WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION

Form #1

Do Not Mark In This Box

FILED

2004 OCT 19 P 3:13

OFFICE WEST VIRGINIA SECRETARY OF STATE

NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Workers' Compensation Commission TITLE NUMBER: 85

RULE TYPE: Exempt Legislative CITE AUTHORITY: W. Va. Code§§23-1-1a(j)(3), 23-4B-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES___NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: *

TITLE OF RULE BEING AMENDED: *Repeals and replaces 85CSR2, "Administration of the Coal Workers' Pneumoconiosis Fund"

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 2

TITLE OF RULE BEING PROPOSED: "Administration of the Coal Workers' Pneumoconiosis Fund"

DATE OF PUBLIC HEARING: November 19, 2004 TIME: 1:00 p.m.

LOCATION OF PUBLIC HEARING: Rooms 207-209
Charleston Civic Center
Charleston, West Virginia
**Comments will close at the end of the public hearing on this rule.

COMMENTS LIMITED TO: ORAL ___, WRITTEN ___, BOTH X

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS:

T. J. Obrokta
Executive Offices
Workers' Compensation Commission
~~4700 MacCorkle Avenue, S.E.~~
Charleston, WV 25304
Fax # (304) 926-5372

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Authorized Signature

$5.60

Workers' Compensation Commission
Insuring a Working West Virginia
Gregory A. Burton, Executive Director

Office of General Counsel
4700 MacCorkle Avenue, S. E.
Charleston, West Virginia 25304
Phone Number (304) 926-3423
Fax Number (304) 926-5441

October 19, 2004

The Honorable Joe Manchin III
Secretary of State
State Capitol Complex
Building 1, Room W-157
Charleston, West Virginia 25305

Re: Proposed Rule
Title 85, Series 2
"Administration of the Coal Workers' Pneumoconiosis Fund"

Dear Secretary Manchin:

Please consider this letter to be my written approval for the filing of the above-noted proposed Rule.

Pursuant to Senate Bill 2013, Second Extraordinary Session, 2003, the Workers' Compensation Commission is established as a government entity separate from the Bureau of Employment Programs. Pursuant to that same bill, the Board of Managers of the Workers' Compensation Commission have approved the enclosed 85 C.S.R. 2 entitled, "Administration of the Coal Workers' Pneumoconiosis Fund," for filing as a proposed rule of the Workers' Compensation Commission.

Thank you very much for your assistance in this matter.

Very truly yours,

Gregory A. Burton
Executive Director

Enclosure

FISCAL NOTE FOR PROPOSED LEGISLATIVE RULES

Rule Title: Title 85 Series 2: Administration of the Coal Workers' Pneumoconiosis Fund

Type of Rule: _X_ Legislative Exempt ___Interpretive ___Procedural

Agency: Workers' Compensation Commission

Address: 4700 MacCorkle Ave. S.E.

Charleston, WV 25304

1. Effect of Proposed Rule

	Annual		Fiscal Year		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	$0	$0	Unkown	Unknown	Unknown
PERSONAL SERVICES	Unknown	0	Increase	Increase	Increase
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERNATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER:					
Benefit payments	0	0	0	0	0
Benefit related payments	0	0	0	0	0

2. Explanation of above estimates:

Implementation of this rule provides additional requirements for the general administration of the West Virginia Coal Workers' Pneumoconiosis Fund. The rule provides specific guidance for requiring additional application and subscription data, establishing classification and premium rates, the timely processing of benefit payments, processing employer quarterly reports and other filing requirements and procedures for the cancellation, reinstatement, withdrawal and transfer of coverage. Implementation of the rule's guidance will require establishing some additional operational procedures. These procedures may require some additional personnel to review the required subscriber application supporting data mandated by the rule, to evaluate and implement the classification and rating criteria established by the rule and to properly maintain claims processing and the cancellation, reinstatement, withdrawal and transfer of coverage in accordance with the rule's established criteria. The rule may also result in an increase in premium revenue due to a more effective rate setting process. There is no historical data readily available to estimate any additional personnel expenses or to determine the possible increase in premium revenue resulting from the implementation of this rule. Therefore, it cannot be reasonably determined what amount of additional personnel expenses will be incurred or to estimate any potential increase in premium revenue that could be realized as a result of the proposed rule.

Rule Title: Title 85 Series 2: Administration of the Coal Workers' Pneumoconiosis Fund

3. Objectives of this rule:

This rule establishes and defines the policy and procedure for the administration of the West Virginia Coal Workers' Pneumoconiosis Fund and should result in equitable premium rates for subscribers and promote more effective claims processing.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

It is expected that this rule will improve the overall administration of the West Virginia Coal Workers' Pneumoconiosis Fund and should promote a more efficient and cost-effective coal workers' pneumoconiosis insurance program.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

The rule will provide the opportunity for operators, as defined by Title IV of the Federal Coal Mine Health and Safety Act of 1969, to apply, as an alternative to other coverage available, for coverage in the West Virginia Coal Workers' Pneumoconiosis Fund insurance program.

C. Economic Impact on Citizens/Public at Large.

This proposed rule would not have a direct economic impact on the citizens of West Virginia.

Date: October 19, 2004

Signature of Agency Head or Authorized Representative

Gregory A. Burton
Executive Director, Workers' Compensation Commission

SUMMARY OF PROPOSED RULE
STATEMENT OF CIRCUMSTANCES
TITLE 85, SERIES 2

The proposed rule entitled, "Administration of the Coal-Workers' Pneumoconiosis Fund," repeals and replaces the current 85 C.S.R. 2 with the same title.

The proposed rule requires additional information from the employer when it applies for Coal-Workers' coverage. The additional information includes officer and financial information. The rule requires additional information about the make-up of the employer's workforce so that the Commission may determine an applicant's current exposure and charge for that exposure as a condition of the provision of coverage.

A change is made to the rule to clarify that the provision of Coal-Workers' coverage is discretionary with the Commission.

A change is made to the methodology of establishing premium rates for Coal-Workers' so that the Board of Managers determines rates and classifications in a similar manner to the method used to establish workers' compensation premium rates. The proposal allows the Board of Managers to set rates on a periodic basis.

The proposal eliminates the requirement that the Commission reinstate employers who have been canceled for failure to pay premiums.

Draft 10-18-04

TITLE 85
LEGISLATIVE RULE
WORKERS' COMPENSATION COMMISSION

SERIES 2
ADMINISTRATION OF THE COAL-WORKERS' PNEUMOCONIOSIS FUND

§85-2-1. General.

1.1. Scope. -- These legislative rules provide for the administration of the Coal-Workers' Pneumoconiosis Fund.

1.2. Authority. -- W. Va. Code §23-4B.

1.3. Filing Date. --

1.4. Effective Date. –

1.5. Repeal and replacement. This rule repeals and replaces 85 C.S.R. 2 entitled, "Administration of the Coal-Workers' Pneumoconiosis Fund," filed April 15, 1986, and effective July 1, 1986.

History. The 1986 Legislative Rules repealed West Virginia Legislative Rules, "Workers' Compensation Commissioner, West Virginia Code Article four-b, Chapter twenty-three, Series II, Coal-Workers' Pneumoconiosis Fund", filed December 27, 1982.

§85-2-2. Definitions.

For purposes of these Rules, except where the content clearly indicates otherwise, the following definitions apply:

2.1. "Commission" means the West Virginia Workers' Compensation Commission as provided for by W. Va. Code §23-1-1, et seq.

2.2. "Federal Act" means Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended.

2.3. "Subscriber" means any operator, or person deemed to be, or treated as, an operator under the Federal Act, who has elected to and has entered into a contract with the Commission, for the purpose of securing coverage of the responsibility imposed upon such operator by the Federal Act in respect of the total disability or death of miners due to pneumoconiosis.

2.4. "Claimant" means an individual who files a claim for benefits under the Federal Act.

2.5. "Employee" means any individual within the employ of an operator subject to the Federal Act, who is termed a miner for benefit purposes under the Federal Act and Federal Regulations.

2.6. "Fund" means the West Virginia Coal-Workers' Pneumoconiosis Fund.

2.7. "Operator" means an operator, as defined by the Federal Act and Federal Regulations, including, but not limited to, any owner, lessee or other person who operates, controls or supervises a coal mine, including a prior or successor operator and certain transportation and construction employers.

2.8. "Person" means an individual, partnership, association, corporation, firm, subsidiary, or parent of a corporation or other organization or business entity.

2.9. "State Act" means West Virginia Code of 1931, Article four-b, Chapter twenty-three, as amended.

2.10. "Subscription Year" means one (1) year, on a fiscal year basis, from July 1 to June 30 of the next following year, except in the case of a subscriber joining the Fund after the start of a fiscal year, in which case it means the period from the date of acceptance into the Fund until the close of the fiscal year in which the subscriber joined.

2.11. "Preparation" means any ancillary operation pertaining to the mining of coal, including, but not limited to, marketing, transportation, breaking, crushing, sizing, cleaning, washing, drying, mixing, storing, installation and construction of "on-site" facilities, drilling of shafts, and any and all other commercial activities in connection with the production of coal, whether or not specifically described herein: Provided, That such activities are covered activities under the Federal Act.

2.12. "Federal Regulations" means the Rules and Regulations of the United States Department of Labor with regard to the Federal Act, as amended.

2.13. "Pneumoconiosis" means coal-workers' pneumoconiosis, as defined under the Federal Act and Federal Regulations.

2.14. "Actuarial Value" shall be the discounted present value of the estimated indemnity and medical benefits, recognizing claimant mortality, interest earnings and future benefit escalations. The interest discount and escalation values used shall be those used in the most recent rate calculation by the Commission.

§85-2-3. Subscription.

3.1. Application. An application for coverage of all operations, located within the State of West Virginia, by the West Virginia Coal-Workers' Pneumoconiosis Fund, may be filed by any parent or subsidiary corporation, partner or partnership, party to a joint venture, joint venture, individual, lessee or lessor of a coal mine, transferee or transferor of a corporation or other business entity, which may be determined an operator liable for the payment of benefits under the Federal Act, regardless of whether such applicant is directly engaged in the business of mining coal.

a. Application for coverage by the Fund shall be filed with the West Virginia Coal-Workers' Pneumoconiosis Fund, at the address designated by the Commission and shall be made on a form provided by the Commission. Such application shall be signed by the applicant over his typewritten name, and, if the applicant is not an individual, by the principal officer of the applicant, over his typewritten name and official designation, and shall be sworn to by him. If the applicant is other than an individual, a copy of the authorization to act on behalf of the applicant by the officer signing the application shall be attached to the

application.

3.2. Application Information. Each application for coverage shall contain the following information.

a. Identifying information:

1. The applicant's name, address and telephone number;

2. The applicant's type of business operation, such as sole proprietorship, corporation, partnership, limited liability company, etc.;

3. Upon application for coverage, all applicants must provide a copy of the business registration certificate issued by the tax commissioner pursuant to W. Va. Code §11-1 et seq.;

4. The applicant's West Virginia workers' compensation policy number;

5. The names, addresses and social security numbers of the applicant's principals, including corporate officers if the applicant is a corporation, partners if the applicant is a partnership, members if the applicant is a limited liability company, sole proprietors and so on.

6. A statement of the date the applicant was authorized to do business in West Virginia, the date of commencement of operations at each location, the name of the predecessor at each operation, if any, and the names of the officers or members of the firm, if the applicant is a corporation or a partnership. If the applicant is a corporation, a statement of the place of incorporation shall be included. If the applicant is a subsidiary of any business entity, the name and address of the parent organization shall be given. If the applicant is a lessee operation, the name and address of the lessor shall be given to the commission together with a copy of any and all agreements and leases involving the operations;

7. Whether the applicant has previously obtained coal workers' coverage through the Commission, private carrier or self-insurance with the identification of any previous carrier or self-insurance, the years covered by that policy or self-insurance and the policy number thereof; and

8. The address at which a field auditor may conduct a payroll audit, the name of the applicant's contact person at the site where a field audit may be conducted and telephone number of that contact person.

b. Financial information. The applicant shall provide its latest three financial reports.

c. The applicant will provide a copy of all citations issued to the applicant by all State and federal regulatory agencies, which citation results from or in part results from emissions of dust or unlawful concentrations of dust, within or from the mining operation.

d. Employee and payroll information previous to application. The applicant shall supply the following information as part of its application:

1. A statement of the employer's payroll report for each of the preceding three (3) years;

2. A statement of the average number of employees engaged in employment within the purview of

the Federal Act for each of the preceding three (3) years;

3. A statement of the estimated average number of employees for each and every operation for the next three (3) months and the next year of operation, together with a statement of the estimated gross payroll of each and every operation for the next three (3) months and the next year of operation;

e. Operations for which coverage is sought. The applicant shall provide a list of the mine or mines to be covered by the Fund, being all operations located in West Virginia. Each mine or operation shall be described by name, location (including county), type of operation (underground, surface, trucking or other described activity), type of coal being mined (bituminous or anthracite), Federal Mine Identification Number assigned such mine by the Bureau of Mines, United States Department of the Interior or any successor thereof with jurisdiction over the nation's mines, the Federal Employer Identification Number, and the date that operations began or will begin.

f. Demographics of current employees. The applicant shall provide the following information for all covered employees:

1. The name and social security number of each employee;

2. Each employee's gender, birth date and marital status;

3. The birth date of the employee's spouse, the number of dependents of the employee and the dependents' relationship to the employee;

4. Each employee's address, including their state of residence;

5. The location of the employee's work site;

6. The employee's average weekly wage;

7. The employee's job description, such as miner, coal truck operator, tipple employee, barge operations, clerical work or other;

8. Each employee's complete mining operations work history for the applicant and for all previous employers; and

9. In addition to the aforementioned, the Commission may in its discretion require the applicant to submit such further and additional information or such evidence, as the Commission may deem necessary in order to enable it to give adequate consideration to such application. In furtherance of such information gathering, the Commission shall be authorized to audit and inspect, at any time, any and all papers, books, documents, ledgers, accounts and other business records, and the Commission is authorized to conduct a physical inspection on the premises of any applicant for the purpose of verifying activities.

f. Each employer is required to update and maintain all information and supply the information to the Commission on a periodic basis as required by the Commission.

3.2. Classification and premium information. All prospective applicants will be furnished classification

and premium information, together with the proper application form, upon request.

3.3. Application; effect of regulations. Each of the requirements of these Rules shall be binding upon each applicant and subscriber hereunder, and the applicant's and subscriber's consent to be bound by all requirements of said Rules shall be deemed to be included in and be a part of the application, as fully as though written therein.

3.4. Action by the Commission upon application of operator.

a. Upon receipt of a completed application and the receipt of all other information requested by the Commission, including the completion of an audit and inspection, should either or both be deemed necessary, the Commission shall, after examination of the information, determine the amount of deposit and the first quarter's premium to be paid the Commission to obtain coverage or deny the application for coverage.

b. The applicant shall thereafter be notified in writing of the denial of coverage, or, that the deposit and first quarter's premium, as determined by the Commission, may be paid to the Fund.

3.5. Determining the amount of deposit. The amount of deposit determined, and required of applicants and subscribers, shall be such as the Commission shall deem appropriate, based on information and factors deemed relevant by the Commission, to maintain the solvency of the Fund, but in no event shall the deposit be less than one (1) quarter's premium.

Whenever in the opinion of the Commission the amount of the deposit is deemed insufficient, the Commission may require such additional deposit as deemed appropriate, and, upon written notice and demand by the Commission to the applicant or subscriber, they shall, within thirty (30) days from receipt of such notice, remit to the Fund such additional amounts of deposit as may be required. At any time upon application of an applicant or subscriber or on the initiative of the Commission, when in its opinion the facts warrant, the amount of deposit required may be reduced by the Commission.

3.6. At the time of an employer's initial application for coal workers' coverage and at each reapplication for coverage that results from a modification of the business as described in 4.3.a. of this Rule, the commission will determine, on an actuarial basis, a sum sufficient to initially cover the applicant's liability for the future costs.

a. The employer is required to pay into the Fund the amount of this determined liability prior to coverage being granted by the commission, or

b. The commission may, in the exercise of its discretion, allow the employer to pay the sum in up to four equal payments. The first payment is due prior to coverage being granted by the commission. The remaining payments shall be due on or before the last day of the month next following the end of each subsequent quarter. Failure to complete the payment agreement shall result in termination of coverage.

3.7. Effective date and notice of coverage. When an applicant has fully complied with all of the requirements for application, herein set forth, and has paid the initial sum sufficient to cover the applicant's liability for the future costs, the required first quarter premium and the required deposit, the Commission shall promptly notify the applicant of their acceptance as a subscriber to the Fund, stating therein the effective date of such acceptance, and a report thereof shall be promptly made to the United States Department of Labor in

accordance with the Federal Regulations.

3.8. Failure to provide proper information. If the Commission discovers, after an application or renewal has been accepted, that an applicant or subscriber has failed to provide proper information, or has provided false or misleading information, or has only applied for partial coverage of their operations, and if the information so misrepresented, either intentionally or unintentionally, is of a nature as to have been material to the decision made by the Commission, such that a different decision might have been made had proper information been supplied, the Commission may revoke the coverage previously approved and shall be entitled to recover from such applicant or subscriber all moneys paid by the Fund as benefits, penalties and/or interest in any and all claims under the Federal Act in which the applicant or subscriber is determined to be the responsible operator, plus interest thereon at the maximum rate allowed by law, together with such sum of money as shall be determined by the Commission to represent the fair value of the administrative services involved in handling and processing of the subscription and claims against such applicant or subscriber, or collect from such applicant or subscriber all premiums and deposits, plus interest thereon from the effective date of acceptance that would have been chargeable for coverage had proper information been provided.

3.9. Renewals required. Continuation as a subscriber to the Fund shall not be automatic at the end of a subscription year. Coverage by the Fund will cease at the end of a subscription year, unless a renewal application form for the next ensuing subscription year is filed and accepted prior to the end of the current subscription year. Such renewal application form must be received in the office of the Commission in completed form on or before April 30 of the current subscription year to insure no lapse in coverage for the next following year. Failure to comply with the renewal application time requirements may result in cessation and lapse of coverage and necessitate a request for reinstatement by the subscriber to regain coverage by the Fund. Extensions for filing renewal applications may be granted at the discretion of the Commission, upon written request for such by a subscriber, for up to thirty (30) days at a time, upon such terms and conditions as shall be deemed appropriate by the Commission.

a. Upon an employer's application for renewal of coverage, the commission shall determine whether a gain or loss has occurred in relation to the employer's account. The commission shall determine the following factors: total premium taxes paid, excluding the costs of the administration of the coal workers' pneumoconiosis fund and any other assessments or surcharges; and the cost of known claims reserved. If the total premium taxes paid are less than the costs of known claims reserved, the commission may require that the application for renewal be treated in the same manner and be subject to the same requirements as an initial application for coverage under the provisions of 3.6. of this Rule.

3.10. Denials of coverage. Any applicant whose application has been rejected, or who believes that the deposit or a sum sufficient to initially cover the applicant's liability for the future costs required by the Commission is excessive, may request, in writing, within fifteen (15) days of receipt of the above notice, that the Commission review its determination. A request for review should contain such information as may be necessary to support the request that the denial be set aside, or that the amount of the deposit required or sum sufficient to initially cover the applicant's liability for the future costs be reduced. Whether coal workers' pneumoconiosis coverage is provided to an employer applicant is entirely within the discretion of the Commission.

a. Upon receipt of any such request, the Commission shall review its previous determination, considering any new or additional information submitted, and inform the applicant whether or not the request is granted or denied, and, in the case of a change in the amount of deposit or the sum sufficient to initially

cover the applicant's liability for the future costs, what the adjusted deposit amount or sum sufficient is. However, in no event shall the amount of deposit required be less than one quarter's premium.

§85-2-4. Coverage.

4.1. General. The Fund shall provide coverage to subscribing operators for liability for benefits to which claimants are found entitled in claims under the Federal Act on the basis of the claimant's last day of exposure to coal dust in the employment of a subscriber. All claims with dates of last exposure during a subscription period, while the operator was a subscriber, shall be accepted for coverage, if otherwise eligible, regardless of the subsequent date of filing with the United States Department of Labor or the date of receipt of the award of benefits notification by the Commission. The Fund will also accept for coverage those claims for which the claimant's last day of exposure to coal dust in the employment of the subscriber falls between January 1, 1970, and June 30, 1973, and which is first filed under the Federal Act during the subscription period, or, if a federal claim is for medical benefits only, is first reported to the responsible mine operator during the subscription period.

4.2. Retroactive liability. In the event that the Federal Act or the Federal Regulations are amended in such a way as to impose retroactive liability upon the Fund for claims previously filed, or adjudicated, the Commission shall have the right to make prospective or immediate adjustments to the premium rates charged for past subscription periods to cover such imposition of retroactive liability.

4.3. Assignment or transfer prohibited. Coverage by the Fund is not assignable or transferable to any person. Coverage is limited to the operations identified in the notice of coverage.

a. Any modification of such identified operations, by sale, transfer, acquisition, leasing arrangement or otherwise, shall require reapplication before any addition to or deletion from any existing coverage shall be effective. Modifications shall include, but not be limited to, business reorganizations, the acquisition of new operations, buying an additional business, and mergers with other businesses.

§85-2-5. Classification and premium rates.

5.1. Exposure base. Premium taxes shall be based on the total gross wages paid or payable to employees covered by the Act. In accordance with the provisions of 5.2, the board of managers may provide for a different exposure base as it may determine.

a. Except as modified by the board of managers under the provisions of 5.2, "gross wages" means all wages paid to employees, whether payable in money or other valuable consideration, and shall include salaries, bonuses, commissions, profit sharing, and the reasonable money value of board, rent, housing, lodging and other goods and services. The commission retains the right to determine whether an item, not otherwise described in this provision, is reportable as "gross wages."

"Gross wages" include: W-2 items, vacation pay, including accrued vacation at time of dismissal, holiday pay, sick pay (excluding 3rd party sick pay), partnership and S Corporation distributions of ordinary income from trade or business activities (do not report losses), draws taken for items other than business expenses, retroactive wages, bonuses, including stock options and stock bonuses, commissions, including draws against commissions, wages paid to summer interns, overtime wages, profit sharing, incentive programs, per diem payments to employees not directly related to travel, allocation to employees for such things as tools,

equipment, machinery, etc. regardless if such allocation is labeled as per diem, hourly expense or other titles, stipend or other non-travel related payments to board members who are being covered under the employer's workers' compensation account, other compensation and perquisites paid to employees, owners and officers that have value, but are not per diem travel related, and value of gifts given to employees, owners, officers and board members.

"Gross wages" do not include: per diem expenses related to travel, the value of any special discount or markdown allowed a worker on goods or services purchased from or supplied by the employer if the purchase is optional with the worker and does not constitute regular or systematic remuneration for services, facilities or privileges such as cafeterias, restaurants, medical services or so-called 'courtesy discounts' on purchases furnished or offered by an employer merely as a convenience to workers or as a means of promoting their health, goodwill or efficiency, partnership and S Corporation distributions other than ordinary income from trade or business activities, payments, not required under any contract of hire, made to an individual with respect to a period of training or service in the armed forces of the United States, severance pay, savings plan proceeds, third party sick pay, and disability pay.

5.2. Determinations. The board of managers shall have the authority to make the following determination or determinations at any time and from time to time in accordance with the procedures set out in subsection 5.3 of this rule.

a. Classify into classes the employers subject to the Act.

b. Restructure classes and create or eliminate classes. The board of managers may establish additional classifications on the basis of the number of employees, size of payroll, type of mining operations, type of coal mined, claims experience or any combination of the aforementioned, or on any other basis which the board of managers deems appropriate.

c. Prepare a premium tax rate schedule based on an actuarially sound model, which shall specify the base rate for each classification.

d. Adjust the premium tax rate schedule in whole or in part.

e. Determine the expected loss ratios.

f. Determine the method for limiting losses.

g. Determine such other matters as the board of managers deems appropriate in the exercise of its ratemaking authority.

5.3. Procedures for determinations. Determinations made by the board of managers under the provisions of subsection 5.2, shall be made in the following manner.

a. The board of managers shall make any determination or determinations at a public meeting or meetings held in accordance with the provisions of 85 C.S.R.14, "Procedural Rules for the Workers' Compensation Board of Managers."

b. Such determinations shall be filed with the office of the secretary of state for publication in the state

register pursuant to the provisions of W.Va. Code §29A-2-1 et seq.

c. Such determinations shall be filed with the office of the secretary of state at least thirty (30) days prior to the first day of the quarter in which the determination or determinations become effective.

5.4. Notification. The commission shall notify every employer whose premium tax is affected under the provisions of section five (§85-2-5) of this rule. The commission shall provide such notice to each affected employer at least thirty (30) days prior to the period for which the rate change is applicable.

§85-2-6. Payment of benefits.

6.1. General. Within thirty (30) days of the receipt of a decision and order, or of a subsequent modification order, from the United States Department of Labor directing payment of benefits, or such other payments as provided for in the Federal Act, the Fund will, if the determined responsible operator was a subscriber for whom coverage is provided under subsection 4.1 of these Rules, issue payment as such order may direct, unless such decision and order is controverted by the operator in accordance with the Federal Act and the Federal Regulations, and the Fund has received written notification by the operator of its controversion, within the time period allowed by the Federal Act and Federal Regulations for filing such controversion of liability, requesting that the Fund withhold payment of benefits during the adjudication process. The operator shall be responsible to the Fund for any penalties or other payments, except interest, assessed against the operator or the Fund by reason of any requested delay in payment of benefits.

A subscriber shall promptly notify the Commission, and send copies of all documents connected therewith, of all claims filed against him as a responsible operator. A subscriber shall also supply the Commission with notification and copies of all his actions and responses to claims filed against him. In the cases in which the responsible operator fails to respond to an appropriate order to pay benefits from the United States Department of Labor, the Commission reserves the right to take appropriate action.

6.2. Medical expenses. Medical expenses shall be paid for the claimant under the criteria set forth in the Federal Act and Federal Regulations, as amended from time to time.

§85-2-7. Quarterly reporting.

7.1. General. On or before the last day of the month next following the end of each quarter of the subscription year, each subscriber must have filed, and the Commission must have received in its office, a quarterly payroll and premium report, reflecting the subscriber's payroll for the preceding quarter, and there must have been submitted therewith payment of the total premium due. This payroll and premium report must be made on the prescribed form in conformity with the instructions appearing thereon and must include the following information:

a. The total amount of gross wages paid during the preceding quarter to all covered employees. If an operator is conducting operations in more than one classification, a separate statement of wages paid must be made with respect to each such classification. Names of employees are required to be shown on the payroll and premium report and must appear in the payroll records maintained by the subscriber. If in a quarter no employees are engaged and no wages are paid, the report shall so state, and an average of employees and wages for the last four (4) quarters, in which actual employees and wages were reported, shall be calculated, and such will be considered in arriving at premium charge.

b. A statement of the premium rate assigned to the subscriber with respect to each classification. Upon request, the Commission shall provide necessary information concerning the premium rate and classification applicable to the operation conducted.

c. A statement of the amount of premium due with respect to each classification. In order to compute the premium due, the total wages or such other exposure base as determined by the board of managers shall be multiplied by the assigned rate.

Failure by the subscriber to comply with the time limits for filing of reports, and payment of premiums hereunder, may result in the immediate transmittal of a notice of cancellation to the subscriber, and the United States Department of Labor, without a grace period, or prior courtesy notice to the subscriber. Reports made after the date due, if accepted in lieu of cancellation, are subject to penalty for late filing in the amount of one hundred dollars ($100.00), plus interest on any late payments of premium. Improperly made payments, including, but not limited to failure to include full payment with the quarterly report and failure to properly execute checks, shall be treated as late payments, and interest shall attach thereto. All interest provided for in these Rules shall be at the maximum rate allowed by law.

7.2. Remittance. All premiums and other payments, required by or under these Rules, shall be made on or before the due date of such, payable to the order of "West Virginia Coal-Workers' Pneumoconiosis Fund", and shall be mailed, postage prepaid, by United States Mail, or delivered directly to the "West Virginia Coal-Workers' Pneumoconiosis Fund" at Charleston, West Virginia, at the address provided by the commission on its forms.

§85-2-8. Cancellation and reinstatement.

7.1. Right of cancellation. The commission shall have the right to cancel the coverage of any subscriber for the following reasons:

a. Failure to timely pay any premium;

b. Failure to timely file any quarterly payroll and premium report;

c. Failure to timely pay any deposit or additional deposit required by the Commission;

d. Failure to timely provide full, complete, and accurate information, as required by or requested under the authority herein;

e. Failure to permit, or facilitate, an audit or inspection, as hereinafter provided, by the commission;

f. Failure to otherwise comply with the requirements of the state act and these rules;

The use of the word "Timely" herein shall mean that premiums, deposits, and other payments required must be received in the office of the commission on or before the close of business of the last day specified by these rules, or of the date specified in any notice given the subscriber under authority of these rules. The filing of quarterly payroll and premium reports, and the providing of information, required or requested, shall be "Timely" if such is filed in the office of the Commission on or before the close of business of the last day

specified for the providing of such reports or information.

8.2. Reinstatement.

a. Prior to effective date of cancellation. After the Commission has issued a Notice of Cancellation, but before the effective date of cancellation has arrived, a subscriber may be reinstated, upon written request to the Commission: Provided, That the subscriber cures the delinquency, deficiency, or non-compliance which led to the issuance of the Notice of Cancellation: And provided, however, That the subscriber pay to the Commission interest on any moneys owed the Fund at the maximum rate allowed by law, together with a penalty of five hundred dollars ($500.00). Any request filed under this Section will not be given consideration, unless received in the office of the Commission on or before the close of business on the effective date of cancellation.

b. After voluntary withdrawal from coverage. Any subscriber who has voluntarily withdrawn from coverage by the Commission may, if they were not delinquent, deficient, or in non-compliance at the time of their withdrawal, be reinstated, without penalty, upon written request received within one hundred eighty (180) days of the effective date of their withdrawal. Such reinstatement shall be within the discretion of the Commission, and shall be upon such terms and conditions as may be deemed appropriate by the Commission.

c. Effective date of reinstatement. The effective date of any reinstatement, granted under subdivisions 8.2.a or 8.2.b of this regulation, shall be set forth in a written notice of reinstatement, which shall be sent to the subscriber and to the United States Department of Labor immediately upon the granting of reinstatement by the Commission. The operator shall not be entitled to receive coverage by the Fund of liability for claims with dates of last exposure during the period of cancellation or withdrawal, unless retroactive reinstatement is granted.

§85-2-9. Audit and inspection.

9.1. General.

a. Every subscriber shall keep, maintain, and preserve accurate records of all expenditures for payroll, past and present, which shall be separated according to each classification of the subscriber.

b. The Commission shall be authorized to audit and inspect, at any reasonable time, any and all papers, books, documents, ledgers, accounts and other business records of a subscriber or applicant for the purpose of verification of activities and verification of all information required to be provided to the commission under this rule.

c. If a subscriber or an applicant fails or refuses to comply with the requirements of this section, the Commission may (1) assess premiums on the basis of available information, or (2) revoke coverage previously approved, or (3) deny the application for coverage, as deemed appropriate within the discretion of the Commission.

d. If two (2) or more classifications have been assigned to a subscriber's operations, and the subscriber fails to maintain an accurate and verifiable separation on their payroll expenditures by such classifications, that part of the payroll which cannot be reasonably determined by the Commission to belong to any other classification shall be allotted to the assigned classification having the highest premium rate and premiums

shall be assessed accordingly.

§85-2-10. Withdrawal.

10.1. General. Since subscription to the Fund is voluntary, a subscriber may withdraw from coverage by the Fund at any time. Such withdrawal must be in writing and must be signed by the subscriber, and, if the subscriber is not an individual, by the principal officer of the subscriber, over his typewritten name and official designation, and shall be sworn to by him. If the subscriber is other than an individual, a copy of the authorization to act on behalf of the subscriber by the officer signing the withdrawal shall be attached to the withdrawal from coverage. Upon receipt of a written withdrawal, the Commission shall promptly send notice of cancellation, based upon the withdrawal, to the United States Department of Labor. The notice of cancellation shall set forth the effective date of cancellation, which shall be the earliest possible date that will comply with the notice requirements of the Federal Act and Regulations. A subscriber shall remain liable to the Commission for all premiums, deposits and other payments due the Commission until the effective date of cancellation specified in the notice of cancellation sent to the United States Department of Labor. Withdrawal from coverage, or cancellation, shall not relieve a subscriber from the obligation to pay past due premiums, interest or penalties, provided by these Rules, for the period during which an operator was a subscriber.

10.2. Upon withdrawal from coverage by a subscriber, or cancellation by the Commission, the Commission shall not refund any premiums for past years of coverage, nor for the current subscription year.

§85-2-11. Transfers.

11.1. Subscriber to subscriber. If a subscriber sells, leases or transfers in any way all or any portion of his organization, trade or business, or all or any portion of the assets thereof, to another subscriber, coverage by the Fund of the transferred interests and employees shall not be automatic upon transfer. Such transfer shall require the transferee subscriber to apply for coverage of the assets acquired by way of the transfer. Responsibility for all claims arising during the current subscription year out of the transferred interest, for which the transferor subscriber would have otherwise been responsible, shall be assumed by the transferee subscriber and shall be reflected in the experience of the transferee subscriber. Past due premiums, deposits, penalties and interest owed the Fund by the transferor upon the transferred interest shall not be defeated by such transfer, and the transferee subscriber shall become jointly and severally liable to the Fund for such along with the transferor. Copies of all documents connected with and affecting the transfer shall be provided to the Fund.

11.2. Non-subscriber to subscriber. If a subscriber acquires by means of purchase, lease, or transfer in any way all or any portion of the organization, trade or business, or all or any portion of the assets thereof, of a non-subscriber to the Fund, coverage by the Fund of the transferred interests shall not be automatic upon transfer.

11.3. Subscriber to non-subscriber. If a subscriber shall sell, lease or transfer in any way all or any portion of the organization, trade or business, or all or any portion of the assets thereof, to a non-subscriber, the transferor subscriber shall be liable for payment of premiums, deposits and any other payments to the Fund for coverage until withdrawal is effective, as provided in section 10 of these rules. Should the transferee be later determined unable to provide benefits to an approved claimant, because of the transferee's failure to insure against liability under the Federal Act and Regulations, either with a private carrier, a state fund, or through qualification with the Department of Labor as a self-insured operator, and should the Fund be held liable, as the insurer of the transferor subscriber, for such benefit payments, the Fund shall be entitled to recover the

actuarial value of each and every claim so approved from the transferor subscriber, regardless of when such claim is filed or benefits are awarded, if the date of last exposure is after the effective date of withdrawal from coverage of the transferor subscriber by the Fund. To secure the performance required by this section, the Fund may secure the written personal guarantee of the transferor subscriber, its officers, or principal stockholders.

11.4. Construction of these regulations. The provisions of this section shall be construed and applied so as to minimize the liability of the Fund for which no revenue is derived.

§85-2-12. Severability.

If any provision of these rules or the application thereof to any entity or circumstance shall be held invalid, such invalidity shall not effect the provisions or the applications of these rules which can be given affect without the invalid provisions or application and to this end the provisions of these rules are declared to be severable.