

**ADMINISTRATIVE RULES COMMITTEE**  
**December 5, 2017**

Good Afternoon Mr. Chairman, Members of the Committee:

My name is Anne Green. I am the Director of Legal Services and Staff Counsel for Workforce Safety and Insurance. I submit for your review responses to the questions posed by Legislative Council in their organizational materials. I direct your attention to number 6 of this document, which outlines the subject matter and the reasons for these proposed amendments.

**1. Whether the rules resulted from statutory changes made by the Legislative Assembly:**

ANSWER - Yes, five of the nine rules resulted from statutory changes.

The amendment of Administrative Rule 92-01-02-11.1, relating to attorney fees, Senate Bill 2048, referred by the Workers' Compensation Review Committee, during the 65<sup>th</sup> Legislative Assembly.

The amendment of Administrative Rule 92-01-02-14, relating to employer accounts, HB 1137, introduced by Representative Keiser, during the 65<sup>th</sup> Legislative Assembly.

The creation of a new section of Administrative Code, Chapter 92-01-02, relating to the requirement of an employer to provide a security instrument to guarantee payment of premium, SB 2094, introduced by the Industry, Business and Labor Committee at the request of Workforce Safety and Insurance, during the 65<sup>th</sup> Legislative Assembly.

The amendment of Administrative Rule 92-01-03-02, relating to the Decision Review Office, SB 2093, introduced by the Industry, Business and Labor Committee at the request of Workforce Safety and Insurance, during the 65<sup>th</sup> Legislative Assembly.

The amendment of Administrative Rule 92-01-03-04, relating to the Decision Review Office, SB 2093, introduced by the Industry, Business and Labor Committee at the request of Workforce Safety and Insurance, during the 65<sup>th</sup> Legislative Assembly.

**2. Whether the rules are related to any federal statute or regulation.**

ANSWER - No.

**3. A description of the rulemaking procedure followed in adopting the rules, e.g., the type of public notice given and the extent of public hearings held on the rules.**

ANSWER - For the creation of, and amendments of these rules, WSI followed the provisions of N.D.C.C. Chapter 28-32. As required, both a full notice and an abbreviated notice of the intent to create and amend were accomplished. On July 21, 2017, the full notice was mailed to Legislative Council, and the abbreviated notice was published in each official county newspaper in the state (N.D.C.C. § 28-32-10). Also, on July 21, 2017, a letter was submitted to the North Dakota Newspaper Association requesting publication. Also, on July 21, 2017, a copy of the changes to administrative rule section 92-01-02-14 was emailed to Representative George Keiser. On August 14, 2017, the N.D. Newspaper Association issued an Affidavit of Publication to WSI.

The public hearing was held on August 29, 2017, in the Board Room at WSI's Bismarck office. The public hearing was transcribed and that transcription is on file with WSI. No persons from the public attended the hearing and no comments were received during the public hearing. The hearing record was held open for ten days after the public hearing. No written comments were received during the subsequent 10-day comment period.

A request was made to the Attorney General for an opinion as to the legality of the proposed rules on September 29, 2017. The Opinion of the Office of Attorney General that the rule amendments are in compliance with N.D.C.C. Chapter 28-32 was issued on October 27, 2017. Publication of the rules was requested of Legislative Council on October 31, 2017.

Copies of all documents referenced in this response were provided to Legislative Council.

**4. Whether any person has presented a written or oral concern, objection, or complaint for agency consideration with regard to these rules. If so, describe the concern, objection, or complaint and the response of the agency, including any change made in the rules to address the concern, objection, or complaint. Please summarize the comments of any person who offered comments at the public hearings on these rules.**

ANSWER - No concerns, objections, or complaints were submitted to WSI. No comments were received during the public hearing. No comments received following the public hearing.

**5. The approximate cost of giving public notice and holding any hearing on the rules, and the approximate cost (not including staff time) of developing and adopting the rules.**

ANSWER -	
Cost of Public Notice	\$2,426.08
Cost of Hearing (transcript)	94.50
<u>Cost of expert opinion re: rules</u>	<u>\$ 276.72</u>
TOTAL COST	\$2,797.30

**6. An explanation of the subject matter of the rules and the reasons for adopting those rules.**

1. The purpose of the proposed amendment to Administrative Code Section 92-01-02-11.1, relating to attorney fees, is to increase hourly rates and caps, to clarify the provision which allows for costs to exceed one hundred fifty dollars with prior approval, and to eliminate a fee percentage increase for prevailing on appeal. The amendment is also the result of legislation passed by the 65<sup>th</sup> Legislative Assembly, Senate Bill 2048. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

2. The purpose of the proposed creation of Administrative Code Section 92-01-02-13.1, is to clarify that the relationship between a general contractor and subcontractor may be identified by the organization in any industry. The proposed creation is not expected to have an impact on the regulated community in excess of \$50,000.

3. The purpose of the proposed amendment to Administrative Code Section 92-01-02-14, relating to employer accounts, is to require on the payroll reports the information requested by the organization, including the name, social security number, rate classification, and gross payroll for each employee, and to clarify for non-receipt of a payroll report the organization may bill the employer consistent with North Dakota Century Code §65-04-19. The amendment is also the result of legislation passed by the 65<sup>th</sup> Legislative Assembly, House Bill 1137. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

4. The purpose of the proposed creation of a new section to Administrative Code Chapter 92-01-02, is to allow the organization to require an employer to provide a security instrument to guarantee payment of premium. This creation is also the result of legislation passed by the 65<sup>th</sup> Legislative Assembly, Senate Bill 2094. The proposed creation is not expected to have an impact on the regulated community in excess of \$50,000.

5. The purpose of the proposed amendment to Administrative Code Section 92-01-02-25, relating to permanent impairment evaluations and disputes, is to disallow a doctor who has treated an injured worker from conducting an evaluation of impairment, and establishes that pollicization be rated as an impairment under the Scheduled Injury Subsection. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

6. The purpose of the proposed creation of a subsection to Administrative Code Section 92-01-02-31, relating to reimbursements, is to provide for entities operating under Federal authority to receive reimbursement from the organization. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

7. The purpose of the proposed amendment to Administrative Code Section 92-01-03-02, relating to the Decision Review Office, is to remove a definition relating to constructive denial and vocational consultant's reports. This amendment is also the result of legislation passed by the 65<sup>th</sup> Legislative Assembly, Senate Bill 2093. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

8. The purpose of the proposed amendment to Administrative Code Section 92-01-03-04, relating to the Decision Review Office, is to clarify when a claimant may contact the Decision Review Office. This amendment is also the result of legislation passed by the 65<sup>th</sup> Legislative Assembly, Senate Bill 2093. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

9. The purpose of the proposed creation of a new section to Administrative Code Chapter 92-01-02, is to further clarify and define the contributing cause of mental or psychological conditions. The proposed creation is not expected to have an impact on the regulated community in excess of \$50,000.

**7. Whether a regulatory analysis was required by North Dakota Century Code (NDCC) Section 28-32-08 and whether a regulatory analysis was issued. Please provide a copy if one was prepared.**

ANSWER - No impact in excess of \$50,000 is expected. A copy of each Regulatory Analysis was provided to Legislative Council.

**8. Whether a regulatory analysis or economic impact statement of impact on small entities was required by NDCC Section 28-32-08.1 and whether that regulatory analysis or impact statement was issued. Please provide copies.**

ANSWER - No adverse impact is expected. A copy of each Small Entity Regulatory Analysis and Small Entity Economic Impact Statement was provided to Legislative Council.

**9. Whether these rules have a fiscal effect on state revenues and expenditures, including any effect on funds controlled by your agency. If so, please provide a fiscal note.**

ANSWER - No significant financial impact is expected. A copy of each Fiscal Note was provided to Legislative Council.

**10. Whether a constitutional takings assessment was prepared as required by North Dakota Century Code Section 28-32-09. Please provide a copy if one was prepared.**

ANSWER - None was required.

**11. If these rules were adopted as emergency (interim final) rules under NDCC Section 28-32-03, provide the statutory grounds from that section for declaring the rules to be an emergency and the facts that support that declaration and provide a copy of the Governor's approval of the emergency status of the rules.**

ANSWER - These rules were not adopted under the emergency provision.