



Notice of Intent to Adopt Rules

A copy of the proposed rules may be obtained at <http://rules.wyo.gov>

Revised November 2016

1. General Information

a. Agency/Board Name*		
b. Agency/Board Address	c. City	d. Zip Code
e. Name of Agency Liaison	f. Agency Liaison Telephone Number	
g. Agency Liaison Email Address		
h. Date of Public Notice	i. Comment Period End Date	
j. Public Comment URL or Email Address:		
k. Program		

* By checking this box, the agency is indicating it is exempt from certain sections of the Administrative Procedure Act including public comment period requirements. Please contact the agency for details regarding these rules.

2. Legislative Enactment

For purposes of this Section 2, "new" only applies to regular rules promulgated in response to a Wyoming legislative enactment not previously addressed in whole or in part by prior rulemaking and does not include rules adopted in response to a federal mandate.

a. Are these rules new as per the above description and the definition of "new" in Chapter 1 of the Rules on Rules?

No. Yes. Please provide the Enrolled Act Numbers and Years Enacted:

3. Rule Type and Information

a. Provide the Chapter Number, Title, and Proposed Action for Each Chapter.
Please use the Additional Rule Information form for more than 10 chapters, and attach it to this certification.

Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
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Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed

4. Public Comments and Hearing Information

a. A public hearing on the proposed rules has been scheduled. No. Yes. Please complete the boxes below.

Date:	Time:	City:	Location:
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b. What is the manner in which interested persons may present their views on the rulemaking action?

By submitting written comments to the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: _____

A public hearing will be held if requested by 25 persons, a government subdivision, or by an association having not less than 25 members. Requests for a public hearing may be submitted:

To the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: _____

c. Any person may urge the Agency not to adopt the rules and request the Agency to state its reasons for overruling the consideration urged against adoption. Requests for an agency response must be made prior to, or within thirty (30) days after adoption, of the rule, addressed to the Agency and Agency Liaison listed in Section 1 above.

5. Federal Law Requirements

a. These rules are created/amended/revoked to comply with federal law or regulatory requirements. No. Yes. Please complete the boxes below.

Applicable Federal Law or Regulation Citation:
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Indicate one (1):

The proposed rules meet, but do not exceed, minimum federal requirements.

The proposed rules exceed minimum federal requirements.

Any person wishing to object to the accuracy of any information provided by the Agency under this item should submit their objections prior to final adoption to:

To the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: _____

6. State Statutory Requirements

a. Indicate one (1):

The proposed rule change *MEETS* minimum substantive statutory requirements.

The proposed rule change *EXCEEDS* minimum substantive statutory requirements. Please attach a statement explaining the reason that the rules exceed the requirements.

b. Indicate one (1):

The Agency has complied with the requirements of W.S. 9-5-304. A copy of the assessment used to evaluate the proposed rules may be obtained:

By contacting the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: _____

Not Applicable.

7. Additional APA Provisions

a. Complete all that apply in regards to uniform rules:

These rules are not impacted by the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j).

The following chapters do not differ from the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j):

_____ (Provide chapter numbers)

These chapters differ from the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j) (see Statement of Principal Reasons).

_____ (Provide chapter numbers)

b. Checklist

The Statement of Principal Reasons is attached to this Notice and, in compliance with *Tri-State Generation and Transmission Association, Inc. v. Environmental Quality Council*, 590 P.2d 1324 (Wyo. 1979), includes a brief statement of the substance or terms of the rule and the basis and purpose of the rule.

If applicable: In consultation with the Attorney General's Office, the Agency's Attorney General representative concurs that strike and underscore is not required as the proposed amendments are pervasive (Chapter 3, *Types of Rules Filings*, Section 1, Proposed Rules, of the Rules on Rules).

8. Authorization

a. I certify that the foregoing information is correct.

<i>Printed Name of Authorized Individual</i>	
<i>Title of Authorized Individual</i>	
<i>Date of Authorization</i>	

Principal Statement of Reason – WC Chapter 7 – Benefits

The Workers' Compensation Division proposes to update this chapter by the following changes:

The header has been deleted/repealed;

All underlined headers/titles for this chapter have been revised so they are no longer underlined per the Secretary of State's Rules on Rules;

Section 1(a)(i)(B) – changes Chapter 1, Section 4(b)(C) to Chapter 1, Section 3(d)(i)(C); this is the correct citation for the definition of overtime;

Section 2(b)(ii) – repealed; the former rule stated no awards of additional temporary total disability benefits shall exceed twelve (12) months;

Section 3(a)(iv)(A) – “terminal mileage” has been reworded for clarification on travel reimbursement; and,

General formatting has been updated for this chapter.

CHAPTER 7
BENEFITS

Section 1. Awards of Compensation.

(a) Computation of Disability Awards.

(i) Procedure for Determining Temporary Total Disability (TTD).

(A) Temporary wage rate is computed as follows:

(I) Hourly rate multiplied by the total number of hours worked within the employer's established work week = weekly rate;

(II) Weekly rate multiplied by 52 and divided by 12 = monthly rate.

(B) Overtime will be considered if verification is received from the employer as outlined in the definition of actual monthly earnings Chapter 1, Section 3(d)(i)(C).

(C) If a worker is paid other than hourly, weekly or monthly, the worker shall verify income by documenting at least three months of wage history with the worker's employer(s) at the time of the injury. If the worker cannot obtain three months of information, the Division shall obtain verification of average monthly wages from the employer(s).

(ii) Procedure for Determining Temporary Partial Disability (TPD). TPD benefits will be calculated by taking 80% of the difference between the light duty wage and the employee's actual monthly earnings at the time of injury.

(A) The claimant will receive TPD benefits plus light duty wages. The combination of earnings and benefits is intended to pay the claimant more than TTD alone, and as close to pre-injury wage as possible, but cannot exceed the statewide average monthly wage for the quarterly period in which the injury occurred.

(B) TPD will terminate when any of the following occurs:

(I) The claimant returns to work in a full duty capacity, without limitations or restrictions, with the pre-injury or new employer;

(II) The light duty wages are 95% or more of the claimant's pre-injury wage;

(III) The claimant is working more than one light duty, modified, or part-time job, and the total wages earned equal or exceed 95% of the pre-injury wage;

(IV) The claimant is unable to work at a gainful occupation for which he is reasonably suited by experience or training, and is certified temporarily totally disabled by his treating physician;

(V) The claimant incurred an ascertainable loss from the work-related injury and was given a PPI rating by his treating physician;

(VI) The claimant voluntarily terminates light duty employment due to non-injury related reasons.

(iii) Procedure for Determining Permanent Partial Disability (PPD). The award shall be calculated using the statutory formula which adds months to the award for each of five labor market factors: The worker's remaining work-life (14 months maximum), experience in other occupations (six months maximum), education (eight and one half months maximum), career plans (two months maximum) and age over 40 (three months maximum). The application for the award shall contain such information as the Division deems necessary to apply the formula. Workers older than 65 at the time of ascertainable loss will be deemed to be 65 years old for purposes of the formula.

(b) Computation of Impairment Award. The calculation of the award pursuant to W.S. § 27-14-405(g) will be based upon the percentage of whole body impairment as determined by the most recent edition of the *American Medical Association Guides to the Evaluation of Physical Impairment* or its successor publication.

(i) Permanent Partial Impairment Rating (PPI) Benefits Payment. After the Division receives a PPI rating from a physician, the Division shall compute the amount of benefits due, and offer a PPI award to the injured worker.

(A) If the injured worker disagrees with the PPI rating and requests a second impairment rating, the Division will schedule an appointment with an independent physician. The Division may issue an interim PPI award, which is subject to deduction from the final award amount.

(I) Upon receipt of the second impairment rating the Division shall consider both ratings and issue a final determination.

Section 2. Benefit Suspension, Limitations and Discounting.

(a) Failure to Appear for Medical Appointment. TTD benefits shall be suspended if the worker fails to appear and cooperate in any examination or testing at an appointment with his health care provider(s), or one scheduled by the Division. Payment shall be suspended until such

time as the worker appears at a subsequent rescheduled appointment. Payment will not be suspended if:

(i) The worker notifies the Division prior to the appointment or within 24 hours after missing the appointment. The worker should call his claims analyst at the claims analyst's direct number and leave a message if the claims analyst is not available;

(ii) The Division determines that the worker made all reasonable efforts to appear at the appointment.

(b) Limitation on Period of Temporary Total Disability (TTD); Extraordinary Circumstance.

(i) The period for receiving a TTD award under W.S. § 27-14-404 resulting from a single incident, accident, or period of cumulative trauma or exposure shall not exceed a cumulative period of 24 months, except that the Division, in its discretion, may award additional TTD benefits if the claimant establishes by clear and convincing evidence that the claimant:

(A) Remains totally disabled, due solely to a work-related injury;

(B) Has not recovered to the extent that he or she can return to gainful employment;

(C) Reasonably expects to return to gainful employment within 12 months following the date of the first TTD claim occurring after the expiration of the 24-month period;

(D) Does not have an ascertainable loss which would qualify for benefits under W.S. §§ 27-14-405 or 406;

(E) Has taken all reasonable measures to facilitate recovery, including compliance with the recommendations of the treating physician.

(c) Discounting of Lump Sum Payments. Pursuant to W.S. § 27-14-403(f), awards to an injured worker or an injured worker's spouse for PPD, Permanent Total Disability (PTD) or death, or any part of such awards, may be discharged by the payment of a lump sum if the Administrator determines that a lump sum payment is justified by exceptional necessity. All lump sum payments shall be discounted using a discount factor determined by the State Treasurer's Office, based upon the average rate of return on the Division's investments for the prior fiscal year.

Section 3. Medical and Hospital Care.

(a) Health Care Benefits.

(i) Workers with injuries compensable under the Act shall be provided reasonable and necessary health care benefits as a result of such injuries.

(ii) Change of Health Care Provider. A worker wishing to change treating health care providers while under treatment shall file a written request with the Division, stating all reasons for the change and the name of the intended new treating health-care provider. The Division shall send notice of the change to the employer, the worker, and the current and intended new treating health care providers.

(iii) Medical Reimbursement to Injured Worker. Requests for reimbursement may be submitted to the Division by an injured worker for expense paid out-of-pocket for medical service(s) deemed reasonable, necessary and directly related to his work-related injury on a form provided by the Division.

(A) Requests for reimbursement will be considered only if the original receipt, which must be itemized, displays the transaction date, and substantiates proof of payment, is submitted with the Division's form.

(B) The Division may reimburse an injured worker 100% for the initial expense including taxes, paid out-of-pocket for prescribed medical service, prescribed drug or supply required to treat a compensable injury, when the service, drug or supply had been provided prior to the Division's notifying the injured worker of the case number assigned to his reported injury. The Division will not reimburse an injured worker for insurance co-pays or deductibles.

(C) Expenses incurred by an injured worker for over-the-counter (OTC) medication or medical supplies prescribed or recommended by the treating health care provider will be reimbursed at 100% of the purchase price, including taxes.

(iv) Travel Reimbursement. Reimbursement for travel necessary to obtain the closest available medical or hospital care needed by the employee will be payable at the rates provided for state employees in the rules and regulations of the State Auditor. W.S. § 27-14-401(d)(iii).

(A) Reimbursement for mileage will be based on map mileage from city to city and travel within the community of residence will only be paid if the distance exceeds ten miles one way.

(B) Requests for reimbursement of meal, lodging, bus, air travel, cab, train, parking, and other travel expenses must be accompanied by the original receipt. Reimbursement will not be paid for car rental expenses under any circumstances.

(C) Reimbursement for meals shall be paid as provided for state employees in the rules and regulations of the State Auditor.

(D) Unless medically necessary, there shall be no reimbursement for

the travel and associated expenses incurred by other persons or for phone charges incurred during such travel. Necessity for accompanied travel should be reflected in the documentation provided from the health care provider.

(E) Reimbursement for travel will be considered only if filed on the appropriate form provided by the Division.

(F) Claims for reimbursement shall be submitted to the Division within one (1) year from the date travel or other expenses were incurred.

~~Rules, Regulations and Fee Schedules of the Wyoming Workers' Compensation Division~~

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(B) TPD will terminate when any of the following occurs:

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(D) ~~d~~Does not have an ascertainable loss which would qualify for benefits under W.S. §§ 27-14-405 or 406;

(E) ~~h~~Has taken all reasonable measures to facilitate recovery, including compliance with the recommendations of the treating physician.

~~(ii) No awards of additional TTD benefits pursuant to subsection (i) of this section shall exceed 12 cumulative calendar months.~~

(c) Discounting of Lump Sum Payments. Pursuant to W.S. § 27-14-403(f), awards to an injured worker or an injured worker's spouse for PPD, Permanent Total Disability (PTD) or death, or any part of such awards, may be discharged by the payment of a lump sum if the Administrator determines that a lump sum payment is justified by exceptional necessity. All lump sum payments shall be discounted using a discount factor determined by the State Treasurer's Office, based upon the average rate of return on the Division's investments for the prior fiscal year.

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