

IDAPA 17 – IDAHO INDUSTRIAL COMMISSION

17.02.11 – ADMINISTRATIVE RULES OF THE INDUSTRIAL COMMISSION UNDER THE WORKERS' COMPENSATION LAW – SECURITY FOR COMPENSATION – SELF-INSURED EMPLOYERS

DOCKET NO. 17-0211-1802

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 Sections 72-508, 72-301 and 72-304, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

PUBLIC HEARING
Wednesday, October 10, 2018
2:00 – 3:30 p.m.

Idaho Industrial Commission
700 S. Clearwater Lane
Boise, ID 83720

Via VIDEO CONFERENCE

1:00 p.m. (PDT)	2:00 p.m. (MDT)
IIC Coeur D'Alene Field Office 1111 W. Ironwood Drive, Suite A Coeur D'Alene, Idaho 83814	IIC Idaho Falls Field Office 1820 E. 17th, Suite 300 Idaho Falls, Idaho 83404
1:00 p.m. (PDT)	2:00 p.m. (MDT)
IIC Lewiston Field Office 1118 "F" Street Lewiston, Idaho 83501	IIC Twin Falls Field Office 1411 Falls Avenue East, Suite 915 Twin Falls, Idaho 83301

The hearing sites 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 Industrial Commission seeks to authorize and set forth conditions for the use of electronic fund transfers and access cards to pay benefits due to injured workers by self-insured employers.

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 as a result of this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the June 6, 2018 Idaho Administrative Bulletin, Vol. 18-6, page 76.

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 Patti Vaughn, Benefits Administration Manager, (208) 334-6063.

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 24, 2018.

Dated this 28th day of August, 2018.

Mindy Montgomery, Director
Industrial Commission
700 S. Clearwater Lane
P.O. Box 83720
Boise, Idaho 83720-0041
Phone: (208) 334-6000
Fax: (208) 334-2321

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 17-0211-1802
(Only Those Sections With Amendments Are Shown.)

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

All self-insured employers and licensed adjusters servicing Idaho workers' compensation claims shall comply with the following requirements: (4-7-11)

01. Idaho Office. All self-insured employers 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. The self-insured employer shall designate and require an Idaho licensed, resident adjuster to make decisions regarding claims pursuant to Section 72-305, Idaho Code. As staffing changes occur and, at least annually, the self-insured employer 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. Answering machines, answering services, or toll free numbers outside of the state will not suffice. (3-25-16)

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: (4-7-11)

- a. First Report of Injury and Claim for Benefits; (4-7-11)
- b. Copies of bills for medical care; (4-7-11)
- c. Copy of lost-time computations, if applicable; (4-7-11)

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; (4-7-11)

- e. Employer's Supplemental Report; and (4-7-11)
- f. Medical reports. (4-7-11)
- 03. Correspondence.** All original correspondence involving adjusting decisions regarding Idaho workers' compensation claims shall be authorized from and maintained at in-state offices. (3-25-16)
- 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 self-insured employer. (4-7-11)
- 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 self-insured employer. 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. (4-7-11)
- 06. Compensation Payments – Generally.** ()
- a. All compensation, as defined by Section 72-102, Idaho Code, must be issued from the in-state office. (4-7-11)()
- b. Except as ordered otherwise by the Commission, the self-insured employer may make compensation payments by either: ()
 - i. Check or other readily negotiable instrument; ()
 - ii. When requested by the claimant, electronic transfer to an account designated by the claimant in accordance with the requirements of Subsection 051.07 of this rule; or ()
 - iii. When requested by the claimant, electronic transfer payments made through an access card; if that option is made available by the employer, in accordance with the requirements of Subsection 051.08 of this rule. ()
- 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 through an access card before such compensation may be paid other than by a check made payable to the claimant and the attorney. ()
- 07. Electronic Transfer Payments.** ()
- a. A claimant may request that the self-insured employer make compensation payments by electronic transfer to a personal bank account by providing the 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 self-insured employer shall provide the claimant with a written form to fill out the information required 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 employer. ()
- b. The self-insured employer may make compensation payments to the claimant by electronic transfer to an account designated by the claimant if the claimant: ()
 - i. Requests in writing that payment be made by electronic transfer; ()
 - ii. Provides the information required by Paragraph 051.07.a. of this rule; and ()
 - 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 051.07.a.i. and 051.07.a.ii. of this rule are satisfied. ()

c. The self-insured employer shall initiate payment by electronic transfer starting with the first benefit payment due on or after the twenty-first day after all the requirements of Paragraph 051.07.b. of this rule are met, but shall continue to make timely payments by check until the self-insured employer initiates benefit payment delivery by electronic transfer. ()

d. If the claimant has previously been receiving benefit payments by electronic transfer and wants to receive benefits by check, the 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. ()

08. Access Card Payments. ()

a. Access card means any card or other payment method that may be used by a claimant to initiate electronic fund transfer from 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 a self-insured employer's bank account. ()

b. A self-insured employer may pay compensation through an access card to a claimant if there is written mutual agreement signed by the self-insured employer and the claimant. The self-insured employer shall maintain accurate records of the mutual agreement for, at a minimum, four hundred 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 051.08.d. of this rule. ()

c. A self-insured employer providing compensation payments to a claimant through an access card shall: ()

i. Permit the claimant to withdraw the entire amount of the balance of an access card in one (1) transaction: ()

ii. Not reduce compensation payments paid to a claimant through an access card for the following fees, surcharges, and adjustments: ()

(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; ()

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

(3) ATM balance inquiries; ()

(4) Withdrawing money from network ATMs; ()

(5) Withdrawing money from a teller; ()

(6) Customer service calls; ()

(7) Activating the card; ()

(8) Fees for card inactivity; ()

(9) Closing account; ()

(10) Access card replacement through standard mail; ()

(11) Withdrawing the entire payment in one (1) transaction; ()

- (12) Point of sale purchases; or ()
- (13) Any other fees or charges that are not authorized under Subparagraph 051.08.c.iii. of this rule; and ()
- iii. Only permit a claimant to be charged for the following: ()
- (1) Fees for access card replacement through an expedited mail service; ()
- (2) International transaction fees; and ()
- (3) Out-of-network ATM fees. ()
- d. Self-insured employers shall provide a written disclosure to the claimant contemporaneously with the written mutual agreement required under Paragraph 051.08.b. of this rule. The written disclosure shall include: ()
- i. A summary of the claimant's liability for unauthorized electronic fund transfers; ()
- 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; ()
- iii. The type of electronic fund transfers that the claimant may make and any limitations on the frequency of transfers; ()
- 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; ()
- 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; ()
- vi. A summary of the claimant's right to receipts and periodic statements; ()
- vii. All bank locations and network ATMs in the United States where the claimant may access his or her funds at no cost; ()
- 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. ()
- e. A self-insured employer shall provide the written disclosure and any notice of term or condition changes required under Subsection 051.08 of this rule that: ()
- i. Are printed in not less than twelve (12) point font; ()
- ii. Include the full text in English, Spanish, and any other language common to the claimant population; ()
- 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 ()
- 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. ()
- f. An access card issued to a claimant under Subsection 051.08 of this rule; ()

i. Shall not bear any information that could reasonably identify the claimant as a participant in the workers' compensation system; and ()

ii. Shall 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 (9:00 a.m. to 6:00 p.m. Mountain Time). ()

g. The 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 Subsection 051.08 of this rule are null and void and may result in administrative action against the employer. A self-insured employer shall provide a written notice of term or condition changes that: ()

i. Provides a comparison of the current terms and the changes; and ()

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 051.07 of this rule, or to payment by check. ()

h. 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. ()

i. The self-insured employer shall not remove money from the claimant's account or access card except to remove permitted fees under Subparagraph 051.08.c.iii. of this rule, or to close the account for inactivity of a period of twelve (12) months or more. A self-insured employer seeking to recoup overpayments shall follow the requirements of Section 72-316, Idaho Code. ()

j. A self-insured employer is considered to have made a compensation payment the date the payment is available on the claimant's access card. ()

079. Checks and Drafts. Checks must be signed and issued within the state of Idaho; drafts are prohibited. (4-7-11)

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 a self-insured employer to sign and issue checks outside the state of Idaho. (4-7-11)

b. An Application for Waiver must be accompanied by an affidavit signed by an officer or principal of the self-insured employer, attesting to the fact that the self-insured employer is prepared to comply with all statutes and rules pertaining to prompt payment of compensation. (4-7-11)

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 self-insured employer for which a waiver under this rule has been granted to assure that the self-insured employer is complying with all statutes and rules pertaining to prompt payment of compensation. (4-7-11)

d. If at any time after the Commission has granted a waiver, the Commission receives information permitting the inference that the 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 self-insured employer an opportunity to be heard, may revoke the waiver and order the self-insured employer to comply with the requirements of Subsections 051.06 and 051.07 of this rule. (4-7-11)

0810. 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, showing signature and date, shall be sent to the Industrial Commission the same day of

issuance. (3-25-16)

0911. Prompt Claim Servicing. Prompt claim servicing includes, but is not limited to: (4-7-11)

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. (3-28-18)

b. Payment of medical bills in accordance with the provisions of IDAPA 17.02.09, Medical Fees, Sections 031, 032, 033, and 034. (4-7-11)

c. Payment of income benefits on a weekly basis, unless otherwise approved by the Commission. (4-7-11)

i. The first payment of income benefits under Section 72-408, Idaho Code, shall constitute application by the 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. (3-28-18)

ii. Such waiver application shall be granted upon receipt and remain in effect unless revoked by the Industrial Commission in accordance with Subparagraph 051.09.c.iii., below. (3-28-18)

iii. If at any time after a waiver has been granted pursuant to this section the Commission receives information permitting the inference that the 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 employer an opportunity to be heard, may revoke the waiver with respect to all or certain claimants and order the self-insured employer to comply with the requirements of Subsection 051.09.c. of this rule. (3-28-18)

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. (3-28-18)

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. (3-28-18)

102. Audits. The Industrial Commission will perform periodic audits to ensure compliance with the above requirements. (4-7-11)

113. Non-Compliance. Non-compliance with the above requirements may result in the revocation of the authority of a self-insured employer to self-insure its workers' compensation obligations in the state of Idaho, or such lesser sanctions as the Industrial Commission may impose. (4-7-11)