

CR 84-212

RULES CERTIFICATE

STATE OF WISCONSIN)
) SS
DEPT. OF INDUSTRY,)
LABOR & HUMAN RELATIONS)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Howard S. Bellman, Secretary of the Department of Industry, Labor and Human Relations, and custodian of the official records of said department, do hereby certify that the annexed rule(s) relating to Worker's Compensation were duly approved and adopted by this department on July 16, 1986.

(Subject)

(Date)

I further certify that said copy has been compared by me with the original on file in this department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the department at 2:00 in the city of Madison, this 17th day of July A.D. 1986.

Howard S. Bellman
Secretary

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ORDER OF ADOPTION

Pursuant to authority vested in the Department of Industry, Labor and Human Relations by section(s) 101.02(1), 102.15 and 102.39 Stats., the Department of Industry, Labor and Human Relations hereby creates; amends; repeals and recreates; and repeals and adopts rules of Wisconsin Administrative Code chapter(s):

Ind. Chapter Ind 80 Worker's Compensation
(Number) (Title)

The attached rules shall take effect on the first day of the month
following publication, pursuant to section
227.026, Stats.

Adopted at Madison, Wisconsin, this 17th
day of July, A.D., 1986.
DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS
Howard B. Bellman
Secretary

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WORKER'S COMPENSATION DIVISION ADMINISTRATIVE RULE PROPOSALS

Pursuant to the authority vested in the State of Wisconsin, Department of Industry, Labor and Human Relations, by ss. 101.02(1), 102.15, and 102.39, Stats., the State of Wisconsin, Department of Industry, Labor and Human Relations, hereby repeals, renumbers, amends and recreates, and creates rules interpreting ss. 102.16(1), 102.17, 102.18(1), 102.26, 102.28(2), 102.28(6), 102.28(7), 102.28(8), 102.31(1), 102.31(3), 102.31(6), 102.31(7), 102.37, 102.38, 102.43(7), and 102.59, Stats., as follows:

Section 1. Ind 80.02(2) is amended to read:

Ind 80.02(2) SELF-INSURED EMPLOYERS AND INSURANCE COMPANIES. Pursuant to s. ~~102.37~~ 102.38, Stats., for injuries which require the first report of injury set forth in (1), self-insured employers and insurance companies shall:

Section 2. Ind 80.02(3) is created to read:

Ind 80.02(3) In evaluating whether payments of compensation and reports made by insurance carriers and self-insured employers were prompt and proper under the provisions of s. 102.28(2), and s. 102.31(3), Stats., and before undertaking to revoke the exemption from insurance under s. 102.28(2)(c) or before recommending under s. 102.31(3) to the commissioner of insurance that enforcement proceedings under s. 601.64 be invoked the department will consider the following performance standards together with all other factors bearing on the performance and activities of the insurance carrier or self-insured employer:

- (a) Payment of first indemnity. Whether 80% or more of first indemnity payments are mailed to the injured employe in 14 days or less following the last day worked after the injury.
- (b) First report of injury. Whether 70% or more of reports required under Ind 80.02(1) are received by the department within 14 days of the last day worked after injury.
- (c) Correct and complete names. Names of self-insured employers on reports filed with the department must be correct and complete. The name of an insurance group is not a substitute for the name of the individual company insuring the risk. The name of an insurance service company is not a substitute.
- (d) Penalty frequency and severity. The number and amount of penalties assessed for violations of s. 102.18(1)(bp), s. 102.22(1), s. 102.57, and s. 102.60, Stats.

- (d) Scientific knowledge or experience indicating that there may be further progression of the disability or that future treatment may be required. Examples of such conditions are: skull fractures with laceration of the dura, sub-capitol fractures of the femur, silicosis and asbestosis.
- (e) The length of time since the date of injury.
- (f) Any and all other factors that bear on the equity of the proposed compromise.

Section 7. Ind 80.05(1) is amended to read:

- (1) In cases of disputes in matters coming under the jurisdiction of ch. 102, ss. ~~66.194~~, 101.47, 56.21, or 40.65, Stats., any party to the dispute may apply to the department for relief and the department shall make such order or award as shall be lawful and just under the circumstances.

Section 8. Ind 80.20(1) is amended to read:

Ind 80.20 License to appear. (1) The following rules shall govern the issuance, suspension, or revocation of licenses to appear before the department in compensation matters under the provisions of s. 102.17 (1)~~(am)~~(c), Stats.

Section 9. Ind 80.22 title is amended to read:

Ind 80.22 Use of physicians' reports as evidence. See s. 102.17(1)~~(as)~~(d), Stats.

Section 10. Ind 80.25 is amended to read:

Ind 80.25 LOSS OF HEARING; ~~determined,--The report of the medical committee which has revised and updated the report of 1954 is adopted,--Such report is as follows.~~ The department adopts the following standards for the determination and evaluation of noise induced hearing loss, other occupational hearing loss and accidental hearing loss:

- (1) HARMFUL NOISE. Hearing loss resulting from hazardous noise exposure depends upon several factors, namely, the overall intensity (sound pressure level), the daily exposure, the frequency characteristic of the noise spectrum and the total lifetime exposure. Noise exposure level of 90 decibels or more as measured on the A scale of a sound level meter for 8 hours a day is considered to be harmful.

(7) ALLOWANCE FOR TINNITUS. In addition to the above impairment if tinnitus has permanently resulted due to work exposure, an allowance of 5 percent loss of hearing impairment for the affected ear or ears shall be computed.

(8) HEARING IMPAIRMENT TABLE

Average Decibel Loss ANSI	Percent of Compensable Hearing Impairment	Average Decibel Loss ANSI	Percent of Compensable Hearing Impairment
30	0.0	62	51.2
31	1.6	63	52.8
32	3.2	64	54.4
33	4.8	65	56.0
34	6.4	66	57.6
35	8.0	67	59.2
36	9.6	68	60.8
37	11.2	69	62.4
38	12.8	70	64.0
39	14.4	71	65.6
40	16.0	72	67.2
41	17.6	73	68.8
42	19.2	74	70.4
43	20.8	75	72.0
44	22.4	76	73.6
45	24.0	77	75.2
46	25.6	78	76.8
47	27.2	79	78.4
48	28.8	80	80.0
49	30.4	81	81.6
50	32.0	82	83.2
51	33.6	83	84.8
52	35.2	84	86.4
53	36.8	85	88.0
54	38.4	86	89.6
55	40.0	87	91.2
56	41.6	88	92.8
57	43.2	89	94.4
58	44.8	90	96.0
59	46.4	91	97.6
60	48.0	92	99.2
61	49.6	93	100.0

Following are examples of the calculation of hearing loss:

A. Mild to Marked Bilateral Hearing Loss

	<u>500</u> Hz	<u>1,000</u> Hz	<u>2,000</u> Hz	<u>3,000</u> Hz
Right Ear	15	25	45	55
Left Ear	30	45	60	85

1. Calculation of average hearing threshold level:

Right Ear:

$$\frac{15+25+45+55}{4} = \frac{140}{4} = 35 \text{ db} = 8\% \text{ loss}$$

Left Ear:

$$\frac{30+45+60+85}{4} = \frac{220}{4} = 55 \text{ db} = 40\% \text{ loss}$$

2. Calculation of hearing handicap:

Smaller number (better ear)

$$8\% \times 5 = 40$$

Larger number (poorer ear)

$$40\% \times 1 = 40$$

Total 80 + 6 = 13.33% loss

Therefore, a person with the hearing threshold levels shown in this audiogram would have a 13.33% hearing handicap.

B. Slight Bilateral Hearing Loss

	<u>500</u> Hz	<u>1,000</u> Hz	<u>2,000</u> Hz	<u>3,000</u> Hz
Right Ear	15	15	20	30
Left Ear	25	30	35	40

1. Average hearing threshold level:

Right Ear:

$$\frac{15+15+20+30}{4} = \frac{80}{4} = 20 \text{ db} = 0\% \text{ loss}$$

Left Ear:

$$\frac{25+30+35+40}{4} = \frac{130}{4} = 33.0 \text{ db} = 4.8\% \text{ loss}$$

Therefore, the hearing loss is 4.8% left ear

Section 13. Ind 80.40 is created to read:

Ind 80.40

ASSESSMENT FOR UNPAID CLAIMS OF INSOLVENT SELF-INSURER.

If an employer currently or formerly exempted from the duty to insure by order of the department under s. 102.28(7)(b) is unable to pay any award and if judgement against such employer is returned unsatisfied, the department shall determine payment into the fund established by s. 102.28(8), Stats., as follows:

- (1) The department shall prepare an estimate of the payments that should be made by the insolvent exempt employer for a period of one year. If the department elects to retain an insurance carrier or insurance service organization under 102.28(7), Stats., the department will prepare an estimate of the charges that will be made by such carrier or organization to process, investigate and pay such claims for the same one year period. The sum of these two amounts shall be divided by the total number of employers exempted under s. 102.28(2), Stats.
- (2) The department shall assess and order payment within thirty days by each exempt employer the amount determined under sub (1) to the state treasurer for deposit in the fund created by s. 102.28(8), Stats.
- (3) The department shall prepare an estimate of the total remaining liability of the insolvent exempt employer and an estimate of the amount that may be recovered from that employer, its receiver or trustee in bankruptcy. Such estimates shall be communicated to all exempt employers.
- (4) At least annually following the original order the department shall estimate the amount due and payable during the following year and the charges expected from any insurance carrier or claims service for such year and assess and order payment by each exempt employer its pro rata share determined as provided by s. 102.28(7)(b), Stats.
- (5) At the time orders are issued under sub. (4) the department shall prepare an estimate of the remaining liability of the insolvent exempt employer and the amount that may reasonably be expected to be recovered from such employer, its receiver or trustee in bankruptcy. Such estimates will be communicated to all exempt employers.
- (6) All money due and payable to injured employes which remain unpaid shall be considered money payable during the following year in making estimates.
- (7) All money recovered by the attorney general and paid into the fund shall be used in the payment of unpaid claims and shall be taken into account in making estimates and assessments.

Section 18. Ind 80.60(4)(b) (intro) is amended to read:

- (b) Minimum requirements. The minimum requirements necessary for initial consideration for self-insurance are:

Section 19. Ind 80.60(4)(b)11 is created to read:

- (b) 11 An employer granted self-insurance may be excused from the requirements of s. Ind 80.60(4)(b)2 and 3 by the department if the number of employes or net book value of property in Wisconsin subsequently is reduced below the specified minimums.

Section 20. Ind 80.60(4)(c) (intro) is amended to read:

- (c) General criteria to be considered by the department. The following factors may be used by the department to initially grant or renew self-insurance, in addition to the minimum requirements, in evaluating the qualifications of the employer, the amount and type of guaranty and securities, the number and kind of special reports to assure the payment of all worker's compensation claims:

Section 21. Ind 80.61 (Title) is amended to read:

Ind 80.61 DIVIDED-INSURANCE AND PARTIAL-INSURANCE REQUIREMENTS UNDER S. 102.31(1) AND (6), FOR ALL EMPLOYERS, INCLUDING ~~EMPLOYERS PARTICIPATING IN A JOINT VENTURE AND~~ CONTRACTORS WORKING ON A WRAP-UP PROJECT.

Section 22. Ind 80.61(2)(a)1 is amended to read:

1. Submission of an application on department forms ~~WCA-19.3, WCA-19.4 or WCA-19.4M, to~~ available from the department. If the application is approved, the department shall permit partial-insurance or divided-insurance by written order. In the application, the employer shall agree to assume full responsibility to immediately make all payments of compensation and medical expense as the department may require, pending a final determination as to liability between the insurance carriers under divided-insurance or between the employer and the insurance carrier under partial-insurance, if a dispute should arise as to which insurance company or whether the employer or insurance company is responsible for a particular injury or illness sustained during the time the written order is in effect.

Section 23. Ind 80.61(3)(b)3. is amended to read:

3. The project shall be confined to a single location except that in connection with the building of a road, bridge, pipeline, tunnel, ~~or~~ waterway, or two or more concurrent wrap-up projects involving the same owner and the same insurance carrier the entire job or the concurrent projects is are considered as a single project location. ~~to the extent that there is single ownership or a single contractor.~~

Section 27. Ind 80.68 is created to read:

Ind 80.68 PAYMENT OF BENEFITS UNDER S. 102.59, STATS.

- (1) Payment of benefits under s.102.59, Stats., shall initially be made to the individual entitled to the benefits at such time as payments of primary compensation by the employer cease to be made or would have been made had there been no payment under s. 102.32(6) unless the preexisting disability and the disability for which primary compensation is being paid combine to result in permanent total disability.
- (2) Payments received by an employe or dependent from an account in a financial institution or from an annuity policy where such account or annuity policy are established through settlement of the claim for primary compensation, shall be considered payments by the employer or insurance carrier.
- (3) Payments under s. 102.59 shall be on a periodic basis but subject to s. 102.32(6) and (7), Stats.

Note: This rule is adopted to insure the solvency of the work injury supplemental benefit and to insure the protection of dependents as of the date of death of the employe with the preexisting disability.

Section 28. These rules shall become effective as provided in s. 227.026(1) (intro).



State of Wisconsin \ Department of Industry, Labor and Human Relations

Office of the Secretary
201 E. Washington Avenue
P.O. Box 7946
Madison, Wisconsin 53707
Telephone 608/266-7552

July 18, 1986

Gary Poulson
Assistant Revisor of Statutes
Suite 904
30 West Mifflin Street
Madison, Wisconsin 53703

Douglas LaFollette
Secretary of State
Room 271, GEF-1
201 East Washington Avenue
Madison, Wisconsin 53702

Dear Messrs. Poulson and LaFollette:

TRANSMITTAL OF RULE ADOPTION

CLEARINGHOUSE RULE NO. 84-212

RULE NO. Chapter Ind 80

RELATING TO Worker's Compensation

Pursuant to section 227.023, Stats., agencies are required to file a certified copy of every rule adopted by the agency in the offices of the Secretary of State and the Revisor of Statutes.

At this time, the following material is being submitted to you.

1. Order of Adoption.
2. Rules Certificate Form.
3. Rules in Final Draft Form.

Pursuant to section 227.016 (6), Stats., a summary of the final regulatory flexibility analysis is also included.

Respectfully submitted,

Howard S. Bellman

Howard S. Bellman
Secretary

cc: Agency Contact Person

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