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**IDAPA 17
TITLE 02
CHAPTER 11**

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

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. (4-7-11)

001. TITLE AND SCOPE.

These rules shall be cited as IDAPA 17.02.11, “Administrative Rules of the Industrial Commission Under the Workers’ Compensation Law – Security for Compensation – Self-Insured Employers.” These rules shall apply to all employers securing compensation under the Workers’ Compensation Law. (4-7-11)

002. WRITTEN INTERPRETATIONS.

No written interpretations of these rules exist. (4-7-11)

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. (4-7-11)

004. INCORPORATION BY REFERENCE.

No documents have been incorporated by reference into these rules. (3-20-14)

005. OFFICE – OFFICE HOURS – MAILING ADDRESS AND STREET ADDRESS.

Idaho Industrial Commission office hours are Monday through Friday, 8:00 a.m. to 5:00 p.m., except holidays designated by the state of Idaho. The mailing address for filing documents is Idaho Industrial Commission, PO BOX 83720, Boise, ID 83720-0041. The Commission office is located at 700 S. Clearwater Lane, Boise, ID 83712. (3-20-14)

006. PUBLIC RECORDS ACT COMPLIANCE.

This rule is subject to and in compliance with the Public Records Act. (3-20-14)

007. -- 009. (RESERVED)

010. DEFINITIONS.

For the purposes of this chapter, the following definitions are applicable: (4-7-11)

01. Adjuster. An individual who adjusts workers’ compensation claims. (3-25-16)

02. Claims Administrator. An organization, including insurers, third party administrators, independent adjusters, or self-insured employers, that services workers’ compensation claims. (3-25-16)

03. Compensation. All benefits payable under the provisions of the Idaho Workers Compensation Law. (3-29-12)

04. Indemnity Benefits. All payments made to or on behalf of workers’ 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. (3-28-18)

05. Indemnity Claim. Any claim made for the payment of indemnity benefits. (4-7-11)

06. Payroll. 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. (4-7-11)

011. -- 012. (RESERVED)

013. RULES GOVERNING QUALIFICATIONS OF SELF-INSURED EMPLOYERS.

In order to be considered for approval by the Industrial Commission to self-insure under Section 72-301, Idaho Code, an employer shall comply with the following requirements: (4-7-11)

01. Payroll. Have an average annual Idaho payroll over the preceding three (3) years of at least four million dollars (\$4,000,000). However, if the applicant is approved to apply under the exception to this requirement provided by Section 72-301A, Idaho Code, for employers at Idaho National Laboratory working under a cost reimbursement contract with the federal government, the employer must have an annual Idaho payroll of at least four million dollars (\$4,000,000) as of the effective date of the Commission's approval to act as a self-insured employer in Idaho. (4-11-15)

02. Application. Submit a completed application, available from the Industrial Commission’s Fiscal Bureau, along with the application fee of two hundred fifty dollars (\$250), to the Idaho Industrial Commission, Attention: Fiscal Bureau, telephone (208) 334-6000. (3-20-14)

03. Documentation. Submit documentation satisfactory to the Commission demonstrating the sound financial condition of the employer, such as the most recent CPA reviewed or, if available, audited, financial statement. (4-7-11)

04. 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. (3-25-16)

05. Previous Claims. Provide a history of all workers’ compensation claims filed with the employer or the employer’s workers’ compensation carrier, as well as all compensation paid, during the previous five (5) calendar years. (3-29-12)

06. Excess Insurance. Provide an insurance plan that must include excess insurance coverage and copies of all proposed policies of excess workers’ compensation insurance coverage, unless the applicant is approved by the Commission as qualified under the exception to this requirement provided by Section 72-301A, Idaho Code, for employers at Idaho National Laboratory working under a cost reimbursement contract with the federal government. (4-11-15)

07. 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. (3-29-12)

08. 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. (3-29-12)

09. 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, unless the applicant is approved by the Commission as qualified under the exception to this requirement provided by Section 72-301A, Idaho Code, for employers at Idaho National Laboratory working under a cost reimbursement contract with the federal government. (4-11-15)

10. Supplemental Information. Provide supplemental information as requested; (4-7-11)

11. 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 set forth in Subsection 014.02, of this rule, 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, unless the applicant is approved by the Commission as qualified under the exception to this requirement provided by Section 72-301A, Idaho Code, for employers at Idaho National Laboratory working

under a cost reimbursement contract with the federal government. (4-11-15)

12. 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 workers’ compensation claims of employees of that joint venture or subsidiary employer seeking to become self-insured. 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 from the Commission and posted on the Commission’s website at www.iic.idaho.gov. (3-20-14)

13. Written Approval. Obtain written approval from the Industrial Commission. (4-7-11)

014. CONTINUING REQUIREMENTS FOR SELF-INSURED EMPLOYERS.

Upon receiving the approval of the Industrial Commission to be a self-insured employer under Section 72-301, Idaho Code, to continue such approval a self-insured employer shall comply with the following requirements: (4-7-11)

01. Payroll Requirements. Maintain an average annual Idaho payroll over the preceding three (3) years of at least four million dollars (\$4,000,000), unless the applicant was approved by the Commission as qualified under the exception to this requirement provided by Section 72-301A, Idaho Code, for employers at Idaho National Laboratory working under a cost reimbursement contract with the federal government. 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 workers’ compensation coverage with an insurance carrier authorized to write workers’ compensation insurance in the state of Idaho. (4-11-15)

02. Security Deposit with Treasurer. (4-7-11)

a. 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 in substantially the form set forth below, 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), unless the applicant was approved by the Commission as qualified under the exception to this requirement provided by Section 72-301A, Idaho Code, for employers at Idaho National Laboratory working under a cost reimbursement contract with the federal government. 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 Workers’ 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. (4-11-15)

b. 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 Subsection 014.02.a. of this rule. (3-29-12)

c. 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 Subsection 014.02.a. 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. (3-20-14)

d. All security deposited by the self-insured employer shall be maintained as provided by Section 72-302, Idaho Code. (4-7-11)

e. Any withdrawal or partial release of security deposited hereunder must be requested in writing and

approved by the Commission.

(4-7-11)

SELF-INSURER'S COMPENSATION BOND

KNOW ALL MEN BY THESE PRESENTS, THAT _____, a corporation of the State of _____, hereinafter called the Principal, as Principal, and the _____, a surety corporation authorized to transact a surety business in the State of Idaho, as Surety, are held and firmly bound unto the State of Idaho, for the use and benefit of all those employees of the Principal to whom or to the dependents of whom the Principal may, during the life of this bond, become liable for benefits under the Idaho Workers’ Compensation Law, as hereinafter more fully referred to, in the sum equal to and limited by the sum or sums that may become due and/or payable by said Principal to said employees under the terms, provisions and limitations of said Workers’ Compensation Law, and in accordance with the terms, agreements, conditions and limitations of this obligation not exceeding, however, the sum of _____ dollars, for the payment of which, well and truly made, the Principal well and truly binds itself, its successors and assigns, and the Surety binds itself, its successors and assigns, jointly and severally, well and truly by these presents.

WHEREAS, in accordance with the provisions of Idaho Code, Title 72, Chapters 1 to 8, both inclusive, known as the Workers’ Compensation Law and all amendments thereto, and Principal has elected to secure compensation to its employees by depositing and maintaining with the Industrial Commission of Idaho a surety bond issued and executed by the surety herein named, which surety is duly qualified to transact such business in the state of Idaho subject to the approval of the Industrial Commission of the State of Idaho.

NOW, THEREFORE, the condition of this obligation is such that if the said Principal shall pay compensation according to the terms, provisions, and limitations of Idaho Code, Title 72, Chapter 1 to 8, both inclusive, known as the Workers’ Compensation Law and all amendments thereto, to its injured employees or the dependents of its killed employees contemplated by the terms of and covered under the said law, and shall furnish medical, surgical, nursing and the hospital services and attention and funeral expenses as provided for in said law (all of which shall be understood to be included in the term “compensation” as hereinafter used), then this obligation shall be null and void, otherwise to remain in full force and effect, subject, however to the following express conditions and agreements:

That any employee or the dependent of any employee of the Principal entitled to compensation under said Workers’ Compensation Law, shall have the right to enforce in his own name the liability of the Surety hereunder, in whole or in part, for such compensation, either by at any time filing a separate claim against the Surety or by at any time making the Surety a part of the original claim against the employer; provided, however, that payment in whole or in part of such compensation by either the Principal or the Surety shall, to the extent thereof, be a bar to the recovery against the other of the amount so paid.

That as between the employee and the Surety, notice to or knowledge of the occurrence of injury on the part of the employer shall be deemed notice to or knowledge, as the case may be, on the part of the Surety; that the obligation of the Surety, and the Surety, shall in all things be bound by and subject to the orders, findings, decisions or awards rendered against the Principal for the payment of compensation under the provisions of the Workers’ Compensation Law aforesaid, and that the insolvency or bankruptcy of the Principal and its discharge therein, shall not relieve the Surety from the payment of compensation for injuries, including death resulting therefrom, sustained during the life of this bond by an employee of the Principal covered under the Workers’ Compensation Law.

That upon request of the Industrial Commission of Idaho, it will make such changes in this form of bond by endorsement to be attached hereto or by the execution of a surety bond replacing this one, as the said Commission may deem requisite, to bring this bond into conformity with its rulings as to the form of surety bond required of employers under Idaho Code, Title 72, Chapters 1 to 8, both inclusive, known as the Workers’ Compensation Law and all amendments thereto.

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 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 TESTIMONY WHEREOF, the said Principal and said Surety have caused these presents to be executed in due form this ____ day of _____, 20__.

Countersigned

By

Resident Agent

Principal

SEAL

SEAL

By

By

Samples of this form are available from the Fiscal Bureau of the Industrial Commission, Telephone (208) 334-6000, or on the Commission’s website at www.iic.idaho.gov. (3-20-14)

03. Continue or Provide Guaranty Agreement. (3-20-14)

a. 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. (3-20-14)

b. 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 workers’ 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 from the Commission and posted on the Commission’s website at www.iic.idaho.gov. (3-20-14)

04. 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: (3-25-16)

a. Investigate and adjust all claims for compensation; (4-7-11)

b. Pay all compensation benefits due; (4-7-11)

c. Accept service of claims, applications for hearings, orders of the Commission, and all process which may be issued under the Workers’ Compensation Law; (4-7-11)

d. Enter into compensation agreements and lump sum settlements with Claimants; (4-7-11)

e. Provide at the employer’s expense necessary forms to any employee who wishes to file a claim under the Workers’ Compensation Law. (4-7-11)

05. File Reports. Report to the Industrial Commission semi-annually, or more often as required by the Commission, total unpaid liability on all open claims. (3-29-12)

a. 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. (3-29-12)

b. 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. (3-29-12)

c. 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. (3-29-12)

d. 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 from the Fiscal Bureau of the Industrial Commission or on the Commission’s website at www.iic.idaho.gov. 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 ½” x 11”) in size. (3-20-14)

e. The report shall be signed and certified to be correct by a corporate officer. If an employer has designated more than one adjuster for workers’ compensation claims in Idaho, a corporate officer of the employer shall prepare, certify and file a consolidated report of all unpaid liability. (3-29-12)

f. 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 Workers’ Compensation Law. (3-25-16)

06. 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 Workers’ 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. (3-20-14)

07. 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 Workers’ Compensation Law. (4-7-11)

015. 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 Bureau 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 or from the Fiscal Bureau. 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 the National Council on Compensation Insurance (NCCI) and submitted to the Commission in accordance with Subsection 015.02 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. (4-11-15)

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 Bureau: (4-11-15)

a. A copy of the completed form ERM-6 filed with NCCI; (4-11-15)

- b. The resulting experience modification factor received from NCCI; and (4-11-15)
- c. The completed IC 4010 Semi-Annual Premium Tax Form for Self-Insurers and IC 4010a Computation Form. (4-11-15)

016. -- 050. (RESERVED)

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 claims administrator or self-insured employer responsible for making the electronic filing with the Commission. 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. (4-11-19)

06. Compensation Payments – Generally. (4-11-19)

- a. All compensation, as defined by Section 72-102, Idaho Code, must be issued from the in-state office. (4-11-19)
- b. Except as ordered otherwise by the Commission, the self-insured employer may make compensation payments by either: (4-11-19)

- i. Check or other readily negotiable instrument; (4-11-19)
 - 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 (4-11-19)
 - 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. (4-11-19)
- 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. (4-11-19)

07. Electronic Transfer Payments. (4-11-19)

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. (4-11-19)

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: (4-11-19)

- i. Requests in writing that payment be made by electronic transfer; (4-11-19)
- ii. Provides the information required by Paragraph 051.07.a. of this rule; and (4-11-19)
- 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. (4-11-19)

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. (4-11-19)

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. (4-11-19)

08. Access Card Payments. (4-11-19)

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. (4-11-19)

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. (4-11-19)

- shall:
- c. A self-insured employer providing compensation payments to a claimant through an access card (4-11-19)
 - i. Permit the claimant to withdraw the entire amount of the balance of an access card in one (1) transaction; (4-11-19)
 - ii. Not reduce compensation payments paid to a claimant through an access card for the following fees, surcharges, and adjustments: (4-11-19)
 - (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; (4-11-19)
 - (2) ATM withdrawal or point of sale purchase for more than the card holds and the transaction is denied; (4-11-19)
 - (3) ATM balance inquiries; (4-11-19)
 - (4) Withdrawing money from network ATMs; (4-11-19)
 - (5) Withdrawing money from a teller; (4-11-19)
 - (6) Customer service calls; (4-11-19)
 - (7) Activating the card; (4-11-19)
 - (8) Fees for card inactivity; (4-11-19)
 - (9) Closing account; (4-11-19)
 - (10) Access card replacement through standard mail; (4-11-19)
 - (11) Withdrawing the entire payment in one (1) transaction; (4-11-19)
 - (12) Point of sale purchases; or (4-11-19)
 - (13) Any other fees or charges that are not authorized under Subparagraph 051.08.c.iii. of this rule; and (4-11-19)
 - iii. Only permit a claimant to be charged for the following: (4-11-19)
 - (1) Fees for access card replacement through an expedited mail service; (4-11-19)
 - (2) International transaction fees; and (4-11-19)
 - (3) Out-of-network ATM fees. (4-11-19)
 - 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: (4-11-19)
 - i. A summary of the claimant’s liability for unauthorized electronic fund transfers; (4-11-19)
 - 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; (4-11-19)
 - iii. The type of electronic fund transfers that the claimant may make and any limitations on the

- frequency of transfers; (4-11-19)
- 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; (4-11-19)
 - 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; (4-11-19)
 - vi. A summary of the claimant’s right to receipts and periodic statements; (4-11-19)
 - vii. All bank locations and network ATMs in the United States where the claimant may access his or her funds at no cost; (4-11-19)
 - 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. (4-11-19)
- 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: (4-11-19)
- i. Are printed in not less than twelve (12) point font; (4-11-19)
 - ii. Include the full text in English, Spanish, and any other language common to the claimant population; (4-11-19)
 - 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 (4-11-19)
 - 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. (4-11-19)
- f. An access card issued to a claimant under Subsection 051.08 of this rule: (4-11-19)
- i. Shall not bear any information that could reasonably identify the claimant as a participant in the workers’ compensation system; and (4-11-19)
 - 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). (4-11-19)
- 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: (4-11-19)
- i. Provides a comparison of the current terms and the changes; and (4-11-19)
 - 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. (4-11-19)
- 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. (4-11-19)
- 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. (4-11-19)

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. (4-11-19)

09. 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)

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, showing signature and date, shall be sent to the Industrial Commission the same day of issuance for legacy claims. Paper copies of the first income benefit check need not be sent to the Industrial Commission on claims when the initial payment transaction is filed electronically. (4-11-19)

11. 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)

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

13. **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)

052. -- 180. (RESERVED)

181. 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 workers’ compensation benefits to an employee as provided by the Workers’ Compensation Law may require an employee to accept “sick leave” or other comparable benefit in lieu of the workers’ 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 Workers’ Compensation Law shall be valid. (4-7-11)

02. **Election of Sick Leave or Alternative Compensation Prohibited.** Further, the Commission construes Section 181 as preventing an employee from electing to accept “sick leave” or other comparable benefit from an employer in lieu of workers’ compensation benefits to which the employee is entitled under the Workers’ Compensation Law, and therefore such elections or agreements are prohibited. (4-7-11)

182. -- 270. (RESERVED)

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

Pursuant to Section 72-327, Idaho Code, every authorized self-insurer authorized to self-insure its workers’ compensation obligations 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. (4-7-11)

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. (3-29-12)

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, “Workers’ Compensation Claims Involving Medical Payments Only and Claims Involving Indemnity Payments Report,” available from the Fiscal Bureau of the Industrial Commission or on the Commission’s website at www.iic.idaho.gov. (3-20-14)

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. (4-7-11)

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. (3-29-12)

a. A penalty of two hundred dollars (\$200) shall be assessed for late filing of seven (7) days or less. (4-7-11)

b. A penalty of one hundred dollars (\$100) per day shall be assessed for late filing of more than seven (7) days. (4-7-11)

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. (4-7-11)

05. Estimating Indemnity Payments for Entities That Fail to Report Timely. If an entity required to report indemnity and medical 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%). (3-29-12)

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. (4-7-11)

272. -- 999. (RESERVED)

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