

1 DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, INSURANCE DIVISION  
2 DIVISION 43  
3 RATING AND RATING ORGANIZATIONS  
4 (WORKERS' COMPENSATION INSURANCE  
5 ASSIGNED RISK PLAN -- ORS CHAPTER 737)  
6

7 **836-043-0005**

8 **Definitions for the Workers' Compensation Insurance Plan**

9 As used in OAR 836-043-0001 to 836-043-0091:

10 (1) "Affiliated insurer" or "affiliate" means an insurer that directly, or indirectly through  
11 one or more intermediaries, controls, or is controlled by, or is under common control with,  
12 another insurer **specified**, and is required to participate in the Plan pursuant to OAR 836-043-  
13 0009. For purposes of this definition, [*the term*] "control" means possession, direct or indirect, of  
14 the power to direct or cause the direction of the management and policies of an insurer, whether  
15 through the ownership of voting securities, by contract or otherwise. Control [*shall be*] **is** deemed  
16 to exist if any person or business enterprise, directly or indirectly, owns, controls, holds with the  
17 power to vote, or holds proxies, representing ten percent or more of the voting securities of any  
18 other insurer.

19 [(2) "*Articles of Agreement*" or "*Articles*" means the National Pool reinsurance  
20 mechanism that is filed with and approved by the Insurance Commissioner and that is authorized  
21 under this Plan to provide reinsurance to the servicing carriers on employers assigned to them  
22 under the Plan.]

23 **(2) "Application" means the form approved for use in the assigned risk market by**  
24 **the Plan Administrator for the purpose of securing workers compensation insurance under**  
25 **the Plan, which contains the required information as described in NCCI's Assigned Risk**  
26 **Supplement to the Basic Manual for Workers' Compensation and Employers Liability**  
27 **Insurance.**

28 **(3) "Assigned risk market" means a state insurance plan that provides employers**  
29 **unable to secure coverage in the voluntary market with a means for insuring their**  
30 **operations through a designated insurance carrier.**

31 [(3) "*Assigned carrier*" means the insurer that has been assigned to provide coverage to  
32 an employer who has applied for workers' compensation insurance pursuant to a Plan in a state  
33 other than Oregon.]

34 **(4) "Assigned Carrier Performance Standards" means the minimum level of**  
35 **performance for servicing carriers writing coverage on behalf of the Plan. The purpose of**  
36 **the Assigned Carrier Performance Standards is to provide policy issuance and service level**  
37 **requirements that servicing carriers must adhere to in order to provide assigned risk**  
38 **market policyholders with uniform service while reducing the overall loss ratio.**

39 **(5) "Board" means the Board of Directors or governing entity of the reinsurance**  
40 **organization selected by the Director to implement the assigned risk plan under ORS**  
41 **656.730.**

42 **(6) "Bona Fide Premium Dispute" means a disagreement relating to a workers'**  
43 **compensation premium established under OAR 836-043-0071(1).**

44 [(4)] **(7) "Client" means any person to whom workers are provided under contract and for**  
45 **a fee on a [temporary or] leased basis.**

1 **(8) “Common management interest” means an interest that exists when one or more**  
2 **individuals are or were owners or officers of, or performs or performed management**  
3 **functions for, two or more entities, or for a succession of entities.**

4 [(5)] **(9) "Employer" means any business organization or enterprise that has a statutory**  
5 **right to maintain workers' compensation insurance in [this state. The term shall include]Oregon.**  
6 **“Employer” includes:**

7 **(a) Any business organization or enterprise that is affiliated at any time as a result of**  
8 **common management or ownership; or**

9 **(b)[.The term includes] A client business of a worker leasing company as established in**  
10 **ORS 656.850.**

11 **(10) “Governing state” means the state that generates the largest amount of payroll.**

12 **(11) “Insured” means the employer designated in the information page of a policy to**  
13 **which this Plan is applied and issued by a servicing carrier.**

14 **(12) “Insurance Commissioner” means the Director of the Department of Consumer**  
15 **and Business Services or the person appointed by the director to serve as Insurance**  
16 **Commissioner under ORS 705.115.**

17 [(6)] **(13) "Insurer" [includes] means the State Accident Insurance Fund Corporation or a**  
18 **person licensed under ORS chapter 731 for workers’ compensation that satisfies its**  
19 **participation obligation by subscribing to the organizing principles. By subscribing to the**  
20 **organizing principles, an insurer shares in the results of the reinsurance pooling**  
21 **mechanisms on a pro-rata basis of their net premiums written within the state. The insurer**  
22 **may be assessed or receive disbursements depending upon the reinsurance pooling**  
23 **mechanism’s operating results.**

24 [(7)] **(14) "National Council on Compensation Insurance, Inc." and "NCCI" mean a rating**  
25 **organization that is licensed in [this state]Oregon to make and file rates, rating values,**  
26 **classifications and rating plans for workers' compensation insurance, and is an organization that**  
27 **authorized workers' compensation insurers may be members for the purpose of satisfying ORS**  
28 **737.560.**

29 [(8)] **"National Workers' Compensation Reinsurance Pool" or "National Pool" means the**  
30 **nonprofit unincorporated association of insurers that serves as a reinsurance facility for**  
31 **workers' compensation insurance in a number of states and that is administered by the National**  
32 **Council on Compensation Insurance, Inc.]**

33 [(9)] **(15) "Net premiums written" means the gross direct premiums charged less all**  
34 **premiums (except dividends and savings refunded under participating policies) returned to**  
35 **insureds for all workers' compensation and occupational disease insurance, exclusive of**  
36 **premiums for employers subject to the Plan, and for employers written under the National**  
37 **Defense Projects Rating Plan and under excess policies.**

38 **(16) “Organizing principles” means the agreement and principles of the reinsurance**  
39 **organization, approved by the Director, that govern the management of and participation**  
40 **in the Plan. A carrier participating in the Plan subscribes to the organizing principles.**  
41 **“Organizing principles” may include any of the following, as applicable:**

42 **(a) The National Pool reinsurance mechanism that is filed with and approved by the**  
43 **Insurance Commissioner and that is authorized under the Plan to provide reinsurance to**  
44 **the servicing carriers on employers assigned to them under the Plan.**

1 (b) The Bylaws of the National Workers' Compensation Reinsurance Association  
2 NFP (NWCRA or Association), whose member insurers participate in the Reinsurance  
3 Agreement(s) authorized under this Plan to provide reinsurance to the servicing carriers  
4 on employers assigned to them under this Plan. The Bylaws are the agreement subscribed  
5 to by insurers selecting Option 2—Subscription to organizing principles as their means of  
6 satisfying their participation in the Plan.

7 (c) The agreement or management rules of any reinsurance organization selected by  
8 the Director to implement Oregon's assigned risk plan.

9 [(10)](17) "Plan" means the Oregon Workers' Compensation Insurance Plan.

10 [(11)](18) "Plan Administrator" means the organization designated in OAR 836-043-  
11 0017, and its agents.

12 (19) "Producer" means a person who is licensed as an insurance producer under  
13 ORS 744.052 to 744.089, whose privileges under this Plan have not been suspended or  
14 revoked, designated by the employer or applicant applying under this Plan to secure and  
15 maintain workers' compensation and employers liability insurance on behalf of the  
16 employer. For purposes of this Plan, the producer is considered to be acting on behalf of  
17 the insured or employer applying for coverage under this Plan and not as a producer of the  
18 Plan Administrator or of any servicing carrier for Plan business.

19 (20) "Reasonable offer of voluntary coverage" means any offer for voluntary  
20 coverage where the total estimated annual premium is less than or equal to the assigned  
21 risk total estimated annual premium including any applicable assigned risk surcharges or  
22 pricing programs for all comparable coverage. Subject to the Plan Administrator's  
23 discretion, "reasonable offer of coverage" does not include:

24 (a) An offer that does not provide all of the required coverage (e.g., carrier cannot  
25 provide federal coverage or limits of liability);

26 (b) An offer that includes a deductible or deposit that is a financial burden to the  
27 employer as determined by the producer or employer; or

28 (c) The carrier's financial rating status is below that required by the producer or  
29 employer.

30 (21) "Regulatory authority" means the commissioner, director or superintendent of  
31 a state's insurance regulatory agency, or a properly appointed designee of the  
32 commissioner, director or superintendent.

33 (22) "Reinsurance Agreement" means a contractual arrangement among association  
34 members providing a quota share reinsurance facility for workers' compensation  
35 insurance in a number of states and for which administrative services are provided by the  
36 National Council on Compensation Insurance, Inc. in its capacity as administrator as  
37 designated under the organizing principles.

38 (23) "Reinsurance Organization" means the entity selected by the Director to  
39 implement Oregon's workers compensation assigned risk plan under ORS 656.730.  
40 "Reinsurance Organization" may include:

41 (a) The National Workers' Compensation Reinsurance Association, a nonprofit  
42 corporation whose members provide for contractual quota share reinsurance through  
43 reinsurance agreements among themselves as workers' compensation insurers, which  
44 affords the insurers an option for complying with state insurance plan requirements by  
45 sharing in the experience of certain policies written pursuant to such insurance plans;

1 **(b) The National Workers' Compensation Reinsurance Pool, a contractual**  
2 **reinsurance mechanism among participating workers' compensation insurers, that affords**  
3 **insurers in certain states an option for complying with state insurance plan requirements**  
4 **by sharing in the experience arising out of certain policies written pursuant to such**  
5 **insurance plans; or**

6 **(c) Any other entity selected by the Director to implement the Oregon assigned risk**  
7 **plan.**

8 [(12)](24) "Servicing carrier" means an insurer, including the State Accident Insurance  
9 Fund Corporation, approved by the Insurance Commissioner that has been assigned to provide  
10 coverage to an eligible employer who has applied for workers' compensation insurance pursuant  
11 to the Plan.

12 **(25) "State" means any state of the United States and the District of Columbia.**

13 [(13)](26) "Undisputed premium obligation" means a workers' compensation insurance  
14 premium obligation that is not the subject of a bona fide dispute pursuant to ORS 737.318 or  
15 ORS 737.505 or by a judicial action, and for which there is no written payment plan in effect  
16 between an insurer and employer.

17 [(14)](27) "Workers' compensation insurance" means:

18 (a) Statutory workers' compensation and occupational disease liability insurance,  
19 including insurance for liability under the Longshore and Harbor Workers' Compensation Act, as  
20 amended, and the Federal Coal Mine Health and Safety Act of 1969, as amended;

21 (b) Employers liability insurance written in connection with a workers' compensation  
22 insurance policy; and

23 (c) Such additional coverage as determined by the Plan Administrator and approved by  
24 the **Insurance** Commissioner.

25 [(15)](28) "Workers' Compensation Rating System Review and Advisory Committee"  
26 means the committee established pursuant to OAR 836-043-0200 to hear employer grievances  
27 pursuant to ORS 737.505.

28 **Note: The Bylaws and the National Pool reinsurance mechanism (Articles of**  
29 **Agreement) are attached to this rule as Exhibit 4.**

30  
31 Stat. Auth.: ORS 656.427, ORS 656.730 & ORS 731.244

32 Stats. Implemented: ORS 656.427, ORS 656.730 & ORS 737.265

33  
34 **836-043-0009**

35 **Participation by Insurers and Insurance Producers**

36 (1) All insurers authorized to transact workers' compensation insurance in [*this*  
37 *state*]**Oregon** are required to participate in the Plan and subscribe to the [*Articles of*  
38 *Agreement*]**organizing principles** for [*this state*]**Oregon**.

39 (2) Failure of an insurer to comply with the Plan is grounds for revocation of the insurer's  
40 certificate of authority to transact workers' compensation insurance.

41 (3) Each insurance producer who is authorized to transact the class of **property and**  
42 **casualty** insurance is authorized to transact workers' compensation insurance offered by the Plan.  
43 The Director of the Department of Consumer and Business Services may terminate [*an*  
44 *insurance*]**a** producer's authority under this section for cause.

1 (4) An insurer may terminate participation in this Plan as of the close of the  
2 calendar year in which its authority to write workers' compensation is terminated. With  
3 respect to all policies in force on the effective date of an insurer's termination, the liability  
4 of the terminating insurer will cease on the succeeding anniversary date of each such  
5 policy. Termination of participation does not discharge or otherwise affect liabilities  
6 incurred prior to the anniversary date of such policies, and the insurer will be charged or  
7 credited in due course with the insurer's proper share of all expenses, losses, and profits  
8 allocable thereof.

9 (5) All insurers participating in the Plan through the Reinsurance Agreements  
10 provided for in the organizing principles shall share in the writings, expenses, servicing  
11 allowance and losses. Each insurer's participation in the Plan shall:

12 (a) Be in the proportion that the total net premiums of all members participating in  
13 the Plan in Oregon during the preceding calendar years bear to the aggregate direct  
14 premiums written in Oregon during the preceding calendar years by all insurers  
15 participating through the Reinsurance Agreements;

16 (b) Except as provided in OAR 836-043-0017(2)(k), exclude that portion of the  
17 premiums attributable to the operation of the Plan; and

18 (c) Be determined on the basis of the direct premiums as reported in the most recent  
19 annual reports filed with the regulatory authority.

20  
21 Stat. Auth.: ORS 656.427, 656.730 & 731.244

22 Stats. Implemented: ORS 656.427, 656.730 & 737.265

23  
24 **836-043-0017**

25 **Plan Administrator**

26 (1) The Plan Administrator is a rating organization for workers' compensation insurance  
27 in *[this state]* **Oregon** that is designated as the plan administrator by the *[Insurance*  
28 *Commissioner]* **Director. The National Council on Compensation Inc. is designated as the**  
29 **Plan Administrator.** The Plan Administrator shall continue to serve from the effective date of  
30 the Plan unless the Plan Administrator resigns. The Plan Administrator must give advance  
31 written notice of its resignation to the *[Insurance Commissioner]* **Director** at least one year in  
32 advance of the effective date of resignation.

33 (2) The Plan Administrator has the following duties and responsibilities in addition to any  
34 others set forth in the Plan and the *[Articles of Agreement]* **organizing principles:**

35 *[(a) Administering, managing and enforcing the Plan, subject to the rules governing the*  
36 *Plan;]*

37 *[(b)]* **(a)** Determining the methodology and formula for making assignments to servicing  
38 carriers pursuant to OAR 836-043-0060 and securing the necessary information in order to make  
39 the assignments;

40 **(b) Developing and implementing assigned risk operating rules and forms approved**  
41 **by the Director to the extent necessary to carry out the purposes of the Plan;**

42 (c) Processing assigned risk applications<sup>]</sup>, *determining eligibility for coverage and*  
43 *binding coverage pursuant to the requirements of the Plan;* **pursuant to OAR 836-043-0041;**

44 *[(d) Establishing eligibility criteria for servicing carriers and selecting servicing*  
45 *carriers, subject to approval by the Commissioner;]*

1 [(e)](d) Establishing written [performance requirements] **Assigned Carrier Performance**  
2 **Standards** for servicing carriers, subject to approval by the **Insurance** Commissioner, including,  
3 but not limited to:

- 4 (A) Verification of ongoing Plan eligibility of the employer;
- 5 (B) Issuance of policies and endorsements;
- 6 (C) Filings with administrative agencies;
- 7 (D) Maintenance of premiums on policies, consistent with manual rules, rates, rating  
8 plans, and classifications;
- 9 (E) Completion and billing of final audits;
- 10 (F) Collection of premium;
- 11 (G) Claim services, including investigation, disability management and medical cost  
12 control;
- 13 (H) Loss control services and safety information to encourage employers to make safety a  
14 part of their business;
- 15 (I) Payment of [insurance] producer fees;
- 16 (J) Issuance of renewal proposals and non-renewal notices;
- 17 (K) Assurance of insured and insurer compliance with all terms and conditions of the  
18 policy contract;
- 19 (L) Resolution of complaints and response to insured and insurance producer inquiries;  
20 and

21 (M) Reporting financial and statistical data;  
22 [(f)](e) Monitoring servicing carrier performance and enforcing [performance  
23 requirements] **Assigned Carrier Performance Standards** and incentives;

24 [(g)](f) Administering the dispute resolution mechanism as provided in OAR 836-043-  
25 0070;

26 [(h)](g) Developing and implementing assigned risk operating rules and forms to the  
27 extent necessary to carry out the purposes of the Plan;

28 [(i)](h) Informing the Insurance Commissioner of any insurer that is not participating in  
29 this Plan; [and]

30 [(j)](i) Monitoring the performance and operation of the Plan and initiating amendments  
31 thereto as appropriate;

32 **(j) Determining the expenses for operation of the Plan, including but not limited to**  
33 **the Plan Administrator's fees or legal expenses associated with Plan matters, and assess**  
34 **each insurer participating in the Plan for those expenses on an equitable basis as**  
35 **determined by the Plan Administrator and approved by the Director; and**

36 **(k) Developing and administering a take-out credit program as provided in OAR**  
37 **836-043-0076.**

38 (3) The Plan Administrator shall also publish and make available to all affected insurers  
39 and [insurance] producers, upon request and at no charge, both the necessary information for  
40 placement in the Plan and the listings of all employers that have been placed into the Plan. The  
41 listings shall include each employer's name, address, policy expiration date, latest experience  
42 modification, if applicable, the [ARAP] **Simplified Assigned Risk Adjustment Program** factor  
43 and the governing class code.

44 (4) The Plan Administrator shall monitor compliance by servicing carriers with  
45 occupational safety and health consultative service requirements of ORS 731.480. The Plan

1 Administrator shall file with the Insurance Commissioner by May 1 of each year a report  
2 regarding such compliance for the preceding calendar year. The Plan Administrator shall also  
3 determine the expenses for operation of the Plan, not including the Plan Administrator's expenses  
4 incurred in connection with responsibilities it has under the Articles, and shall assess each  
5 insurer participating in the Plan for those expenses on an equitable basis as determined by the  
6 Plan Administrator.

7  
8 Stat. Auth.: ORS 656.427, 656.730 & 731.244  
9 Stats. Implemented: ORS 656.427, 656.730 & 737.265

10  
11 **836-043-0021**

12 **Servicing Carriers**

13 (1) The Plan Administrator shall establish written requirements that insurers must meet in  
14 order to be eligible to act as a servicing carrier. **The Plan Administrator shall provide the**  
15 **written requirements to the board for review and acceptance.** From among those insurers  
16 that are eligible and have applied to act as a servicing carrier, and subject to approval by the  
17 Insurance Commissioner, the Plan Administrator shall select a sufficient number of servicing  
18 carriers that are needed to handle the assignments made pursuant to the Plan. **The Plan**  
19 **Administrator may confer with the board in regard to the number of servicing carriers**  
20 **needed to handle the assignments made pursuant to this Plan.** Subject to approval by the  
21 Insurance Commissioner, the Plan Administrator may terminate the servicing carrier status of  
22 any insurer that fails to meet the servicing carrier requirements on a continuing basis.

23 **(2) In order to be a servicing carrier, an insurer must meet all of the following**  
24 **eligibility criteria:**

25 **(a) Be licensed to write workers' compensation and employers liability insurance in**  
26 **Oregon or be the State Accident Insurance Fund Corporation.**

27 **(b) Be writing or be an affiliated insurer of a carrier that is currently licensed and**  
28 **actively writing voluntary workers' compensation and employers liability insurance**  
29 **premium in Oregon and that has been licensed and writing in Oregon for each of the five**  
30 **calendar years immediately preceding the first effective year of the proposed contract, or**  
31 **be licensed and actively writing workers' compensation and employers liability insurance**  
32 **in Oregon for a minimum of the most recent three calendar years immediately preceding**  
33 **the first effective year of the proposed contract and active as a workers' compensation**  
34 **servicing carrier in any other national workers' compensation reinsurance organization in**  
35 **another state for a minimum of five calendar years immediately preceding the first**  
36 **effective year of the proposed contract.**

37 **(c) Be assigned and maintain at a minimum an "A-" rating as published by A.M.**  
38 **Best, except that such "A-" A.M. Best rating is not applicable to the State Accident**  
39 **Insurance Fund Corporation.**

40 **(d) Maintain the necessary staff and facilities to comply with the procedures,**  
41 **Assigned Carrier Performance Standards, financial reporting requirements, and Plan**  
42 **requirements.**

43 **(e) Comply with all applicable statutory and regulatory requirements, including but**  
44 **not limited to, statutes, regulations, codes, rules, acts, directives, bulletins, announcements**  
45 **and circulars.**

1 **(f) Be either precertified in writing by the Plan Administrator or have achieved and**  
2 **maintained and not be subject to a revocation of precertification or certification status as**  
3 **determined by the Plan Administrator under the applicable precertification or certification**  
4 **program established by the Plan Administrator.**

5 **(g) Comply with all mandatory electronic processing and reporting requirements of**  
6 **the Plan Administrator that are currently in effect.**

7 **(h) Comply with all federal and state laws and regulations, which relate to the**  
8 **policies applicable to the servicing carrier.**

9 [(2)](3) Each servicing carrier shall provide a report to the Plan Administrator in such a  
10 format and for such a period as determined by the Plan Administrator, but not less than  
11 semiannually. This report, among other things, shall provide information on the servicing  
12 carrier's operations related to Plan business in the following areas: underwriting, auditing,  
13 claims, loss control, premium collection and customer service. A summary of such reports shall  
14 be provided to the **Insurance** Commissioner.

15 [(3)](4) The Plan Administrator shall establish written [*minimum levels of acceptable*  
16 *performance for servicing carriers and shall establish procedures for measuring servicing*  
17 *carrier performance.*] **procedures for measuring servicing carrier performance. In**  
18 **recognition of the interests of the participating companies who have subscribed to the**  
19 **organizing principles, the Plan Administrator shall provide a copy of such written Assigned**  
20 **Carrier Performance Standards to the board for review and acceptance.** Servicing carriers  
21 shall manage losses in compliance with the performance standards established hereunder. The  
22 Plan Administrator, **with the approval of the Insurance Commissioner,** shall also establish the  
23 compensation for servicing carriers, which shall take into consideration, among other things,  
24 provisions for:

25 (a) Rewarding servicing carriers for positive action targeted at reducing losses and costs;

26 (b) Disincentives for inefficiencies and [*poor*] service **below the minimum Assigned**  
27 **Carrier Performance Standards;** and

28 (c) Servicing carrier capacity.

29 [(4) *Monitoring and enforcement are subject to the following provisions:*]

30 [(a)](5) The Plan Administrator shall monitor and review servicing carrier performance  
31 by:

32 [(A)](a) Reviewing the operations reports;

33 [(B)](b) Requiring and reviewing self-audits;

34 [(C)](c) Conducting on-site audits; and

35 [(D)](d) Reviewing any other information available that relates to the servicing carrier[;].

36 [(b)](6) The Plan Administrator shall require servicing carriers to maintain desired  
37 performance levels and shall take appropriate remedial action where necessary including, but not  
38 limited to, establishment and administration of a progressive discipline program which may lead  
39 to terminating an insurer's servicing carrier status[;].

40 [(c)](7) Termination of an insurer's servicing carrier status is subject to Insurance  
41 Commissioner approval[;].

42 [(d)](8) Any formal action taken by the Plan Administrator under this rule shall be the  
43 exclusive remedy and in lieu of any other penalty or sanction that may apply under the Plan[;].

44 [(e)](9) Any action taken by the Plan Administrator under this provision is subject to  
45 review under OAR 836-043-0070[; and].

1 [(f)]**10)** In order to fulfill its responsibilities under this Plan, the Plan Administrator shall  
2 have the right, itself or through authorized representatives, at all reasonable times during regular  
3 business hours, to audit and inspect the books and records of any servicing carrier with respect to  
4 any policies, claims, or related documents coming within the purview of the Plan, *[or the*  
5 *Articles]***the organizing principles or the Reinsurance Agreement. Upon request, the Plan**  
6 **Administrator shall make available to the Insurance Commissioner and the board a formal**  
7 **written report on the Plan Administrator’s monitoring and enforcement activities related**  
8 **to servicing carriers.**  
9

10 Stat.Auth.: ORS 656.427, 656.730 & 731.244  
11 Stats. Implemented: ORS 656.427, 656.730 & 737.265  
12

13 **836-043-0024**

14 **Right to Apply**

15 (1) An employer **who is eligible for workers’ compensation insurance as set forth in**  
16 **this rule** may apply to the Plan Administrator for workers' compensation insurance under the  
17 Plan as provided in this rule if the employer is unable to obtain *[an]***a reasonable** offer of  
18 *workers' compensation insurance in a regular manner from an insurer who is authorized to*  
19 *transact and is actively transacting workers' compensation insurance in this state, and if the*  
20 *employer is eligible for coverage under the Plan]***voluntary coverage. The employer must**  
21 **apply on the forms and according to the directions prescribed in Exhibits 1, 2, and 3 to this**  
22 **rule.**

23 **(2) For purposes of section (1) of this rule, the offer of a rating plan approved by the**  
24 **Insurance Commissioner is considered an offer of voluntary coverage or insurance. Any**  
25 **dispute arising from the application or interpretation of this rule is subject to the dispute**  
26 **resolution procedure provided in OAR 836-043-0070. As used in this section, “reasonable**  
27 **rating plan” means any rating program approved for use in a state by the regulatory**  
28 **authority.**

29 [(2)]**(3)** An employer seeking coverage under the Plan **or a representative of the**  
30 **employer** must *[ apply to the Plan Administrator not later than the 60th day after the date on*  
31 *which the employer is declined coverage as provided in section (1) of this rule. The right of an*  
32 *employer to apply to the Plan Administrator does not apply when the employer is declined*  
33 *coverage by the insurer providing workers' compensation insurance to the employer at the time*  
34 *of application to the Plan Administrator.]*

35 **(a) Within 60 days before applying for coverage under the Plan, apply for workers’**  
36 **compensation insurance and receive a declination from at least one insurer licensed to**  
37 **write and actively writing workers’ compensation insurance in Oregon. The declination**  
38 **must be from the insurer providing workers’ compensation insurance to the employer at**  
39 **the time of application, if any. Proof of cancellation or nonrenewal from the insurer shall**  
40 **be considered to be the required declination.**

41 **(b) Maintain a record of all insurer declinations for the policy period in force. The**  
42 **employer must provide this information to the Plan Administrator or servicing carrier**  
43 **upon request. The information must include:**

44 **(A) Insurer name;**

45 **(B) Person contacted at insurer;**

1 **(C) Mailing address and phone number of insurer contact; and**

2 **(D) Date of declination.**

3 *[(3) For purposes of section (1) of this rule, the offer of insurance with premium*  
4 *determined by any rating plan approved for use in this jurisdiction is an offer of insurance in a*  
5 *regular manner.]*

6 (4) For purposes of section (1) of this rule, an employer is presumed to be eligible in the  
7 absence of clear and convincing evidence to the contrary. An employer is not eligible if any of  
8 the following circumstances exists at the time of application or thereafter:

9 (a) *[At the time of application, the employer is]* A self-insured employer **knows** and is  
10 aware of pending bankruptcy proceedings, insolvency, cessation of operations or conditions that  
11 will probably result in occupational disease or cumulative injury claims from exposures incurred  
12 while the employer was self-insured[.];

13 (b) The employer, while insurance issued under the Plan is in force[.];

14 **(A) Knowingly refuses to meet reasonable health, safety or loss control requirements[.];**

15 **(B) Does not allow any insurer or the servicing carrier reasonable access to its records**  
16 **for audit or inspection under the policy; or**

17 **(C) Does not comply with any other policy obligation[.];**

18 (c) The employer has an outstanding workers' compensation insurance premium  
19 obligation or other monetary policy obligation **including but not limited to an obligation**  
20 **under a deductible program,** on previous workers' compensation insurance that is not subject  
21 to a bona fide dispute[; or];

22 (d) The employer *[or its agent]*, **a representative of the employer, or the producer**  
23 **knowingly fails to comply with Plan procedures, or knowingly** makes a material  
24 misrepresentation on the application by **express statement,** omission or otherwise, including but  
25 not limited to:

26 **(A) Estimated payroll[.];**

27 **(B) Offers of workers' compensation insurance[.];**

28 **(C) Nature of business[.];**

29 **(D) Name [or ownership] of business[.];**

30 **(E) Management or ownership of business;**

31 **(F) [premium]Previous insurance history[. or];**

32 **(G) Avoidance of an experience rating modification;**

33 **(H) An outstanding workers' compensation insurance premium obligation or other**  
34 **monetary policy obligation of the employer[.];**

35 **(I) Noncompliance with any applicable state licensing or registration requirement;**

36 **(J) Fails to accept any reasonable offer of voluntary coverage; or**

37 **(K) Other evidence exists that shows the employer is not entitled to insurance**

38 *[(e) Except as provided in subsection (6) of this section, the employer is required to*  
39 *obtain a license as a worker-leasing company and has yet to be licensed as a worker-leasing*  
40 *company.]*

41 *[(5) An employer may apply to the Plan Administrator for coverage by electronic*  
42 *transmission or telephone, as provided by OAR 836-043-0028, or by United States mail or a*  
43 *private overnight mail delivery company as provided by OAR 836-043-0032. An application*  
44 *must be made on the forms and according to the directions prescribed in Exhibits 1, 2, and 3 to*  
45 *this rule.]*

1 **(5) An eligible employer may submit a completed application for assigned risk**  
2 **coverage through the Plan by any method approved by the Plan Administrator, including:**

3 **(a) Online—Through ncci.com ;**

4 **(b) Mail—The U.S. Postal Service or private overnight delivery service; or**

5 **(c) Telephone—By contacting the Plan Administrator.**

6 (6) The Plan Administrator shall conditionally bind coverage of a worker[-] leasing  
7 company applicant for an initial worker[-] leasing company license under OAR 436-050-0440  
8 pending issuance of the license by the Director.

9 **(7) An eligible employer or the representative of the employer must submit the total**  
10 **initial or deposit premium by a method approved by the Plan Administrator including:**

11 **(a) Electronic fund transfer;**

12 **(b) Credit card; or**

13 **(c) Check.**

14 [ED. NOTE: Exhibits referenced in this rule are available from the agency.]

15  
16 Stat. Auth.: ORS 656.427, ORS 656.730 & ORS 731.244

17 Stats. Implemented: ORS 656.427, ORS 656.730 & ORS 737.265

18  
19 **836-043-0028**

20 **Application by Electronic Transmission or Telephone**

21 (1) An application made by electronic transmission or telephone must be completed in  
22 full and must be signed. The signature may be submitted by facsimile transmission. The  
23 [application may include a requested date for the coverage to become effective pursuant  
24 to] **effective date of coverage shall be determined in accordance with** OAR 836-043-0044.

25 [(2) Upon receiving an application, the Plan Administrator shall review the application  
26 for completeness and determine whether the employer is eligible for coverage under the Plan. If  
27 the employer is ineligible, the Plan Administrator shall so inform the employer. If the employer  
28 is eligible, the Plan Administrator shall calculate the initial premium and inform the employer or  
29 its agent of the applicable premium and the submission options identified by the Plan  
30 Administrator. The Plan Administrator shall refer to the Oregon State Instruction page of the  
31 application (*Exhibit 3* to OAR 836-043-0024) for the minimum deposit percentage, and the  
32 percentage determined shall be the initial premium..]

33 **(2) An employer or the representative of an employer may apply for assigned risk**  
34 **coverage electronically by accessing NCCI's online application service. Upon receipt of an**  
35 **application submitted electronically, the Plan Administrator shall review the information**  
36 **to determine whether the employer is eligible. If the employer is eligible and the**  
37 **application is complete and accurate, the Plan Administrator shall calculate electronically**  
38 **the initial or deposit premium amount and request the employer to submit the amount to**  
39 **continue the application process. The amount of the initial or deposit premium shall be**  
40 **determined in accordance with rules set forth in Exhibit 3 to OAR 836-043-0024.**

41 (3) The employer or its agent must submit the total required initial premium to the Plan  
42 Administrator by **credit card or** electronic funds transfer[, *mail-in check or verbal check*]. A  
43 portion of the deposit premium may be satisfied with an authorized surety's financial guaranty  
44 bond **as provided in OAR 836-043-0034.**[, *but the cash portion shall be no less than either the*  
45 *minimum premium or 25 percent of the required premium, whichever is greater. The applicant*

1 may select any minimum deposit percentage listed in the Oregon State Instructions page (Exhibit  
2 3 to OAR 836-043-0024) and post a bond for the premium difference between that percentage  
3 and the minimum deposit percentage otherwise applicable. If the application is otherwise  
4 complete and the Plan Administrator determines that the employer is eligible for coverage, in  
5 order for coverage to be bound on the effective date requested under section (1) of this rule, the  
6 initial premium must be received by the Plan Administrator not later than the fifth business day  
7 after the Plan Administrator notifies the employer or its agent of the amount of the initial  
8 premium.]

9 **(4) (a) The employer or the representative of the employer may contact the Plan**  
10 **Administrator by telephone to apply for assigned risk coverage. If the information**  
11 **provided by telephone is complete, accurate, and the employer is deemed eligible for**  
12 **coverage, the Plan Administrator shall:**

13 **(A) Advise the employer of the total estimated annual premium and required initial**  
14 **or deposit premium required to bind coverage; and**

15 **(B) Fax the employer a copy of the completed applications as set forth in Exhibits 1**  
16 **and 2 of OAR 836-043-0024 for review and signature.**

17 **(b) For a application made by telephone, the employer or the representative of the**  
18 **employer shall submit the total required initial or deposit premium by electronic funds**  
19 **transfer in accordance with rules set forth in Exhibit 3 to OAR 836-0043-0028.**

20  
21 Stat. Auth.: ORS 656.427, ORS 656.730 & ORS 731.244

22 Stats. Implemented: ORS 656.427, ORS 656.730 & ORS 737.265

23  
24 **836-043-0032**

25 **Nonelectronic Application**

26 (1) An [application made]**employer or the representative of an employer may submit**  
27 **a signed and completed application as set forth in Exhibits 1 and 2 of OAR 836-043-0024** by  
28 United States mail or a private overnight mail delivery **service** [company must be completed in  
29 full and must be signed]. The application must **be sent to the Plan Administrator and must**  
30 include the **initial or** deposit premium as calculated by the employer or its agent. The application  
31 may include a requested date for the coverage to become effective. A portion of the deposit  
32 premium may be satisfied with an authorized surety's financial guaranty bond **as provided in**  
33 **OAR 836-043-0034.** but the cash portion shall be no less than either the minimum premium or  
34 25 percent of the required premium, whichever is greater. The applicant may select any  
35 minimum deposit percentage listed in the Oregon State Instructions page (Exhibit 3 to OAR 836-  
36 043-0024) and post a bond for the premium difference between that percentage and the minimum  
37 deposit percentage otherwise applicable.]

38 (2) The employer or its agent shall refer to [the Oregon State Instruction page (]Exhibit 3  
39 to OAR 836-043-0024[)] of the application for the [minimum deposit percentage for the purpose  
40 of determining the amount of the deposit premium to be submitted by the employer.]**applicable**  
41 **deposit or initial premium rules.**

42 [(3) Upon receiving an application, the Plan Administrator shall review the application  
43 for completeness and determine whether the employer is eligible for coverage under the Plan. If  
44 the employer is ineligible or the application incomplete, the Plan Administrator shall so inform  
45 the employer or its agent.]

1  
2 Stat. Auth.: ORS 656.427, ORS 656.730 & ORS 731.244  
3 Stats. Implemented: ORS 656.427, ORS 656.730 & ORS 737.265

4  
5 **836-043-0034**  
6 **Surety Bonds**

7 **For all submission options under OAR 836-043-0028 or 836-043-0032, the employer**  
8 **submitting an application may satisfy a portion of the deposit premium with an authorized**  
9 **surety's financial guaranty bond, but the cash portion of the deposit premium must be no**  
10 **less than either the minimum premium or 25 percent of the total estimated annual**  
11 **premium, whichever is greater. The employer may select any minimum deposit percentage**  
12 **listed in the NCCI Plan Oregon State Instructions page (Exhibit 3 to OAR 836-042-0024)**  
13 **and post a bond for the premium difference between that percentage and the minimum**  
14 **deposit percentage otherwise applicable.**

15  
16 **Stat. Auth.: ORS 656.427, ORS 656.730 & ORS 731.244**  
17 **Stats. Implemented: ORS 656.427, ORS 656.730 & ORS 737.265**

18  
19 **836-043-0036 - Repealed**  
20 ***Facsimile Transmission***

21 *Until July 1, 1997, in addition to the application methods authorized in OAR 836-043-*  
22 *0024(5), an employer may apply to the Plan Administrator for coverage by facsimile*  
23 *transmission. An application by facsimile transmission:*

- 24 *(1) Must be made on the forms and according to the directions prescribed in Exhibits 1,*  
25 *2, and 3 to OAR 836-043-0024; and*  
26 *(2) Is subject to the provisions of OAR 836-043-0028 and 836-043-0044.*

27  
28 *Stat. Auth.: ORS 656.427, ORS 656.730 & ORS 731.244*  
29 *Stats. Implemented: ORS 656.427, ORS 656.730 & ORS 737.265*

30  
31 **836-043-0037 - Repealed**  
32 ***Operative Dates for Transmission Methods***

- 33 *(1) An employer may apply to the Plan Administrator for coverage by telephone on and*  
34 *after July 1, 1996.*  
35 *(2) An employer may apply to the Plan Administrator for coverage by electronic*  
36 *transmission on and after November 1, 1996.*

37  
38 *Stat. Auth.: ORS 656.427, ORS 656.730 & ORS 731.244*  
39 *Stats. Implemented: ORS 656.427, ORS 656.730 & ORS 737.265*

40  
41 **836-043-0041**  
42 **Application Review**

43 **(1) Upon receiving an application submitted under OAR 836-043-0028 or 836-043-**  
44 **0032, the Plan Administrator shall review the application for completeness and determine**  
45 **whether the employer is eligible for coverage under the Plan.**

1           (2)[(1)For the purpose of reviewing an application,] The Plan Administrator may request  
2 additional information to establish eligibility, to assign appropriate classification codes, to  
3 calculate applicable premiums and to otherwise appropriately process the application. **The**  
4 **additional** information may include:

5           **(a) Tax documentation[,];**

6           **(b) Ownership information, including a request to complete and sign a change of**  
7 **ownership form;**

8           **(c) Contracts, including worker leasing company arrangements, temporary**  
9 **employment agency contract or franchise agreements;**

10           **(d) Supplemental worker leasing company applications;**

11           **(e) Additional information regarding short-term policies requests, such as**  
12 **verification of annualized payroll;**

13           **(f) Proof of declination of voluntary coverage;**

14           **(g) Prior policy information including claims and audits, corporate charters, [D and**  
15 **B]Dun & Bradstreet, Inc. reports, signed financial statements and signed letters of explanation;**  
16 **and**

17           **(h) Any other information that the Plan Administrator considers necessary to**  
18 **process the application.**

19           [(2)](3) The employer or its agent shall provide information and documentation requested  
20 by the Plan Administrator or provide an acceptable explanation for failure to provide the  
21 requested items not later than the second business day after the request or upon the mutually  
22 agreed-upon date.

23           [(3)](4) The Plan Administrator may return an incomplete application to the employer or  
24 its agent for completion or, with notice to the employer or its agent, the Plan Administrator may  
25 retain the application pending receipt of further information. The Plan Administrator may reject  
26 an application **and the previously established effective date** if the employer fails to comply in a  
27 timely manner with a request from the Plan Administrator.

28           **(5) An employer or a representative of an employer may resubmit a complete**  
29 **application to the Plan Administrator for an application review and establishment of a new**  
30 **effective date in accordance with 836-043-0044.**

31           [(4) An employer or its representative shall maintain on record for the policy period the  
32 name of the insurer that declined the employer, and the contact person, address, phone number  
33 and date of contact, and make such information available to the Plan Administrator or servicing  
34 carrier upon request.]

35 Stat. Auth.: ORS 656.427, ORS 656.730 & ORS 731.244

36 Stats. Implemented: ORS 656.427, ORS 656.730 & ORS 737.265

37  
38 **836-043-0044**

39 **Binding Coverage**

40           **(1) The Plan Administrator may issue binders to eligible employers in accordance**  
41 **with the provisions of this Plan. The servicing carrier shall provide coverage under any**  
42 **binder issued by the Plan Administrator, subject to the provisions of the Plan, any**  
43 **applicable policy terms or conditions, and any applicable laws, rules, or regulations. The**  
44 **Plan Administrator shall send copies of the binder to the employer's representative, if any,**

1 **the servicing carrier to which the Plan Administrator assigned the employer and the**  
2 **Director of the Department of Consumer and Business Services.**

3 [(1)] (2) The Plan Administrator shall [*bind coverage*] **issue a binder** for an employer  
4 [*if*] **when** the Plan Administrator determines [*that*] **all of the following occur:**

5 (a) The employer is eligible for coverage[.];

6 (b) **The Plan Administrator has received an** application **that** is complete and signed **by**  
7 **an officer, owner or other designee with power of attorney and includes any additional**  
8 **information within the established time frame;** and

9 (c) **The Plan Administrator has received** the **total** initial premium or deposit premium  
10 [*is paid*] **within the established time frame.**

11 [(2) *The effective date of coverage of an employer applying for coverage by electronic*  
12 *transmission or telephone, other than an employer that was self-insured, is the later of the*  
13 *following dates but in any event must not be later than the 60th day after the date of application:*

14 [(a) *12:01 a.m. on the date following receipt by the Plan Administrator of a complete*  
15 *application;*

16 [(b) *The date of expiration of existing coverage; or*

17 [(c) *A date requested by the employer.*

18 [(3) *The effective date of coverage of an employer applying for coverage by*  
19 *nonelectronic means, other than an employer that was self-insured, is the later of the following*  
20 *dates but in any event must not be later than the 60th day after the date of application:*

21 [(a) *12:01 a.m. on the day following the date of the postmark or equivalent receipt date*  
22 *on the envelope in which the application and check for the deposit premium is mailed;*

23 [(b) *The date of expiration of existing coverage; or*

24 [(c) *A date requested by the employer.*

25 [(4) *The effective date of coverage of an employer applying for coverage by*  
26 *nonelectronic means, other than an employer that was self-insured, when there is no postmark or*  
27 *equivalent receipt date, is the later of the following dates, but in any event must not be later than*  
28 *the 60th day after the date of application:*

29 [(a) *12:01 a.m. on the date following receipt by the Plan Administrator of a complete*  
30 *application;*

31 [(b) *The date of expiration of existing coverage; or*

32 [(c) *A date requested by the employer.*

33 (5) *Subject to the review by the servicing carrier, an employer that was self-insured may*  
34 *request and obtain an effective date that is not later than 12:01 a.m. of the 60th day after the*  
35 *date on which the Plan Administrator receives a complete application.]*

36 (3) **After the Plan Administrator binds coverage, the Plan Administrator shall**  
37 **provide the servicing carrier with the following:**

38 (a) **A copy of the binder;**

39 (b) **The initial or deposit premium;**

40 (c) **The application forms as set forth in Exhibits 1 and 2 to OAR 836-043-0024;**

41 (d) **Copies of any provided election or rejection forms;**

42 (e) **Other forms submitted during the application review process; and**

43 (f) **Any information to assist the servicing carrier in providing the proper coverage**  
44 **and correct rates including but not limited to experience rating modification worksheet**

1 data, NCCI's Inspection and Classification Report, and change of ownership information  
2 form if applicable.

3 (4) Upon receipt of the assignment package, the servicing carrier shall review the  
4 documents to ensure that all documentation needed to properly issue the policy is attached.  
5 Based on the separate review of the servicing carrier , the servicing carrier may request  
6 additional information or premium from the employer. The servicing carrier must receive  
7 all additional requested information or premium before the servicing carrier issues a  
8 policy.

9 (5) The servicing carrier shall issue the policy in accordance with Plan rules, state  
10 law and the Assigned Carrier Performance Standards.

11 (6) The binder or verification page remains in effect until cancelled or until the  
12 servicing carrier issues a policy in accordance with the Assigned Carrier Performance  
13 Standards or state law. If the Plan Administrator does not issue a binder, coverage does not  
14 exist.

15 (7) (a) The employer or the representative of the employer may request an effective  
16 date no later than sixty days after the date of application. However, such requested  
17 effective date must be the later of the following:

18 (A) The established effective date as outlined in the tables set forth in subsection (8)  
19 of this rule;

20 (B) The date of expiration of existing coverage; or

21 (C) A date the employer requested.

22 (b) To secure a requested effective date, the employer or the representative of the  
23 employer shall:

24 (A) Submit to the Plan Administrator a signed and completed application as  
25 described in Exhibits 1 and 2 to OAR 836-043-0024 using one of the submission methods  
26 described in OAR 836-043-0024(5).

27 (B) For an application submitted by U.S. Postal Service or private overnight  
28 delivery service, at a minimum, include in the application submission the required critical  
29 threshold elements as defined in NCCI's Assigned Risk Supplement to the Basic Manual.

30 (C) If submitting an application via mail or an overnight delivery service, include  
31 the appropriate initial or deposit premium. The Plan Administrator will consider the  
32 receipt of the application at the specified mailing address receipt.

33 (8) The earliest effective date for coverage is dependent on the method used to  
34 submit the application and shall be determined in accordance with the following tables:

35  
36 **Application Submission Table 1**

<b><u>If the application is submitted by regular mail and the envelope containing the application has ...</u></b>	<b><u>Then the earliest eligible effective date is 12:01 a.m. on the day after ...</u></b>
<b><u>A legible U.S postmark</u></b>	<b><u>Postmark</u></b>
<b><u>An illegible U.S. postmark</u></b>	<b><u>Receipt of the application by the Plan Administrator</u></b>
<b><u>A meter mark only</u></b>	<b><u>Receipt of the application by the Plan Administrator</u></b>
<b><u>Internet postage with a legible cancellation</u></b>	<b><u>The date on the cancellation stamp</u></b>

stamp	
Internet postage without a cancellation stamp or an illegible cancellation stamp	Receipt of the application by the Plan Administrator

**Application Submission Table 2**

If the application is submitted by overnight mail and ...	Then the earliest eligible effective date is 12:01 a.m. on the day after ...
The package containing the application has proof of mailing that can be verified	The application was sent to the Plan Administrator
The package containing the application does not have proof of mailing or proof of mailing cannot be verified	Receipt of the application by the Plan Administrator
Proof of mailing (i.e., certified mail receipt) can be obtained	Postmark
Proof of mailing cannot be obtained	Receipt of the application by the Plan Administrator

**Application Submission Table 3**

If all required information and deposit premium is received within the established time frame and the application is submitted by...	Then the earliest eligible effective date is 12:01 a.m. on the day after receipt of the ...
Online application service established by the Plan Administrator	Completed online submission
Telephone	Telephone submission

[(6)](9) If the Plan Administrator fails to issue a binder to an eligible employer by the 14th day after receiving a completed application and the total initial or deposit premium, coverage is bound at 12:01 a.m. on the later of the dates specified in [section (2)]**section (8)** of this rule.

[(7) Except as provided in section (8) of this rule, the Plan Administrator shall send the binder as authorized under ORS 742.043(3), to the employer, the agent, the Compliance Section of the Workers' Compensation Division of the Department of Consumer and Business Services and the servicing carrier to which the Plan Administrator assigned the coverage. The binder remains in effect until canceled or a policy is issued.]

[(8)](10) A binder issued to a worker[-] leasing company applicant in compliance with requirements for an initial worker[-] leasing company license under OAR 436-050-0440 is extended as provided in this section until the Director **of the Department of Consumer and Business Services** either licenses or refuses to license the applicant, as follows:

(a) The binder is conditional upon the subsequent initial worker[-] leasing company licensing by the Director. The binder does not obligate the Plan to provide coverage to the worker[-] leasing company for its clients until the worker[-] leasing company is licensed by the Director **of the Department of Consumer and Business Services**.

1 (b) Upon the conditional binding of the applicant worker[-] leasing company, the Plan  
2 Administrator shall send the binder to those entities listed in section [(7)](1) of this rule, except  
3 for the servicing carrier.

4 (c) Upon the [Director's] initial licensing of a worker[-] leasing company applicant **by**  
5 **the Director of the Department of Consumer and Business Services,** and receipt of proof of  
6 licensing, the Plan Administrator shall assign an unconditional binder to a servicing carrier and  
7 send an unconditional binder to all entities listed in section [(7)](1) of this rule.

8 (d) Upon the [Director's] refusal to license a worker[-] leasing company applicant **by the**  
9 **Director of the Department of Consumer and Business Services,** and upon receipt of proof of  
10 refusal, the Plan Administrator shall send notice to all entities listed in section [(7)](1) of this  
11 rule that the conditional binder has been rescinded and the applicant was not covered.

12  
13 Stat. Auth.: ORS 656.427, ORS 656.730 & ORS 731.244

14 Stats. Implemented: ORS 656.427, ORS 656.730 & ORS 737.265

15  
16 **836-043-0046**

17 **Rates and Forms, Policy Term, Additional Coverages and Other Provisions**

18 (1) An insurer issuing a policy to an employer to which the Plan applies shall write the  
19 policy according to the classifications, forms **including but not limited to policy**  
20 **endorsements, change of ownership forms, supplemental leasing forms, and** rates and rating  
21 plans **including retrospective rating plans authorized for use in the assigned risk market**  
22 [recommended] by the Plan Administrator and approved by the **Insurance** Commissioner[,  
23 and]as required in ORS 737.265 (2). [Each policy must be in writing and must be issued prior to  
24 expiration of the binder.]

25 (2) The policy information page and all endorsements must be properly identified as a  
26 [WCIP]Plan or AR (Assigned Risk) policy, and policy information submitted on hard copy must  
27 show the [WCIP]Plan or AR indicator [directly above] **with** the policy number on the  
28 Information Page. The Policy Information Page and all endorsements must be [filed  
29 with]**submitted to** the Plan Administrator or its designee [on or before the date]**within the time**  
30 **frame** and in the format established by the Plan Administrator.

31 (3) The servicing carrier shall issue a policy and related guaranty contract **or proof of**  
32 **coverage as required by ORS 656.419,** [if any,] for a term of at least one year, unless insurance  
33 for a shorter term has been requested. A short-term policy may be obtained only once within a  
34 12-month period unless otherwise agreed by the servicing carrier.

35 (4) The servicing carrier may make additional coverages described in the Supplement to  
36 the Plan available to an employer[, as shown in the WCIP Supplement at the end of the Plan for  
37 the coverages available in each state].

38 [(5) The servicing carrier shall affix to each policy issued under the Plan the  
39 "Amendment to Coverage B Endorsement -- Oregon" (NCCI form filing effective August 1,  
40 1976).]

41  
42 Stat. Auth.: ORS 656.427, ORS 656.730 & ORS 731.244

43 Stats. Implemented: ORS 656.427, ORS 656.730 & ORS 737.265

44  
45 **836-043-0048**

1 **Additional States' Coverage**

2 Except as shown on the binder or verification page, all assignments under the plan are to  
3 be made on an intrastate basis. An employer seeking [*information*]**insurance** for operations in  
4 one or more states other than the state [*covered by its servicing carrier*]**listed in the Policy**  
5 **Information Page** may request its servicing carrier to furnish insurance in the additional states  
6 in accordance with OAR 836-043-0050 and the Interstate Assignments section of the Plan. **A**  
7 **Plan policy that affords coverage on operations in more than one state shall clearly indicate**  
8 **the premium developed for each state separately.**  
9

10 Stat. Auth.: ORS 656.427, ORS 656.730 & ORS 731.244

11 Stats. Implemented: ORS 656.427, ORS 656.730 & ORS 737.265

12  
13 **836-043-0050**

14 **Interstate Assignments**

15 (1) [*A request by an employer for workers' compensation insurance in one or more other*  
16 *states is subject to the following provisions:*]

17 [(a)] Any employer assigned under this Plan and desiring workers' compensation  
18 insurance for operations **for physical locations** in states other than that covered by the Plan may  
19 request its servicing carrier to furnish such insurance in such additional states. **If the servicing**  
20 **carrier is licensed in those additional states and will write workers' compensation**  
21 **insurance on a voluntary basis, the servicing carrier must do so** [*. Workers' compensation*  
22 *insurance in such additional states may be written by the servicing carrier*] on a voluntary basis  
23 and in accordance with the law, rates, rules, classifications, and regulations applicable to the  
24 voluntary workers' compensation market in those states[;].

25 [(b)](2) If the servicing carrier does not wish to provide the insurance on a voluntary  
26 basis, [*such*]**the** servicing carrier may provide assigned risk coverage in such additional states  
27 subject to the following:

28 [(A)](a) Workers' compensation insurance may be provided only in accordance with  
29 OAR 836-043-0001 to 836-043-0091 in those states that have a Workers' Compensation  
30 Insurance Plan that is similar to this Plan and that allows employers applying for coverage under  
31 those Plans to obtain coverage for operations in [*this state*]**Oregon**;

32 [(B)](b) A servicing carrier providing such insurance shall collect all premiums due [*on*  
33 *operations located in such other states*] **based on the exposure for the physical operations in**  
34 **those other states**. The effective date of such insurance in such additional states shall be the day  
35 after premium is received; however, in the event coverage in such additional states is on an "if  
36 any" basis, the effective date of such coverage shall be the day following receipt of an acceptable  
37 request for such insurance by the servicing carrier. A copy of the policy Information Page and all  
38 endorsements, properly identified as a [*WCIP*]**Plan** or AR (Assigned Risk) policy, shall be  
39 submitted to the appropriate Plan Administrator having jurisdiction in the state where the  
40 coverage is effected;

41 [(C)](c) The rates, rating plans, classifications, and policy forms used to provide coverage  
42 in such additional states shall be those **that are:**

43 **(A)** Applicable to [*residual*]**the assigned risk** market; [*and are*]

44 **(B)** On file and have been approved by the regulators in those additional states; and

45 **(C)** Authorized for use in the [*residual*]**assigned risk** market by the Plan Administrator;

1 [(D)](d)The servicing carrier must be a signatory to an agreement providing reinsurance  
2 for **workers' compensation insurance policies issued to assigned risk [residual]** market  
3 employers [*similar to the Articles of Agreement*]**under the organizing principles** in each state  
4 where the coverage shall be provided; and

5 [(E)](e) A servicing carrier unwilling or unable to provide insurance for an employer in  
6 additional states [*either on a voluntary basis or in accordance with paragraph (A) of this*  
7 *subsection*] shall refer the [*request*]**employer** to the Plan Administrator **or appropriate**  
8 **administrative organization for the states where coverage is needed for instructions and**  
9 **applications.**

10 [(2) *Multistate policy procedure at the time of application:*]

11 (3)(a) An employer who applies for workers' compensation insurance under another  
12 state's workers' compensation insurance plan may purchase coverage for operations in [*this*  
13 *State*]**Oregon** without meeting the application requirements of this Plan, provided:

14 (A) The employer qualifies for such insurance under the other state's Plan;

15 (B) The employer is in good faith entitled to insurance under this Plan;

16 (C) The other state's Plan is similar to this Plan;

17 (D) That Plan also provides for interstate assignments; and

18 (E) The payroll for the employer's operation in [*this state*]**Oregon** is not greater than the  
19 payroll in the other state;

20 (b) The rates, rating plans, classifications and policy forms used to provide coverage in  
21 [*this state*]**Oregon** shall be those that are applicable to [*residual*]**assigned risk** market risks in  
22 [*this state*]**Oregon** and are on file and have been approved by the Insurance Commissioner and  
23 authorized for use in the [*residual*]**assigned risk** market by the Plan Administrator;

24 (c) The administrator of the other Plan is authorized to assign employers with operations  
25 in [*this State*]**Oregon** to the other Plan's [*assigned*]**servicing** carriers, subject to the following  
26 conditions:

27 (A) The [*assigned*]**servicing** carrier must be a signatory to the [*Articles of*  
28 *Agreement*]**organizing principles** in [*this state*]**Oregon**. In addition, if the payroll for the  
29 employer's operation in [*this state*]**Oregon** is greater than \$250,000, the [*assigned*]**servicing**  
30 carrier must also be a servicing carrier in [*this state*]**Oregon**. If there is no eligible servicing  
31 carrier in [*this state*]**Oregon** that is also an insurer in the state of assignment, then the Plan  
32 Administrator may remove the payroll limitation or may require the employer to submit a  
33 separate application for coverage in [*this state*]**Oregon**; and

34 (B) The other state's Plan must give the Plan Administrator in [*this State*]**Oregon** similar  
35 authority to make interstate assignments[; *and*].

36 (d) With regard to interstate assignments and policies, this Plan shall have jurisdiction  
37 over all disputes resulting from the application of rules, programs, and procedures that are  
38 specific to [*this state*]**Oregon**. Disputes regarding application requirements shall be under the  
39 jurisdiction of the state's Plan where the application was filed.

40 **(4) This section is not applicable for unknown or unanticipated operations or**  
41 **exposures for which coverage may be available under the Residual Market Limited Other**  
42 **States Coverage Endorsement.**

43

1 Stat. Auth.: ORS 656.427, ORS 656.730 & ORS 731.244  
2 Stats. Implemented: ORS 656.427, ORS 656.730 & ORS 737.265

3  
4 **836-043-0053**

5 **Premium Obligations**

6 (1) (a) The Plan Administrator shall not knowingly make an assignment unless the  
7 employer has met all undisputed workers' compensation premium obligations on any previous  
8 **workers' compensation** insurance **including but not limited to obligations to:**

9 **(A)** [to] Any servicing carrier[.];

10 **(B)** A direct assignment carrier; or

11 **(C)** A voluntary insurer.

12 (b) After policy issuance, if an employer does not meet all undisputed workers'  
13 compensation insurance premium obligations under the current policy or previous assigned risk  
14 or voluntary policies, the employer's present servicing carrier retains the right to cancel a policy  
15 currently in force under the plan **in accordance with ORS 656.427.**

16 (2) When an employer with a prior undisputed workers' compensation premium  
17 obligation is a client of a worker leasing company as established in ORS 656.850 that is insured  
18 by the Plan, the servicing carrier may instruct the worker leasing company to issue a client  
19 cancellation notice to the [*Workers' Compensation Division,*] **Director of the Department of**  
20 **Consumer and Business Services** with a copy to the client and a copy to the servicing carrier.  
21 Such a cancellation is effective on the 30th day after receipt of notice by the [*Workers'*  
22 *Compensation Division*] **Director of the Department of Consumer and Business Services**  
23 unless the client pays the prior premium debt or obtains coverage in the voluntary insurance  
24 market before the 30th day. When a worker leasing company fails to issue the requested client  
25 cancellation notice within 20 days of the request, the servicing carrier may cancel the worker  
26 leasing company policy.

27  
28 Stat. Auth.: ORS 656.427, ORS 656.730 & ORS 731.244  
29 Stats. Implemented: ORS 656.427, ORS 656.730 & ORS 737.265

30  
31 **836-043-0060**

32 **Assignment Formula**

33 (1) This rule describes the mechanism used to provide for the random and equitable  
34 distribution of employers under the Plan to servicing carriers. [*When participation under the*  
35 *Articles of Agreement is required by rule or by operation, distribution is based on each servicing*  
36 *carrier's share of the total net direct written premium of all insurers participating in the Plan in*  
37 *this state. When assigning an employer to an insurer, the Plan Administrator must consider the*  
38 *employer's prior Plan coverage, special requirements, such as additional states or federal*  
39 *coverage, and premium size.] The Plan Administrator may override the random assignment  
40 process to ensure the availability of requested Plan coverages to the employer.*

41 (2) (a) **A servicing carrier is responsible for providing services on behalf of those**  
42 **insurers that have elected to meet their Plan participation requirements by subscribing to**  
43 **the organizing principles. The Plan Administrator shall determine the allocable percentage**  
44 **of the servicing carrier through an objective selection process. However, the combined**  
45 **allocable percentages for all servicing carriers must be equal to the combined net voluntary**

1 premiums written for all signatories to the organizing principles as compared to the total  
2 net premiums of all insurers participating in the Plan in Oregon. An approved servicing  
3 carrier may receive assignments for any risk eligible for coverage under the Plan.

4 (b) When assigning an employer to an insurer, the Plan Administrator shall  
5 consider the employer's prior Plan coverage, special requirements, including but not  
6 limited to additional states or federal coverage, and premium size.

7 (c) Any carrier authorized by the U.S. Department of Labor to provide coverage  
8 under the U.S. Longshore and Harbor Workers' Compensation Act (USL&HW) and  
9 extension acts is eligible to receive assignments requesting the same coverage in the  
10 assigned risk market. A carrier with USL&HW authorization is also eligible for  
11 assignments requesting Maritime, Program I or II. The Plan Administrator shall  
12 determine request for assignments under the USL&HW Act, Maritime, or extension acts  
13 coverage in accordance with the assignment methodology established by the Plan  
14 Administrator.

15 (d) A servicing carrier that has previously reported voluntary or assigned risk  
16 premium writing in any state, that is subject to the Federal Coal Mine Health and Safety  
17 Act or that has previously accepted assignments in any state for operations that are subject  
18 to the Federal Coal Mine Health and Safety Act, will receive assignments requesting such  
19 coverage in accordance with the assignment methodology established by the Plan  
20 Administrator.

21 (3) If an employer has prior assigned risk coverage, the Plan Administrator shall  
22 reassign the employer to the original servicing carrier as long as the carrier can provide the  
23 coverage requested by the employer. Circumstances may require the suspension of this  
24 criterion, such as when the suspension is warranted, in order to ensure that all servicing  
25 carriers achieve their allocable percentage of Plan business. The Plan Administrator shall  
26 provide a report of such suspensions to the regulatory authority upon request.

27 (4) The Plan Administrator shall identify those servicing carriers eligible to receive  
28 an assignment based on the following requirements of the employer and the capabilities of  
29 carriers:

30 (a) The Plan Administrator shall select a servicing carrier that is able to provide  
31 coverage in the additional states requested by the employer in accordance with Interstate  
32 Assignments section of the Plan.

33 (b) The Plan Administrator shall select a servicing carrier that is able to provide  
34 authorized additional coverage requested by the employer. The following coverages require  
35 assignment to a servicing carrier with special capabilities as indicated:

36 (A) For coverage under the USL&HW Act and its extension acts, including the  
37 Outer Continental Shelf Lands Act, Defense Base Act, and Nonappropriated Fund  
38 Instrumentalities Act, the Plan Administrator shall select a carrier authorized by the U.S.  
39 Department of Labor to provide these coverages.

40 (B) For Maritime coverage, the Plan Administrator shall select a carrier authorized  
41 by the Department of Labor to provide United States Longshore and Harbor Workers'  
42 Compensation Act coverage.

43 (C) For coal mine risks, the Plan Administrator shall select a carrier experienced in  
44 servicing coal mine risks, either through writing coal mine policies in the voluntary market  
45 or through prior servicing of assigned risk market coal mine risks.

1 (c) Under special circumstances, the Plan Administrator may establish a minimum  
2 or maximum number of assignments or premium in order to ensure equitable assignments.  
3 These numbers may vary and are based on the amount of business remaining to be  
4 assigned and the number of weeks remaining in the calendar year.

5 (d) A servicing carrier that meets or exceeds its maximum weekly number of risks is  
6 not considered eligible. Each employer is assigned to an eligible servicing carrier according  
7 to the following algorithm, considering all servicing carriers in the aggregate:

8 (A) Each servicing carrier's quota premium is calculated by multiplying total  
9 premium in the Plan at the time of the assignment by the carrier's quota percent. A  
10 servicing carrier's quota percent may be adjusted to allow for a more even distribution of  
11 assignments over a period of time.

12 (B) Each servicing carrier's remaining business to be assigned is calculated by  
13 subtracting its premium in force at the time of the assignment from its adjusted quota  
14 premium. In order to allow the flexibility of slightly larger assignments in the carrier  
15 assignment process, an adjustment is made to each carrier's quota premium. This  
16 adjustment consists of applying an "over-quota limit" of five percent or \$5,000, whichever  
17 is greater, up to a maximum of \$200,000. The Plan Administrator may lower this limit if  
18 circumstances warrant, such as when required to ensure that all servicing carriers achieve  
19 their allocable percentage of Plan business.

20 (C) Based on the difference between the percentage of a servicing carrier's premium  
21 in force and its quota premium, a range of numbers proportional in size to the percentage  
22 difference is assigned to each carrier. A random number is generated, and the assignment  
23 is made to the servicing carrier whose range encompasses the random number.

24 Stat. Auth.: ORS 656.427, ORS 656.730 & ORS 731.244

25 Stats. Implemented: ORS 656.427, ORS 656.730 & ORS 737.265

26  
27 **836-043-0062**

28 **Issuance and Continuation of Policy**

29 (1) A policy must be issued, renewed or reinstated without a lapse in coverage when  
30 premium, including an interim premium audit or installment payment, is received by the  
31 carrier or postmarked by the United States Postal Service prior to the policy effective date or  
32 cancellation date.

33 (2) The following table establishes reinstatement provisions for a policy that is  
34 cancelled or renewed:

<u>If ...</u>	<u>Then ...</u>
<u>An item correcting a deficiency that resulted in cancellation is received on or within 60 days after the effective date of cancellation</u>	<u>The servicing carrier shall reinstate insurance with a lapse in coverage, issue a short-term policy, or take other underwriting action consistent with NCCI Rules, one time only during the original policy period. The lapse of coverage must clearly be stated on the reinstatement notice. A copy of the reinstatement notice must be sent to the Plan Administrator. Timely receipt of the deficiency by the servicing carrier will be presumed if received within five</u>

	<u>days of the expiration date of the policy. The servicing carrier considers receipt at the servicing carrier’s designated lockbox receipt. No lapse occurs if the item is U.S. postmarked prior to the effective date of cancellation.</u>
<u>An item correcting a deficiency that resulted in cancellation is received more than 60 days from the effective date of cancellation</u>	<u>If coverage is still required under the Plan, the employer must submit a new application to the Plan Administrator.</u>
<u>An item correcting a deficiency that resulted in cancellation is received on, within, or after 60 days after the effective date of cancellation and the insured had received a previous policy reinstatement during the policy term</u>	<u>If coverage is still required under the Plan, the employer must submit a new application to the Plan Administrator.</u>
<u>Payment for a renewal policy is received on or within 60 days after the renewal effective date</u>	<u>The policy will be issued with a revised new or different effective date (a “gap”) in coverage. The determination of the revised effective date will be in accordance with OAR 836-043-0044 or the date payment is received by the servicing carrier.</u>
<u>A finance company requests cancellation for non-payment of premium, and subsequently a request for reinstatement is received within 60 days of the date of cancellation</u>	<u>A one-time reinstatement is allowed. However, the servicing carrier is not obligated to reinstate.</u>

1  
2           **(3) A servicing carrier may impose additional requirements if necessary to effect the**  
3 **reinstatement of a policy. Effective or reinstatement dates for a lapse in coverage shall be**  
4 **determined in the same manner provided in OAR 836-043-0044.**  
5

6 Stat. Auth.: ORS 656.427, ORS 656.730 & ORS 731.244  
7 Stats. Implemented: ORS 656.427, ORS 656.730 & ORS 737.265  
8

9 **836-043-0064**

10 **Renewal, Nonrenewal**

11           **(1) [Not later than the 45th day prior to the expiration date of insurance, the servicing**  
12 **carrier shall send a renewal proposal or notice of impending expiration of coverage to the**  
13 **insured, agent and the Plan Administrator. If this requirement conflicts with a state law or rule,**  
14 **the more stringent provision shall apply.] A servicing carrier shall send a renewal or**  
15 **nonrenewal notice of impending expiration of coverage to the insured, the representative of**  
16 **the insured and the Plan Administrator at least 45 days before the expiration date of**  
17 **insurance.** Upon receipt of the required premium, **the servicing carrier shall issue** the policy  
18 **[shall be issued] in [the normal manner] accordance with Oregon statutes and rules** and  
19 **furnish** a copy of such policy and all endorsements, properly identified as a [**WCIP**]**Plan** or AR

1 (Assigned Risk) policy, [*shall be furnished*] to the Plan Administrator or its designee within the  
2 time and in the format established by the Plan Administrator.

3 **(2) The servicing carrier shall apply the** deposit premium paid by an employer in the  
4 Plan [*must be applied*] against the deposit required for a renewal policy, if any. If the servicing  
5 carrier assigned the renewal policy is different from the previous servicing carrier, then the  
6 previous servicing carrier shall promptly bill the employer for the final billing period, including  
7 any audit adjustments. If the final billing is not paid on or before the 30th day after the billing,  
8 the renewal servicing carrier may immediately issue a cancellation notice.

9 **(3) A servicing carrier may refuse to renew a policy if the servicing carrier is unable**  
10 **to supply a required type of coverage, including but not limited to longshore, coal mine,**  
11 **maritime or additional state exposures.**

12  
13 Stat. Auth.: ORS 656.427, ORS 656.730 & ORS 731.244

14 Stats. Implemented: ORS 656.427, ORS 656.730 & ORS 737.265

15  
16 **836-043-0066**

17 **Reassignment**

18 (1) An employer [*who is dissatisfied with the servicing carrier*] may [*request*]**submit to**  
19 **the Plan Administrator a written request for** reassignment to [*another insurer as provided in*  
20 *this rule*] **a different carrier, if available.** The employer must submit the request **in writing** to  
21 the Plan Administrator not later than the 30th day and not earlier than the 60th day prior to the  
22 expiration of the current policy unless the Plan Administrator approves another request period **or**  
23 **at the request of the regulatory authority.** The employer must [*submit a new application for*  
24 *coverage in the Plan as provided in OAR 836-043-0028 or 836-043-0032. The employer must*  
25 *also*] provide the Plan Administrator with [*a reason or reasons*]**an acceptable reason** for the  
26 request with appropriate documentation. **Acceptable reasons for an employer to request**  
27 **reassignment include:**

28 **(a) Documented poor servicing carrier service such as failure to provide timely**  
29 **issuance of statements, policies, and endorsements, or services not provided under the**  
30 **policy;**

31 **(b) Documented refusal of or inability of a servicing carrier to supply a required**  
32 **type of coverage including but not limited to longshore, coal mine, maritime or additional**  
33 **state exposures;**

34 **(c) Documented failure of a servicing carrier to return premium due to the insured,**  
35 **where there is no valid bona fide premium dispute;**

36 **(d) Based on the servicing carrier's A.M. Best Rating or financial size category, if**  
37 **appropriate documentation is provided to and approved by the Plan Administrator; or**

38 **(e) Any other substantial documented reason subject to approval of the Plan**  
39 **Administrator**

40 (2) The request for reassignment [*and the reason or reasons given for the request are*]**is**  
41 subject to approval by the Plan Administrator. **If the Plan Administrator approves the**  
42 **reassignment request, the employer shall submit a new application as provided in OAR**  
43 **836-043-0028 or 836-043-0032 along with the appropriate initial or deposit premium to the**  
44 **Plan Administrator and must be otherwise eligible for continued coverage through the**  
45 **Plan.** The reassignment shall be made on a random basis.

1            [(3) A servicing carrier that is unwilling to renew an employer assigned to it shall notify  
2 the employer and the Plan Administrator not later than the 45th day prior to the date of  
3 expiration, or the number of days required by state statute if more stringent, giving a reason or  
4 reasons acceptable to the Plan Administrator.]

5  
6 Stat. Auth.: ORS 656.427, ORS 656.730 & ORS 731.244  
7 Stats. Implemented: ORS 656.427, ORS 656.730 & ORS 737.265

8  
9  
10 **836-043-0068**

11 **Cancellation**

12            (1) The servicing carrier may cancel a policy after its issuance, with the approval of the  
13 Insurance Commissioner, for any of the reasons stated in this section. The servicing carrier must  
14 first provide an opportunity for cure and must file the reasons for cancellation with the Insurance  
15 Commissioner for necessary approval before issuance of the cancellation notice and inform the  
16 Plan Administrator of the reason for the cancellation. A proposed cancellation shall be deemed  
17 approved unless disapproved by the Insurance Commissioner on or before the 15th day after the  
18 servicing carrier filed the reasons for cancellation. *[The reasons for cancellation under this*  
19 *section are as follows]* **A servicing carrier may initiate cancellation when the employer:**

20            (a) *[The employer]* Has failed to comply with reasonable health, safety *[and loss*  
21 *control]* **or audit** requirements; *[or]*

22            (b) *[The employer]* Has violated any of the terms and conditions under which the  
23 insurance was issued[.];

24            **(c) Is not eligible for workers' compensation insurance under the Plan;**

25            **(d) Refuses to allow the servicing carrier or NCCI reasonable access to its facilities**  
26 **or its files and records for audit or inspection;**

27            **(e) Refuses to disclose to the servicing carrier the full nature and scope of the**  
28 **employer's exposure;**

29            **(f) Has had the employer's worker leasing company license denied, revoked or**  
30 **suspended; or**

31            **(g) The employer does not properly report changes in ownership.**

32            (2) The servicing carrier may cancel a policy without the approval of the Insurance  
33 Commissioner when cancellation is for any of the following reasons:

34            (a) Nonpayment of Plan premium, except that a servicing carrier must provide a  
35 minimum of 10 days' notice of additional premium owed prior to the obligation becoming past  
36 due;

37            (b) Failure to complete, submit and pay a payroll report due the insurer, if the insurer has  
38 given the employer the following notice:

39 Important Notice:

40 This Policy is subject to periodic payroll reporting. Reports will be sent to you in accordance  
41 with the section entitled "Reporting Frequency" on the Information Page of your policy. Your  
42 failure to complete, submit and pay these reports to the insurance company when due may result  
43 in cancellation of your policy.

44            (c) Nonpayment of a premium finance agreement, as defined in ORS 746.405 with notice  
45 pursuant to ORS 656.427; **or**

1           **(d) The employer properly reported changes in ownership.**

2           (3) An insured employer whose coverage is canceled as provided in this rule must  
3 reestablish eligibility or must demonstrate entitlement to the Plan Administrator before any  
4 further assignment can be made under the Plan.

5           (4) If an employer fails or refuses to file any report of payroll required by the servicing  
6 carrier, the servicing carrier may estimate the payroll and make demand for premiums due  
7 thereon. If the required report and the premium due thereon are not received within ten days of  
8 actual notice of demand, the employer shall be considered in default of premium payment.

9           **(5) The servicing carrier shall keep the Plan Administrator fully informed of any**  
10 **cancellation and of any reestablishment of eligibility or of compliance by the employer.**  
11 **Any employer whose coverage is cancelled must reestablish eligibility or demonstrate**  
12 **eligibility for coverage under this Plan to the Plan Administrator before the Plan**  
13 **Administrator may make any further assignment under the Plan.**

14  
15 Stat. Auth.: ORS 656.427, 656.730 & 731.244

16 Stats. Implemented: ORS 656.427, 656.730 & 737.265

17  
18 **836-043-0070 - Repealed**

19 **Dispute Resolution Procedure**

20           *[(1) Any person affected by the operation of the Plan including, but not limited to,*  
21 *participating insurers, employers, agents and assigned carriers, who has a dispute with respect*  
22 *to any aspect of the Plan, including any dispute arising under the Articles of Agreement or any*  
23 *dispute concerning the insuring of employers, may seek a review of the matter by the Plan*  
24 *Administrator by setting forth in writing with particularity the nature of the dispute, the parties*  
25 *to the dispute, the relief sought and the basis thereof. The Plan Administrator may secure*  
26 *additional information that it needs to make a decision.]*

27           *[(2) An appeal from an employer and insurer on a Plan matter regarding an individual*  
28 *employer dispute is subject to ORS 731.240, ORS 737.340, or 737.505 as applicable. Any other*  
29 *dispute shall be handled as follows:]*

30           *[(a) If the dispute relates to the general operation of the Plan, including the established*  
31 *classification, rates or rating data and excluding individual employer disputes, disputes arising*  
32 *under the Articles of Agreement, and disputes pertaining to the selection of servicing carriers,*  
33 *the Plan Administrator shall review the matter and render a written decision with an explanation*  
34 *of the reasons for the decision not later than the 30th day after receipt of all the information*  
35 *necessary to make the decision. Any party affected by a decision made by the Plan Administrator*  
36 *may seek binding arbitration for such purpose, or in the alternative, the party may seek a de*  
37 *novo review by the Insurance Commissioner by requesting such review, in writing, not later than*  
38 *the 30th day after the date of the decision; and]*

39           *[(b) Except as provided in section (3) of this rule, if the dispute arises under the Articles*  
40 *of Agreement, the Administrator designated under the Articles of Agreement shall first review the*  
41 *matter and render a written decision with an explanation of the reasons for the decision not later*  
42 *than the 30th day after receipt of all the information necessary to make the decision. Any party*  
43 *affected by the decision may seek a review by the Board of Governors established under the*  
44 *Articles by requesting such review, in writing, not later than the 30th day after the date of the*  
45 *decision by the Administrator under the Articles of Agreement. The Board of Governors may*

1 consider the matter and render its written decision pursuant to the procedures set forth in the  
2 Articles of Agreement, or waive its decision and offer the aggrieved party the option of appealing  
3 directly to the Commissioner or submitting the dispute to arbitration in accord with the terms  
4 and conditions established by the Board. Any party affected by a decision of the Board of  
5 Governors may seek a de novo review by the Insurance Commissioner by requesting such a  
6 review in writing not later than the 30th day after the date of the Board of Governors' decision.]

7 [(3) If the dispute relates to the expulsion of a participating insurer under the Articles of  
8 Agreement by the Board of Governors, an appeal may be taken directly to the Insurance  
9 Commissioner pursuant to ORS 737.360.]

10 [(4) In reviewing a dispute under section (3) of this rule, the Insurance Commissioner  
11 shall follow the procedures provided in ORS 737.360 and ORS 183.310 to 183.550 for contested  
12 cases.]

13  
14 Stat. Auth.: ORS 656.427, ORS 656.730 & ORS 731.244

15 Stats. Implemented: ORS 656.427, ORS 656.730 & ORS 737.265

16  
17 **836-043-0071**

18 **Dispute Resolution Procedures**

19 **(1) (a) A bona fide premium dispute is established when the employer or its**  
20 **representative provides:**

21 **(A) Written notice to the Plan Administrator that includes all of the following:**

22 **(i) All documentation relevant to the dispute, including written notice to the insurer**  
23 **or the servicing carrier detailing the specific areas of dispute;**

24 **(ii) Description of the attempts to reconcile the differences; and**

25 **(iii) A specific request for a review of all documentation, appropriate action to**  
26 **resolve the areas of dispute and if necessary, a hearing before the appropriate**  
27 **administrative or regulatory body having jurisdiction over assigned risk related appeals.**

28 **(B) An estimate of the premium the employer believes to be correct, with an**  
29 **explanation of the premium calculation.**

30 **(C) Verification of payment of the undisputed portion of the premium provided to**  
31 **the servicing carrier or insurer, and the Plan Administrator.**

32 **(b) If the premium in dispute is in litigation, the employer shall provide**  
33 **documentation to the Plan Administrator.**

34 **(c) The Plan Administrator shall notify the servicing carrier when a bona fide**  
35 **premium dispute is confirmed. Upon notification, the servicing carrier shall act according**  
36 **to the Plan Administrator's direction pending the resolution of the dispute. The Plan**  
37 **Administrator may direct the servicing carrier to:**

38 **(A) Suspend collection activity;**

39 **(B) Suspend cancellation if a dispute exists prior to the effective date of cancellation;**

40 **or**

41 **(C) For policies already cancelled, refer to rules set forth in by the Plan**  
42 **Administrator.**

43 **(2) Any assigned risk policyholder and the producer of an assigned risk policyholder**  
44 **affected by the actions of their servicing carrier or NCCI shall follow the procedures set**

1 forth in ORS 731.240, 737.340 or 737.505 to review, resolve or request a hearing on any  
2 grievance.

3 (a) An individual employer dispute is subject to ORS 731.240, 737.340 or 737.505 as  
4 applicable and the conditions outlined in the Bona Fide Premium Dispute and Undisputed  
5 Premium Obligation. The intervention of the Plan Administrator in a dispute is limited to  
6 matters involving:

7 (A) Experience rating modification factors;

8 (B) Application of rules contained in NCCI manuals;

9 (C) Eligibility and assignment under the Workers' Compensation Insurance Plan;

10 (D) Classification assignments;

11 (E) Assigned risk pricing programs; or

12 (F) A dispute involving other matters arising under the Plan.

13 (b) Upon receipt of all necessary information regarding the dispute, the Plan  
14 Administrator shall review the matter and provide a written decision within 30 days.

15 (3) (a) When an employer dispute concerns any of the above matters, other than the  
16 application of NCCI's rating plan rules, or involves more than one state, the Plan  
17 Administrator shall determine the appropriate jurisdiction for the dispute to be heard,  
18 based upon the following factors:

19 (A) Governing state which shall be the state generating the greatest payroll;

20 (B) The state covered by the servicing carrier with the greatest exposure insured;

21 (C) The state where the operations are best represented; or

22 (D) In accordance with the following jurisdiction table:

<u>If ...</u>	<u>Then ...</u>
<u>As determined by the Plan Administrator, the governing state is an NCCI Plan administered state that best represents the operations of the business</u>	<u>The governing state's dispute resolution process will apply</u>
<u>The governing state is an NCCI Plan administered state, but the Plan Administrator determines that the governing state does not best represent the operations of the business</u>	<u>The Plan Administrator shall review the dispute and determine the appropriate jurisdiction in which the dispute will be heard</u>
<u>The dispute involves NCCI Plan administered states and non-NCCI Plan administered states</u>	<u>The jurisdiction selected and resulting decision will apply only to the NCCI Plan administered states</u>
<u>The governing state is not an NCCI Plan administered state</u>	<u>The employer must follow the appropriate dispute resolution process for the governing state</u>

23 (b) When a dispute concerns the application of NCCI's rules for interstate rated  
24 risks, the Plan Administrator shall determine the appropriate jurisdiction for the dispute  
25 to be heard.

1 (c) Unless state-specific rules apply, the ruling of the state appeals mechanism (as  
2 determined by the Plan Administrator to have jurisdiction over the dispute) will apply to  
3 all assigned risk policies whether written by one or more servicing carriers.

4 (4) Upon receipt of all necessary information regarding the dispute, the Plan  
5 Administrator shall review disputes relating to the calculation or payment of producer fees  
6 and producer of record changes and provide a written decision within 30 days.

7 (5)(a) Any Plan participant who has a dispute with respect to any aspect of the Plan  
8 or Reinsurance Agreement including any dispute arising out of the organizing principles  
9 must first seek a review of the matter under this section by providing the following to the  
10 Plan Administrator:

11 (A) Written documentation detailing specific areas of the dispute;

12 (B) Specific request for a review of all documentation; and

13 (C) Appropriate actions of areas to resolve the dispute.

14 (b) The Plan Administrator may request additional information necessary to make a  
15 decision. All disputes submitted to the Plan Administrator are governed as follows:

16 (A) For disputes relating to the general operation of the Plan, including but not  
17 limited to, performance standards for servicing carrier performance, compensation and  
18 incentives and application assignment determination, the Plan Administrator shall review  
19 the matter and provide a written decision within 30 days of receipt of all necessary  
20 information regarding the dispute.

21 (B) Within 30 days after the Plan Administrator makes a decision and at the  
22 expense of the party, a party affected by the decision may submit a written request for  
23 binding arbitration or the party may seek a *de novo* review by the Insurance  
24 Commissioner.

25 (C) For any *de novo* review, the Insurance Commissioner shall follow the  
26 procedures provided in ORS 183.310 to 183.540 and 737.360 for review of a contested case.

27 (D) For a dispute relating to the servicing carrier selection process, refer to the Bid  
28 Protest Procedures contained in the applicable servicing carrier Request for Proposal  
29 (RFP).

30 (6) (a) Within 30 days after receipt of all necessary information regarding a dispute  
31 that arises under the organizing principles or a Reinsurance Agreement, the Plan  
32 Administrator or the administrator of the Reinsurance Agreement shall review the matter  
33 and provide a detailed written decision. Any party affected by the decision may request the  
34 board to review the decision by submitting a written request for review within 30 days  
35 after the date of the decision by the Reinsurance Administrator under the organizing  
36 principles. The board may:

37 (A) Consider the matter and render its written decision pursuant to the procedures  
38 set forth in the organizing principles, or

39 (B) Waive its decision and offer the aggrieved party the option of appealing directly  
40 to the Insurance Commissioner or submitting the dispute to arbitration in accordance with  
41 the terms and conditions established by the board.

42 (b) Any party affected by a decision of the board may seek a *de novo* review by the  
43 Insurance Commissioner by submitting a written request for review, within 30 days after  
44 the date of the board decision.

1 (c) If the dispute relates to the expulsion of a participating company under the  
2 organizing principles by the board or the noncontinuation of the reinsurance afforded  
3 under the organizing principles, the party may take the appeal directly to the Insurance  
4 Commissioner pursuant to ORS 737.360 without first complying with the procedures  
5 contained in this rule. The Insurance Commissioner has exclusive jurisdiction over all such  
6 disputes. For a review under this paragraph, the Insurance Commissioner shall follow the  
7 procedures provided in ORS 183.310 to 183.540 and 737.360 applicable to review of a  
8 contested case.

9  
10 Stat. Auth.: ORS 656.427, ORS 656.730 & ORS 731.244  
11 Stats. Implemented: ORS 656.427, ORS 656.730 & ORS 737.265

12  
13 **836-043-0076**

14 **Takeout Credit**

15 The Plan Administrator shall establish a take-out credit program. The take-out  
16 credit program shall operate in accordance with the following guidelines:

17 (1) Each insurer participating in the Plan who removes an employer insured through the  
18 Plan is eligible for a take-out credit application against the premium used to calculate the Plan  
19 participation base of the enrolled insurer. *[An offer to take an employer out of the Plan must be*  
20 *made in writing to the named insured, stating the amount of the estimated annual premium, the*  
21 *amount of the down payment required and the amount of each installment, if available.]* An  
22 insurer shall contact the take-out credit administrator to enroll in the program. Any  
23 insurer licensed in Oregon and writing workers' compensation insurance coverage is  
24 eligible to enroll in the take-out credit program.

25 (2) An insurer may not receive credit for any policy removed from the Plan within one  
26 calendar year after the insurer or its affiliate wrote the policy in the voluntary market. An  
27 insurer who does not enroll in the program cannot receive take-out credit.

28 (3) An insurer, other than the last voluntary insurer of record, may remove a policy  
29 without any restriction on the length of time the policy resided in the [*residual*]assigned risk  
30 market.

31 (4) For the purpose of the take-out credit program, the requirements of this rule apply to  
32 an insurer's affiliates as well as to the insurer.

33 (5) The kind and amount of coverage to be offered a voluntary employer shall not be less  
34 than those afforded by the policy being replaced unless the kinds and amounts of coverage are  
35 refused by the employer.

36 (6) The granting of credits is subject to the following provisions:

37 (a) An insurer who removes an employer from the [*residual*]assigned risk market is  
38 eligible for a take-out credit application equal to the annual premium from the voluntary policy  
39 times a credit factor from the following schedule: Total Premium -- \$5,000 or Less -- Total  
40 Premium -- Greater than \$5,000:

41 (A) First Year – [*3.0*]3:1 – [*1.0*]1:1;

42 (B) Second Year – [*3.0*]3:1 – [*1.0*]1:1;

43 (C) Third Year – [*3.0*]3:1 – [*1.0*]1:1.

44 (b) Credits received under this rule are not subject to a maximum limit, except that the  
45 credits shall not reduce the participation base of an insurer below zero[.];

1           [(c) *When an insurer takes an employer out of the Plan, the insurer must report the*  
2 *individual employer credit on a form and in a manner prescribed by the Plan Administrator;*]

3           [(d)](c) An insurer shall receive a credit against the premium used to calculate its Plan  
4 participation base for the amount of verifiable annual premium reported in its [*financial*  
5 *statements*]**Exhibit of Premiums and Losses (Statutory Page 14) of its Annual Statement** for  
6 the respective calendar year. The reported premium must be stated on the same financial basis as  
7 the premiums that are reported for use in determining each insurer's Plan participation base and  
8 are subject to subsequent adjustments and audits. The definition of "net premiums written" in the  
9 [*WCIP Definitions section of the*] Plan shall govern the description of premium used to calculate  
10 the Plan participation base. As audit premiums, retrospective adjustments and other items are  
11 developed, an insurer shall receive a credit against its participation base for the amount of the  
12 premium adjustment in the calendar year in which the adjustment is reported in the direct earned  
13 premium for Oregon entry in the Annual Statement. Regardless of when an adjustment was made  
14 or reported in the direct earned premium for Oregon entry, the adjustment shall be allowed if  
15 related to the first, second or third year of voluntary coverage by the insurer[;].

16           [(e)](d) If an insurer keeps an employer out of the [*residual*]**assigned risk** market for  
17 three **consecutive** years, the insurer shall receive credit for each of the three **consecutive** years.  
18 If the insurer does not write the insurance for three years, it shall receive credit only for the  
19 **consecutive** period of time that it covered the employer in the voluntary market. An insurer shall  
20 not receive any credit for an employer returned to the Plan within one [*policy*]**calendar year of**  
21 **removal**[;].

22           [(f)](e) An insurer must submit a request [for credit annually during the three year period  
23 in order to qualify for the credit.

24           **(f) Each year, the Plan Administrator shall perform a systematic search of policies**  
25 **submitted as voluntary that were previously assigned risk policies to determine their**  
26 **eligibility for take-out credit.**

27           **(g) The Plan Administrator shall provide enrolled insurers with a detailed Take-Out**  
28 **Credit Policy Report of eligible policies. The Plan Administrator shall provide the Take-**  
29 **Out Credit Policy Report to insurers in electronic format.**

30           **(h) Each insurer shall review and modify the Take-Out Credit Policy Report to**  
31 **ensure all eligible policies are included in the calculation of the credit.**

32           **(i) The Plan Administrator shall review any modifications to the Take-Out Credit**  
33 **Policy Report to ensure agreement. The Plan Administrator may eliminate any policy that**  
34 **is inaccurately reported or those modifications that the Plan Administrator cannot**  
35 **research for concurrence.**

36           **(j) Upon review and approval of the policies on the Take-Out Credit Policy Report,**  
37 **the enrolled insurer need only send an electronic reply of concurrence that indicates the**  
38 **official request of the insurer to receive the credit.**

39           **(k) The Plan Administrator shall grant credit only to enrolled insurers that provide**  
40 **electronic concurrence with the Take-Out Credit Policy Report.**

41  
42 Stat. Auth.: ORS 656.427, ORS 656.730 & ORS 731.244

43 Stats. Implemented: ORS 656.427, ORS 656.730 & ORS 737.265

44  
45 **836-043-0079**

1 **Notification of Outstanding Premium**

2 A servicing carrier or its representative shall furnish information regarding outstanding  
3 assigned risk and voluntary workers' compensation insurance premium or other workers'  
4 compensation monetary policy obligations identified by the servicing carrier or its representative  
5 to the Plan Administrator or its designee in accordance with the appropriate Assigned Carrier  
6 Performance Standards or other state market conduct or regulatory requirements. A servicing  
7 carrier shall report to the Plan Administrator within five business days of the servicing  
8 carrier's determination all instances of noncompliance and of any compliance by the  
9 employer.

10  
11 Stat. Auth.: ORS 656.427, ORS 656.730 & ORS 731.244  
12 Stats. Implemented: ORS 656.427, ORS 656.730 & ORS 737.265

13  
14 **836-043-0082**

15 **Policyholder Services**

16 A servicing carrier shall provide all of the following to each policyholder or a  
17 representative of the insured and its [agent]producer:

- 18 (1) Access to audit, loss control and safety services.
- 19 (2) Prompt, professional handling of claims, including investigation, resolution and  
20 communication.
- 21 (3) Fair and prompt responses to complaints and disputes.
- 22 (4) Access to appropriate information regarding the classification of the business and the  
23 factors influencing the policy premium.

24 Stat. Auth.: ORS 656.427, ORS 656.730 & ORS 731.244  
25 Stats. Implemented: ORS 656.427, ORS 656.730 & ORS 737.265

26  
27 **836-043-0086 - Repealed**

28 **Agent Designation and Compensation**

29 *[(1) An employer may designate a licensed insurance producer, and with respect to any*  
30 *renewal of the assigned insurance, may change the designated insurance producer by notice to*  
31 *the servicing carrier prior to the date of the renewal or, at any other time with the consent of the*  
32 *servicing carrier.]*

33 *[(2) A servicing carrier shall pay a fee to the insurance producer designated by the*  
34 *employer on new and renewal policies upon payment and receipt of premium due under the*  
35 *policy. The fee shall be based on the state standard premium and paid at the rate of five percent*  
36 *on the first \$1,000 of premium, three percent on the next \$4,000 of premium, two percent on the*  
37 *next \$95,000 of premium and one percent of premium in excess of \$100,000.]*

38  
39 Stat. Auth.: ORS 656.427, 656.730 & 731.244  
40 Stats. Implemented: ORS 656.427, 656.730 & 737.265

41  
42 **836-043-0087**

43 **Producer Changes and Compensation**

44 **(1) The servicing carrier must pay a fee to the licensed agency on all new and**  
45 **renewal policies after the policy is issued. The servicing carrier shall pay the producer as**

1 premium is collected. The servicing carrier must process and mail fee payments within 30  
2 days after the date the policy is issued or 30 days after the receipt of premium. The carrier  
3 may withhold payments until an accumulative total of \$25 per agency is reached. However,  
4 the servicing carrier must pay the agency their fees upon request regardless of the amount  
5 or if the withholding time period exceeds six months. The fee payment also may be applied  
6 to return fees that the agency may owe to the servicing carrier from other assigned risk  
7 policies for that agency. The servicing carrier may not pay a producer fee on premium not  
8 actually collected.

9 (2) The producer fee paid by the servicing carrier shall be in accordance with the  
10 producer fee percentage scales and shall be paid at the rate filed by the Plan Administrator  
11 with the Director.

12 (3) It is the responsibility of the servicing carrier to determine whether the producer  
13 is properly licensed in the appropriate jurisdictions for payment of producer fees. If the  
14 producer listed on the application is not properly licensed, or if the employer designates a  
15 representative other than a licensed producer, the servicing carrier shall accept the  
16 assignment but the producer fee will not be paid. For all other purposes, the producer shall  
17 be treated as the producer of record.

18 (4) The employer may request a change to the licensed producer. The employer shall  
19 provide written notice to the servicing carrier, generally in the form of a “producer of  
20 record” letter. The request must be made prior to the date of renewal, or with the consent  
21 of the servicing carrier at another agreed upon time.

22  
23 Stat. Auth.: ORS 656.427, 656.730 & 731.244

24 Stats. Implemented: ORS 656.427, 656.730 & 737.265

25  
26 **836-043-0089**

### 27 **Confidentiality of Information**

28 The servicing carrier shall keep in confidence and [shall] **must** not [disclose to any third  
29 party such detailed information as it may obtain by virtue of its position as the servicing carrier],  
30 except as directed by the insured or the [agent]**producer** of record, or as otherwise may be  
31 required by law or the **Insurance** Commissioner, **disclose to any third party, or use for the**  
32 **benefit of itself or any third party, such detailed information as it may obtain by virtue of**  
33 **its position as the servicing carrier. Such information may be used solely for the evaluation,**  
34 **underwriting, and insuring of coverage under this Plan and not for any other purpose. The**  
35 **servicing carrier may not use any information the servicing carrier obtains in its capacity**  
36 **as the servicing carrier to request, encourage, or solicit employers it insures under this Plan**  
37 **to use the services of any specific insurance producer, agency, insurer or group of insurers,**  
38 **including but not limited to direct writers affiliated with the servicing carrier, for purposes**  
39 **of providing voluntary workers’ compensation insurance or other lines of insurance to such**  
40 **employer. .**

41  
42 Stat. Auth.: ORS 656.427, ORS 656.730 & ORS 731.244

43 Stats. Implemented: ORS 656.427, ORS 656.730 & ORS 737.265