Oregon Administrative Rule Revision
Chapter 436, Division 050
Employer-Insurer Coverage Responsibility

Transcript

Stakeholder Rulemaking Advisory Committee Meeting
Aug. 24, 2022

Attending – stakeholders:

Bob Brandkamp	Avista
Hasina Wittenberg	Government Relations Strategies
Jennifer Flood	Ombuds for Oregon Workers
Jessica McCune	Slocum Center
Kevin Barrett	SAIF Corporation
Kirsten Adams	Associated General Contractors
Madison Walters	UFCW Local 555
Michael Hamilton	Medata
Mike Bradley	North Clackamas School District
Penny Humphrey	International Paper Company
Shawn Miller	Miller Public Affairs
Viki Bisby	City of Portland

Attending – Department of Consumer and Business Services:

Aaron Fellman
Adam Breitenstein
Amelia Vargas
Carrie Van Handel
Daneka Karma
Fred Bruyns
Jason Cupp
Jason Haynes
Jody Howatt

Note: Numbers at the left in the format 00:00 refer to time locations on the audio recording.

00:00 [Fred] Welcome. Thank you very much for joining us. My name is Fred Bruyns. I coordinate rulemaking for the Workers Compensation Division, and we really appreciate your time and your expertise today. We look forward to having your advice. We do rely on it.

So, for today's meeting you should have an agenda. The agenda is posted to the workers' compensation division's website. In just a moment I'm going to put another link to it in the chat. Right now I have one there, but let me go ahead and put another one there. Copy the one I had, because I think it disappears to anybody who arrives after I post it. I'm not sure it's showing up here. There it goes. Again, you should have an agenda, but agenda is on our website. You can actually find that by going to wcd.oregon.gov. It's under "Laws and rules," and then it's under "Rule hearings and meetings." However, as in a moment I'm going to turn the conduct of the meeting over to Aaron Fellman, and he will paraphrase the issues, and he will describe them in a way that will be very helpful even if you're on the telephone and you don't have access to an agenda. I think you'll be able to follow along just fine, but feel free to ask for clarification at any time.

And, with that in mind, letting you know that this is an advisory committee meeting. It's not a public hearing. It's not formal at all. And the most important thing is that we hear from you if you have input on any of the issues, whether you can use the hands up function, that's great if you want to use it. And we'll try to keep track of that. But if we miss you for any reason or you can't make it work, please just speak up, because the most important thing, as I said, is hearing from you. And we don't have many ground rules for a meeting like this. The only one I'd ask us to observe is that if you want to describe problems or issues that you do so in a way - using examples I guess - that you do so in a way that doesn't actually name the names of the people involved or the organizations. That will really help us, but otherwise, aside from that, examples are great and very helpful.

As we go along, please let us know about any fiscal impacts to possible rule changes, positive or negative. We have to estimate those impacts when we file rules with the Secretary of State – proposed rules that is, and we try to do our best but we rely on information from the folks who are actually going to experience those costs or potential benefits. In a similar fashion as we go along, please let us know if there's anything here, that might affect racial equity in Oregon. When we file proposed rules we have to make some kind of a statement about that now in terms of the impact on racial equity in the state to the best of our knowledge, and again, that knowledge is somewhat limited at times, because we often do not know

the actual makeup of the race or ethnicity of the people who are injured on the job. And we shouldn't make assumptions, so if you have any information for us in that respect we really would appreciate it.

We will hear background noises in your office, even keyboarding, so I would ask you to selectively mute your PC or your phone. But again, the most important thing is to hear from you. So, please come on and talk to us. Introductions can be a little awkward in a meeting like this, where there's a lot of people who wouldn't know when to actually let us know that they're here, so I'm going to call a role, and if you'll just let us know you're here. And, then when I'm done I'm going to ask for anybody I missed. And, then you're all welcome regardless, so:

05:27 [Fred] Amanda Clark, from Boise Cascade?

05:31 [Fred] Bob Brandkamp, Avista?

05:34 [Bob] Here.

05:35 [Fred] Welcome. Dave Boyd, Associated Oregon Loggers?

05:42 [Fred] Dave Waki, Small Business Ombudsman?

05:47 [Fred] Jennifer Flood, Ombuds for Oregon Workers?

05:52 [Jennifer] Here.

05:54 [Fred] Welcome Jennifer.

05:55 [Unknown speaker] Good afternoon.

05:56 [Fred] Good afternoon.

05:58 [Fred] Jennifer Volz of Peace Health?

06:02 [Fred] Jessica McCune, Slocum Center?

06:07 [Jessica] I'm here. Thank you.

06:10 [Fred] Welcome Jessica. Marcy Grail, from the IBEW local 125, and MLAC?

06:18 [Fred] Michael Hamilton of Medata?

06:23 [Michael] I'm here.

06:24 [Fred] Welcome Michael. Paloma Sparks, Oregon Business and Industry?

06:31 [Fred] Penny Humphrey, International Paper Company

06:36 [Penny] Here.

06:39 [Fred] Sarah Craft, Precision Castparts?

06:42 [Fred] Shawn Miller, Miller Public Affairs?

06:47 [Shawn] Yes, here.

06:48 [Fred] Welcome Shawn. Viki Bisby, City of Portland?

06:53 [Viki] I'm here.

06:54 [Fred] Welcome Viki. Madison Walters of the UFCW?

06:58 [Madison] I'm here – Local 555.

07:00 [Fred] Welcome Madison. Did I anybody, among our stakeholders, I guess?

07:07 [Kirsten Adams] Hi Fred, this is Kirsten Adams of AGC.

07:10 [Fred] Oh Welcome, Kirsten. Anyone else?

07:14 [Kevin Barrett] Hi Fred, this is Kevin Barrett from SAIF Corporation.

07:20 [Fred] Welcome Kevin. Is there anyone else on with us today?

07:24 Hello this is Mike Bradley, with Clackamas School District.

07:28 [Fred] Welcome. Anyone else? Okay, hearing no one, I'm going to actually run down a list of possible department attendees. Adam Breitenstein, from the Workers' Compensation Division?

07:43 [Adam] I'm here.

07:45 [Fred] Jason Cupp?

07:48 [Jason] Yes, hi Fred.

07:50 [Fred] Welcome to you both. Aaron Fellman with the Workers' Compensation Division?

07:55 [Aaron] I'm here.

07:57 [Fred] Welcome. Caitlyn Breitbach?

08:01 [Fred] Daneka Karma? I know you're here Daneka, welcome.

08:08 [Daneka] Hi Fred. When you said my name, you cut out maybe – thought you were still waiting for Caitlyn.

08:14 [Fred] Okay. No. Welcome Daneka. Zoe Tacadena?

08:18 [Fred] Jody Howatt?

08:21 [Fred] Jason Haynes?

08:24 [Jason] I'm here.

08:25 [Fred] Welcome Jason. Molly Van Houten?

08:30 [Fred] Carrie Van Handel?

08:35 [Carrie] Yes, I'm here Fred.

08:36 [Fred] Welcome Carrie. Val Mueller?

08:40 [Audio unclear]

08:45 [Fred] Amelia Vargas?

08:46 [Amelia] I'm here.

09:03 [Fred] Welcome Amelia. And, did I miss anyone from the department?

09:09 [Jody] Good afternoon Fred, this is Jody Howatt.

09:00 [Fred] Welcome Jody. I think we're getting a little feedback from you, Jody, and I'm thinking that's from you, but I'm not sure. Okay, well thank you again. There are a number of department people here today. Our role here is to listen to you, and if we can answer any questions, we will do that. Again, we're still getting some feedback. I guess I'd ask folks to mute themselves unless they're going to be speaking, just because the phone here is providing a little feedback. Actually, that's not sounding like feedback now. It's a little bit too regular. I apologize for it. And, it went away. Hopefully, it will just stay away. So, with that, that's pretty much all I have for you. I'm going to turn the conduct of the meeting over to Aaron Fellman in a minute. I'm also going to switch the camera back so you can see who is in the conference room. We have a pretty limited footprint right here. We just have two people in the conference room in addition to me. I'm going to be invisible, because I'm actually up where the camera is. But, with that, I'm gonna - I'm gonna let Aaron take us through the agenda now. Aaron?

10:35 [Aaron] Thanks Fred. Hello everybody, thank you for coming. My name is Aaron Fellman, I'm the policy analyst here, who was primarily responsible for preparing this rulemaking document. I want to mention that for many of the issues that we'll talk through today, draft rules are included in the packet that Fred sent out. These are subject to change of course, including based on your feedback today, but they will hopefully give you a sense of what specific changes, we might be talking about making.

And with that I will launch right into it with issue number one. This is concerning division 050, these are all division 050 rules. Rule 0155, section (3), and 0190, and the issue here is that current rule does not clearly define how the division will use the proceeds from making demand on an expiring ISLOC. So for those of you who are not familiar with the term, an ISLOC is an irrevocable standby letter of credit. And, this is a financial instrument issued by a bank that many of our self-insurers use to satisfy the obligation to maintain security. The way it works is the bank is obligated to pay out on demand to a beneficiary, which is the division when one of a number of triggering conditions is met, the most obvious of which is the self-insured employer who provided the ISLOC fails to make payment on a claim. What we would do in that scenario is we would make demand for only the amount necessary to cover the default. We would leave the underlying ISLOC in place so that it would be available for any future defaults that might occur.

However, there is another circumstance in which we would make demand, and that is if the ISLOC is about to expire, and the self-insured employer has not replaced it. What we would do in that scenario is we would make demand for the full outstanding balance of the ISLOC, and we would

retain those funds as a hedge against any future default that might arise. The reason we do it that way is fairly straightforward. If we did not, we would be allowing the self-insured employer to continue without security; if they then became insolvent, then the cost of covering claims would fall on the self-insured employers' adjustment reserve. And, this in turn would create liability for the community of active self-insured employers, which can become liable for additional assessments if the adjustment reserve becomes depleted.

So, from our perspective, it's in everybody's best interest that security be maintained, or failing that, that the division take possession of security proceeds.

And the issue here, the reason that we're discussing this is in these situations where we take possession of security proceeds, current rule does not clearly define how they will be handled or when the division has the authority to use them. It's important to note that the proceeds from an ISLOC that has been called are not technically security themselves under rule. The only forms of acceptable security are an outstanding ISLOC or a surety bond, and the proceeds from an ISLOC that in effect has been called are neither of these things. So our existing rules and statutes dealing with security don't clearly apply in this somewhat unusual situation.

So, what we're recommending here is to adopt rules on handling proceeds that mirror existing statutory provisions on handling outstanding security. We're not looking to reinvent the wheel here, just to bring ISLOC proceeds under the same handling regime that already applies to what you might call valid security. What this would look like specifically is a rule providing that ISLOC proceeds will be deposited in a separate account, with the State Treasurer, separate from our general fund, and that in the event of default, the director may use security proceeds to the extent necessary to make payment. And, we would also be looking at adopting rules requiring self-insured employers to confirm their acceptance of this procedure in the memorandum of understanding that existing rule requires them to submit alongside an ISLOC if they provide an ISLOC as their security.

Thank you for your patience as I went through that. That is all I have to say for the moment, so I will open it up for discussion now. Not hearing anybody raising any - making any comments or feedback on that issue. I'll wait just another second in case anyone wants to chime in. But hearing nobody, I'll move on to issue number two. Thank you very much.

15:58 [Aaron] All right, issue number two pertains to rule 0165, section (3), subsection (n), and the issue here is that the memorandum of understanding, or MOU, that a self-insured employer must submit alongside an ISLOC, references a condition for making demand that is not on the ISLOC. So, as we discussed in the previous issue, when a self-insured employer provides security in the form of an ISLOC, they're also

required to provide us with a memorandum of understanding affirming their acceptance of the ISLOC's terms, which helps make sure that everybody's on the same page about the division's authority with respect to the ISLOC, as well as the rights of the self-insured employer.

As you would expect, one of the subjects addressed by the MOU is when the division can make demand. Under the ISLOC there are four such demand conditions, including if the self-insured employer has failed to replace the ISLOC within 15 days of the date it would expire. But, the MOU references a fifth condition that is not on the ISLOC. It says that we can make demand upon receiving notice of nonrenewal from the bank that issued the ISLOC. Banks are required under the terms of the ISLOC to provide us with at least 60 days advance notice before the desired expiration date. So, if this condition were on the ISLOC, it would allow us to make demand much earlier in the nonrenewal process. Because it is not, we do not believe a bank would be required to honor a demand made in those circumstances. And, I also want to add that we have not historically made demand under those circumstances. In the past we have waited for that 15-day window to open.

So, to clear up the discrepancy, we are proposing quite simply to amend the MOU to delete the reference to the division being able to make demand upon receiving the notice of nonrenewal, so that the terms, addressed by the ISLOC are consistent with those on the MOU.

And, I will open that one up for discussion here. All right, not hearing any discussion on that one. So unless anybody would like to chime in, I will move on here to the third issue on the agenda.

18:38 [Aaron] This issue is pertaining to rule 0180, section (4), and the issue is, in certain circumstances rule requires the division to increase self-insured employer's required security based on its financial strength rating. We have sometimes offset this increase based on what are called other factors. This is not explicitly authorized by rule.

So, as you may be aware, when determining how much security a self-insured employer must maintain, the division follows a three-step process. The first step is calculating a minimum amount of security, based on a formula in rule. Second, if the employer has received a rating of moderate under our ratio-based financial strength analysis, we apply an upward adjustment of between 5 and 20% to the amount in step one. And then, finally, we consider other factors, including the employer's probable continuity of operations and financial condition in arriving at the final amount of security.

Rule doesn't specify an order of operations for this process. It doesn't say to apply the financial strength adjustment and then consider other factors or vice versa. But, the advantage of the process that we currently follow is that it allows us to use other factors to offset a financial strength adjustment, when appropriate. And, what I mean by that is if we determine

that an employer's risk of default is very low, its likelihood of remaining in business is very high, we might use other factors to turn, say a 10% financial strength adjustment, to 5%. If the process was conducted in a different order, if we first considered other factors and then applied the financial strength adjustment, we would have less flexibility because we would be applying other factors to a minimum below which we cannot go, so we would only be able to use that analysis to increase required security.

As I say, rule doesn't say one way or another what order we should take these steps in, and so our current process is justifiable under rule, but it does occasionally lead to questions about the extent of the division's authority in setting required security.

Also, although I'm getting a little bit into the weeds here, prior to 2016, which is the last time we made significant changes to this rule, it did actually specify that the financial strength adjustments should be applied after considering other factors. That change wasn't presented to stakeholders at the time as substantive; it was kind of folded into the housekeeping issues of that rulemaking.

So, in the interest of clarity, both internally and for our external stakeholders, what we're proposing here is to codify our current process into rule. There's draft rule language in the packet available for this but without - basically looks like it's saying that other factors will be considered after calculating minimum security and after applying a financial strength adjustment, if any.

And, I'll open it up for discussion on that one now.

22:19 [Bob Brandkamp] Hey, Aaron. This is Bob Brandkamp from Avista. So, my question just on the surface, item three, the other factors appears to be pretty subjective. Unless there's something in the background, some type of matrix that would say, okay, well if these factors are in place, you know, we can reduce it to 5% or – I'm just curious, and I guess the question comes from – if I'm a company, and I don't get reduced to five, but I think there are elements that should get us down to five, what kind of guideposts or things should I be looking for that would say: hey, you know, we've considered other factors, and you know the division is saying, we're taking you from 20 to 10 because of these other factors but as the company I'm like, well how come I can't, you know, get down to five? So, I'm just, again, that's just a hypothetical. It's not a direct experience thing, but I'm just curious on that third item how, how somebody would determine what's appropriate.

23:58 [Aaron] Could I turn to the program area to perhaps provide a little bit of context there?

24:09 [Jason Cupp] Absolutely, I can, and if Jody or Jason, the specialists for the programs, if they want to add anything as well they can but, Bob, you

know, you are correct, it is what I would call, you know, what you termed as a subjective process. You know, as Aaron laid out, you know, the minimum and how we calculate that deposit is clearly outlined under administrative rule, and so for that, you know, we don't really have near as much wiggle room for adjustments there, really, you know, it kind of comes down to, you know, the purpose of this rule change that we're proposing is to clearly codify, you know, when we're talking about other factors, you know, when do they apply in the process. You know, when you receive a letter from us, you know, talking about a security increase, you know, there's always the option to request another look at it and to request, you know, to state your interest in having it looked at in another way, so it's definitely not a closed door at that point.

And so, you know, I would say, you know, if it comes down to your thinking it should be a lot less than what it currently is. that we would, you know, the program area would need something to justify that stance. And, you know, typically you know we will look at those. And, I can't say that we will always provide what is being requested, but yeah - I don't know, if either of the program specialists have anything they wanted to add to that? Okay. Did I answer your question, [audio unclear] at least?

26:15 [Bob Brandkamp] Yeah, I don't know that it really answered - I mean, I understand what you're doing there; it's really kind of a mechanism to allow for some latitude and adjustment, but that can cut both ways, right, if the company doesn't agree with it, and even if I come back and say why I think it should be “x” and the department says well we still think it should be “y,” right, that there's nothing in the statute that really - unlike the first parts, where you know you don't really have wiggle room. You know, it's kind of defined. Because there is that subjectivity, I’m wondering if that potentially gives rise to conflict, because somebody's not getting what they want, right, and there's – and you can't go back to anything to say, well, you know, it should be this because this is what it says in the statute. You know, these are the factors that are considered. So it's just a general observation, and it's not a – I don't ask the question because I have the answer, but just that kind of stands out to me that, you know, it could be problematic, and maybe in the history of the division, you've never had a problem with that, you know, I don't know what the, you know, the division’s history with it has been just with something like that where there are a lot of factors that could potentially go into that adjustment. That just gave rise to the question. So, I understand why it's in there. And I don't know if there is a way to better define it, but anyway, it's not a question to hold anything up on so, appreciate your response, Jason.

28:29 [Jason Cupp] Yeah, no, I appreciate your feedback a lot and, you know, under administrative rule we do have the financial strength ratios also clearly outlined, as far as how we come to those, and so really I think what this part of what this other factors tries to reflect is that sometimes those ratios are pretty rigid and inflexible with what they're showing and

sometimes the actual business practices that support those ratios don't really deserve the ratio that was calculated from it and so we try to at least leave the door open for the contingency that maybe an adjustment is in the best interest, you know, of providing a reasonable sufficient security to cover the losses. So, I completely understand what you're saying as well, and Jody provided a comment in the chat as well that you know this rule change will give us a little more flexibility in that way to be able to consider these more, whereas, you know, in the past, it wasn't clearly outlined, and so it, you know, was our practice to do so, but it wasn't something that we really had the full authority under administrative role to do that.

29:43 [Bob Brandkamp] No, and I appreciate that and especially from like a utility perspective when you look at some of those, you know they're - the ratios aren't really geared for utility, because we're so capital intensive. So, again, it's not – you know I've never had an issue with it. And, I appreciate its existence from a utility perspective, but that might be an issue for other companies. So, that's all.

30:11 [Fred] Aaron, can I chime in for just a moment? I want to read Jody's input through chat, just in case anyone is on telephone and can't see her chat, Jody, with the self-insured employer program was saying "I agree, and to Bob's point, we will look at factors under this rule that would adjust security, sometimes to the advantage to the self-insured employer. Prior to this the rule did not provide such an advantage." That's it.

30:41 [Aaron] Thank you. Thank you, Fred, and thank you, Bob, and appreciate the discussion on this issue. Does anybody have any other contributions to make on this one? I'm not hearing any so I will move on to issue number four. Thank you again.

31:05 [Aaron] This issue is relating to rules 0195 and 0200. The issue is that these two rules provide two methods for removing an entity from a self-insurance certification, and it is not clear which one should be used. And so the first of those rules that I mentioned provides in general that a self-insured employer must notify the division in writing of any change on their certification. Specifically, it provides that the employer may delete an entity from a certification by submitting one of the division's forms, Form 1865. Rule 0200 provides that a self-insured employer must notify the division in writing to cancel its certification or to cancel the coverage of an entity on its certification. This rule requires a longer notice period than the first one that I mentioned. It also requires the employer provide certain financial and underwriting data to us. From our perspective deleting an entity from a certification would appear to end coverage of the entity in question on an ongoing forward basis, so our feeling is that having this language pertaining to individual entities in two rules is a little duplicative or even redundant.

Our current practice, when these situations come up, is to follow the process under rule 0195, that is to say to require employers to give us

notice that they wish to remove an entity from the certification, but not to provide that additional financial and underwriting data.

So, in the interest of clarity, we would like to codify that into rule. And what that would look like, specifically, is deleting the language from rule 0200 pertaining to canceling the coverage of a single entity. So, rule 0200 would remain in place; otherwise, it would continue to be the process for terminating an entire self-insurance certification, in which case we would want this additional information, but in case where an employer wanted to remove a single entity from their certification, we would continue following the process under rule 0195. One wrinkle I do want to mention, which isn't addressed on the document: As I say the current rule says that form 1865 should be used for reporting the deletion of an entity; that form doesn't actually currently contain fields addressing that use case. So, if we did move forward with these changes, we would either need to amend the form or amend the rule to no longer require the use of the form. So, that's a detail that we would need to iron out. But that said, I'll open it up for discussion on this one.

34:20 [Aaron] Hearing no discussion, unless anyone would like to chime in, I will move on to issue number five on the agenda.

34:33 [Aaron] Issue number five is regarding rule 0200, section (4), and the issue is that the rule does not provide a clear timeline for when a self-insured employer's certification can be revoked. The rule provides that when the division revokes a certification, it will give notice in accordance with provisions of ORS 656.440, except as provided in 656.430, subsection (9). 440 requires the division to give 10-days' notice; 430, section (9) requires 30-days' notice. Otherwise, the processes as outlined in statute are the same, including that an employer can interrupt that timeline by addressing the conduct that led to the revocation or by appealing the revocation. However, the two statutes have considerable overlap in terms of what reasons for revocation are allowable. 656.440 allows the division to revoke a certification for any violation of a rule or statute. Whereas 430, subsection (9), lists a narrower subset of circumstances in which we can revoke using that longer timeline. And, the upside of all of this is, if we have reason for revocation under 430, subsection (9), we also have reason for revocation under 440. Statute gives us the discretion to determine what timeline is appropriate based on the severity of the conduct we're seeing.

It's not clear whether the rule gives us that same flexibility. The rule could be read to require us to give 30-days notice anytime the statute would allow us to do so. We would prefer to have the same flexibility in rule as we do in statute. So, what we're proposing here is to amend the rule. And, this is, again, there is again – there is rule language available in this package showing what this would look like, to provide that the director can give notice of revocation under either statute if they both apply. Ultimately,

this is a case where we could take no action and leave the existing rule in place.

36:51 [Aaron] I do want to mention before opening this one up for discussion, we do understand that revoking a self-insured employer's certification is probably the most drastic option we have for addressing rule violations, and it is one that we have used very seldomly in past. I think only once or twice in the past 10 years, though Jason can correct me if I'm wrong about that. So in bringing forward this issue our intent is not to change the process that we currently use for addressing violations. We just want to make sure that on the rare occasion when we do discuss revoking the certification that our authority is clearly defined in rule. And, I'll open that one up for discussion now.

37:53 [Jason Cupp] Aaron, this is Jason. Just to clarify, on your point, we have issued an intent to revoke on a couple of occasions over the last decade, but we have not actually revoked a self-insured employer - just wanted to make that clear that, you know, having this, you know, either 10-day or 30-day window is just another compliance tool to make sure that we address whatever the underlying issue is, and so we, you know, as you said it is our kind of final option, and it is the one we are least wanting to use, but, you know when it comes to, you know, some issues, and we are unable to get compliance in other ways, you know, we do follow that route, and so I just wanted to clarify on that.

38:49 [Aaron] Thank you. Okay, I'm not hearing anybody else speak up on this issue. So, thank you for that. And I will take us forward now to issue number six.

39:10 This issue is regarding rule 0200, section (5), and the issue is a former self-insured employer cannot transfer its liability for claims to a third party without division approval, but this is not stated explicitly in rule. So, under ORS 656.403, subsection (3), depositing security or purchasing insurance does not relieve self-insured employer's responsibility for paying and administering claims. ORS 656.443, subsection (3) further provides that in lieu of security, the division can accept a policy of paid up insurance or PPUI submitted by a former self-insured employer. Reading these two statutes together, the division's interpretation is that a former self-insured employer can only transfer its liability for the claims incurred during its self-insured period by submitting a PPUI accepted by the division. It can contract with a service company to manage the claims, or purchase reinsurance to cover some of the costs, but the responsibility for ensuring the claims are paid and administered correctly - those ultimately remain with the employer. But, this is not something which is explicitly stated anywhere in rule or statute, and we have concerns this could lead to issues.

We had a recent case where a former self-insured employer entered into a unapproved reinsurance agreement that purported to transfer liability for

its claims to a third party. Even if this agreement had been reported to us at the time, we could not have approved it as PPUI, because the third party was not authorized to transact workers' compensation insurance in Oregon. And this kind of illustrates some of the problems from our perspective with these invalid agreements transferring liability. They can lead to records being transferred improperly to parties that don't have a right to them. They can lead to claims being processed by uncertified claims examiners. Also, if self-insured employer believes incorrectly that it has extinguished its liability for claims, and the third party in question defaults, there could be confusion or controversy over where liability rests, which could lead to delays in payment to injured workers.

So to sort of head off these future troubles, what we are proposing here is to amend the rules to state explicitly that claims responsibility cannot be transferred without prior division approval. I noticed reading this over the other day that actually this is a little less clear than I'd like it to be. What we would specifically be putting in rule or what we're talking about putting in rule is language saying that exiting self-insurance does not relieve a self-insured employer of its liability for paying the claims and administering the claims incurred during the self-insurance period, unless it submits a PPUI approved by the division. And again, there's language, draft rule language on this issue in the package you received.

Alternately, we could take no action, or there might be some other approach that we could take to this issue. But I will open this one up for discussion now. Alright, not hearing anybody speak up on this issue. So, thank you very much. Unless anybody wants to chime in, I will move on to issue seven, which is the last of the substantive issues on our agenda.

43:32 [Aaron] This issue is in regards to rules 0260 and to 0290. The issue is self-insured employer groups are not currently required to affiliate with NCCI, the National Council on Compensation Insurance, and this may make it more difficult for exiting members to obtain coverage on the voluntary market. So, self-insured employer groups can choose to become NCCI affiliates. What this does for them is it allows them to submit payroll and loss information for their members to NCCI, which then calculates experience rating modifications, or ERMs, for those members. For anyone on the line who's not from the rating world, an ERM is basically a reflection of an employer's loss history compared to other similarly sized employers in the same industry. So, if their loss history is relatively favorable, they would receive a low ERM, which allows them to get a – pay lower premium than they would otherwise. If their loss history is more unfavorable – higher ERM – higher pure premium. For self-insured employer groups, this data can help them adjust their pricing, but it can also be useful to members of those groups if they choose to leave the group and re-enter the voluntary market for coverage. Insurers use loss information to make underwriting decisions, and loss information audited by NCCI has kind of been the gold standard for that. Currently self-insured

employer groups are not required to become NCCI affiliates. And the issue here really is, whether this is something which is potentially going to cause problems for their members if they wish to re-enter the voluntary market.

So, on this one we have several alternatives under consideration, kind of ranging from most to least prescriptive. We could require self-insured employer groups to become NCCI affiliates. We could require self-insured employer groups to provide complete loss runs to exiting members, which would provide them for - with some information that could be useful to them in re-entering voluntary market. Or, we could require self-insured employer groups that are not affiliates to disclose this during the member application process or to inform their existing members if they choose to disaffiliate so that the members can make informed decisions about whether the group's affiliation or non-affiliation impacts their decision to be a part of the group. Alternately, we could take no action and leave the rule as is; or, I suppose, not add any new rule language, because this is not something which the current rules address.

And, I will open this one up for discussion now.

46:56 [Madison Walters] I do have a question actually. Do you have a sense just based on how many self-insured employers in Oregon are currently affiliates of the NCCI, you know, what's kind of the percentages on that, how many choose to become affiliates, and if it were to become required, how many employers will have to then go ahead and go through that process?

47:20 [Aaron] So, I do want to clarify just for the record, that this would be only for self-insured employer groups. Individual self-insured employers would not be affected. I believe most of our existing groups are NCCI affiliates. I think there is one, possibly two that are not, but the program area can correct me if I'm off base there.

47:47 [Jason Cupp] Aaron, if we're talking about self-insured employer groups, we only have three in the active market currently, and so I'm unsure as to the numbers as far as NCCI affiliation goes, but I just wanted to clarify that if we are talking about groups, specifically, then there's only three total, and two of them are public groups, while we have one private group.

48:30 [Aaron] Does anybody else on the line or in the room have any more feedback to provide on this issue? Questions, comments? All right, I'm hearing none, I want to thank you all for your time today. There are a couple of housekeeping issues on this agenda. I'm not going to go over those at length because we don't believe them to be substantive changes to the rule. Essentially, we want to clarify a little bit the timeframe for approving a self-insured employer’s certification to make clear that it cannot be approved retroactively before we've received all the required application materials. We're making changes to the rules on the memorandum of understanding that accompanies an ISLOC to minimize

the duplication of language from the section of the rules addressing the ISLOC contents. There will probably be other changes for plain language and clarity, which we will make sure you have an opportunity to comment on when final rules become available. But, as I say, we don't anticipate any of these being substantive.

But if you do have questions or concerns about any of these, or if anything occurs to you that you didn't have a chance to bring up during this meeting, please feel free to reach out to me or to Fred. We would love to hear from you.

50:08 [Aaron] And with that I think that completes my portion of the proceedings. I will turn it back over to you, Fred.

50:16 Thank you very much, Aaron. I just would like to say to anyone who may have received a notice of the meeting by someone forwarding it to them, and if you haven't been hearing from me, if you just want to stay on the connection after the meeting closes, then you can go ahead and give me your contact information so I can keep you informed. In other words, when we file proposed rules, I can let you know that they have been posted to our website – that kind of thing, so you can stay informed. So please just stay with us at the end of the meeting and we'll be good to go, But, otherwise I guess that's the conclusion of our meeting. What kind of a window of opportunity, Aaron, Jason, would we - can we provide if people have additional thoughts on the agenda? We usually provide anywhere from, you know, seven to 10 days to up to two weeks.

51:15 [Aaron] I'm afraid I don't have the - our internal calendar for this rulemaking in front of me, but I'm not aware of any particular time crunch on this one. So, I guess from my perspective, whatever we usually provide is probably fine.

51:35 [Fred]Yeah, maybe like a a week from this coming Friday I think would be ideal. This Friday is what, the 26th? So, we're going to be into just the first few days of September, I think, so if you can get it to us by Friday of next week, any additional advice or afterthoughts, that would be very helpful to us, and we'll keep this on track, and we'll let you all know when we file proposed rules. Otherwise, with that, everybody, thank you very much for your time. And, we're just – we're always pleased to work with you and I look forward to working with you again in the future, and we'll keep you up to date. So, good day, everyone.