member's participation in the group under OAR 436-050-0290.¶

(b) ~~Failure of~~ If a certified self-insured employer group fails 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~~ will 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;~~¶

(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 under OAR 436-050-0340.~~

Statutory/Other Authority: ORS 656.407, ORS 656.430, ORS 656.726(4)

Statutes/Other Implemented: ORS 656.407, ORS 656.430 [OL 2017, ch. 118]

AMEND: 436-050-0270

RULE SUMMARY: Rule 0270 is amended for plain language to enhance clarity.

CHANGES TO RULE:

436-050-0270

Applying for Certification as a Self-Insured Employer Group: Private Employers ¶

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

(a) A completed Form 1867, "Application to Become a Self-Insured Employer Group: Private Employers;"¶

(b) Proof in the form of a certificate from the Secretary of State's Corporation Division showing the employer group as a corporation or cooperative;¶

(c) A copy of the bylaws or corporate minutes that include:¶

(A) Designation of specific individuals as trustees for the corporation or cooperative;¶

(B) Naming an administrator to administer the financial affairs of the group who may not be a member of the group or the group's board, or a trustee for the group; and¶

(C) The criteria 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 that the members meet the requirements of OAR 436-050-0260;¶

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

(g) A completed Form 1866, "Group Self-Insured Indemnity Agreement," or another form authorized by the director, that jointly and severally binds each member for the payment of any compensation and moneys due to the director by the group or any member of the group. Government subdivisions do not need to submit this agreement;¶

(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 group~~ 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 employers within the group and the effect on the remaining combined net worth of the group; and¶

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

(m) A program whereby each employer within the group contributes to a common claims fund in accordance with OAR 436-050-0300, or specification if 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 of security deposit the employer group wishes to provide, with appropriate justification.¶

(2) Audited financial statements. Notwithstanding ~~subsection (1)(e)~~ of this rule, the director may require an audited 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 under this rule, the director will review the application and notify the employer group that the request for certification as a self-insured employer group is approved or denied:¶

(a) If the request is denied, the employers will be notified of the reasons for denial; or¶

(b) If the request is approved, the notice will include:¶

(A) The amount of security deposit required;¶

(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 rule.¶

(4) Issuance of certification. If approved, the ~~certification of self-insurance~~ certification will be issued upon receipt of the security deposit and the appropriate excess insurance binder. The effective date of certification will be the first day of the month following the date the certification is issued, or a later date specified by the applicant.
Statutory/Other Authority: ORS 656.407, ORS 656.430, ORS 656.726(4)
Statutes/Other Implemented: ORS 656.407, ORS 656.430

AMEND: 436-050-0280

RULE SUMMARY: Rule 0280 is amended to clarify that certification of self-insurance is contingent on approval by the director.

CHANGES TO RULE:

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 for Self-Insured Employer Group";¶¶

(b) Proof that the governmental subdivisions have formed:¶¶

(A) 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;¶¶

(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 group 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 (l)(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 rule.¶

(4) Issuance of certification. ~~The certification of~~ If approved, the self-insurance certification 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/Other Authority: ORS 656.407, ORS 656.430, ORS 656.726(4)

Statutes/Other Implemented: ORS 656.407, ORS 656.430 [~~OL 2017, ch. 118~~]

AMEND: 436-050-0290

RULE SUMMARY: Rule 0290 is amended to require that if an employer member's membership in a self-insured employer group is canceled, terminated, or ceases due to the cancellation or revocation of the group's certification, the self-insured employer group must, upon request of the member, provide the employer member with the claim loss data for that member as reported to the director; the group must provide the claim loss data within 30 days of receiving the member's request.

CHANGES TO RULE:

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 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 employer member may elect to terminate its membership in a self-insured employer 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 cancel the membership of any private employer member that fails to maintain the minimum individual net worth required under OAR 436-050-0260(15). ~~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.¶¶

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

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

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

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

(B) 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;¶¶

(C) 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¶¶

(D) The expected date of cancellation or termination.¶¶

(c) If an employer member's membership in a self-insured employer group is canceled, terminated, or ceases due to the cancellation or revocation of the group's certification, the group must, upon the member's request, provide the member with the most recent claim loss data for the member as reported to the director under OAR 436-050-0175(3)(a). The group must provide the claim loss data no later 30 days after receiving the member's request.¶¶

- (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(31).¶
- (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;¶
 - (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/Other Authority: ORS 656.726(4)
 Statutes/Other Implemented: ORS 656.434, ORS 656.440

AMEND: 436-050-0340

RULE SUMMARY: Rule 0340 is amended to provide that the director may revoke the certification of a self-insured employer group after giving 10 days written notice under specified conditions; but, notwithstanding this provision, the director may revoke the certification after giving 30 days written notice under ORS 656.430(9).

CHANGES TO RULE:

436-050-0340

Group Self-Insurance Revocation ¶¶

~~Notwithstanding ORS 656.440, (1) The director may revoke the certification of a self-insured employer group may be revoked by the director after giving 30 days written notice if:¶~~

~~(1a) The employer group does not comply with ORS 656.430(7) or (8), OAR 436-050-0170 to 436-050-0190, 436-050-0260, or 436-050-0290;¶~~

~~(2b) There are fewer than five employers within a group;¶~~

~~(3c) The net worth of the group falls below that required by OAR 436-050-0260(3);¶~~

~~(4d) The employer group defaults in payment of compensation or other payments due the director;¶~~

~~(5e) The employer group commits any violation for which a civil penalty could be assessed under ORS 656.745; or¶~~

~~(6f) The employer group or any member of the group submits any false or misleading information.¶~~

(2) Notice of revocation will be given as provided in ORS 656.440, except that the director may revoke the certification of a self-insured employer group after giving 30 days written notice as provided in ORS 656.430(9).

Statutory/Other Authority: ~~ORS 656.704, 656.726(4)~~

Statutes/Other Implemented: ~~ORS 656.434, 0, ORS 656.434, ORS 656.440~~