

Dear Senators TIPPETS, Patrick, Schmidt, and  
Representatives HARTGEN, Anderson, King:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the  
Two Sets of Industrial Commission Proposed Rules:

IDAPA 17.02.10 - Rules Pertaining To The Administrative Rules of the Industrial Commission  
Under the Workers' Compensation Law - Security for Compensation - Insurance Carriers  
(Docket No. 17-0210-1301);

IDAPA 17.02.11 - Rules Pertaining To The Administrative Rules of the Industrial Commission  
Under the Workers' Compensation Law - Security for Compensation - Self-Insured  
Employers (Docket No. 17-0211-1301).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the  
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research  
and Legislation no later than fourteen (14) days after receipt of the rules analysis from Legislative  
Services. The final date to call a meeting on the enclosed rules is no later than 10/25/2013. If a meeting is  
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules analysis  
from Legislative Services. The final date to hold a meeting on the enclosed rules is 11/25/2013.

The germane joint subcommittee may request a statement of economic impact with respect to a  
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,  
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has  
been held.

To notify Research and Legislation, call 334-4845, or send a written request to the address on the  
memorandum attached below.



Jeff Youtz  
Director

# Legislative Services Office Idaho State Legislature

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*Serving Idaho's Citizen Legislature*

## MEMORANDUM

**TO:** Rules Review Subcommittee of the Senate Commerce & Human Resources Committee and the House Commerce & Human Resources Committee

**FROM:** Division Manager - Mike Nugent

**DATE:** October 7, 2013

**SUBJECT:** Two Sets of Industrial Commission Proposed Rules

IDAPA 17.02.10 - Rules Pertaining To The Administrative Rules of the Industrial Commission Under the Workers' Compensation Law - Security for Compensation - Insurance Carriers (Docket No. 17-0210-1301)

IDAPA 17.02.11 - Rules Pertaining To The Administrative Rules of the Industrial Commission Under the Workers' Compensation Law - Security for Compensation - Self-Insured Employers (Docket No. 17-0211-1301)

The Industrial Commission is proposing to promulgate two sets of proposed rules relating to security for compensation for insurance carriers and relating to security for compensation for self insured employers. The first proposed rule establishes an annual deductible policy reporting period of March 3rd to coincide with the premium tax due date and requires the mandatory data elements in the proof of coverage reporting. This proposed rule also removes the Appendices B and C reporting forms from the rule but directs insurance carriers to the Commission's address or website to obtain report forms.

The second proposed rule allows the Industrial Commission to require a self-insured employer to provide a guaranty resolution that confirms the agreement of joint venturers or a parent corporation to guarantee the payment of all Idaho workers' compensation claims of employees of the self-insured employer. The proposed rule also provides no credit for excess insurance coverage provided by a surplus lines carrier. The proposed rule also allows the Industrial Commission to presume that the most recent proof of coverage information contained in the Industrial Commission's database is correct for purposes of determining coverage by a self-insured employer. The proposed rule also removes reporting forms from the rule and provides that the forms are available from the Commission or on the Commission's website.

It appears that both sets of proposed rules have been promulgated within the scope of statutory authority granted to the Industrial Commission.

cc: Industrial Commission  
Mindy Montgomery & Jane McClaran

Mike Nugent, Manager  
Research & Legislation

Cathy Holland-Smith, Manager  
Budget & Policy Analysis

April Renfro, Manager  
Legislative Audits

Glenn Harris, Manager  
Information Technology

## IDAPA 17 - INDUSTRIAL COMMISSION

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

DOCKET NO. 17-0210-1301

#### 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, 72-304 and 72-302, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 2013.

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

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

This rule establishes an annual deductible policy reporting period of March 3rd to coincide with the premium tax due date; and requires the mandatory data elements in the proof of coverage reporting. This rule change also removes the Appendices B and C reporting forms from the rule but directs insurance carriers to the Commission's address or website to obtain report forms.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: There is no fiscal impact to the General Fund or to the Commission's fund as a result of these proposed changes.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: There is no negative fiscal impact resulting from this rulemaking.

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

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jane McClaran, (208) 334-6042.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 18, 2013.

DATED this 27th day of August, 2013.

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. 17-0210-1301**  
**(Only those Sections being amended are shown.)**

**004. INCORPORATION BY REFERENCE.**

No documents have been incorporated by reference into these rules. ( )

**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. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

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

**0047. -- 009. (RESERVED)**

**(BREAK IN CONTINUITY OF SECTIONS)**

**011. (RESERVED)**

**012. RULES GOVERNING QUALIFICATION OF INSURANCE CARRIER TO UNDERWRITE WORKERS' COMPENSATION LIABILITY.**

**01. Deposit With State Treasurer.** To receive the approval of the Industrial Commission to write Worker's Compensation coverage under Section 72-301, Idaho Code, a carrier whose application has been approved by the Director of Insurance to underwrite casualty and surety insurance under Sections 41-506 and 41-507, Idaho Code, shall initially deposit security in the amount of two hundred fifty thousand dollars (\$250,000) with the State Treasurer, under the provisions of Section 72-302, Idaho Code. (4-7-11)

**02. Application.** Before the Commission shall approve any insurance carrier to do business under the Workers' Compensation Law, said carrier shall apply to the Industrial Commission for permission to write compensation insurance and said application shall include the following: (4-7-11)

**a.** A statement from the Director of the Idaho Department of insurance that the insurance carrier has been granted authority under the insurance laws of the state of Idaho to write casualty or surety insurance; (4-7-11)

**b.** The latest audited financial statement of said carrier; (4-7-11)

**c.** The name and address of the agent for service of process in Idaho; (4-7-11)

**d.** The name and address of the Idaho resident licensed adjuster or adjusters with authority to make compensation payments and adjustments of claims arising under the Act. If more than one (1) adjuster is utilized in Idaho, a list of every such adjuster and all corresponding policyholders shall be provided; (4-7-11)

**e.** A statement that the carrier will provide such blank forms as are, or may be, prescribed by the Commission and distributed to such employers as it may insure. (4-7-11)

**f.** A statement that all surety bonds covering the payment of compensation will be filed with the Idaho State Treasurer in compliance with the law for all employers insured. All carriers will use the continuous bond form set out herein. (4-7-11)

**SURETY BOND**

**KNOW ALL MEN BY THESE PRESENTS:**

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

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

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

IN WITNESS WHEREOF, the parties hereto have caused their names to be signed and this instrument to be sealed by the respective parties thereto this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. (4-7-11)

**g.** A statement that renewal certificates on said bonds will be issued and filed with the Industrial Commission immediately, if said bonds are to be renewed. (4-7-11)

**h.** A statement that the cancellation of surety contracts will be made as set forth in the law, if said contracts are cancelled; (4-7-11)

**i.** A statement that said carrier will deposit, in addition to the security required for authorization to write Workers' Compensation coverage by these rules, such further security equal to all unpaid outstanding awards of compensation; (4-7-11)

**j.** A statement that said carrier will comply with the statutes of the state of Idaho and rules of the Industrial Commission to the end that payments of compensation shall be sure and certain and not unnecessarily delayed; and (4-7-11)

**k.** A statement that said carrier will make such reports to the Commission as it may require in reference to matters under the Workers' Compensation Law, including IC Form 36A, Report of Outstanding Awards – Insurance Carriers; which must be filed quarterly with the Commission. (4-7-11)

**0123. RULES GOVERNING INSURANCE CARRIERS.**

An insurance carrier must apply for and receive the approval of the Industrial Commission to write workers' compensation insurance pursuant to Section 72-301, Idaho Code. After receiving such approval, an insurance carrier shall comply with the following: (4-7-11)

**01. Maintain Statutory Security Deposits with the State Treasurer. (4-7-11)**

**a.** Each insurance carrier shall maintain with the Idaho State Treasurer a security deposit in the amount of twenty-five thousand dollars (\$25,000) if approved by the commission prior to July 15, 1988, or two hundred and fifty thousand dollars (\$250,000) if approved subsequent to that date. (4-7-11)

**b.** In addition to the security required in Subsection 0123.01.a., of this rule, each insurance carrier

shall deposit an amount equal to the total unpaid outstanding awards of said insurance carrier. Such deposit shall be in the form permitted by Section 72-301, Idaho Code. Surety bonds shall be in the form set forth in Subsection 01~~2~~<sup>2</sup>.02.f. of these rules. If a surety bond is deposited, the surety company shall be completely independent of the principal and authorized to transact such business in the state of Idaho. A partial release of security deposited hereunder must be requested in writing and approved by the Commission. (4-7-11)(    )

**c.** Securities which are maintained to satisfy the requirements of this rule may be held in the federal reserve book-entry system, as defined in Section 41-2870(4), Idaho Code, and interests in such securities may be transferred by bookkeeping entry in the federal reserve book-entry system without physical delivery of certificates representing such securities. (4-7-11)

**02. Appoint Agent for Service of Process.** Each insurance carrier shall appoint the Director of the Department of Insurance as its agent to receive service of legal process. (4-7-11)

**03. Maintain Resident Idaho Office.** Each insurance carrier shall maintain an Idaho licensed resident adjuster or adjusters, or its own adjusting offices or officers resident in Idaho who have been appointed and have been given authority as to claims arising under the Act. (4-7-11)

**a.** Each authorized insurance carrier shall notify the Commission Secretary in writing of any change of the designated resident adjuster(s) for every insured Idaho employer within fifteen (15) days of such change. (4-7-11)

**b.** Each authorized insurance carrier will ensure that every in-state adjuster can classify and identify all claims adjusted on behalf of said insurance carrier, and that the in-state adjuster will provide such information to the Industrial Commission upon request. (4-7-11)

**04. Supply Forms.** Each insurance carrier shall supply such forms as are or may be prescribed by the Commission pursuant to the Workers' Compensation Law and distribute them to all employers it insures. A list of required forms is available from the ~~public information section~~ [Employer Compliance Bureau](#) of the Industrial Commission, ~~700 S. Clearwater Lane, P. O. Box 83720, Boise, Idaho 83720-0041~~, telephone (208)334-6000, ~~or on the Commission's website at www.iic.idaho.gov.~~ (4-7-11)(    )

**05. Comply with Industrial Commission Reporting Requirements.** Each insurance carrier shall file such reports as the Industrial Commission may require concerning matters under the Workers' Compensation Law. (4-7-11)

**06. Report Proof of Coverage.** (4-7-11)

**a.** Each insurance carrier shall report proof of coverage information to a third party designated by the Industrial Commission as its agent to receive, process, and forward the proof of coverage information required by these rules to the Commission. The name and address of the Commission's designated agent(s) is available upon request from the Employer Compliance Bureau of the Industrial Commission, ~~700 S. Clearwater Lane, P. O. Box 83720, Boise, Idaho 83720-0041~~, telephone (208) 334-6000, ~~or on the Commission's website at www.iic.idaho.gov.~~ (4-7-11)(    )

**b.** As an alternative to Subsection 01~~23~~<sup>23</sup>.06.a., an insurance carrier may be allowed to report proof of coverage information directly to the Industrial Commission in an electronic format prescribed by the Commission by first making a written request to the Commission and obtaining the Commission's permission. A formal written agreement with the Commission is required prior to the electronic transmission of proof of coverage data to the Commission. (4-7-11)(    )

**c.** The Industrial Commission hereby adopts the International Association of Industrial Accident Boards and Commissions' (IAIABC) electronic proof of coverage record layout and transaction standards as the required reporting mechanism for new policies, renewal policies, endorsements, cancellations, and non-renewals of policies. A copy of the record layout, [data element requirements](#), and transaction standards is available upon request from the Employer Compliance Bureau, ~~of the Industrial Commission, 700 S. Clearwater Lane, P. O. Box 83720, Boise, Idaho 83720-0041~~, telephone (208) 334-6000, ~~or on the Commission's website at www.iic.idaho.gov.~~ [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. (4-7-11)( )

**d.** The most recent proof of coverage information contained in the Industrial Commission's database shall be presumed to be correct for the purpose of determining the insurance carrier providing coverage. (4-7-11)

**07. Report New Policy, Renewal Policy, and Endorsement Information Within Thirty Days.** Each insurance carrier shall report the issuance of any new workers' compensation policy, renewal policy, or endorsement to the Industrial Commission or its designated agent within thirty (30) days of the effective date of the transaction. (4-7-11)

**08. Report Cancellation and Non-Renewal of Policy Within Time Prescribed by Statute.** Each insurance carrier shall report the cancellation and/or nonrenewal of any workers' compensation insurance policy to the Industrial Commission or its designated agent within the time frames prescribed by Section 72-311, Idaho Code. Receipt of cancellation or nonrenewal notices by the Commission's designated agent shall be deemed to have been received by the Commission. (4-7-11)

**09. Report Election of Coverage on Form IC52 or Similar Format.** Each insurance carrier shall report election of coverage or revocation of election of coverage on or in a format substantially the same as Form IC52, "Election of Coverage," which follows this chapter as Appendix A. This report shall be submitted to the Industrial Commission in writing on eight and one-half by eleven inch (8 1/2" x 11") paper. (4-7-11)

**10. 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 upon request from the Fiscal Bureau of the Industrial Commission, telephone (208) 334-6000, or on the Commission's website at www.iic.idaho.gov. 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. ( )

**101. 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. (4-7-11)

**a.** The report of outstanding awards shall be filed with the Industrial Commission by the end of the month following the end of each calendar quarter. (4-7-11)

**b.** The report shall be filed even if there are no outstanding awards. In that event, the carrier shall certify the fact that there are no outstanding awards to be reported. (4-7-11)

**c.** 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" which follows this chapter as Appendix B available upon request from the Fiscal Bureau of the Industrial Commission, telephone (208) 334-6000, 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 1/2" x 11") in size. (4-7-11)( )

**d.** The report shall be signed and certified to be correct by a corporate officer. If an insurance carrier has designated more than one adjuster for workers' compensation claims in Idaho, a corporate officer of the insurance carrier shall prepare, certify and file a consolidated report of outstanding awards. (4-7-11)

**e.** The report shall list all outstanding awards, commencing with the calendar quarter during which the award is made or benefits are first paid, whichever occurs earlier. (4-7-11)

**112. 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. (4-7-11)

~~0134.~~ -- 050. (RESERVED)

**(BREAK IN CONTINUITY OF SECTIONS)**

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

Pursuant to Section 72-327, Idaho Code, the state insurance fund and every insurance carrier authorized to transact workers' compensation insurance in Idaho shall report annually to the Industrial Commission the total gross amount of indemnity benefits paid on Idaho workers' compensation claims during the applicable reporting period. (4-7-11)

**01. Filing.** The report of indemnity payments shall be filed with the Industrial Commission simultaneously with the first Semi-Annual Premium Tax Report which, pursuant to Section 72-523, Idaho Code, is due each year on March 3rd. (4-7-11)

**02. Form.** The report of indemnity payments shall be submitted in writing on, or in a format substantially the same as Form IC327, "Report of Indemnity Payments," ~~contained in Appendix C at the end of this chapter~~ available upon request from the Fiscal Bureau of the Industrial Commission, telephone (208) 334-6000, or on the Commission's website at [www.iic.idaho.gov](http://www.iic.idaho.gov). (4-7-11)( )

**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 payments later than March 3 each year. (4-7-11)

**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 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%). (4-7-11)

**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)

**APPENDIX A**



**IC52 ELECTION OF COVERAGE**

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

The undersigned hereby notifies the Industrial Commission of the following:

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

(Name of Insurance Company)

Policy Number \_\_\_\_\_

Insured Name \_\_\_\_\_

Effective Date of Election/Revocation \_\_\_\_\_

\_\_\_\_\_  
(Signature of authorized representative)

\_\_\_\_\_  
(Employer's signature)

***[APPENDIX B is being deleted]***

***[APPENDIX C is being deleted]***

## IDAPA 17 - INDUSTRIAL COMMISSION

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

DOCKET NO. 17-0211-1301

#### 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:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 2013.

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

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

This rule change allows the Industrial Commission to require a self-insured employer to provide a Guaranty Resolution that confirms the agreement of joint venturers or a parent corporation to guarantee the payment of all Idaho workers' compensation claims of employees of the self-insured employer. The rule also provides no credit for excess insurance coverage provided by a surplus lines carrier. The rule change also allows the Industrial Commission to presume that the most recent proof of coverage information contained in the Industrial Commission's database is correct for purposes of determining coverage by a self-insured employer. The rule also removes reporting forms from the rule and provides that the forms are available from the Commission or on the Commission's website.

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

There is no fiscal impact to the General Fund or to the Commission's fund as a result of these proposed changes. There is a potential positive fiscal impact to the dedicated Industrial Administration fund, but the amount is unknown.

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

There is no negative fiscal impact resulting from this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was not conducted because a subcommittee of the Commission's Advisory Committee, which included insurance carrier representatives and self-insured employers, has been providing input to the Industrial Commission in the drafting of these rules.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jane McClaran, (208) 334-6042.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 27th day of August, 2013.

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

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 17-0211-1301**  
**(Only those Sections being amended are shown.)**

**004. INCORPORATION BY REFERENCE.**

No documents have been incorporated by reference into these rules. ( )

**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. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

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

~~004.~~ ~~01109.~~ **(RESERVED)**

**0120. DEFINITIONS.**

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

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

**02. Indemnity Benefits.** All payments made to or on behalf of workers' compensation claimants, including temporary or permanent disability benefits, permanent partial impairment benefits, death benefits paid to dependents, retraining benefits, and any other type of income benefits, but excluding medical and related benefits. (4-7-11)

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

**04. 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); (4-7-11)

**02. Application.** Submit a completed application, available from the Industrial Commission's Fiscal ~~Section~~ Bureau, along with the application fee of two hundred fifty dollars (\$250), to the Idaho Industrial Commission, Attention: Fiscal ~~Section~~ Bureau, ~~at 700 S. Clearwater Lane, PO Box 83720-0041, Boise, Idaho 83720-~~

~~0041~~ telephone (208) 334-6000.

~~(4-7-11)~~( )

**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. Adjuster.** Designate in writing a licensed Idaho resident adjuster; (4-7-11)

**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. ~~(3-29-12)~~( )

**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; (4-7-11)

**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 and fifty thousand dollars (\$150,000), plus five percent (5%) of the first ten million dollars (\$10,000,000.00) 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; (4-7-11)

**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](http://www.iic.idaho.gov). ( )

~~123.~~ **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). 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. (3-29-12)

**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). 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. ~~(3-29-12)~~(\_\_\_\_)

**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. ~~(3-29-12)~~(\_\_\_\_)

**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 ~~Section~~ Bureau of the Industrial Commission, ~~700 S. Clearwater Lane, P. O. Box 83720, Boise, Idaho 83720-0041~~, Telephone (208) 334-6000, or on the Commission's website at [www.iic.idaho.gov](http://www.iic.idaho.gov). (4-7-11)(\_\_\_\_)

**03. Continue or Provide Guaranty Agreement.** (\_\_\_\_)

**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. (\_\_\_\_)

**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](http://www.iic.idaho.gov). ( )

**034. Maintain a Licensed Resident Adjuster.** Maintain a resident licensed claims adjuster located within the state of Idaho who shall have full authority to service said claims on behalf of the employer including, but not limited to, the following: (4-7-11)

- 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)

**045. 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," which follows this chapter as Appendix A available from the Fiscal Bureau of the Industrial Commission or on the Commission's website at [www.iic.idaho.gov](http://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. ~~(3-29-12)~~( )
- 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 such other reports to the Commission as it may require in reference to matters under the Workers' Compensation Law. (4-7-11)

**056. 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. (4-7-11)( )

~~067.~~ **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)

**(BREAK IN CONTINUITY OF SECTIONS)**

**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," ~~contained in Appendix B at the end of this chapter~~ available from the Fiscal Bureau of the Industrial Commission or on the Commission's website at [www.iic.idaho.gov](http://www.iic.idaho.gov). (~~3-29-12~~)( )

**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)**

**[APPENDIX A and APPENDIX B are being removed]**