

Agenda

Rulemaking Advisory Committee

Workers' Compensation Division Rules,

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

Type of meeting:	Rulemaking advisory committee
Date, time, & place:	<p>August 27, 2025 2:30 – 4 p.m.</p> <p>Labor & Industries Building, 350 Winter St, NE Salem, OR</p> <p>Room F (basement) or via Microsoft Teams:</p> <p>https://teams.microsoft.com/l/meetup-join/19%3ameeting_OWZkOTgxMTAtM2RiMy00NjJhLTg4MTMtOGEzYjgxMWZmYmYx%40thread.v2/0?context=%7b%22Tid%22%3a%22aa3f6932-fa7c-47b4-a0ce-a598cad161cf%22%2c%22Oid%22%3a%22419bb41f-34a1-4d77-8afc-abd87db857e0%22%7d</p> <p>Meeting ID: 259 856 892 088 0 Passcode: Ry2oZ7jz</p> <hr/> <p>Dial in by phone +1 503-446-4951,,439242616# United States, Portland Phone conference ID: 439 242 616#</p>
Facilitators:	Marie Rogers, Aaron Fellman, Workers' Compensation Division
2:30 to 2:40	Welcome and introductions; meeting objectives
2:40 to 3:55	Discussion of issues – see attachment. Request for new issues, if time.
3:55 to 4:00	Summing up – next steps – thank you!

Attached: OAR 436-050 Issues document

Issues Document
 Rulemaking Advisory Committee Meeting
 8/27/25 2:30 PM LNI CRF

Rule: OAR 436-050-0165 – Security Deposit Requirements

Issue: Current rule doesn't allow the division to promptly revoke a self-insured employer's authority to self-insure based on failure to maintain security.

Background: Current rule doesn't allow the division to revoke an employer's authority to self-insure (i.e. its certification) based on failure to maintain security until at least 10 days after the existing security cancels or expires. This delay creates liability for SIEAR and SIEGAR, the reserves the division uses to pay unsecured claims in the event of an employer's default.

Oregon law requires a self-insured employer to provide the director with either a surety bond or irrevocable standby letter of credit (ISLOC) as security. If the employer defaults on its claims processing obligations, the director can draw on that security to ensure that claims continue to be paid.

The surety company or bank that issues a self-insured employer's security can cancel or nonrenew it by providing advance notice to the director and employer. The employer must then replace the security before it expires. If it doesn't, the director can revoke the employer's certification, at which point the employer must obtain workers' compensation coverage through a carrier to remain in compliance.

However, the director can't begin the revocation process on this basis until the existing security has actually expired. A revocation takes effect 10 days after the director gives notice to the employer (unless the employer corrects the grounds for revocation or appeals.) This means that if the employer doesn't replace its security before it expires, there will be a period of at least 10 days between the expiration date and the effective date of the revocation.

Allowing an employer to self-insure without active security for any length of time creates liability for SIEAR and SIEGAR. SIEAR and SIEGAR are funded in part by premium assessments on active self-insured employers; a significant increase in unsecured claims could lead to a higher premium assessment rate.

The division has encountered this problem three times in the past three years. In each case the division was aware canceled security would probably not be replaced but was unable to begin revocation proceedings until after it had expired.

Alternatives

1. Amend OAR 436-050-0165 to require a self-insured employer to replace its security a certain number of days before its expiration date. This would allow the director to begin the revocation process in time for revocation to take effect on the same day security expires.

Note that ORS 656.440(1) provides that a revocation will not take effect if the employer corrects the grounds for revocation within the notice period, so a self-insured employer's certification would only be revoked under the new rule if it failed to replace its security by the expiration date.

Sample rule language is provided below.

- **(3) Irrevocable standby letters of credit.**

...

(d) If a bank elects not to extend an ISLOC as provided under (H)(iii) of this subsection, the self-insured employer must provide acceptable substitute security at least 15 days before the expiration date of the ISLOC. Substitute security provided under this subsection must take effect no later than the expiration date of the ISLOC.

- **(4) Surety bonds.**

...

(d) If a surety company terminates a surety bond as provided under paragraph (F) of this subsection, the self-insured employer must provide acceptable substitute security at least 15 days before the effective date of the termination. Substitute security provided under this subsection must take effect no later than the termination date of the surety bond.

2. Adopt a rule requiring a self-insured employer to provide replacement security in advance of expiration when ordered by the director, as follows:

- **(3) Irrevocable standby letters of credit.**

...

(d) If a bank elects not to extend an ISLOC as provided under (H)(iii) of this subsection, the self-insured employer must comply with an order of the director to provide acceptable substitute security at least 15 days before the expiration date of

the ISLOC. Substitute security provided under this subsection must take effect no later than the expiration date of the ISLOC.

- **(4) Surety bonds.**

...

(d) If a surety company terminates a surety bond as provided under paragraph (F) of this subsection, the self-insured employer must comply with an order of the director to provide acceptable substitute security within 15 days of the mailing date of the order. Substitute security provided under this subsection must take effect no later than the termination date of the surety bond.

3. Take no action.

Fiscal Impacts, including cost of compliance for small business:

No fiscal impacts are anticipated, except in that the proposed change may reduce the future liability of SIEAR and SIEGAR. No compliance costs for small businesses are anticipated, because small businesses generally do not qualify to self-insure.

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

No racial equity impacts are anticipated.

ISSUE No. 2

Rule: OAR 436-050-0175(3)(b) – Annual Reporting Requirements

Issue: Current rule requires self-insured employers to report data on open claims, but the term “open claim” isn’t defined in rule or statute.

Background: Current rule requires self-insured employers to report certain claim data to the division annually, including data about open claims with injury dates outside the experience period. The division uses this data to determine the amount of security a self-insured employer must maintain, among other uses.

The term “open claim” isn’t defined by rule or statute, but [Bulletin 209](#), which outlines claim reporting requirements, defines an open claim as “a claim for which the employer expects future indemnity or medical payments or there is current litigation.” This definition includes some claims for which a notice of closure has been issued, but on which the employer continues to pay benefits- for example, hearing loss claims, which often continue paying out for years after a worker is medically stationary. The division needs data on these claims to accurately assess a self-insured employer’s future liability, but an external stakeholder wouldn’t necessarily consider a claim for which a notice of closure has been issued to be an “open claim.” Adopting a definition in rule could provide clarity and avoid future disputes.

Other rules in divisions 050 and 060 require insurers and self-insured employers to notify workers with open or active claims when moving claims to a new processing location. The term “open or active claims” is also not defined, but in practice it has a similar meaning to “open claims” as defined by Bulletin 209.

Alternatives

1. Amend rule 0175 to provide that open claims “include claims for which a notice of closure has been issued, but on which the employer expects future indemnity or medical payments or there is current litigation.”
2. Amend rule 0175 and Bulletin 209 to refer to “open or active claims” rather than “open claims.”
3. Both 1 and 2.
4. Take no action.

Fiscal Impacts, including cost of compliance for small business:

Because the rule would not widen the scope of claims self-insured employers are required to report, no fiscal impacts are anticipated.

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

No racial equity impacts are anticipated.

ISSUE No. 3

Rule: OAR 436-050-0185 – Qualifications for Deposit Exemption for Self-Insured Cities, Counties, and Qualified Self-Insured Employer Groups, Application Procedures, Conditions and Requirements, Revocation and Requalification

Issue: A 2025 bill allows self-insured school districts to apply for exemption from security deposit requirements. The existing rule on deposit exemptions should be amended accordingly.

Background:

Oregon law requires a self-insured employer to provide the director with security. However, ORS 656.407(3) allows certain self-insured public employers to apply for exemption from this requirement. To qualify for exemption, the self-insured public employer must establish a loss reserve account and meet certain other requirements outlined in OAR 436-050-0185.

SB 904 (2025) amends ORS 656.407(3) to add self-insured school districts to the list of self-insured public employers who may apply for an exemption, effective Jan. 1, 2026. Current OAR 436-050-0185, which only refers to self-insured cities, counties, and qualified self-insured employer groups, should be updated.

Recommendation

1. Wherever OAR 436-050-0185 refers to a “[self-insured] city, county, or self-insured employer group,” amend to read “[self-insured] city, county, **school district**, or self-insured employer group.”

Fiscal Impacts, including cost of compliance for small business:

No fiscal impacts are anticipated. Although allowing self-insured school districts to apply for exemption may save them money, this is an impact of SB 904 rather than the proposed change.

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

No racial equity impacts are anticipated for the reason above.

ISSUE No. 4

Addressing the following issues would require rule changes, but the program area doesn't anticipate any meaningful impact on stakeholders. Accordingly, these issues are being presented in summary form. Policy is happy to facilitate a fuller discussion if stakeholders prefer.

- **Rule:** OAR 436-050-0005 – Definitions

Under current rule, a self-insured employer must comply with certain orders of the director within 30 days of their mailing date. However, current rule does not define "mailing date."

Alternatives:

1. Adopt the following definition, which is adapted from OAR 436-050-0005(13):

"Mailing date," unless otherwise specified, means:

- (a) The date a document is postmarked;
- (b) The date automatically produced by electronic transmission (e.g., email or facsimile); or
- (c) The date a hand-delivered document is received by the recipient

2. Something else.

3. Take no action.

- **Rule:** OAR 436-050-0008(4) – Requests for Hearings or Administrative Review

Rule provides that the provisions of OAR 436-001 will apply to appeals on non-penalty matters. However, statute provides a specific process for an employer to appeal the revocation of its authority to self-insure, and that process is inconsistent with division 001.

Alternatives:

4. Add language to rule 0008 to clarify that the provisions of OAR 436-001 will apply to revocation proceedings except as provided by ORS 656.430 to 656.440.

5. Something else.

6. Take no action.

- **Rule:** OAR 436-050-0165(3)(a)(B) – Security Deposit Requirements

Rule provides that the division may only accept an ISLOC as a self-insured employer's security deposit if the issuing bank meets certain rating requirements, or if the ISLOC is accompanied by a confirming ISLOC issued by a bank that meets those requirements.

Per rule, a confirming ISLOC must provide that it will pay the full amount of the underlying ISLOC regardless of reimbursement from the issuing bank. However, in some circumstances the division may wish to demand less than the full amount of an ISLOC.

The terms of the ISLOC used by the division already allow for partial draws, but the rule should still be amended for clarity.

Alternatives:

7. Amend rule 0165(3)(a)(B) to provide that the confirming ISLOC must “pay on demand **any amount up to the full amount of the ISLOC**, regardless of reimbursement from the bank whose ISLOC is being confirmed”.

8. Something else.

9. Take no action.

Fiscal Impacts, including cost of compliance for small business:

No fiscal impacts are anticipated.

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

No racial equity impacts are anticipated.

Housekeeping

Rule:

- OAR 436-050-0110 – Notice of Insurer's Place of Business in State; Records Insurer Must Maintain
- OAR 436-050-0210 Notice of Self-Insurer's Place of Business in State; Records Self-Insured Must Maintain

Amend title to clarify that rule applies to both a self-insured employer/insurer's place of business and a processing location operated by a service company.