

Agenda

Rulemaking Advisory Committee

Workers' Compensation Division rules,

- OAR 436-050, Employer/Insurer Coverage Responsibility

Type of meeting:	Rulemaking advisory committee
Date, time, & place:	Aug. 24, 2022, 1:30 p.m. Room F (basement), Labor & Industries Building, 350 Winter Street NE, Salem, Oregon <i>Or</i> ZoomGov Meeting: https://www.zoomgov.com/j/1611777266?pwd=ek9UbSsxcVIPRGFoU1JjeHN3WU5TUT09 Meeting ID: 161 177 7266 Passcode: 350195 Dial-in: 1 833 568 8864 US Toll-free
Facilitators:	Aaron Fellman and Fred Bruyns, Workers' Compensation Division
1:30 to 1:40	Welcome and introductions; meeting objectives
1:40 to 3:20	Discussion of issues – see attachment.
3:20 to 3:30	Summing up – next steps – thank you!

Attached: [Issues document](#)
[Related rules, some with draft changes, some for reference only](#)

Blank page for two-sided printing

OAR 436-050 Employer/Insurer Coverage Responsibility
Issues Document
Rulemaking Advisory Committee Meeting
Aug. 24, 2022, 1:30 p.m.

ISSUE No. 1

Rule: 436-050-0165(3) Security Deposit Requirements
436-050-0190 Using Self-Insured Employers' Security Deposit

Issue: Current rule does not clearly define how the division will use the proceeds from making demand on an expiring ISLOC.

Background: One of the ways a self-insured employer can provide security to the division is by obtaining an Irrevocable Standby Letter of Credit, or ISLOC. An ISLOC is a financial instrument under which a bank agrees to make payment to a beneficiary on demand when certain conditions are met. The division is the sole named beneficiary of an ISLOC.

Ordinarily, the division would make demand on an ISLOC only if a self-insured employer defaulted on its obligations, and only in the amount necessary to cover the immediate default. However, if the ISLOC was about to expire and the self-insured employer had not replaced it, the division would generally make demand for the entire outstanding balance of the ISLOC. The alternative would be to allow the ISLOC to expire without being replaced. In the event of the employer's bankruptcy, this would create significant risk for the Self-Insured Employer Adjustment Reserve (SIEAR), which is used to pay the claims of workers of self-insured employers when no security is available, and for self-insured stakeholders, who are liable for additional assessments if SIEAR becomes depleted.

Current rule does not clearly define how the division will handle ISLOC proceeds or when it may use them to cover a default. (The proceeds of an ISLOC are not technically "security," because under rule the director is only allowed to accept an ISLOC or surety bond as security. As a result, rules and statutes addressing security do not clearly apply to ISLOC proceeds.)

Recommendation:

- (1) Adopt rules on handling ISLOC proceeds that mirror statutory provisions on handling security. These would include:
 - Providing that ISLOC proceeds will be deposited in a separate account with the State Treasurer.
 - Providing that in the event of default, the director may use security proceeds to the extent necessary to make payments.

- (2) Adopt rules requiring self-insured employers to confirm their acceptance of the division's rules on handling security proceeds in the Memorandum of Understanding they are required to submit alongside an ISLOC.

Fiscal Impacts, including cost of compliance for small business:

How will adoption of this rule affect racial equity in Oregon?

Issue No. 2

Rule: 436-050-0165(3)(n) Security Deposit Requirements

Issue: The Memorandum of Understanding (MOU) a self-insured employer must submit alongside an ISLOC references a condition that is not on the ISLOC.

Background: When a self-insured employer provides security in the form of an ISLOC, it must also submit an MOU affirming its acceptance of the ISLOCs terms.

Among the terms addressed by the MOU is when the division can make demand on the ISLOC. Under the ISLOC, there are four such conditions for making demand, including failure to replace the ISLOC within 15 days before it would expire.

However, the MOU also references an fifth condition that is not on the ISLOC: receipt of notice of nonrenewal from the issuing bank. Banks must provide notice of nonrenewal at least 60 days before the desired expiration date, so if this condition were on the ISLOC, it would allow the division to make demand much earlier. Because it is not, the division does not believe a bank would be required to honor such a demand.

Recommendation:

- (1) Amend the MOU to delete the reference to notices of nonrenewal.

Fiscal Impacts, including cost of compliance for small business:

How will adoption of this rule affect racial equity in Oregon?

Recommendation:

-

ISSUE No. 3

Rule: 436-050-0180(4) Determination of Amount of Self-Insured Employer's Deposit

Issue: In certain circumstances, rule requires the division to increase a self-insured employer's required security based on its financial strength rating. The division sometimes offsets this increase based on other factors, but this is not explicitly authorized by rule.

Background: The division uses a three-step process to determine how much security a self-insured employer must maintain:

1. Calculate a minimum security based on a formula in rule.
2. If the employer has received a financial strength rating of 'moderate' under the division's financial strength analysis¹, apply an upward adjustment of between 5% and 20% to the amount in step 1.
3. Consider 'other factors,' including the employer's probable continuity of operations and financial condition.

Under this process, the division can use its 'other factors' analysis to offset a financial strength adjustment when appropriate. For example, if the division determined that an employer's risk of default was very low in spite of its 'moderate' financial strength rating, it could reduce a 10% financial strength adjustment to 5%.

Rule does not specify whether 'other factors' should be considered before or after the financial strength adjustment. If before, the division would have less discretion when determining how much security an employer must maintain, because the division cannot reduce an employer's security below the minimum amount determined in step 1.

Codifying the division's current process in rule would add clarity for stakeholders.

Recommendation:

- (1) Amend rule to clarify that the division will consider 'other factors' after calculating minimum security and applying a financial strength adjustment, if any.

Fiscal Impacts, including cost of compliance for small business:

How will adoption of this rule affect racial equity in Oregon?

¹ See OAR 436-050-0150(4).

ISSUE No. 4

Rule: 436-050-0195 Requirements for Changes in Self-Insured Employer Entity
436-050-0200 Self-Insured Certification Cancellation; Revocation

Issue: Rule provides two methods for removing an entity from a self-insurance certification, and it is not clear which one should be used.

Background: OAR 436-050-0195 provides that a self-insured employer must notify the division in writing of any change in entity on its self-insurance certification. The rule also provides that the employer may delete an entity from its certification by submitting Form 1865.

OAR 436-050-0200 provides that a self-insured employer must notify the division in writing in order to cancel its certification, or to cancel the coverage of an entity on its certification. The rule requires a longer notice period than OAR 436-050-0195 and also requires the employer to provide financial and underwriting data to the division.

Under current rule, it is not clear when a self-insured employer can remove an entity from its certification simply by notifying the division, as provided under OAR 436-050-0195, and when it must meet the more exacting requirements of OAR 436-050-0200. The division's current practice is to only require self-insured employers to notify the division in order to remove an entity. In the interest of clarity, it may be advisable to codify that approach in rule.

Recommendation:

- (1) Delete the language from OAR 436-050-0200 pertaining to cancelling the coverage of a single entity, as opposed to cancelling the entire certification.

Fiscal Impacts, including cost of compliance for small business:

How will adoption of this rule affect racial equity in Oregon?

Recommendation:

-

ISSUE No. 5

Rule: 436-050-0200(4) Self-Insured Certification Cancellation; Revocation

Issue: Rule does not provide a clear timeline for when a self-insured employer's certification can be revoked.

Background: Rule provides that when the division revokes a self-insured employer's certification, it will give notice in accordance with the provisions of ORS 656.440, except as provided in ORS 656.430(9). ORS 656.440 requires the division to give the employer 10 days notice, while ORS 656.430(9) requires 30 days notice.

Any violations for which an employer's certification may be revoked under ORS 656.430(9) also provide grounds for revocation under ORS 656.440, and statute gives the division discretion to determine which timeframe is appropriate. However, current rule does not make it clear whether the division has that discretion, or whether it is required to revoke under ORS 656.430(9) anytime there is grounds for revocation under that section. Specifying that the division has the same discretion under rule as under statute would add clarity.

Alternatives:

- (1) Specify that the director may provide notice of revocation under either ORS 656.430(9) or ORS 656.440.
- (2) Take no action, or other.

Fiscal Impacts, including cost of compliance for small business:

How will adoption of this rule affect racial equity in Oregon?

Recommendation:

-

ISSUE No. 6

Rule: 436-050-0200(5) Self-Insured Certification Cancellation; Revocation

Issue: 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.

Background: Under ORS 656.403(3), depositing security or purchasing insurance does not relieve a self-insured employer of its responsibility for paying and administering claims. ORS 656.443(3) further provides that in lieu of security, the division can accept a policy of paid-up insurance (PPUI) submitted by a former self-insured employer.

Based on these two statutes, the division's position is that a former self-insured employer can *only* transfer its liability for claims incurred during the self-insured period by submitting a PPUI accepted by the division. However, this is not stated explicitly in rule or statute. Recently, the division became aware that a former self-insured employer had entered into an unapproved reinsurance agreement that purported to transfer liability for its claims to a third party. (Even if the agreement had been reported timely, the division could not have approved it as a PPUI, because the third party was not authorized to transact workers' compensation insurance in Oregon.)

Invalid agreements transferring liability for claims are problematic for a number of reasons. First, if a self-insured employer believes it is no longer liable for claims, workers' benefits may be interrupted if the third party defaults. Second, these agreements can lead to records being transferred improperly and claims being processed by uncertified claims examiners.

Alternatives:

- (1) Amend rules to explicitly state that claims responsibility cannot be transferred without prior division approval.
- (2) Take no action, or other.

Fiscal Impacts, including cost of compliance for small business:

How will adoption of this rule affect racial equity in Oregon?

Recommendation:

-

ISSUE No. 7

Rule: 436-050-0260 Qualifications of a Self-Insured Employer Group
436-050-0290 Termination of Employers with a Self-Insured Employer Group

Issue: Self-insured employer groups are not required to affiliate with NCCI, which may make it more difficult for exiting members to obtain coverage on the voluntary market.

Background: Self-insured employer groups can choose to become affiliates of the National Council on Compensation Insurance (NCCI). Affiliate status allows a group to submit payroll and loss information for its members to NCCI, which then calculates experience rating modifications for the members.

Currently, self-insured employer groups are not required to become NCCI affiliates. Members of self-insured employer groups who choose not to affiliate may find it more difficult to reenter the voluntary market, because insurers use loss data to make underwriting decisions. If an exiting member's loss data is unavailable, or has not been verified by NCCI, the member may be unable to obtain coverage under favorable terms.

Alternatives:

- (1) Require self-insured employer groups to become NCCI affiliates.
- (2) Require self-insured employer groups to provide complete loss runs to exiting members.
- (3) Require self-insured employer groups that are not NCCI affiliates to disclose this during the member application process, or to inform their existing members if they choose to disaffiliate.
- (4) Take no action.

Fiscal Impacts, including cost of compliance for small business:

How will adoption of this rule affect racial equity in Oregon?

Recommendation:

-

Housekeeping

- Wording change to 436-050-0160(3) to clarify that a self-insured employer's certification cannot be approved retroactively.
- Wording changes to 436-050-0165(3)(n) to minimize duplicative language.

Blank page for two-sided printing



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

DRAFT Proposed Effective { }

TABLE OF CONTENTS

Rule	Page
SELF-INSURED EMPLOYERS.....	1
436-050-0165 Security Deposit Requirements.....	1
436-050-0180 Determination of Amount of Self-Insured Employer's Deposit; Effective Date of Order to Increase Deposit	6
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.....	9
436-050-0195 Requirements for Changes in Self-Insured Employer Entity	10
436-050-0200 Self-Insured Certification Cancellation; Revocation	10
436-050-0260 Qualifications of a Self-Insured Employer Group	12
436-050-0270 Applying for Certification as a Self-Insured Employer Group: Private Employers	19
436-050-0280 Applying for Certification as a Self-Insured Employer Group: Governmental Subdivisions	21
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	23
436-050-0340 Group Self-Insurance Revocation.....	26

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

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION**Draft proposed** EMPLOYER/INSURER COVERAGE RESPONSIBILITYOREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 050

NOTE: Revisions are marked: new text | ~~deleted text~~.

SELF-INSURED EMPLOYERS

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 by the director as all or part of the security deposit.

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

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

(iA) 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 a long-term certificate of deposit rating of:

(i) "Aaa", "Aa", or "A" in the current monthly edition of "Moody's Statistical Handbook" prepared 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;

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION**

***Draft proposed* EMPLOYER/INSURER COVERAGE RESPONSIBILITY**

(Bii) An ISLOC issued by a bank that does not meet the rating requirement of paragraph (A) 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 (A). 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;

(Ciii) 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:

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

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

(IIIiii) 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

(IViv) 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;

(bB) [Form 3640](#), "Irrevocable Standby Letter of Credit," must be used for the ISLOC;

(Ce) 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;

(Dd) 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;

(Ee) 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;

(Ff) The ISLOC must be able to be called immediately if:

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

(Bii) The self-insured employer has filed for bankruptcy;

(iiiE) The self-insured employer has failed to renew the ISLOC or provide

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION**

***Draft proposed* EMPLOYER/INSURER COVERAGE RESPONSIBILITY**

acceptable substitute security at least 15 days before the expiration date of the ISLOC; or

(ivD) The self-insured employer has failed to provide additional or replacement security after being ordered to do so by the director, notwithstanding written notice to the self-insured employer;

(Gg) The funds provided by the ISLOC must 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 subsection (f), signed by the director;

(Hh) The ISLOC must 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;

(Ii) The ISLOC must state that:

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

(iiB) If legal proceedings are initiated by any party with respect to the payment of any ISLOC, it is agreed that such proceedings will be subject to Oregon courts and Oregon law;

(Jj) The ISLOC must state that 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 be in the name of the "Department of Consumer and Business Services In Trust For [the legal name of the certified self-insured employer]";

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

(Ll) The ISLOC must state that all bank charges for the ISLOC will be for the account of the applicant;

(Mm) The ISLOC must state that any amendment to the ISLOC must be approved by the beneficiary before the amendment is effective;

(Nn) The self-insured employer that submits the ISLOC must provide an accompanying [Form 3529](#), "Memorandum of Understanding," affirming the self-insured employer's acceptance of the following:

~~**(A)** 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;~~

~~**(iB)** 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 as provided in paragraph (D) of this subsection;~~

(iiC) The ISLOC may be replaced with an ISLOC or surety bond of equal amount

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION**

***Draft proposed* EMPLOYER/INSURER COVERAGE RESPONSIBILITY**

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;~~

~~(Diii)~~ The ISLOC can be called immediately, ~~at the director's discretion, if the director receives notice that the ISLOC will not be renewed; if the self-insured employer fails to pay its workers' compensation liabilities, obligations, or payments due to the director under ORS chapter 656; if the self-insured employer files bankruptcy; if the self-insured employer fails 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 as provided in paragraph (F) of this subsection;~~ and

~~(ivE)~~ 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 calls an ISLOC as provided in (a)(F)(ii) through (iv) of this section, the proceeds will be deposited with the State Treasurer in an account separate and distinct from the General Fund.

(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 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 Insurer Financial Strength Rating of A or better; or

(ii) A.M. Best Company Financial Strength Rating of B+ or better;

(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

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

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) The surety bond must be replaced by the self-insured employer with an acceptable type of security deposit within 30 days after notice from the department that the Surety has been placed in conservatorship, is seized, declares insolvency, or has a current credit rating below the ratings required in subsection (a)(B).

(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](#),

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION**

***Draft proposed* EMPLOYER/INSURER COVERAGE RESPONSIBILITY**

"Security Agreement and Notice to Intermediary," granting the department a security interest in and control over those financial assets.

Statutory authority: ORS 656.430 and 656.726(4)

Statutes implemented: ORS 656.430

Hist: Amended 12/17/19 as Admin. Order 19-057, eff. 1/1/20

Amended 12/13/21 as Admin. Order 21-055, eff. 1/1/22

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

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

(1) Indicated security deposit.

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

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

(A) \$100,000;

(B) Future claim liability, including losses incurred but not reported (IBNR), a claims processing administrative cost, and the anticipated assessments payable to the director for the employer's next fiscal year; or

(C) The annual incurred losses for the self-insured employer's last fiscal year, including IBNR, a claims processing administrative cost, and anticipated assessments payable to the director for the employer's next fiscal year;

(b) If the employer is applying for self-insurance, the amount of the initial deposit must not be less than the greater of:

(A) The anticipated assessments payable to the director for the employer's next fiscal year, plus an amount equal to 65 percent of the annual premium the employer would pay if carrier-insured using the applicable occupational base rate premium, as such rate is applied to the anticipated payroll of the employer's Oregon operations for the employer's next fiscal year;

(B) \$300,000 plus \$30,000 additional for each \$100,000 the employer's net worth is below \$2 million; or

(C) The amount of the approved self-insured retention level for the employer's excess workers' compensation insurance;

(c) Assessments payable to the director referred to in this section include moneys and assessments due under ORS 656.506, 656.612, and 656.614;

(d) Claims processing administrative costs will be determined by developing a percentage rate to be applied against the employer's unpaid losses;

(A) The rate will be based on the information contained in Schedule P, Part ID (Workers' Compensation) of the Annual Statement for the previous calendar year as reported to the Insurance Commissioner by SAIF Corporation and the 20 private

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

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) of this rule 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;

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION**

***Draft proposed* EMPLOYER/INSURER COVERAGE RESPONSIBILITY**

- (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 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 Subject to (1)(a) and (b) of this rule, the director may increase or decrease the amount of the self-insured employer's security deposit determined under sections (1) and (2) of this rule based on ~~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;

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION**

***Draft proposed* EMPLOYER/INSURER COVERAGE RESPONSIBILITY**

(5) Time frame for compliance.

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

Statutory authority: ORS 656.407, and 656.726(4)

Statutes implemented: ORS 656.407

Hist: Amended 12/14/17 as WCD Admin. Order 17-061, eff. 1/1/18

Amended 12/13/21 as Admin. Order 21-055, eff. 1/1/22

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

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

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

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

(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 calls that ISLOC as provided in OAR 436-050-0165(3)(a)(F)(ii) through (iv), the director may use the proceeds of the ISLOC to the extent necessary to assure continued payments.

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

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

(2) Changes in liability or financial viability.

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

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION**

***Draft proposed* EMPLOYER/INSURER COVERAGE RESPONSIBILITY**

Statutory authority: ORS 656.407, 656.434, and 656.726(4)
 Statutes implemented: ORS 656.407, 656.443 [OL 2017, ch. 69], and 656.614
 Hist: Amended 8/15/14 as WCD Admin. Order 14-059, eff. 9/15/14
 Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17
 Amended 12/14/17 as WCD Admin. Order 17-061, eff. 1/1/18
 See also the *Index to Rule History*: https://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

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

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

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

(2) Adding or deleting entities.

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

- (a) The self-insured employer must submit a completed [Form 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 authority: ORS 656.407, 656.430, and 656.726(3)
 Statutes implemented: ORS 656.407 and 656.430
 Hist: Amended 10/4/12 as WCD Admin. Order 12-056, eff. 1/1/13
 Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17
 Amended 12/14/17 as WCD Admin. Order 17-061, eff. 1/1/18
 See also the *Index to Rule History*: https://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

436-050-0200 Self-Insured Certification Cancellation; Revocation

(1) Effective period of self-insurance certification.

(a) A self-insured employer's certification remains in effect until:

(Aa) Revoked as provided under OAR 436-050-0150 to 436-050-0195, ORS 656.434, and ORS 656.440; or

(Bb) Canceled by the self-insured employer with the approval of the director.

(b) 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

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

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 under section (5) of this rule.

(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.

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION**

***Draft proposed* EMPLOYER/INSURER COVERAGE RESPONSIBILITY**

The director may revoke the self-insurance certification of any self-insured employer that fails to comply with ORS 656.407, 656.430, and 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),~~ Notwithstanding ORS 656.440, the certification of a self-insured employer may be revoked after giving 30 days notice ~~notice of certificate revocation will be issued~~ in accordance with the provisions of ORS 656.430(9)40.

(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.

Statutory authority: ORS 656.726(4)

Statutes implemented: ORS 656.434 and 656.440

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

Amended 12/17/19 as Admin. Order 19-057, eff. 1/1/20

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

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

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

(1) Organization.

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

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.

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

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

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

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

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

WORKERS' COMPENSATION DIVISION

Draft proposed EMPLOYER/INSURER COVERAGE RESPONSIBILITY

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.

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION**

***Draft proposed* EMPLOYER/INSURER COVERAGE RESPONSIBILITY**

(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.

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION**

***Draft proposed* EMPLOYER/INSURER COVERAGE RESPONSIBILITY**

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.

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION**

***Draft proposed* EMPLOYER/INSURER COVERAGE RESPONSIBILITY**

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

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

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

(A) The director will give the group 30 days written notice of the intent to revoke the self-insured certification;

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

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

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

Statutes implemented: ORS 656.407 and 656.430 [OL 2017, ch. 118]

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

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

Amended 12/14/17 as WCD Admin. Order 17-061, eff. 1/1/18

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

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;

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

- (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 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:

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION**

***Draft proposed* EMPLOYER/INSURER COVERAGE RESPONSIBILITY**

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

Statutes implemented: ORS 656.407 and 656.430

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

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

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

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

(1) Required information.

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

- (a) A completed [Form 1867](#), "Application 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;

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION**

***Draft proposed* EMPLOYER/INSURER COVERAGE RESPONSIBILITY**

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

(2) Audited or certified financial statements.

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

(3) Review of application.

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

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION**

***Draft proposed* EMPLOYER/INSURER COVERAGE RESPONSIBILITY**

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

Statutory authority: ORS 656.407, 656.430, and 656.726(4)
 Statutes implemented: ORS 656.407 and 656.430 [OL 2017, ch. 118]
 Hist: Amended 8/15/14 as WCD Admin. Order 14-059, eff. 9/15/14
 Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17
 Amended 12/14/17 as WCD Admin. Order 17-061, eff. 1/1/18
 See also the *Index to Rule History*: https://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

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

(1) Addition of new members.

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

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

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

(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 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.

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

(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.

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

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

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

(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 authority: ORS 656.726(4)

Statutes implemented: ORS 656.434 and 656.440

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

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

Amended 12/14/17 as WCD Admin. Order 17-061, eff. 1/1/18

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

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

436-050-0340 Group Self-Insurance Revocation

Notwithstanding ORS 656.440, the certification of a self-insured employer group may be revoked by the director after giving 30 days notice if:

- (1) 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;
- (2) There are fewer than five employers within a group;
- (3) The net worth of the group falls below that required by OAR 436-050-0260(3);
- (4) The employer group defaults in payment of compensation or other payments due the director;
- (5) The employer group commits any violation for which a civil penalty could be assessed under ORS 656.745; or
- (6) The employer group or any member of the group submits any false or misleading information.

Statutory authority: ORS 656.726(4);

Statutes implemented: ORS 656.434 and 656.440

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

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

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