

Dear Senators PATRICK, Guthrie, Ward-Engelking, and
Representatives HARTGEN, Anderson, King:

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

IDAPA 17.02.04 - Administrative Rules of the Industrial Commission under the Workers'
Compensation Law–Benefits - Proposed Rule (Docket No. 17-0204-1701);

IDAPA 17.02.04 - Administrative Rules of the Industrial Commission under the Workers'
Compensation Law–Benefits - Proposed Rule (Docket No. 17-0204-1702).

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 12/18/2017. 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 01/17/2018.

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 334-4834, or send a written request to the address on the
memorandum attached below.



Eric Milstead
Director

Legislative Services Office

Idaho State Legislature

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: Senior Legislative Research Analyst - Elizabeth Bowen

DATE: November 29, 2017

SUBJECT: Industrial Commission

IDAPA 17.02.04 - Administrative Rules of the Industrial Commission under the Workers' Compensation Law--Benefits - Proposed Rule (Docket No. 17-0204-1701)

IDAPA 17.02.04 - Administrative Rules of the Industrial Commission under the Workers' Compensation Law--Benefits - Proposed Rule (Docket No. 17-0204-1702)

The Industrial Commission submits notice of proposed rulemaking at IDAPA 17.02.04.

The first rule, docket no. 17-0204-1701, eliminates an eligibility requirement to receive reimbursement from the Peace Officer and Detention Officer Temporary Disability Fund. Currently, to receive reimbursement from the fund, an officer must have suffered a work-related injury prior to July 1, 2015. The proposed rule removes this requirement.

Negotiated rulemaking was not conducted, as the change is being made to conform to the provisions of Section 72-1104, Idaho Code. There is no anticipated negative fiscal impact on the state general fund. The commission states that this rulemaking is authorized pursuant to Sections 72-508 and 72-1104, Idaho Code.

The second rule, docket no. 17-0204-1702, concerns a situation in which a worker's compensation claimant has been given two or more impairment ratings by different physicians. The employer has the option of averaging the ratings and paying permanent impairment benefits based on the average. Under the rule, if the employer does not base benefit payments on the average, the employer must notify the claimant of the claimant's right to challenge the employer's decision to pay without averaging.

Negotiated rulemaking was not conducted, but the commission based this rule on stakeholder feedback arising under negotiations for other rule dockets. There is no anticipated negative fiscal impact on the state general fund. The Commission states that this rulemaking is authorized pursuant to Sections 72-428 and 72-508, Idaho Code.

cc: Industrial Commission
Mindy Montgomery

Mike Nugent, Manager
Research & Legislation

Paul Headlee, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

IDAPA 17 – IDAHO INDUSTRIAL COMMISSION
17.02.04 – ADMINISTRATIVE RULES OF THE INDUSTRIAL COMMISSION
UNDER THE WORKERS' COMPENSATION LAW -- BENEFITS

DOCKET NO. 17-0204-1701

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, 72-1103, and 72-1104, 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 November 15, 2017.

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:

The change in rule eliminates situational eligibility for officers subsequent to July 1, 2015.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this rule change is necessary to conform to statute.

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 Nick Landry, Fiscal Manager, (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 November 22, 2017.

DATED this 20th day of September, 2017.

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. 17-0204-1701
(Only Those Sections With Amendments Are Shown.)

004. RULE GOVERNING APPLICATIONS FOR REIMBURSEMENT FROM THE PEACE OFFICER AND DETENTION OFFICER TEMPORARY DISABILITY FUND.

01. Eligibility. An employer who has paid the full base salary due to a peace officer or detention officer, as defined in Section 72-1103, Idaho Code, may apply for reimbursement from the Peace Officer and Detention Officer Temporary Disability Fund under the provisions of Section 72-1104, Idaho Code, for the amount of that salary not covered by the workers' compensation income benefit payments remitted to the employer during the time that such officer is: (5-8-09)

- a. Temporarily incapacitated and unable to perform employment duties; (5-8-09)
- b. Is otherwise eligible to receive workers' compensation benefits; and (5-8-09)
- c. Is one whose incapacitating injury was incurred in the performance of employment duties on or after July 1, 2008, either: (5-8-09)
 - i. When responding to an emergency; or (5-8-09)
 - ii. When in the pursuit of an actual or suspected violator of the law; or (4-4-13)
 - iii. The injury was caused by the actions of another person after July 1, 2012 *and before July 1, 2015.* ~~(4-4-13)~~ ()

02. Application. An employer eligible to seek reimbursement from the Peace Officer and Detention Officer Temporary Disability Fund shall make application on the form provided by the Commission for that purpose. Applications shall be sent to: Idaho Industrial Commission, ATTN: Peace Officer Fund, PO Box 83720, Boise, Idaho 83720-0041. (5-8-09)

03. Payments. Payments to employers requesting reimbursement from the Peace Officer and Detention Officer Temporary Disability Fund shall be made within thirty (30) days of receipt of an approved request for reimbursement, subject to the availability of money in that fund. (5-8-09)

04. Disputes. Disputes regarding eligibility for reimbursement from The Peace Officer and Detention Officer Temporary Disability Fund will be decided by the Commission upon written request by the employer. There is no appeal from the reimbursement dispute decisions of the Commission under this section. Disputes regarding eligibility of an injured peace officer or detention officer for workers' compensation benefits, including the continuation of salary benefit set out in Section 72-1104, Idaho Code, will be decided in accordance with the Commission's current rules and procedures governing disputes in all other workers' compensation claims. (5-8-09)

IDAPA 17 – IDAHO INDUSTRIAL COMMISSION

17.02.04 – ADMINISTRATIVE RULES OF THE INDUSTRIAL COMMISSION UNDER THE WORKERS' COMPENSATION LAW -- BENEFITS

DOCKET NO. 17-0204-1702

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 and 72-428, 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 November 15, 2017.

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 adds language requiring notice to claimant when two or more impairment ratings for the same injury are given by different physicians and the ratings are not then averaged, claimant is to be advised of his right to challenge an employer's decision to pay benefits without averaging.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, a Notice of Intent to Promulgate – Negotiated Rulemaking was not published for this docket. However, as a result of negotiations for Docket Nos. 17-0208-1701, 17-0210-1701, and 17-0211-1701 conducted on June 20, 2017 and June 29, 2017, it was determined by the Industrial Commission that an additional rulemaking promulgated under this docket would be beneficial based on stakeholder input.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Patti Vaughn, Benefits Administration Manager, (208) 334-6063.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before November 22, 2017.

DATED this 20th day of September, 2017.

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. 17-0204-1702
(Only Those Sections With Amendments Are Shown.)

281. RULE GOVERNING ~~CONVERSION OF~~ IMPAIRMENT RATINGS ~~TO "WHOLE MAN"~~
~~STANDARD.~~

01. Converting Single Rating of Body Part to Whole Person Rating. In the event of a percentage rating followed by the practitioner's equating the same to the whole man by one or more steps (e.g., a percentage of the foot, which equals a percentage of the lower extremity, which equals a percentage of the whole man), the initial or basic percentage rating of the injured part (or in non-scheduled injury, percentage of a comparative scheduled injury) shall be converted to the exact percentage of the whole man in accordance with the Industrial Commission Schedule, Section 72-428, Idaho Code, with the base of five hundred (500) weeks for the whole man. Where a single rating is given, such shall be deemed the final rating and converted in the same manner. (1-2-75)

02. Averaging Multiple Ratings. Where more than one (1) evaluating physician has given such ratings, these shall be similarly converted to the statutory percentage of the whole man, and an average obtained for the applicable rating. (1-2-75)

03. Correcting Manifest Injustice. ~~In the event that the Commission deems a manifest injustice would result from the above ruling, it may at its discretion take steps necessary to correct such injustice.~~ When two or more impairment ratings for the same injury have been given by different physicians, payment to claimant of permanent disability based on permanent impairment may be based on the average of such ratings. If such ratings are not averaged, claimant shall be notified of such ratings and advised of his right to challenge employer's decision to pay without averaging. (1-2-75)()