

IDAPA 17 - INDUSTRIAL COMMISSION

17.02.10 - ADMINISTRATIVE RULES OF THE INDUSTRIAL COMMISSION UNDER THE WORKERS' COMPENSATION LAW -- SECURITY FOR COMPENSATION -- INSURANCE CARRIERS

DOCKET NO. 17-0210-1001 (NEW CHAPTER)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 72-508, 72-520, 72-721, 72-722, and 72-723, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 2010.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The current chapter, IDAPA 17.02.03 (Security for Compensation), is being repealed and two new chapters are being adopted to clarify each entity's rules. This new chapter, IDAPA 17.02.10 (Insurance Carriers), adopts rules governing insurance carriers which clarify terms and implement more comprehensive reporting requirements.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because a subcommittee of the Commission's Advisory Committee, including insurance carrier representatives and self-insured employers, has been providing input to the Industrial Commission on the drafting of these rule revisions.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jane McClaran, 334-6042.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 10th day of September, 2010.

Mindy Montgomery
Director
Industrial Commission
700 S. Clearwater Lane, Boise, ID 83712
P.O. Box 83720
Boise, ID 83720-0041
Phone: 208-334-6000
Fax: 208-334-5145

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 17-0210-1001

IDAPA 17
TITLE 02
CHAPTER 10

17.02.10 - ADMINISTRATIVE RULES OF THE INDUSTRIAL COMMISSION UNDER THE WORKERS' COMPENSATION LAW -- SECURITY FOR COMPENSATION -- INSURANCE CARRIERS

000. LEGAL AUTHORITY.

These rules are adopted and promulgated by the Industrial Commission pursuant to the provisions of Sections 72-508, 72-301 and 72-304, Idaho Code. ()

001. TITLE AND SCOPE.

These rules shall be cited as IDAPA 17.02.10, "Administrative Rules of the Industrial Commission Under the Workers' Compensation Law -- Security for Compensation -- Insurance Carriers." These rules shall apply to all insurance companies securing compensation under the Workers' Compensation Law. ()

002. WRITTEN INTERPRETATIONS.

No written interpretations of these rules exist. ()

003. ADMINISTRATIVE APPEALS.

There is no administrative appeal from decisions of the Industrial Commission in workers' compensation matters, as the Commission is exempted from contested-cases provisions of the Administrative Procedure Act. ()

004. -- 009. (RESERVED).

010. DEFINITIONS.

For the purposes of this chapter, the following definitions are applicable: ()

01. Indemnity Benefits. All payments made to or on behalf of workers' compensation claimants, including temporary or permanent disability benefits, permanent partial impairment benefits, death benefits paid to dependents, retraining benefits, and any other type of income benefits, but excluding medical and related benefits. ()

02. Indemnity Claim. Any claim made for the payment of indemnity benefits. ()

011. RULE GOVERNING QUALIFICATION OF INSURANCE CARRIER TO UNDERWRITE WORKERS' COMPENSATION LIABILITY.

01. Deposit With State Treasurer. To receive the approval of the Industrial Commission to write Worker's Compensation coverage under Section 72-301, Idaho Code, a carrier whose application has been approved by the Director of Insurance to underwrite casualty and surety insurance under Sections 41-506 and 41-507, Idaho Code, shall initially deposit security in the amount of two hundred fifty thousand dollars (\$250,000) with the State Treasurer, under the provisions of Section 72-302, Idaho Code. ()

02. Application. Before the Commission shall approve any insurance carrier to do business under the Workers' Compensation Law, said carrier shall apply to the Industrial Commission for permission to write compensation insurance and said application shall include the following: ()

a. A statement from the Director of the Idaho Department of insurance that the insurance carrier has been granted authority under the insurance laws of the state of Idaho to write casualty or surety insurance; ()

- b.** The latest audited financial statement of said carrier; ()
- c.** The name and address of the agent for service of process in Idaho; ()
- d.** The name and address of the Idaho resident licensed adjuster or adjusters with authority to make compensation payments and adjustments of claims arising under the Act. If more than one (1) adjuster is utilized in Idaho, a list of every such adjuster and all corresponding policyholders shall be provided; ()
- e.** A statement that the carrier will provide such blank forms as are, or may be, prescribed by the Commission and distributed to such employers as it may insure. ()
- f.** A statement that all surety bonds covering the payment of compensation will be filed with the Idaho State Treasurer in compliance with the law for all employers insured. All carriers will use the continuous bond form set out herein. ()

SURETY BOND

KNOW ALL MEN BY THESE PRESENTS:

That we, _____, as Principal, and _____, as Surety, are held and firmly bound unto the State of Idaho and the beneficiaries of awards rendered under the Workers' Compensation Law of the State of Idaho, for all sums said Principal is liable for by reason of workers' compensation policies issued to employers in the State of Idaho, insuring such employers' liability under Title 72, Idaho Code, the Workers' Compensation Law. Under the authority of Chapter 3, Title 72, Idaho Code, the liability of the Surety on this bond shall in no event exceed an amount equal to the total amount of all outstanding and unpaid compensation awards against the Principal.

In case of any default by the Principal or in the event said Principal shall fail to pay, by reason of insolvency, or because a receiver has been appointed therefor, or by reason of refusal, neglect or delay to pay any final award or awards, the State of Idaho and any beneficiaries under the Workers' Compensation Law shall have a right of action at law against said Surety immediately upon default by said Principal.

This bond is issued for an indefinite term to begin on the _____ day of _____, 20____, and will continue in full force and effect until terminated in either of the following two (2) manners: This bond may be cancelled by the Surety by filing sixty (60) days' written cancellation notice by registered mail with the Industrial Commission of the State of Idaho. This bond may be cancelled by the Industrial Commission of the State of Idaho by written notice to the Surety hereon, which notice shall specify the date of termination of the bond.

IN WITNESS WHEREOF, the parties hereto have caused their names to be signed and this instrument to be sealed by the respective parties thereto this _____ day of _____, 20____. ()

- g.** A statement that renewal certificates on said bonds will be issued and filed with the Industrial Commission immediately, if said bonds are to be renewed. ()
- h.** A statement that the cancellation of surety contracts will be made as set forth in the law, if said contracts are cancelled; ()
- i.** A statement that said carrier will deposit, in addition to the security required for authorization to write Workers' Compensation coverage by these rules, such further security equal to all unpaid outstanding awards of compensation; ()
- j.** A statement that said carrier will comply with the statutes of the state of Idaho and rules of the Industrial Commission to the end that payments of compensation shall be sure and certain and not unnecessarily delayed; and ()
- k.** A statement that said carrier will make such reports to the Commission as it may require in

reference to matters under the Workers' Compensation Law, including IC Form 36A, Report of Outstanding Awards – Insurance Carriers; which must be filed quarterly with the Commission. ()

012. RULES GOVERNING INSURANCE CARRIERS.

An insurance carrier must apply for and receive the approval of the Industrial Commission to write workers' compensation insurance pursuant to Section 72-301, Idaho Code. After receiving such approval, an insurance carrier shall comply with the following: ()

01. Maintain Statutory Security Deposits with the State Treasurer. ()

a. Each insurance carrier shall maintain with the Idaho State Treasurer a security deposit in the amount of twenty-five thousand dollars (\$25,000) if approved by the commission prior to July 15, 1988, or two hundred and fifty thousand dollars (\$250,000) if approved subsequent to that date. ()

b. In addition to the security required in Subsection 012.01.a., of this rule, each insurance carrier shall deposit an amount equal to the total unpaid outstanding awards of said insurance carrier. Such deposit shall be in the form permitted by Section 72-301, Idaho Code. Surety bonds shall be in the form set forth in Subsection 011.02.f. of these rules. If a surety bond is deposited, the surety company shall be completely independent of the principal and authorized to transact such business in the state of Idaho. A partial release of security deposited hereunder must be requested in writing and approved by the Commission. ()

c. Securities which are maintained to satisfy the requirements of this rule may be held in the federal reserve book-entry system, as defined in Section 41-2870(4), Idaho Code, and interests in such securities may be transferred by bookkeeping entry in the federal reserve book-entry system without physical delivery of certificates representing such securities. ()

02. Appoint Agent for Service of Process. Each insurance carrier shall appoint the Director of the Department of Insurance as its agent to receive service of legal process. ()

03. Maintain Resident Idaho Office. Each insurance carrier shall maintain an Idaho licensed resident adjuster or adjusters, or its own adjusting offices or officers resident in Idaho who have been appointed and have been given authority as to claims arising under the Act. ()

a. Each authorized insurance carrier shall notify the Commission Secretary in writing of any change of the designated resident adjuster(s) for every insured Idaho employer within fifteen (15) days of such change. ()

b. Each authorized insurance carrier will ensure that every in-state adjuster can classify and identify all claims adjusted on behalf of said insurance carrier, and that the in-state adjuster will provide such information to the Industrial Commission upon request. ()

04. Supply Forms. Each insurance carrier shall supply such forms as are or may be prescribed by the Commission pursuant to the Workers' Compensation Law and distribute them to all employers it insures. A list of required forms is available from the public information section of the Industrial Commission, 700 S. Clearwater Lane, P. O. Box 83720, Boise, Idaho 83720-0041, telephone (208)334-6000. ()

05. Comply with Industrial Commission Reporting Requirements. Each insurance carrier shall file such reports as the Industrial Commission may require concerning matters under the Workers' Compensation Law. ()

06. Report Proof of Coverage.

a. Each insurance carrier shall report proof of coverage information to a third party designated by the Industrial Commission as its agent to receive, process, and forward the proof of coverage information required by these rules to the Commission. The name and address of the Commission's designated agent(s) is available upon request from the Employer Compliance Bureau of the Industrial Commission, 700 S. Clearwater Lane, P. O. Box 83720, Boise, Idaho 83720-0041; telephone (208) 334-6000. ()

b. As an alternative to Subsection 012.06.a., an insurance carrier may be allowed to report proof of coverage information directly to the Industrial Commission in an electronic format prescribed by the Commission by first making a written request to the Commission and obtaining the Commission's permission. A formal written agreement with the Commission is required prior to the electronic transmission of proof of coverage data to the Commission. ()

c. The Industrial Commission hereby adopts the International Association of Industrial Accident Boards and Commissions' (IAIABC) electronic proof of coverage record layout and transaction standards as the required reporting mechanism for new policies, renewal policies, endorsements, cancellations, and non-renewals of policies. A copy of the record layout and transaction standards is available upon request from the Employer Compliance Bureau, Industrial Commission, 700 S. Clearwater Lane, P. O. Box 83720, Boise, Idaho 83720-0041; telephone (208) 334-6000. ()

d. The most recent proof of coverage information contained in the Industrial Commission's database shall be presumed to be correct for the purpose of determining the insurance carrier providing coverage. ()

07. Report New Policy, Renewal Policy, and Endorsement Information Within Thirty Days. Each insurance carrier shall report the issuance of any new workers' compensation policy, renewal policy, or endorsement to the Industrial Commission or its designated agent within thirty (30) days of the effective date of the transaction. ()

08. Report Cancellation and Non-Renewal of Policy Within Time Prescribed by Statute. Each insurance carrier shall report the cancellation and/or nonrenewal of any workers' compensation insurance policy to the Industrial Commission or its designated agent within the time frames prescribed by Section 72-311, Idaho Code. Receipt of cancellation or nonrenewal notices by the Commission's designated agent shall be deemed to have been received by the Commission. ()

09. Report Election of Coverage on Form IC52 or Similar Format. Each insurance carrier shall report election of coverage or revocation of election of coverage on or in a format substantially the same as Form IC52, "Election of Coverage," which follows this chapter as Appendix A. This report shall be submitted to the Industrial Commission in writing on eight and one-half by eleven inch (8 1/2" x 11") paper. ()

10. Report Outstanding Awards. Each insurance carrier shall report to the Industrial Commission at the end of each calendar quarter, or more often as required by the Commission, any outstanding award. ()

a. The report of outstanding awards shall be filed with the Industrial Commission by the end of the month following the end of each calendar quarter. ()

b. The report shall be filed even if there are no outstanding awards. In that event, the carrier shall certify the fact that there are no outstanding awards to be reported. ()

c. The report shall be submitted on or in a format that is substantially the same as Form IC36A, "Report of Outstanding Awards – Insurance Carriers" which follows this chapter as Appendix B. The report may be produced as a computerized spreadsheet or database printout and shall be submitted to the Commission in writing on paper no larger than eight and one-half inches by eleven inches (8 1/2" x 11") in size. ()

d. The report shall be signed and certified to be correct by a corporate officer. If an insurance carrier has designated more than one adjuster for workers' compensation claims in Idaho, a corporate officer of the insurance carrier shall prepare, certify and file a consolidated report of outstanding awards. ()

e. The report shall list all outstanding awards, commencing with the calendar quarter during which the award is made or benefits are first paid, whichever occurs earlier. ()

11. Comply with Law and Rules. Each insurance carrier shall comply with the statutes of the state of Idaho and the rules of the Industrial Commission to ensure that payments of compensation shall be sure and certain and not unnecessarily delayed. ()

013. -- 050. (RESERVED).

051. REQUIREMENTS FOR MAINTAINING IDAHO WORKERS' COMPENSATION CLAIMS FILES.

All insurance carriers and licensed adjusters servicing Idaho workers' compensation claims shall comply with the following requirements: ()

01. Idaho Office. ()

a. All insurance carriers and licensed adjusters servicing Idaho workers' compensation claims shall maintain an office within the state of Idaho. The offices shall be staffed by adequate personnel to conduct business. ()

b. The insurance carrier shall authorize a member of its staff or a resident licensed claims adjuster to service and make decisions regarding claims pursuant to Section 72-305, Idaho Code. Answering machines, answering services, or toll free numbers outside of the state will not suffice. That authority shall include, but is not limited to, the following responsibilities: ()

i. Investigate and adjust all claims for compensation; ()

ii. Pay all compensation benefits due; ()

iii. Accept service of claims, applications for hearings, orders of the Commission, and all process which may be issued under the Workers' Compensation Law; ()

iv. Enter into compensation agreements and lump sum settlements with Claimants; and ()

v. Provide at the insurance carrier's expense necessary forms to any worker who wishes to file a claim under the Workers' Compensation Law. ()

c. As staffing changes occur and, at least annually, the insurance carrier or licensed adjuster shall submit to the Industrial Commission Secretary the names of those authorized to make decisions regarding claims pursuant to Section 72-305, Idaho Code. ()

02. Claim Files. All Idaho workers' compensation claim files shall be maintained within the state of Idaho in either hard copy or immediately accessible electronic format. Claim files shall include, but are not limited to: ()

a. First Report of Injury and Claim for Benefits; ()

b. Copies of bills for medical care; ()

c. Copy of lost-time computations, if applicable; ()

d. Correspondence reflecting reasons for any delays in payments (i.e., awaiting medical reports, clarification, questionable items on bills, etc.), the resolution of such delays and acceptance or denial of compensability; ()

e. Employer's Supplemental Report; and ()

f. Medical reports. ()

03. Correspondence. All original correspondence involving adjusting decisions regarding Idaho workers' compensation claims shall be mailed from and maintained at in-state offices. ()

04. Date Stamp. Each of the documents listed in Subsections 051.02 and 051.03 shall be date-stamped

with the name of the receiving office on the day received, and by each receiving agent or vendor acting on behalf of the claims office. ()

05. Notice and Claim. All First Reports of Injury, Claims for Benefits, notices of occupational illnesses and fatalities shall be sent directly to the in-state adjuster or insurance carrier. The original copy of the First Report of Injury, Claim for Benefits and notices of occupational illness and fatality shall be sent directly to the Industrial Commission. ()

06. Compensation. All compensation, as defined by Section 72-102, Idaho Code, must be issued from the in-state office. ()

07. Checks and Drafts. Checks must be signed and issued within the state of Idaho; drafts are prohibited. ()

a. The Commission may, upon receipt of a written Application for Waiver, grant a waiver from the provisions of Subsections 051.06 and 051.07 of this rule to permit an insurance carrier to sign and issue checks outside the state of Idaho. ()

b. An Application for Waiver must be accompanied by an affidavit signed by an officer or principal of the insurance carrier attesting to the fact that the insurance carrier is prepared to comply with all statutes and rules pertaining to prompt payments of compensation. ()

c. All waivers shall be effective from the date the Commission issues the order granting the waiver. A waiver shall remain in effect until revoked by the Industrial Commission. At least annually, staff of the Industrial Commission may review the performance of any insurance carrier for which a waiver under this rule has been granted to assure that the insurance carrier is complying with all statutes and rules pertaining to prompt payments of compensation. ()

d. If at any time after the Commission has granted a waiver, the Commission receives information permitting the inference that the insurance carrier has failed to provide timely benefits to any claimant, the Commission may issue an order to show cause why the Commission should not revoke the waiver; and, after affording the insurance carrier an opportunity to be heard, may revoke the waiver and order the insurance carrier to comply with the requirements of Subsections 051.06 and 051.07 of this rule. ()

08. Copies of Checks. Copies of checks and/or electronically reproducible copies of the information contained on the checks must be maintained in the in-state files for Industrial Commission audit purposes. A copy of the first check, showing signature and date, shall be sent to the Industrial Commission the same day of issuance. ()

09. Prompt Claim Servicing. Prompt claim servicing includes, but is not limited to: ()

a. Payment of medical bills in accordance with the provisions of IDAPA 17.02.09, Medical Fees, Sections 031, 032, 033 and 034. ()

b. Payment of income benefits on a weekly basis, unless otherwise approved by the Commission. ()

10. Audits. The Industrial Commission will perform periodic audits to ensure compliance with the above requirements. ()

11. Non-Compliance. Non-compliance with the above requirements may result in the revocation of the authority of an insurance carrier to write workers' compensation insurance in the state of Idaho, or such lesser sanctions as the Industrial Commission may impose. ()

052. -- 270. (RESERVED).

271. RULE GOVERNING REPORTING INDEMNITY PAYMENTS AND MAKING PAYMENT OF INDUSTRIAL SPECIAL INDEMNITY FUND ASSESSMENT.

Pursuant to Section 72-327, Idaho Code, the state insurance fund and every insurance carrier authorized to transact workers' compensation insurance in Idaho shall report annually to the Industrial Commission the total gross amount of indemnity benefits paid on Idaho workers' compensation claims during the applicable reporting period. ()

01. Filing. The report of indemnity payments shall be filed with the Industrial Commission simultaneously with the first Semi-Annual Premium Tax Report which, pursuant to Section 72-523, Idaho Code, is due each year on March 3rd. ()

02. Form. The report of indemnity payments shall be submitted in writing on, or in a format substantially the same as Form IC327, "Report of Indemnity Payments," contained in Appendix C at the end of this chapter. ()

03. Report Required When No Indemnity Paid. If an entity required to report under this rule has no claims against which indemnity payments have been made during the reporting period, a report shall be filed so indicating. ()

04. Penalty for Late Filing. A penalty shall be assessed by the Commission for filing the report of indemnity payments later than March 3 each year. ()

a. A penalty of two hundred dollars (\$200) shall be assessed for late filing of seven (7) days or less. ()

b. A penalty of one hundred dollars (\$100) per day shall be assessed for late filing of more than seven (7) days. ()

c. A penalty assessed by the Commission shall be payable to the Industrial Commission and shall be submitted with the April 1 payment of the industrial special indemnity fund assessment, following notice by the Commission of the penalty assessment. ()

05. Estimating Indemnity Payments for Entities That Fail to Report Timely. If an entity required to report indemnity payments under these rules fails to report within the time allowed in these rules, the Commission will estimate the indemnity payments for that entity by using the indemnity amount reported for the preceding reporting period and adding twenty percent (20%). ()

06. Adjustment for Overpayments or Underpayments. Overpayments or underpayments, including those resulting from estimating the indemnity payments of entities that fail to report timely, will be adjusted on the billing for the subsequent period. ()

272. -- 999. (RESERVED).

APPENDIX A

IC52 ELECTION OF COVERAGE

| | |
|--|--|
| Check the appropriate box | |
| <input type="checkbox"/> Election | <input type="checkbox"/> Revocation of Election |

The undersigned hereby notifies the Industrial Commission of the following:

- Household domestic service
- Casual employment
- Employment of outworkers
- Employment of members of an employer's family dwelling in his household. (Applies only to sole-proprietorships)
- Employment as the owner of a sole proprietorship
- Employment of a working member of a partnership or a limited liability company (Circle either partnership or Limited Liability Company; if the election applies only to certain partners/members, name the covered partners/members.)
- Employment of an officer of a corporation who at all times during the period involved owns not less than ten percent (10%) of all of the issued and outstanding voting stock of the corporation and, if the corporation has directors, is also a director thereof (If the election applies only to certain corporate officers, name the covered officers)
- Employment for which a rule of liability for injury, occupational disease, or death is provided by the laws of the United States
- Pilots of agricultural spraying or dusting planes
- Associate real estate brokers and real estate salesmen paid solely by commission
- Volunteer ski patrollers
- Officials of athletic contests involving secondary schools

(Name of Insurance Company) _____

Policy Number _____

Insured Name _____

Effective Date of Election/Revocation _____

(Signature of authorized representative)

(Employer's signature)

APPENDIX B

IC36A -- REPORT OF OUTSTANDING AWARDS – INSURANCE CARRIERS

| (Name of Carrier) _____ | | | | | | | |
|--|---|---------------|--------------|--------------------------------------|---------------------------------|-------------|-----------------------------------|
| Calendar Year: _____ | | | | | | | |
| For Calendar Quarter Ending: qMarch qJune qSeptember qDecember | | | | | | | |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) |
| Date of Injury | Claimant Name (as shown on First Report of Injury) | Type of Claim | Total Awards | Compensation Paid This Report Period | Total Compensation Paid to Date | Adjustments | Unpaid Balance [(4) minus (5)] |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| TOTALS | | | | | | | |

Send Original to: Fiscal Section, Industrial Commission, P. O. Box 83720, Boise, Idaho 83720-0041

I, the undersigned corporate officer of the above named insurance carrier, do hereby certify that this report is complete and accurate to the best of my knowledge.

Corporate Officer's Signature: _____

Title: _____

Printed Name: _____

Date: _____

Name and Title of Preparer: _____

Company: _____

Address: _____

Telephone: _____ E-Mail Address: _____

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