

**Please Return Proof to OARC by 5:00 p.m., Friday, October 27, 2023**

**IDAPA 17 – IDAHO INDUSTRIAL COMMISSION**

**17.01.01 – ADMINISTRATIVE RULES UNDER THE WORKER'S COMPENSATION LAW**

**DOCKET NO. 17-0101-2301**

**NOTICE OF INTENT TO PROMULGATE RULES –  
ZERO-BASED REGULATION (ZBR) NEGOTIATED RULEMAKING**

**AUTHORITY:** In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Section(s) 72-301, 72-301A, 72-304, 72-327, 72-432, 72-508, 72-528, 72-602, 72-803, and 72-806, Idaho Code.

**MEETING SCHEDULE:** A public meeting on the negotiated rulemaking will be held as follows:

**Wednesday, November 8, 2023, from 10:30 a.m. to 12:00 p.m. MT**

**Industrial Commission Main Office, Coral Room  
11321 W. Chinden Blvd. Boise, ID 83714**

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

**METHOD OF PARTICIPATION:** Persons wishing to participate in the negotiated rulemaking must do the following:

Interested members of the public who wish to participate must submit any written comments, questions, recommendations, or ideas to the Industrial Commission by contacting the undersigned either in writing, by email, or by calling the phone number listed below. Individuals may also attend the public meeting to be conducted on the above date during which the Industrial Commission will allow oral comments or presentations to be made.

Upon conclusion of the negotiated rulemaking, any unresolved issues, all key issues considered, and conclusion reached during the negotiated rulemaking will be addressed in a written summary. The summary will be made available to interested persons who contact the agency or, if the agency chooses, the summary may be posted on the agency website.

**DESCRIPTIVE SUMMARY AND STATEMENT OF PURPOSE:** The following is a statement in nontechnical language of the substance and purpose of the intended negotiated rulemaking and the principal issues involved:

The November 8, 2023 negotiated rulemaking meeting will only focus on topics related to the following rules: IDAPA 17.01.01.000-307. Other topics and rules will be discussed at subsequent negotiated rulemaking meetings.

In accordance with [Executive Order 2020-01: Zero-Based Regulation](#), the Industrial Commission is striving to prevent the accumulation of costly, ineffective, and outdated regulations and reduce regulatory burden to achieve a more efficient operation of government. The rule changes are intended to perform a comprehensive review of this chapter by collaborating with the public to streamline or simplify this rule language.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING DRAFT COPIES:** For assistance on technical questions concerning this negotiated rulemaking or to obtain a preliminary draft copy of the rule text if available, contact Kamerron Slay, 208-334-6017 or [kamerron.slay@iic.idaho.gov](mailto:kamerron.slay@iic.idaho.gov) Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, can be found on the Commission's web site at the following web address: [iic.idaho.gov](http://iic.idaho.gov).

Anyone may submit written comments regarding this negotiated rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 1, 2024.

**Please Return Proof to OARC by 5:00 p.m., Friday, October 27, 2023**

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**IDAHO INDUSTRIAL COMMISSION**  
**Administrative Rules Under the Worker's Compensation Law**

**Docket No. 17-0101-2301**  
**ZBR Negotiated Rulemaking**

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DATED this 4th day of October, 2023.

George Gutierrez, Director  
Industrial Commission  
11321 W. Chinden Blvd.  
Boise, Idaho 83714  
P.O. Box 83720  
Boise, Idaho 83720-0041  
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## IDAPA 17 – IDAHO INDUSTRIAL COMMISSION

### Administration Section

#### 17.01.01 – Administrative Rules Under the Worker’s Compensation Law

##### **Who does this rule apply to?**

*This rule applies to the following stakeholders:*

- Injured Workers;
- Employers;
- Medical Providers;
- Adjusters;
- Attorneys;
- Sureties; and
- Third-Party Administrators (TPAs)

##### **What is the purpose of this rule?**

*This rule covers the administration and regulation of the Idaho Worker’s Compensation Act, including, but not limited to: coverage requirements, benefits administration, medical fee schedule and process for medical fee disputes, reporting requirements, and claims administration requirements. For rules regarding the complaint and litigation process, please see the Judicial Rules of Practice and Procedure on the Commission’s website at <https://iic.idaho.gov/rules-and-legislation/>.*

##### **What is the legal authority for the agency to promulgate this rule?**

*This rule implements the following statutes passed by the Idaho Legislature:*

Industrial Commission -

- [72-101, et. seq., Idaho Code](#) - Worker’s Compensation and Related Laws

##### **Who do I contact for more information on this rule?**

Idaho Industrial Commission  
11321 W. Chinden Blvd.  
Boise, ID 83714

P.O. Box 83720  
Boise, ID 83720-0041  
Phone: (208) 334-6000  
Fax: (208) 332-7559  
Email: [commissionsecretary@iic.idaho.gov](mailto:commissionsecretary@iic.idaho.gov)  
Web: <https://iic.idaho.gov/>

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# IDAPA 17 – INDUSTRIAL COMMISSION

## 17.01.01 – ADMINISTRATIVE RULES UNDER THE WORKER'S COMPENSATION LAW

### 000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of 72-301, 72-301A, 72-304, 72-327, 72-432, 72-508, 72-528, 72-602, 72-803, and 72-806, Idaho Code. (3-23-22)

### 001. TITLE AND SCOPE.

**01. Title.** The title of this chapter is “Administrative Rules Under the Worker's Compensation Law” IDAPA 17, Title 01, Chapter 01. (3-23-22)

**02. Scope.** This chapter includes the Industrial Commission's worker's compensation rules. (3-23-22)

### 002. WRITTEN INTERPRETATIONS.

The Industrial Commission uses the following guidelines for implementing the EDI reporting requirements set out in this Chapter: (3-23-22)

**01. EDI Guide and Tables.** The Idaho Industrial Commission Claims EDI Implementation Guide and Trading Partner Tables (“EDI Guide and Tables”). The Idaho Industrial Commission Claims EDI Implementation Guide and Trading Partner Tables are available on the Commission's website at <https://iic.idaho.gov/>. (3-23-22)

**02. EDI Implementation Guide.** International Association of Industrial Accidents Boards and Commissions (IAIABC) EDI Claims Release 3.0 or, after September 14, 2023, Release 3.1, Implementation Guide (“EDI Implementation Guide”). The IAIABC Claims Release 3.0 and Release 3.1 Implementation Guides are available at the IAIABC website at <https://www.iaabc.org>. (4-6-23)

### 003 – 009. (RESERVED)

### 010. DEFINITIONS.

The definitions set forth in Chapter 72, Idaho Code apply to these rules. In addition, the following terms have the meaning set forth below: (3-23-22)

**01. Adjustor.** Means an individual who adjusts worker's compensation claims. (3-23-22)

**02. Ambulatory Payment Classification.** Means the payment system adopted by CMS for outpatient services (3-23-22)

**03. Available Funds.** Means a sum of money to which a Charging Lien may attach. It does not include any compensation paid or not disputed to be owed prior to Claimant's agreement to retain the attorney. (3-23-22)

**04. Ambulatory Surgery Center.** Means a facility providing medical services on an outpatient basis only. (3-23-22)

**05. Approval by Commission.** Means the Commission has approved attorney fees in conjunction with an award of compensation or an LSS or otherwise in accordance with Section 802 of this rule upon a proper showing by the attorney seeking to have the fees approved. (3-23-22)

**06. Average Wholesale Price.** Means the average wholesale price for medicine obtained from pricing data provided by the original manufacturer of that medicine to industry-wide compilers of drug prices, e.g., Red Book and Medi-Span. (3-23-22)

**07. Charge.** Means the expense or cost. For hospitals and ASCs, “charge” means the total charge. (3-23-22)

**a. Acceptable charge.** Means a charge calculated in compliance with Section 803 of this rule or as billed by the Provider, whichever is lower, or the charge agreed to pursuant to a written contract. (3-23-22)

**b. Customary charge.** Means a charge that has an upper limit no higher than the 90th percentile, as determined by the Commission, of usual charges made by Idaho Providers for a given medical service. (3-23-22)

c. Reasonable charge. Means a charge that does not exceed the Provider's “usual” charge and does not exceed the “customary” charge. (3-23-22)

d. Usual charge. Means the most frequent charge made by an individual Provider for a given medical service to non-industrially injured patients. (3-23-22)

**08. Charging Lien.** Means a lien against a Claimant's right to any compensation under the Worker's Compensation Law, which may be asserted by an attorney who is able to demonstrate that: (3-23-22)

a. There are compensation benefits available for distribution on equitable principles; (3-23-22)

b. The services of the attorney operated primarily or substantially to secure the fund out of which the attorney seeks to be paid; (3-23-22)

c. It was agreed that counsel anticipated payment from compensation funds rather than from the client; (3-23-22)

d. The Claim is limited to costs, fees, or other disbursements incurred in the case through which the fund was raised; and (3-23-22)

e. There are equitable considerations that necessitate the recognition and application of the Charging Lien. (3-23-22)

**09. Claim.** Means filing for worker's compensation benefits through a Form 1A-1, First Report of Injury or Illness (FROI) or an application for hearing, referred to as a Complaint, with the Commission. (3-23-22)

**10. Claims Administrator.** Means an organization, including insurers, third party administrators, independent adjusters, or self-insured employers, that services worker's compensation claims. (3-23-22)

**11. Claimant.** Means a person who has filed a Claim for worker's compensation benefits and includes their agents, such as attorneys. (3-23-22)

**12. Commission.** Means the Idaho Industrial Commission. (3-23-22)

**13. Critical Access Hospital.** Means a hospital currently designated as a critical access hospital by CMS. (3-23-22)

**14. Current Procedural Terminology.** Means the medical code published by the American Medical Association. (3-23-22)

**15. Death Claim.** Means a Claim arising from the death of a worker as a result of a work-related injury or occupational disease. (3-23-22)

**16. Electronic Data Interchange.** Means a computer to computer exchange of data in a standardized format. (3-23-22)

**17. Fee Agreement.** Means a written agreement between a worker and an attorney in conformity with the Idaho Rules of Professional Conduct. (3-23-22)

a. Reasonable, as used in Section 802 of this rule, means that an attorney's fees are consistent with the fee agreement and are to be satisfied from Available Funds, subject to the element of reasonableness contained in Idaho Rules of Professional Conduct 1.5. (3-23-22)

**18. First Degree of Consanguinity.** Means the relationship between parents and their children whether related by blood or affinity. Adopted or step children and their adoptive or step parents are deemed to be within the first degree of consanguinity. (3-23-22)

- 19. First Report of Injury.** Means the first filing of information with the Industrial Commission that a reportable workplace injury has occurred or an occupational disease has been manifested, as required by Section 72-602(1), Idaho Code; filed in accordance with these rules. (3-23-22)
- 20. Gross Direct Premiums Written.** Means the gross sum of premiums on policies written, without any deduction for refunds or repayments resulting from cancellations. It does not include premiums on contracts between insurers or reinsurers. For all policies written, gross direct premiums written may reflect experience modifications, deviations, and retrospective rating. (3-23-22)
- 21. Healthcare Common Procedure Coding System.** Means the set of healthcare procedure codes based on the American Medical Association's Current Procedural Terminology. (3-23-22)
- 22. Hospital.** Means an acute care facility providing medical or rehabilitation services on an inpatient and outpatient basis. (3-23-22)
- 23. IAIABC EDI Release 3.0 or 3.1.** Means the IAIABC authored EDI Claims Release 3.0 or 3.1 standards that cover the transmission of claims (FROI and SROI) information through electronic reporting. (3-23-22)
- 24. Impairment Rated Claim.** Means those claims in which the Provider establishes an impairment rating for the injured worker. (3-23-22)
- 25. Implantable Hardware.** Means objects or devices that are made to support, replace, or act as a missing anatomical structure or to support or manage proper biological functions or disease processes and where surgical or medical procedures are needed to insert or apply such devices and surgical or medical procedures are required to remove such devices. The term also includes equipment necessary for the proper operation of the implantable hardware, even if not implanted in the body. (3-23-22)
- 26. Indemnity Benefits.** Means payments made to or on behalf of worker's compensation Claimants, including temporary or permanent total or partial disability benefits, death benefits paid to dependents, retraining benefits, and any other type of income benefits, but excluding medical and related benefits. (3-23-22)
- 27. Indemnity Claim.** Means any claim made for the payment of indemnity benefits. (3-23-22)
- 28. Legacy Claim.** Means a FROI that was either filed on paper or electronically prior to the EDI Claims Release 3.1 implementation. (3-23-22)
- 29. Litigated Case.** Means a case in which a complaint has been filed. (3-23-22)
- 30. Medical Only Claim.** Means the injured worker will not suffer a disability lasting more than five (5) calendar days as a result of a job-related injury or occupational disease, nor be admitted to a hospital as an inpatient. (3-23-22)
- 31. Medical Report.** Means and includes without limitation, all bills, chart notes, surgical records, testing results, treatment records, hospital records, prescriptions, and medication records. (3-23-22)
- 32. Medicare Severity - Diagnosis Related Group.** Means a system adopted by CMS that groups hospital admissions based on diagnosis codes, surgical procedures, and patient demographics. (3-23-22)
- 33. Net Premiums Written.** Means the amount of gross direct premiums on policies written less returned premiums and premiums on policies not taken. Paid dividends shall not be deducted for the purposes of calculating net premiums written. (3-23-22)
- 34. Payor.** Means the entity that is responsible for making payment to a Provider for services rendered to treat an industrially injured patient and includes self-insured employers, sureties, adjusters, and their agents. (3-23-22)

**35. Payroll.** Means the gross amount paid by an employer for salaries, wages, or commissions earned by its own direct employees, but not including any money paid to another entity or received from another entity for leased employees. (3-23-22)

**36. Pharmacy.** Means a facility as defined in Section 54-1705(29), Idaho Code. (3-23-22)

**37. Supplemental or Subsequent Report of Injury.** Means the filing of additional information with the Industrial Commission, regarding benefits paid or changes in the status or condition of an injured worker, of a Claim for benefits, as required by Sections 72-602(2), (3), and (4), Idaho Code; filed in accordance with these rules. (3-23-22)

**38. Termination of Disability.** Means the date upon which the obligation of the Employer/Surety becomes certain as to duration and amount whether by settlement, decision, or periodic payments in the ordinary course of claims processing. If resolved by LSS, the termination of disability shall occur on the date the LSS is approved and an order approving is filed by the Industrial Commission. If resolved by decision, the termination of disability shall occur on the date the decision resolving all issues becomes final. (3-23-22)

**39. Time Loss Claim.** Means the injured worker will suffer, or has suffered, a disability that lasts more than five (5) calendar days as a result of a job-related injury or occupational disease, or the injured worker requires, or required, in-patient treatment as a result of such injury or disease. (3-23-22)

**40. Trading Partner.** Means an insurance carrier, self-insured employer, or Claims Administrator that has entered into a Trading Partner Agreement with the Industrial Commission. (3-23-22)

**41. Trading Partner Agreement.** Means an agreement between the Industrial Commission and a Trading Partner that sets out the terms and conditions for the electronic reporting of information to the Commission. (3-23-22)

**011. ABBREVIATIONS.**

The following abbreviations have the meaning set forth below: (3-23-22)

**01. APC.** Means Ambulatory Payment Classification. (3-23-22)

**02. ASC.** Means Ambulatory Surgery Center. (3-23-22)

**03. AWP.** Means Average Wholesale Price. (3-23-22)

**04. CMS.** Means Centers for Medicare and Medicaid Services. (3-23-22)

**05. CPT.** Means Current Procedural Terminology. (3-23-22)

**06. EDI.** Means Electronic Data Interchange. (3-23-22)

**07. FROI.** Means First Report of Injury. (3-23-22)

**08. HCPCS.** Means Healthcare Common Procedure Coding System. (3-23-22)

**09. IAIABC.** Means International Association of Industrial Accident Boards and Commissions. (3-23-22)

**10. ISIF.** Means the Industrial Special Indemnity Fund, which is commonly referred to as the Second Injury Fund. (3-23-22)

**11. LSS.** Means Lumps Sum Settlement. (3-23-22)

**12. MSDRG.** Means Medicare Severity Diagnosis Related Group. (3-23-22)



- 13. NCCI. Means National Council on Compensation Insurance. (3-23-22)
- 14. NDC. Means National Drug Code. (3-23-22)
- 15. RBRVS. Means Resource-Based Relative Value Scale. (3-23-22)
- 16. RVU. Means Relative Value Unit. (3-23-22)
- 17. SROI. Means Supplemental or Subsequent Report of Injury. (3-23-22)

**012. LIBERAL CONSTRUCTION.**

Rulemaking before the Industrial Commission should be just, speedy, and economical; unless prohibited by statute, the Industrial Commission may permit deviation from these rules when it finds compliance with them is impracticable, unnecessary, or not in the public interest. (3-23-22)

**013. -- 200. (RESERVED)**

**201. RULE GOVERNING 72-212(5) EXEMPTIONS.**

**01. Exemptions.** Each person who elects to exempt themselves from coverage or revoke their exemption under Section 72-212(5), Idaho Code, must file an IC53 Declaration form with the Industrial Commission. The form is available on the Commission's website. (3-23-22)

**02. Form.** The form must be signed by both the employee and the employer. An original and one (1) copy of the IC53 form shall be filed with the Commission. Upon approval by the Commission, the copy will be returned to the employee filing for an exemption or revocation of an exemption. (3-23-22)

**03. Approval by Commission.** The Commission must approve the exemption or revocation of exemption. The Commission may require verification of information submitted. Fraud or misrepresentation in the information provided will void the exemption or revocation. (3-23-22)

**04. IC53 Form.** If the employer is insured, it is the employer's responsibility to file a copy of the IC53 form with the employer's insurance company. (3-23-22)

**05. Effective Date.** The effective date of the exemption or revocation of exemption shall be the date the properly completed form is received by the Commission. (3-23-22)

**06. Exemption Effective.** The exemption shall remain in effect until a revocation of exemption is filed with the Commission, or, termination of employment with the designated employer, or upon the death of the employee, whichever occurs first. (3-23-22)

**202. -- 300. (RESERVED)**

**301. RULES GOVERNING QUALIFICATIONS TO WRITE INSURANCE OR SELF-INSURE.**

**01. Insurance Carriers.** In order to gain approval from the Industrial Commission to underwrite worker's compensation insurance under Section 72-301, Idaho Code, an insurance carrier shall comply with the following requirements: (3-23-22)

**a. Deposit With State Treasurer.** The carrier must receive approval from the Director of the Idaho Department of Insurance to underwrite casualty and surety insurance under Sections 41-506 and 41-507, Idaho Code, and 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. (3-23-22)

**b. Application.** To receive approval from the Industrial Commission, an insurance carrier must supply an application with: (3-23-22)

- i. A statement from the Director of the Idaho Department of Insurance documenting compliance with Paragraph 01.a, above; (3-23-22)
  - ii. The latest audited financial statement of said carrier; (3-23-22)
  - iii. The name and address of the agent for service of process in Idaho; (3-23-22)
  - iv. The name and address of the Claims Administrator employing an Idaho licensed resident adjuster or the insurance carrier's own in-house Idaho adjusting staff with authority to make compensation payments and adjustments of claims arising under the Act. Each Claims Administrator shall have only one (1) mailing address on record at the Commission for claims adjusting purposes. If more than one (1) Claims Administrator is utilized in Idaho, a list of every such Claims Administrator and all corresponding policyholders shall be provided; (3-23-22)
  - v. A statement that the carrier will distribute blank forms that are prescribed by the Commission to its insured; (3-23-22)
  - vi. A statement that all surety bonds covering the payment of compensation will be filed with the Idaho State Treasurer for all employers insured. All carriers will use the continuous bond form set out on the Commission's website. (3-23-22)
  - vii. A statement that renewal certificates on said bonds will be issued and filed with the Industrial Commission immediately, when and if renewed; (3-23-22)
  - viii. A statement that all surety contract cancellations will be canceled in compliance with Section 72-311, Idaho Code; (3-23-22)
  - ix. A statement that said carrier will deposit, in addition to other security required by this rule, further security equal to all unpaid outstanding awards of compensation; (3-23-22)
  - x. A statement that said carrier will comply with the statutes of the state of Idaho and rules of the Industrial Commission and that payments of compensation shall be sure and certain and not unnecessarily delayed; and (3-23-22)
  - xi. A statement that the carrier will make reports to the Commission as are required. (3-23-22)
- 02. Self-Insured Employers.** In order to gain approval from the Industrial Commission to self-insure under Section 72-301, Idaho Code, an employer shall comply with the following requirements: (3-23-22)
- a.** Payroll. Have an average annual Idaho Payroll over the preceding three (3) years of at least four million dollars (\$4,000,000). (3-23-22)
  - b.** Application. Submit a completed application, available from the Industrial Commission's Fiscal Department, along with the application fee of two hundred fifty dollars (\$250), to the Idaho Industrial Commission, Attention: Fiscal Department. (3-23-22)
  - c.** Documentation. Submit documentation demonstrating the sound financial condition of the employer, such as the most recent CPA reviewed or, if available, audited, financial statement. (3-23-22)
  - d.** Claims Adjusting. Designate in writing a Claims Administrator employing an Idaho licensed resident adjuster including name and address. Each Claims Administrator shall have only one (1) mailing address on record at the Commission for claims adjusting purposes. (3-23-22)
  - e.** Previous Claims. Provide a history of all worker's compensation claims filed with the employer or the employer's worker's compensation carrier, as well as all compensation paid, during the previous five (5) calendar years. (3-23-22)
  - f.** Excess Insurance. Provide an insurance plan that must include excess insurance coverage and

copies of all proposed policies of excess worker's compensation insurance coverage. (3-23-22)

**g.** Actuarial Study. Provide an actuarial study prepared by a qualified actuary determining adequate rates for the proposed self-funded worker's compensation plan based upon a fifty percent (50%) confidence level. (3-23-22)

**h.** Feasibility Study. Provide a self-insurance feasibility study that includes an analysis of the advantages and disadvantages of self insurance as compared to current coverage, and the related costs and benefits. (3-23-22)

**i.** Custodial Agreement. Set up a custodial agreement with the State Treasurer for securities required to be deposited under Sections 72-301 and 72-302, Idaho Code. (3-23-22)

**j.** Supplemental Information. Provide supplemental information as requested. (3-23-22)

**k.** Initial Security Deposit. Prior to final approval, deposit an initial security deposit with the Idaho State Treasurer in the form permitted by Section 72-301, Idaho Code, or a self-insurer's bond in substantially the form as the Commission's self-insurer's compensation bond, available on the Commission's website, in the amount of one hundred fifty thousand dollars (\$150,000), plus five percent (5%) of the first ten million dollars (\$10,000,000) of the employer's average annual Payroll in the state of Idaho for the three (3) preceding years; along with such additional security as may be required by the Commission based on prior claims history. (3-23-22)

**l.** Initial Guaranty Agreement. The Commission may allow or, where financial reports or other factors such as the high risk industry of the employer indicate the need, require an employer that is organized as a joint venture or a wholly owned subsidiary to provide a guaranty agreement from each member of the joint venture or the parent company. This guaranty agreement confirms the continuing agreement of each of the joint venture members or the parent company to guarantee the payment of all Idaho worker's compensation claims of employees of that joint venture or subsidiary employer. The guaranty agreement shall be in substantially the same form as the current sample Indemnity and Guaranty Agreement and, as applicable, the companion Consent of the Board of Directors, available on the Commission's website. (3-23-22)

**m.** Written Approval. Obtain written approval from the Industrial Commission. (3-23-22)

**n.** Idaho National Laboratory. An employer meeting the requirements of Section 72-301A, Idaho Code, does not have to comply with the requirements of Paragraphs 302.02.a., 02.f., 02.i., and 02.k., above. (3-23-22)

**302. RULES GOVERNING CONTINUING REQUIREMENTS TO UNDERWRITE INSURANCE OR SELF-INSURE.**

**01. Insurance Carriers.** An insurance carrier approved under IDAPA 17.01.01.301.01 shall comply with the following requirements: (3-23-22)

**a.** Maintain Statutory Security Deposits with the State Treasurer. (3-23-22)

**i.** 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 subsequently. (3-23-22)

**ii.** In addition to the security required in Subsection 01.a.i, 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 available on the Commission's website. 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. (3-23-22)

**iii.** 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. (3-23-22)

**b.** 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. (3-23-22)

**c.** Maintain Resident Idaho Office. Each insurance carrier shall maintain a Claims Administrator employing an Idaho licensed resident adjuster or the carrier's own adjusting offices or officers residing in Idaho. (3-23-22)

**i.** 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. (3-23-22)

**ii.** 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. Further each in-state Adjustor must have full authority to: (3-23-22)

- (1) Investigate and adjust all claims for compensation; (3-23-22)
- (2) Pay all compensation benefits due; (3-23-22)
- (3) Accept service of claims, applications for hearings, orders of the Commission, and all process which may be issued under the Worker's Compensation Law; (3-23-22)
- (4) Enter into compensation agreements and LSSs with Claimants; (3-23-22)
- (5) Provide at the employer's expense necessary forms to any employee who wishes to file a Claim under the Worker's Compensation Law. (3-23-22)

**d.** Supply Forms. Each insurance carrier shall distribute the required forms prescribed by the Commission to all employers it insures. A list of required forms is available on the Commission's website. (3-23-22)

**e.** Comply with Industrial Commission Reporting Requirements. Each insurance carrier shall, within the time prescribed, file such reports and respond to such information requests as the Commission may require from time to time concerning matters under the Worker's Compensation Law. (3-23-22)

**f.** Report Proof of Coverage. (3-23-22)

**i.** Each insurance carrier shall report all proof of coverage to NCCI. NCCI is the designated agent to receive, process, and forward the proof of coverage information required by these rules to the Commission. The address of the Commission's designated agent is available on the Commission's website. (3-23-22)

**ii.** The Industrial Commission adopts the IAIABC's 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, data element requirements, and transaction standards is available on the Commission's website. Each insurance carrier shall report data for all mandatory elements in the current IAIABC proof of coverage record layout and transaction standards on each policy reported. (3-23-22)

**iii.** 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. (3-23-22)

**g.** Report New Policy, Renewal Policy, and Endorsement Information Within Thirty Days. Each insurance carrier shall report the issuance of any new worker's 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.

(3-23-22)

**h.** Report Cancellation and Non-Renewal of Policy Within Time Prescribed by Statute. Each insurance carrier shall report the cancellation and/or nonrenewal of any worker's 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. (3-23-22)

**i.** 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," available on the Commission's website. (3-23-22)

**j.** Report Deductible Policy. On or before March 3rd of each year, every insurance carrier shall submit a report of all deductible policies that were issued and in effect during the previous calendar year. That report shall be submitted in a form substantially similar to the current "Deductible Policy Report" available on the Commission's website. The report shall include the following information: insured name, policy number, effective and expiration dates, deductible amount, the premium charged for the policy before credit for the deductible, and the final premium after credit for the deductible. (3-23-22)

**k.** 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. (3-23-22)

**i.** 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. (3-23-22)

**ii.** 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. (3-23-22)

**iii.** The report shall be submitted on or in a format that is substantially the same as the current Form IC36A, "Report of Outstanding Awards - Insurance Carriers" available on the Commission's website. The report may be produced as a computerized spreadsheet or database printout. (3-23-22)

**iv.** 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 worker's compensation claims in Idaho, a corporate officer of the insurance carrier shall prepare, certify, and file a consolidated report of outstanding awards. (3-23-22)

**v.** 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. (3-23-22)

**l.** 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. (3-23-22)

**02. Self-Insured Employers.** A self-insured employer approved under Subsection 301.02 shall comply with the following requirements: (3-23-22)

**a.** Payroll Requirements. Maintain an average annual Idaho Payroll over the preceding three (3) years of at least four million dollars (\$4,000,000). Any self-insured employer that does not meet the Payroll requirement of this rule for two consecutive semi-annual premium tax reporting periods shall be allowed to maintain their self-insured status for six (6) months from the end of the last reporting period in order to permit them time to increase their Payroll or obtain worker's compensation coverage with an insurance carrier authorized to write worker's compensation insurance in the state of Idaho. (3-23-22)

**b.** Security Deposit with Treasurer. (3-23-22)

**i.** Maintain a primary security deposit with the Idaho State Treasurer in the form permitted by Section 72-301, Idaho Code, a self-insurer's bond form available on the Commission's website, or in substantially the same

form, or in such other form approved by the Commission, in the amount of one hundred fifty thousand dollars (\$150,000), plus five percent (5%) of the employers' average annual Payroll in the state of Idaho for the three (3) preceding years, not in excess of ten million dollars (\$10,000,000). 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. In addition thereto, the self-insured employer shall deposit additional security in such amount as the Commission determines is necessary to secure the self-insured employer's total unpaid liability for compensation under the Worker's Compensation Law. No approved security shall be accepted for deposit above its par value. Additional deposits of approved security may be required semi-annually if the market value of an approved investment falls below its par value or if the total value of the employer's security deposit falls below the total security required to be maintained on deposit when calculated in accordance with this rule. (3-23-22)

ii. Self-insured employers shall receive a credit for the primary security deposit against the self-insured employer's obligation to post the additional security required by Subparagraph 302.02.b.i. of this rule. (3-23-22)

iii. Excess insurance coverage approved by the Commission may apply as a credit against the self-insured employer's obligation to post the additional security required by Subparagraph 302.02.b.i. of this rule. The Commission must be provided with thirty (30) days advance written notice of any change or cancellation of an approved excess insurance policy. No credit will be given for any excess insurance coverage provided by a surplus lines carrier, as described in Chapter 12, Title 41, Idaho Code. (3-23-22)

iv. All security deposited by the self-insured employer shall be maintained as provided by Section 72-302, Idaho Code. (3-23-22)

v. Any withdrawal or partial release of security deposited hereunder must be requested in writing and approved by the Commission. (3-23-22)

**c. Continue or Provide Guaranty Agreement. (3-23-22)**

i. A self-insured employer that is organized as a joint venture or a wholly owned subsidiary shall continue in effect any guaranty agreement that the Commission has previously allowed or required, until termination is permitted by the Commission. (3-23-22)

ii. Where an adverse change in financial condition or other relevant factors such as claims history or industry risk indicates the need, a self-insured employer that is organized as a joint venture or a wholly owned subsidiary may be allowed to, or shall upon request, provide a guaranty agreement from each member of the joint venture or the parent company. This guaranty agreement confirms the continuing agreement of each of the joint venture members or the parent company to guarantee the payment of all Idaho worker's compensation claims of employees of that joint venture or subsidiary self-insured employer. The guaranty agreement shall be in substantially the same form as the current sample Indemnity and Guaranty Agreement, and as applicable, the companion Consent of the Board of Directors, available on the Commission's website. (3-23-22)

**d. Maintain a Licensed Resident Adjuster. Maintain an Idaho licensed, resident claims adjuster located within the state of Idaho who shall have full authority to make decisions and to authorize the payment of all compensation on said claims on behalf of the employer including, but not limited to, the following: (3-23-22)**

i. Investigate and adjust all claims for compensation; (3-23-22)

ii. Pay all compensation benefits due; (3-23-22)

iii. Accept service of claims, applications for hearings, orders of the Commission, and all process which may be issued under the Worker's Compensation Law; (3-23-22)

iv. Enter into compensation agreements and LSSs with Claimants; (3-23-22)

v. Provide at the employer's expense necessary forms to any employee who wishes to file a Claim under the Worker's Compensation Law. (3-23-22)

e. File Reports. Report to the Industrial Commission semi-annually, or more often as required by the Commission, total unpaid liability on all open claims. (3-23-22)

i. The semi-annual report of total unpaid liability shall be filed with the Industrial Commission by the end of the months of January and July. (3-23-22)

ii. The report shall provide the aggregate number of open claims, including indemnity with medical and Medical Only Claims, along with the amount of any compensation paid on open claims, as of the end of each June and December. (3-23-22)

iii. The report shall be filed even if there are no open claims. In that event, the employer shall certify the fact that there are no open claims to be reported. (3-23-22)

iv. The report shall be submitted on or in a format that is substantially the same as the current Form IC-211, “Self-Insured Employer Report of Total Unpaid Liability,” available on the Commission's website. The report may be produced as a computerized spreadsheet or database printout. (3-23-22)

v. The report shall be signed and certified to be correct by a corporate officer. If an employer has designated more than one adjuster for worker's compensation claims in Idaho, a corporate officer of the employer shall prepare, certify, and file a consolidated report of all unpaid liability. (3-23-22)

vi. A self-insured employer shall also make, within the time prescribed, such other reports and respond to such information requests as the Commission may require from time to time concerning matters under the Worker's Compensation Law. (3-23-22)

f. Submit to Audits by Industrial Commission. Each year a self-insured employer shall provide the Industrial Commission with a copy of its annual financial statements, or other acceptable documentation. Each self-insured employer shall submit to audit by the Commission or its designee at any time and as often as it requires to verify the amount of premium such self-insured employer would be required to pay as premium to the State Insurance Fund, and to verify compliance with the provisions of these rules and the Idaho Worker's Compensation Law. For the purpose of determining such premium for uninsured contractors of a self-insured employer, 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 such coverage. (3-23-22)

g. Comply with Law and Rules. Comply with the statutes of the state of Idaho and the rules of the Industrial Commission to the end that payment of compensation shall be sure and certain and not unnecessarily delayed. The Commission may withdraw its approval of any employer to operate as a self-insurer if it shall appear to the Commission that workers secured by said self-insured employer are not adequately protected and served, or the employer is failing to comply with the provisions of these rules or the Worker's Compensation Law. (3-23-22)

h. Idaho National Laboratory. An employer meeting the requirements of Section 72-301A, Idaho Code, does not have to comply with Paragraph 303.02.a. and 302.02.b., above. (3-23-22)

**303. RULE GOVERNING THE COLLECTION OF PREMIUM TAX ON WORKER'S COMPENSATION INSURANCE POLICIES.**

This rule governs the collection of premium tax on worker's compensation insurance policies. This procedure applies to all worker's compensation policies. (3-23-22)

**01. Procedure for Submitting Premium Tax Forms.** The form IC 4008, available on the Commission's website, shall be used to report numbers of policies and the total gross premiums written. The original shall be sent to the Commission; a copy shall also be attached to the reporting entity's annual premium tax statement that is filed with the Idaho Department of Insurance. This form is due to the Commission by July 31 for the reporting period of January 1 through June 30; it is due by March 3 for the reporting period of July 1 through December 31. (3-23-22)

**304. RULE GOVERNING PREMIUM TAX COMPUTATION FOR SELF-INSURED EMPLOYERS.**

**01. Payroll Reports.** No later than March 3rd and July 31st, self-insured employers shall file a semi-annual premium tax report with the Fiscal Department of the Commission. Self-insured employers shall use the Commission's current report form IC 4010, along with the accompanying computation form IC 4010a, available on the Commission's website. The premium tax payment due from a self-insured employer shall be based upon the manual premium calculated for each reporting period, as modified by an experience modification factor calculated by NCCI and submitted to the Commission in accordance with Subsection 304.02 of this rule. No other rating factor shall be allowed. If the self-insured employer elects to not provide such experience modification factor, the premium tax will be computed based upon the manual premium only. (3-23-22)

**02. Experience Modification.** A self-insured employer that elects to use an experience modification factor in computing premium tax shall make an annual application to NCCI for an experience modification factor using the NCCI form ERM-6 and paying to NCCI any fees charged for providing that calculation. An NCCI experience modification factor may only be based on the employer's Idaho operations for which self-insured status is authorized. In order to have an experience modification factor considered for any reporting period, an employer must timely submit to the Commission's Fiscal Department: (3-23-22)

- a. A copy of the completed form ERM-6 filed with NCCI; (3-23-22)
- b. The resulting experience modification factor received from NCCI; and (3-23-22)
- c. The completed IC 4010 Semi-Annual Premium Tax Form for Self-Insurers and IC 4010a Computation Form. (3-23-22)

**305. REQUIREMENTS FOR MAINTAINING IDAHO WORKER'S COMPENSATION CLAIMS FILES.**

All insurance carriers, self-insured employers, and licensed adjusters servicing Idaho worker's compensation claims shall comply with the following requirements: (3-23-22)

**01. Idaho Office.** (3-23-22)

a. All insurance carriers, self-insured employers, and licensed adjusters servicing Idaho worker's compensation claims shall maintain an office within the state of Idaho. The offices shall be staffed by adequate personnel to conduct business. (3-23-22)

b. The insurance carrier or self-insured employer shall authorize and require a member of its in-state staff or an Idaho licensed resident adjuster to service and make decisions regarding claims pursuant to Section 72-305, Idaho Code. (3-23-22)

c. As staffing changes occur and, at least annually, the insurance carrier, self-insured employer, or licensed adjuster shall submit to the Commission Secretary the names of those authorized to make decisions regarding claims pursuant to Section 72-305, Idaho Code. Each authorized insurance carrier shall designate only one (1) Claims Administrator for each policy of worker's compensation insurance. (3-23-22)

**02. Claim Files.** All Idaho worker's 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: (3-23-22)

- a. FROI and Claim for Benefits; (3-23-22)
- b. Copies of bills for medical care; (3-23-22)
- c. Copy of lost-time computations, if applicable; (3-23-22)
- d. Correspondence reflecting reasons for any delays in payments, the resolution of such delays, and acceptance or denial of compensability; (3-23-22)



- e. Employer's return-to-work communications; and (3-23-22)
- f. Medical reports. (3-23-22)

**03. Correspondence.** All original correspondence involving adjusting decisions regarding Idaho worker's compensation claims shall be authorized from and maintained at in-state offices. (3-23-22)

**04. Date Stamp.** Each of the documents listed in Subsections 305.02 and 305.03, above, 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. (3-23-22)

**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 for the insurance carrier or self-insured employer. The original copy of the FROI, Claim for Benefits, and notices of occupational illness and fatality shall be sent electronically to the Industrial Commission. (3-23-22)

**06. Compensation Payments - Generally.** (3-23-22)

**a.** All compensation, as defined by Section 72-102, Idaho Code, must be issued from the in-state office. (3-23-22)

**b.** Except as ordered otherwise by the Commission, the insurance carrier or self-insured employer may make compensation payments by either: (3-23-22)

i. Check or other readily negotiable instrument; (3-23-22)

ii. When requested by the Claimant, electronic transfer payment to an account designated by the Claimant in accordance with the requirements of Subsection 305.07; or (3-23-22)

iii. When requested by the Claimant, electronic transfer payments made through an access card; if that option is made available by the carrier or self-insured employer, in accordance with the requirements of Subsection 305.08. (3-23-22)

**c.** If the Claimant is represented by an attorney who may have an attorney's lien for fees due on such compensation payments, the attorney must agree to payment by electronic transfer to Claimant's account or payment through an access card before such compensation may be paid other than by a check made payable to the Claimant and the attorney. (3-23-22)

**07. Electronic Transfer Payments.** (3-23-22)

**a.** A Claimant may request that the insurance carrier or self-insured employer make compensation payments by electronic transfer to a personal bank account by providing the insurance carrier or self-insured employer in writing: the name and routing transit number of the financial institution and the account number and type of account to which the Claimant wants to have the compensation electronically transferred. The insurance carrier or self-insured employer shall provide the Claimant with a written form to fill out the required information by this subsection within seven (7) days of receiving a request for electronic transfer of payments from the Claimant unless the Claimant has already completed an on-line electronic form provided by the carrier or employer. (3-23-22)

**b.** The insurance carrier or self-insured employer may make compensation payments to the Claimant by electronic transfer to an account designated by the Claimant if the Claimant: (3-23-22)

i. Requests in writing that payment be made by electronic transfer; (3-23-22)

ii. Provides the information required by Paragraph 305.07.a. above; and (3-23-22)

iii. Is reasonably expected to be entitled to receive compensation payments for a period of eight (8) weeks or more from the point that Subparagraphs 305.07.b.i. and 07.b.ii. are satisfied. (3-23-22)

**c.** The insurance carrier or self-insured employer shall initiate payment by electronic transfer starting with the first benefit payment due on or after the twenty first day after the requirements of Paragraph 305.07.b., above are met, but shall continue to make timely payments by check until the insurance carrier or self-insured employer initiates benefit payment delivery by electronic transfer. (3-23-22)

**d.** If the Claimant has previously been receiving benefit payments by electronic transfer and wants to receive benefits by check, the insurance carrier or self-insured employer shall initiate benefit payment delivery by check starting with the first benefit payment due to the Claimant on or after the seventh day after receiving a written request for such payments. (3-23-22)

**08. Access Card Payments.** (3-23-22)

**a.** Access card means any card or other payment method that may be used by a Claimant to initiate electronic fund transfer from an insurance carrier's or a self-insured employer's bank account. The term “access card” does not include stored value cards or prepaid cards that store funds directly on the card and that are not linked to an insurance carrier's or a self-insured employer's bank account. (3-23-22)

**b.** An insurance carrier or a self-insured employer may pay compensation through an access card to a Claimant if there is written mutual agreement signed by the insurance carrier or self-insured employer and the Claimant. The insurance carrier or self-insured employer shall maintain accurate records of the mutual agreement for, at a minimum, four hundred and one (401) weeks from the date of injury. The written agreement shall contain an acknowledgment that the Claimant received and agreed to the written disclosure required by Paragraph 305.08.d. (3-23-22)

**c.** An insurance carrier or a self-insured employer providing compensation payments to a Claimant through an access card shall: (3-23-22)

**i.** Permit the Claimant to withdraw the entire amount of the balance of an access card in one transaction; (3-23-22)

**ii.** Not reduce compensation payments paid to a Claimant through an access card for the following fees, surcharges, and adjustments: (3-23-22)

(1) Overdraft services under which a financial institution pays a transaction (including a check or other item) when the Claimant has insufficient or unavailable funds in the account; (3-23-22)

(2) ATM withdrawal or point of sale purchase for more than the card holds and the transaction is denied; (3-23-22)

(3) ATM balance inquiries; (3-23-22)

(4) Withdrawing money from network ATMs; (3-23-22)

(5) Withdrawing money from a teller; (3-23-22)

(6) Customer service calls; (3-23-22)

(7) Activating the card; (3-23-22)

(8) Fees for card inactivity; (3-23-22)

(9) Closing account; (3-23-22)

(10) Access card replacement through standard mail; (3-23-22)

(11) Withdrawing the entire payment in one transaction; (3-23-22)

- (12) Point of sale purchases, or (3-23-22)
- (13) Any other fees or charges that are not authorized under Subparagraph 305.08.c.iii., and (3-23-22)
- iii. Only permit a Claimant to be charged for the following: (3-23-22)
  - (1) Fees for access card replacement through an expedited mail service; (3-23-22)
  - (2) International transaction fees, and (3-23-22)
  - (3) Out-of-network ATM fees. (3-23-22)
- d.** Insurance carriers or self-insured employers shall provide a written disclosure to the Claimant contemporaneously with the written mutual agreement required under Paragraph 305.08.b. that includes: (3-23-22)
  - i. A summary of the Claimant's liability for unauthorized electronic fund transfers; (3-23-22)
  - ii. The telephone number and address of the person or office to be notified when the Claimant believes that an unauthorized electronic fund transfer has been or may be made; (3-23-22)
  - iii. The type of electronic fund transfers that the Claimant may make and any limitations on the frequency of transfers; (3-23-22)
  - iv. Any fees imposed for electronic fund transfers or for the right to make transfers, including a statement that fees may be imposed by an ATM operator that is out-of-network; (3-23-22)
  - v. Fees for expedited card replacement or international transaction fees will be removed from the balance maintained in the bank account linked to the access card; (3-23-22)
  - vi. A summary of the Claimant's right to receipts and periodic statements; (3-23-22)
  - vii. All bank locations and network ATMs in the United States where the Claimant may access his or her funds at no cost; (3-23-22)
  - viii. A statement informing the Claimant that they have a right to receive payments directly into their personal bank account through direct deposit or by check. (3-23-22)
- e.** An insurance carrier or a self-insured employer shall provide the written disclosure and any notice of term or condition changes required under Paragraph 305.08.d. that: (3-23-22)
  - i. Are printed in not less than twelve (12) point font; (3-23-22)
  - ii. Include the full text to communicate all terms and conditions; (3-23-22)
  - iii. Are written in a clear and coherent manner and wherever practical, words with common and everyday meaning shall be used to facilitate readability; and (3-23-22)
  - iv. Are appropriately divided and captioned in a meaningful sequence such that each section contains an underlined, boldfaced, or otherwise conspicuous title or caption at the beginning of the section that indicates the nature of the subject matter included in or covered by the section. (3-23-22)
- f.** An access card issued to a Claimant under this Subsection 305.08 shall: (3-23-22)
  - i. Not bear any information that could reasonably identify the Claimant as a participant in the worker's compensation system; and (3-23-22)

ii. Include on the front or back of the access card a toll-free customer service number and website address. Customer service personnel shall be available by phone Monday through Friday during normal business hours (9 a.m. to 6 p.m. Mountain Time). (3-23-22)

g. The insurance carrier or self-insured employer shall provide a written notice to the Claimant at least twenty one (21) days before the effective date of any change in a term or condition of the mutual agreement or disclosure, including terminating the access card program, increased fees, or liability for unauthorized electronic fund transfers. Any terms or conditions that violate the requirements of this Subsection 305.08 are null and void and may result in administrative action against the carrier or employer. An insurance carrier or employer shall provide a written notice of term or condition changes that: (3-23-22)

i. Provides a comparison of the current terms and the changes; and (3-23-22)

ii. References the Claimant's ability to request a change in method of payment to electronic fund transfer to his or her personal bank account in accordance with Subsection 305.07 or to payment by check. (3-23-22)

h. An insurance carrier or a self-insured employer may close the access card account by issuing a check to the Claimant with the remaining balance of the access card if the account has been inactive for twelve (12) months or longer. (3-23-22)

i. The insurance carrier or self-insured employer shall not remove money from the Claimant's account or access card except to remove permitted fees under Subparagraph 305.08.c.iii. or to close the account for inactivity of a period of twelve (12) months or more. An insurance carrier or a self-insured employer seeking to recoup overpayments shall follow the requirements of section 72-316, Idaho Code. (3-23-22)

j. An insurance carrier or a self-insured employer is considered to have made a compensation payment the date the payment is available on the Claimant's access card. (3-23-22)

**09. Checks and Drafts.** Checks must be signed and issued within the state of Idaho; drafts are prohibited. (3-23-22)

a. The Commission may, upon receipt of a written Application for Waiver, grant a waiver from the provisions of Subsections 305.06 and 305.09 of this rule to permit an insurance carrier or a self-insured employer to sign and issue checks outside the state of Idaho. (3-23-22)

b. An Application for Waiver must be accompanied by an affidavit signed by an officer or principal of the insurance carrier or self-insured employer, attesting to the fact that the insurance carrier or self-insured employer is prepared to comply with all statutes and rules pertaining to prompt payments of compensation. (3-23-22)

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 or self-insured employer for which a waiver under this rule has been granted to assure that the insurance carrier or self-insured employer is complying with all statutes and rules pertaining to prompt payments of compensation. (3-23-22)

d. If at any time after the Commission has granted a waiver, the Commission receives information permitting the inference that the insurance carrier or self-insured employer 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 or self-insured employer an opportunity to be heard, may revoke the waiver and order the insurance carrier or self-insured employer to comply with the requirements of Subsections 305.06 and 305.09 of this rule. (3-23-22)

**10. 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 income benefit check shall be sent to the Industrial Commission electronically on the same day of issuance. (3-23-22)

**11. Prompt Claim Servicing.** Prompt claim servicing includes, but is not limited to: (3-23-22)

**a.** Making an initial decision to accept or deny a Claim for an injury or occupational disease within thirty (30) days of the date the Claims Administrator receives knowledge of the same. The worker shall be given notice of that initial decision in accordance with Section 72-806, Idaho Code. Nothing in this rule shall be construed as amending the requirement to start payment of income benefits no later than four (4) weeks or twenty-eight (28) days from the date of disability under the provisions of Section 72-402, Idaho Code. (3-23-22)

**b.** Payment of medical bills in accordance with the provisions of Section 803 of these rules. (3-23-22)

**c.** Payment of income benefits on a weekly basis, unless otherwise approved by the Commission. (3-23-22)

**i.** The first payment of income benefits under Section 72-408, Idaho Code, shall constitute application by the insurance carrier or self-insured employer for a waiver to pay Temporary Total Disability (TTD) benefits on a bi-weekly basis, Temporary Partial Disability (TPD) benefits on other than a weekly basis, Permanent Partial Disability (PPD) benefits based on permanent impairment and Permanent Total Disability (PTD) benefits every twenty-eight (28) days, rather than on a weekly basis. (3-23-22)

**ii.** Such waiver application shall be granted upon receipt and remain in effect unless revoked by the Industrial Commission in accordance with Subparagraph 305.11.c.iii. (3-23-22)

**iii.** If at any time after a waiver has been granted pursuant to this section the Commission receives information permitting the inference that the insurance carrier or self-insured employer has failed to service claims in accordance with Idaho law, or that such waiver has created an undue hardship on a Claimant, the Commission may issue an order to show cause why the Commission should not revoke that waiver, and after affording the insurance carrier or employer an opportunity to be heard, may revoke the waiver with respect to all or certain Claimants and order the insurance carrier or self-insured employer to comply with the requirements of Subsection 305.11.c. of this rule. (3-23-22)

**d.** Payment of the first Permanent Partial Disability (PPD) benefit based on permanent impairment no later than fourteen (14) days after receipt of the Medical Report providing the impairment rating. The first payment shall include payment of benefits retroactive to the date of medical stability. (3-23-22)

**e.** Temporary Partial Disability (TPD) payments shall be calculated using the employee's pay period, whether weekly, bi-weekly, or semi-monthly. For employees paid pursuant to any other schedule, TPD benefits shall be calculated semi-monthly. TPD payments owed for a particular pay period shall issue no later than seven (7) days following the date on which employee is ordinarily paid for that pay period. (3-23-22)

**12. Audits.** The Industrial Commission will perform periodic audits to ensure compliance with the above requirements. (3-23-22)

**13. Non-Compliance.** Non-compliance with the above requirements may result in the revocation of the authority of an insurance carrier to write worker's compensation insurance or self-insured employer to self-insure its worker's compensation insurance obligations in the state of Idaho, or such lesser sanctions as the Industrial Commission may impose. (3-23-22)

**306. RULE PROHIBITING USE OF SICK LEAVE OR OTHER ALTERNATIVE COMPENSATION.**

**01. Employee Not Required to Take Sick Leave in Lieu of Compensation.** No employer obligated to pay worker's compensation benefits to an employee as provided by the Worker's Compensation Law may require an employee to accept "sick leave" or other comparable benefit in lieu of the worker's compensation benefits provided by law. Section 72-318(2), Idaho Code, specifically provides that no agreement by an employee to waive his rights to compensation under the Worker's Compensation Law shall be valid. (3-23-22)

**02. Election of Sick Leave or Alternative Compensation Prohibited.** Further, an employee may not elect to accept "sick leave" or other comparable benefit from an employer in lieu of worker's compensation benefits

to which the employee is entitled under the Worker's Compensation Law. (3-23-22)

**307. RULE GOVERNING REPORTING INDEMNITY AND MEDICAL PAYMENTS AND MAKING PAYMENT OF INDUSTRIAL SPECIAL INDEMNITY FUND ASSESSMENT.**

Pursuant to Section 72-327, Idaho Code, the state insurance fund, every authorized insurance carrier, and self-insured employer in Idaho shall report annually to the Industrial Commission the total gross amount of medical only and Indemnity Benefits paid on Idaho worker's compensation claims during the applicable reporting period. This report is used to calculate the pro rata share of the annual assessment for the ISIF, under Section 72-327, Idaho Code.

(3-23-22)

**01. Filing.** The report of indemnity and medical 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. (3-23-22)

**02. Form.** The report of indemnity and medical payments shall be submitted in writing on, or in a format substantially the same as the current Form IC2-327, available on the Commission's website. (3-23-22)

**03. Report Required When No Indemnity Paid.** If an entity required to report under this rule has no claims against which indemnity or medical payments have been made during the reporting period, a report shall be filed so indicating. (3-23-22)

**04. Penalty for Late Filing.** A penalty shall be assessed by the Commission for filing the report of indemnity and medical payments later than March 3rd each year. (3-23-22)

**a.** A penalty of two hundred dollars (\$200) for late filing of seven (7) days or less. (3-23-22)

**b.** A penalty of one hundred dollars (\$100) per day for late filing of more than seven (7) days. (3-23-22)

**c.** A penalty assessed by the Commission shall be payable to the Industrial Commission and be submitted with the April 1 payment of the ISIF assessment, following notice by the Commission of the penalty assessment. (3-23-22)

**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%). (3-23-22)

**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. (3-23-22)

**308. – 400. (RESERVED)**

**401. RULE GOVERNING COMPUTATION OF AVERAGE WEEKLY WAGE.**

**01. Amounts Paid over Base Rate.** Sums paid by an employer to an employee, over and above the base rate of compensation agreed upon by the employer and the employee in a contract of hire, which are contingent and dependent upon the employee's increased physical exertion and/or efficiency shall be included in computing the employee's average weekly wage pursuant to Section 72-419(4)(a), Idaho Code. Said sums shall not be considered premium pay. (3-23-22)

**02. Fringe Benefits.** Also, in computing the average weekly wage, it shall be presumed that wages include, but are not limited to, cost of living increases, vacation pay, holiday pay, and sick leave. (3-23-22)

**03. Premium Pay.** Further, in computing the average weekly wage, it shall be presumed that premium pay includes, but is not limited to, shift differential pay and overtime pay. (3-23-22)