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PERMANENT ADMINISTRATIVE RULES

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I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the

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

To become effective 01/01/2016 Rulemaking Notice was published in the December 2015 Oregon Bulletin.

RULE CAPTION

Threshold (split point) for reporting individual claims by self-insured employers

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

RULEMAKING ACTION

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

ADOPT:

AMEND:

436-050-0003, 436-050-0175

REPEAL:

RENUMBER:

AMEND AND RENUMBER:

Statutory Authority:

ORS 656.407, 656.430, and 656.726(4)

Other Authority:

Statutes Implemented:

ORS 656.407, 656.430

RULE SUMMARY

The agency has amended OAR 436-050, Employer/Insurer Coverage Responsibility, to index the threshold for reporting individual claims by self-insured employers to the National Council on Compensation Insurance (NCCI) split point as published in agency Bulletin 209, and to remove the NCCI split point dollar amount from the rules. The split point will increase from \$15,500 to \$16,000 effective Jan. 1, 2016.

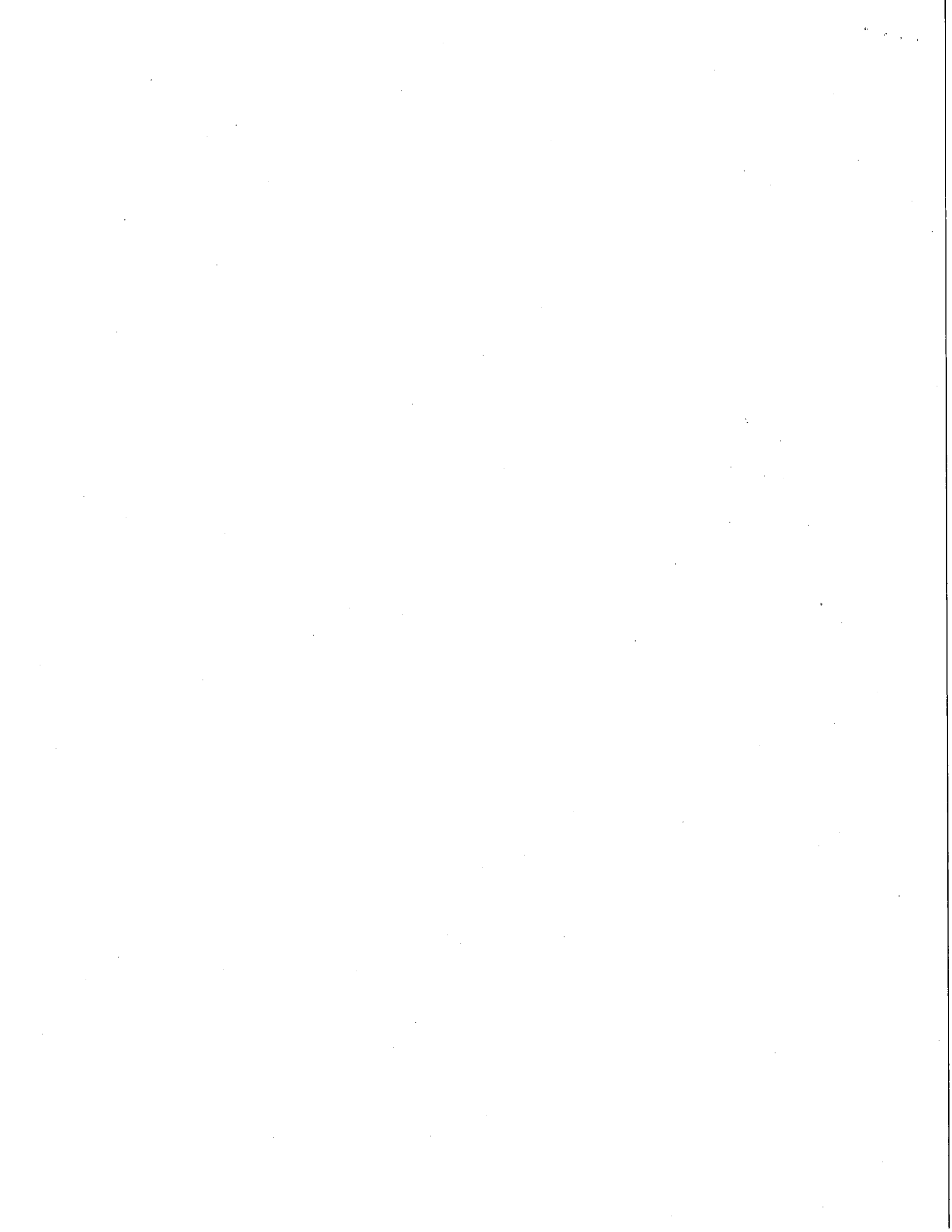
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Rules Coordinator Name

Email Address

WCD 10-2015



Authorization Page
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Stat. Auth.: ORS 656.407, 656.430, and 656.726(4)

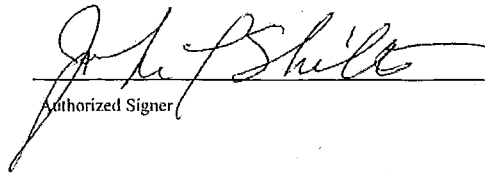
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Authorized Signer

John L. Shilts

Printed Name

Dec. 24, 2015

Date

Authorization Page replaces the ink signature on paper filings. Have your authorized signer sign and date, then scan and attach it to your filing. You must complete this step before submitting your Permanent and Temporary filings.

EMPLOYER/INSURER COVERAGE RESPONSIBILITY

436-050-0003

Applicability of Rules

- (1) These rules are effective Jan. 1, 2016, to carry out the provisions of:
- (a) ORS 656.017 – Employer required to pay compensation and perform other duties.
 - (b) ORS 656.029 – Independent contractor status.
 - (c) ORS 656.126 – Coverage while temporarily in or out of state.
 - (d) ORS 656.407 – Qualifications of insured employers.
 - (e) ORS 656.419 – Workers' compensation insurance policies.
 - (f) ORS 656.423 – Cancellation of coverage by employer.
 - (g) ORS 656.427 – Cancellation of workers' compensation insurance policy or surety bond liability by insurer.
 - (h) ORS 656.430 – Certification of self-insured employer.
 - (i) ORS 656.434 – Certification effective until canceled or revoked; revocation of certificate.
 - (j) ORS 656.443 – Procedure upon default by employer.
 - (k) ORS 656.447 – Sanctions against insurer for failure to comply with orders, rules, or obligations under workers' compensation insurance policies.
 - (l) ORS 656.455 – Records location and inspection.
 - (m) ORS 656.745 – Civil penalties.
 - (n) ORS 656.850 and 656.855 – Worker leasing companies.
 - (o) ORS 731.475 – Insurer's in-state location.
- (2) The director may waive procedural rules as justice requires, unless otherwise obligated by statute.

Stat. Auth: ORS 656.704 and 656.726(4)

Stats. Implemented: ORS 656.017, 656.029, 656.126, 656.407, 656.419, 656.423, 656.427, 656.430, 656.434, 656.443, 656.447, 656.455, 656.745, 656.850, 656.855, and 731.475

436-050-0175

Annual Reporting Requirements

- (1) To determine the financial status of a self-insured employer and to evaluate the employer's continuity of operation, a self-insured employer must file annually with the director an audited financial statement or annual report with audited financial statement, including SEC Form 10K if issued, for the just completed fiscal year. A self-insured employer that is not a municipality must make the filing within 120 days of the fiscal year end and a self-insured employer that is a municipality must make the filing within 180 days of the fiscal year end. All financial statements and annual financial reports filed, as required by this section, will be retained by the director for a period of at least three years. In lieu of an audited financial statement or annual report, a self-insured employer may file a financial statement certified by the employer that the financial statement is true and accurate and presents the employer's financial condition and results of operations as of the date of the statement.
- (2) Notwithstanding section (1) of this rule, the director may require an employer to submit an audited financial statement if the certified financial statement submitted is insufficient to evaluate the employer's financial status.

(3) The financial statements and reports filed by a self-insured employer group must demonstrate the group's acceptable financial viability based on criteria under OAR 436-050-0260 including, but not limited to, satisfactory financial ratios and net worth.

(4) By March 1 of each year, self-insured employer groups must file with the director:

(a) A statement certifying the amount of the group's combined net worth under OAR 436-050-0260(3)(a), as of the date of the statement; and

(b) A copy of the fidelity bond furnished to the group by the administrator or a copy of the comprehensive crime policy obtained by the group, in an amount sufficient to protect the group against the misappropriation or misuse of any moneys or securities. If the fidelity bond or policy covers more than one year, is still in effect, and a copy was provided to the director in the prior year, the group's annual filing may state that fact in lieu of providing an additional copy.

(5) By March 1 of each year, self-insured employer groups consisting of private employer members must file with the director:

(a) A statement certifying that each employer member of the group meets the individual net worth requirement under OAR 436-050-0260(3)(b), as of the employer member's most recent fiscal year end; and

(b) A list of the group's current board members and their professional affiliations.

(6) The self-insured employer must report claim loss data described in Bulletin 209 by March 1 of each year for the purposes of experience rating modification, retrospective rating calculations, and determining deposits.

(a) The report must be certified to be true and accurate by an authorized representative of the self-insured employer, and must include:

(A) A report of losses for each year in the experience rating period. The report must cover all claims incurred during the reporting period and must be valued as of January 1 of the current year. Reports must include:

(i) Contract medical expenses;

(ii) Total maximum medical reimbursement amount;

(iii) Number of claims for which the maximum medical reimbursement amount is claimed;

(iv) For claims with incurred losses at or below the National Council on Compensation Insurance (NCCI) split point published in Bulletin 209, total paid, outstanding reserves, and total incurred losses;

(v) Number of claims with incurred losses at or below the NCCI split point; and

(vi) For each claim with incurred losses exceeding the NCCI split point, worker's name, date of injury, claim number, total paid, outstanding reserves, and total incurred losses. Claims must be listed in alphabetical order.

(B) A report of losses covering the self-insured period prior to the experience rating period. The report must list all open claims and must be valued as of January 1 of the current year. The report must include:

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

(ii) Date of injury;

(iii) Claim number;

(iv) Total paid;

(v) Outstanding reserves; and

(vi) Total incurred losses.

(C) Identification of claims involving catastrophes, Workers with Disabilities Program, permanent total disability or fatal benefits, third party recoveries, and claims where the total

incurred has or is expected to exceed the self-insured retention of the self-insured employer's excess insurance policy.

(D) The total annual paid losses for the previous four fiscal years valued as of January 1 of the current year.

(b) Bulletin 209 provides guidelines for self-insured employers and their authorized representatives to use in submitting the required data. Bulletin 209 is available on the Workers' Compensation Division's website.

(c) Each self-insured city, county, or qualified self-insured employer group that is exempted from the security deposit requirements under ORS 656.407(3) and OAR 436-050-0185 must, in addition to the above, provide the director by March 1 of each year, the procedures, methods, and criteria used in the process of determining the amount of their actuarially sound workers' compensation loss fund, including procedures for determining the amount for injuries incurred but not reported. The director may require a qualified self-insured employer group exempted from the security deposit requirements to provide an actuarial study that demonstrates its loss reserve account is actuarially sound and adequately funded under OAR 436-050-0185(2)(d).

(7) Notwithstanding sections (1) through (5) of this rule, the director may require a self-insured employer group to submit financial statements, reports, or information more frequently for reasons including, but not limited to, changes in the group's financial status or viability, private employer members' individual net worth, group membership, private employer groups' board membership, or incurred claims costs.

(8) Notwithstanding section (6) of this rule, the director may require a self-insured employer to submit claim loss data more frequently if the nature of the self-insured employer's business has changed since the last annual loss report for reasons including, but not limited to, mergers or acquisitions, changes in employment level, nature of employment, or incurred claims costs.

(9) If a self-insured employer fails to comply with the requirements of sections (1) through (8) of this rule, the director may impose any or all of the following sanctions:

(a) Require the self-insured employer to increase its deposit and premium assessments by 25%;

(b) Conduct an audit to obtain the necessary loss information at the self-insured employer's expense;

(c) Assess civil penalties of up to \$250 per day that the information is not provided beyond the deadline; or

(d) Revoke the employer's certification for self-insurance.

(10) To ensure each self-insured employer's claims are valued appropriately for use in deposit, experience rating, and retrospective rating calculations, the director will perform routine test audits. If a self-insured employer's total claims values are found to be 10 percent or more below the director's determined values, the current experience rating will be recalculated using the director's determined values and will be used in the security deposit and retrospective rating calculations. In addition, penalties may be assessed.

Stat. Auth: ORS 656.407, 656.430, 656.704, and 656.726(4)

Stats. Implemented: ORS 656.407 and 656.430

