WORKERS' COMPENSATION FUND

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CHARLESTON, WEST VIRGINIA 25301

ARCH A. MOORE, JR.
Governor

MARY MARTHA MERRITT
Commissioner

August 9, 1985

NOTICE OF AGENCY APPROVAL AND SUBMISSION TO
THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

LEGISLATIVE RULE: Administration of the Coal-Workers' Pneumoconiosis Fund

The attached legislative rule constitutes the official rule approved by the Workers' Compensation Fund on August 9, 1985 and filed pursuant to law with the West Virginia Secretary of State and the Legislative Rule-Making Review Committee.

Mary Martha Merritt

Mary Martha Merritt
Commissioner

WEST VIRGINIA ~~EMERGENCY~~ LEGISLATIVE RULES
WORKERS' COMPENSATION COMMISSIONER
Chapter 23-4B
Series II

Title: Administration of the Coal-Workers' Pneumoconiosis Fund

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Section 1. GENERAL

1.1. Scope. These ~~Emergency~~ Agency Approved Proposed Legislative Rules provide for the administration of the Coal-Workers' Pneumoconiosis Fund.

1.2. Authority. These ~~Emergency~~ Agency Approved Proposed Legislative Rules are promulgated pursuant to the authority of West Virginia Code, Chapter 23, Article 4B.

1.3. Filing Date. ~~June 24, 1985.~~

1.4. Effective Date. ~~July 1, 1985.~~

1.5. Repeal of Former Rule. ~~This emergency legislative rule~~ These Agency Approved Proposed Legislative Rules repeals West Virginia Legislative Rule "Workers' Compensation Commissioner, Chapter 23-4B, Series II, Coal-Workers' Pneumoconiosis Fund", filed December 27, 1982.

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

A. Commissioner means the West Virginia Workers' Compensation Commissioner, who is the administrator of the Fund.

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

C. 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 Fund, 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.

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

E. 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.

F. Fund means the West Virginia Coal-Workers' Pneumoconiosis Fund.

G. 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.

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

I. State Act means Article 4B, Chapter 23 of the West Virginia Code, of 1931, as amended.

J. Subscription Year means one 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.

K. 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.

L. Federal Regulations means the Rules and Regulations of the U. S. Department of Labor with regard to the Federal Act, as amended.

M. Earned Premium means the amount of money paid as the consideration for coverage during any given period of time, which time has passed.

N. Unearned Premium means the amount of money paid for coverage during any period of time, which time is at some period in the future.

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

P. 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 Fund.

Section 2. SUBSCRIPTION

2.1. Application.

A. Who May File. 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.

B. How Filed. Application for coverage by the Fund shall be filed with the West Virginia Coal-Workers' Pneumoconiosis Fund, at the address designated by the Commissioner from time to time, which is on the date of these Rules, P. O. Box 564, Charleston, West Virginia 25322, and shall be made on a form provided by the Fund. 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.

C. Information to be Submitted. Each application for coverage shall contain:

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

(3) 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, type of operation, number of current employees, dollar amount of current payroll, Workers' Compensation Risk number, and Federal Employee Identification number assigned such mine by the Bureau of Mines, U. S. Department of the Interior or any successor thereof with jurisdiction over the nation's mines;

(4) ~~A~~ An ~~certified~~ itemized statement of the gross and net assets and liabilities of the operator for each of the three preceding years in such manner as prescribed by the Fund;

(5) 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 Fund together with a copy of any and all agreements and leases involving the operations;

(6) A statement of the estimated average number of employees for each and every operation for the next three 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 months and the next year of operation;

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

2.2. Classification and Premium Information. All prospective applicants will be furnished classification and premium information, together with the proper application form, upon request.

2.3. 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 a part of the application, as fully as though written therein.

2.4. Action by the Fund Upon Application of Operator.

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

C. Any applicant whose application has been rejected, or who believes that the deposit required by the Fund is excessive, may request, in writing, within fifteen days of receipt of the above notice, that the Fund 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 be reduced.

D. Upon receipt of any such request the Fund 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 required, what the adjusted deposit amount is. However, in no event shall the amount of deposit required be less than one quarter's premium.

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

Whenever in the opinion of the Fund the amount of the deposit is deemed insufficient, the Fund may require such additional deposit as deemed appropriate, and, upon written notice and demand by the Fund to the applicant or subscriber, they shall, within ~~ten (10)~~ thirty (30) ~~working~~ 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 Fund, when in its opinion the facts warrant, the amount of deposit required may be reduced by the Fund.

2.6. 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 required first quarter premium and the required deposit, the Fund 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 U. S. Department of Labor in accordance with the Federal Regulations.

2.7. Failure to Provide Proper Information. If the Fund 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 Fund, such that a different decision might have been made had proper information been supplied, the Fund may revoke the coverage previously approved and shall be entitled to recover from such applicant or subscriber all monies 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 Fund 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.

2.8. 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 Fund in completed form on or before ~~March 1~~ 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 Fund, upon written request for such by a subscriber, for up to 30 days at a time, upon such terms and conditions as shall be deemed appropriate by the Fund.

Section 3. COVERAGE

3.1. 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 U. S. Department of Labor, or the date of receipt of the award of benefits notification by the Fund. 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.

3.2. 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 Fund shall have the right to make prospective adjustments to the premium rates charged for past subscription periods to cover such imposition of retroactive liability.

3.3. 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. Any modification of such identified operations, by sale, transfer, acquisition, or otherwise, shall require re-application before any addition to or deletion from any existing coverage shall be effective.

Section 4. CLASSIFICATION AND PREMIUM RATES

4.1. Fixing of Premium Rates. As soon as practicable after the first day of July of each year, the Commissioner shall reassess the rates charged subscribers, and shall make such adjustments to the rates as may be deemed necessary.

4.2. Categories and Premium Rates for Subscribers. There shall be three categories of subscribers to the Fund, whose rates may be assessed as follows:

A. Ongoing Subscribers - Those subscribers who are already subscribers to the Fund, and who continue without interruption in such status, shall be charged the regular annual premium rate, as determined by the Commissioner.

B. New Coal Operators - Those incoming subscribers to the Fund, who have been engaged in coal operations for less than one year prior to submission of their application, shall be charged the same rates as ongoing subscribers.

C. New Subscribers - Those incoming subscribers to the Fund, who have been engaged in coal operations for one year or more prior to submitting application for coverage by the Fund. This category shall also include previous self insurers and previous subscribers, whose coverage has been cancelled, or have withdrawn, and are seeking reinstatement or re-entry, as well as other operators that have never been covered by the Fund previously. Such subscribers shall be charged the same rates as ongoing subscribers, except that for the first five years of coverage by the Fund, such rates shall be subject to prospective adjustment of up to four times the rate charged to ongoing subscribers, depending upon the experience of the operator within the Fund. If, within fifteen days after notice and demand for such, the subscriber fails to pay any prospective adjusted rates determined by the Fund, the coverage may be cancelled.

The Commissioner may, however, establish additional classifications on the basis of the number of employees, size of payroll, type of mining operation, claims experience or any combination of the aforementioned, or on any other basis which the Commissioner shall deem appropriate. In the preparation and adoption of any merit rating classification, such classification shall be designed and structured to assign liability and secure the premium and deposit necessary to cover the expenses and liability of such classification, based upon the experience of each subscriber who shall be assigned to each such classification. If such merit rating classification is implemented by the Commissioner it shall not take effect until the subscription year next following the subscription year in which it is announced.

4.3. Determination of Prospective Rates for New Subscribers. The subscriber's experience, set forth in subsection 4.2, shall be determined by the Fund based upon the actuarial value of each and every claim adjudicated adversely to the subscriber, and the cumulative premiums paid by the subscriber. The Fund shall make periodic evaluations of each "New Subscriber's" experience until such time as the Fund has reasonably determined that all claims for the five year period have been received, and have been fully adjudicated, at which time a final premium calculation will be made. Such calculation shall be made as soon as practicable, but may be made after the passage of the five year period, which shall not preclude the assessment or collection of such prospective premium.

4.4. Report of Experience. The Fund shall send to each subscriber, upon request of the subscriber, a report of its experience. The experience shall include:

A. Incurred losses determined by the Fund for the experience period in question. Incurred losses shall be computed as the sum of the cumulative payments to date for benefits, and the actuarial value of the estimated remaining benefits to be paid for each claim.

B. Cumulative premium payments paid by the subscriber to date.

4.5. Classification of Operations. Operations shall be classified as underground or surface. A subscriber may, during the first six months of a subscription, make written request for partial or total reclassification of his operations, or for the exclusion of certain of his operations, or for specific employment, if such operations or employment are so separated from the mining operations as to receive no exposure to coal dust. Upon receipt of such request, the Fund shall investigate the operation or employment, and rule on the request. If reclassification or exclusion is deemed appropriate, it will be effective at the beginning of the next subscription year.

Section 5. PAYMENT OF BENEFITS

5.1. General. Within thirty days of the receipt of a decision and order, or of a subsequent modification order, from the U. S. 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 Section 3.1 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 Fund, and send copies of all documents connected therewith, of all claims filed against him as a responsible operator. A subscriber shall also supply the Fund 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 U. S. Department of Labor, the Fund reserves the right to take appropriate action.

5.2. 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.

Section 6. QUARTERLY REPORTING

6.1. 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 Fund 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 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 not to be shown on the payroll and premium report but 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.

(1) For purpose of this report, "wages" shall include all remuneration for employment, whether payable in money or in a form other than money, whether designated as wages, salary, bonus, commission, profit sharing, etc., and shall include the reasonable money value of board, rent, housing, lodging and similar benefits, when afforded in exchange for services rendered by an employee.

(2) No deductions from wages shall be allowed on account of the operator's providing tools, explosives, maintenance of equipment, or other materials or services for which deductions are customarily made from an employee's wages, but the entire amount of wages as defined above shall be included in the payroll report.

(3) The "wages" for a corporate officer, partner, or sole proprietor who may by reason of his employment qualify as a "miner" under the Federal Act and Regulations, shall be as "wages" are set forth and defined above in this section, except that such of said "wages" as shall exceed an annual amount of $50,000.00 shall not be reportable.

B. A statement of the premium rate assigned to the subscriber with respect to each classification. Upon request, the Fund 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 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 U. S. 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.

6.2. 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 25322.

Section 7. CANCELLATION AND REINSTATEMENT

7.1. Right of Cancellation. The Fund 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 Fund.

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 Fund.

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 Fund on or before the close of business of the last day specified by these regulations, 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 Fund on or before the close of business of the last day specified for the providing of such reports or information.

7.2. Reinstatement.

A. Prior to Effective Date of Cancellation. After the Fund 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 Fund, provided the subscriber cures the delinquency, deficiency, or non-compliance which led to the issuance of the Notice of Cancellation, and provided that the subscriber pay to the Fund interest on any monies 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 Fund on or before the close of business on the effective date of cancellation.

B. After Effective Date of Cancellation. After midnight of the effective date of cancellation set in a Notice of Cancellation, and within a period of one hundred eighty (180) days thereafter, a cancelled subscriber may be reinstated as otherwise provided in A above, except that the penalty shall be one thousand dollars ($1,000.00). Such reinstatement may be retroactive, if so requested by the subscriber, and, if such retroactive reinstatement is granted, it shall be upon such terms and conditions as may be deemed appropriate by the Fund.

C. After Voluntary Withdrawal from Coverage. Any subscriber who has voluntarily withdrawn from coverage by the Fund 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 Fund, and shall be upon such terms and conditions as may be deemed appropriate by the Fund.

D. Effective Date of Reinstatement. The effective date of any reinstatement, granted under A, B, or C of this section, 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 Fund. 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.

Section 8. AUDIT AND INSPECTION

8.1. 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 Fund 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.

C. If a subscriber or an applicant fails or refuses to comply with the requirements of this section, the Fund 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 Fund.

D. If two 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 Fund to belong to any other classification shall be allotted to the assigned classification having the highest premium rate, and premiums shall be assessed accordingly.

Section 9. WITHDRAWAL

~~9.1. General. Even though premiums are paid quarterly, the coverage by the Fund is contracted on a year-to-year basis and no withdrawal by a subscriber shall be effective until proper notice has been sent to the United States Department of Labor, and a release from further coverage has been received by the Fund from the Department of Labor. The Fund may, in its discretion, refuse to accept a withdrawal prior to the expiration of the subscription year in progress. A subscriber shall remain liable to the Fund for all premiums, deposits and other payments due the Fund until acceptance of the withdrawal by the Fund and the above release by the Department of Labor.~~

~~9.2. Premium Rate Adjustments. Withdrawal from coverage, or cancellation, shall not relieve a subscriber from any rate adjustments, or the obligation to pay past due premiums, interest or penalties, provided by these Rules, for the period during which an operator was a subscriber.~~

~~9.3. Refunds. Upon withdrawal by a subscriber, the Fund shall not refund any earned premiums for past years of coverage, nor for the present subscription year. Unearned premiums for the current year, together with deposits, may be retained by the Fund until such time as any possible prospective rate adjustment may be determined by the Fund, and may be applied toward satisfaction of such prospective rate adjustment.~~

9.1. 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 Fund 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 Fund for all premiums, deposits and other payments due the Fund 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.

9.2. Refunds. Upon withdrawal from coverage by a subscriber, or cancellation by the Fund, the Fund shall not refund any earned premiums for past years of coverage, nor for the current subscription year. Upon withdrawal, or cancellation, the Fund shall perform a closing audit of the subscriber's account and shall prepare a final accounting for the current subscription year, as soon as possible, and within thirty (30) days after the effective date of withdrawal or cancellation, to determine the amount of any unearned premiums and deposits held by the Fund for the current subscription year, and after deducting any amounts found to be owing to the Fund, and properly deductible by the Fund, shall promptly refund to the subscriber any excess unearned premium and deposit for the current subscription year only.

Section 10. TRANSFERS

10.1. Subscriber to Subscriber. If a subscriber shall sell, lease or transfer 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 shall not be automatic upon transfer. ~~Such transfer shall permit the Fund to reassess the transferee's coverage, as if the transferee subscriber were a "New Subscriber" under Section 4 of these Rules, and to assess premiums, deposits and other payments as for such "New Subscribers". The transferor subscriber shall not be released from the effects of and responsibility for prospective rate increases, either due to retroactive benefit provisions by the United States Department of Labor, or provisions of these Rules. The Fund shall be entitled to demand and receive the written personal guarantee of the transferor subscriber, its officers or its principal stockholders to guarantee any such future payments. Copies of all documents connected with and effecting the transfer shall be provided to the Fund.~~ Such transfer shall require the transferee subscriber to apply for coverage of the assets acquired by way of the transfer. The transfer shall not affect the classification of the acquiring subscriber as regards premium classification, unless the transferor subscriber was treated as a "New Subscriber" under these Rules, and, unless the assets transferred are so substantial as to have a material effect on the transferee subscriber's experience, which shall permit the Fund to treat the transferee subscriber as a "New Subscriber". 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 effecting the transfer shall be provided to the Fund.

10.2. Non-Subscriber to Subscriber. If a subscriber shall acquire 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. If the transferor non-subscriber has been engaged in coal operations for one year or more prior to the transfer of assets, and provided the assets acquired by the transfer are so substantial as to have a material effect on the transferee subscriber's experience, such transfer shall permit the Fund to reassess the transferee subscriber's coverage, as if they were a "New Subscriber" under Section 4 of these Rules, and to assess premiums, deposits and other payments, as for such "New Subscribers". The experience of the transferor non-subscriber may be considered in such assessment, and the transferee may be required to produce papers, documents, accounts, ledgers, and other records of the transferor for purposes of such assessment by the Fund, together with all documents connected with and effecting the transfer.

10.3. 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 9 of these Rules. ~~The transferor subscriber shall not be released from the effects of and responsibility for any prospective rate increase, either due to retroactive benefit provisions by the United States Department of Labor, or provisions 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.

10.4. Construction of Section 10. 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.

Section 11. ACCESS TO RECORDS

11.1. General. All records of the Fund which are maintained as a memorial of any official transaction are public records and subject to inspection by all persons who have a legitimate interest therein. All other records of the Fund which are maintained as evidence of internal operations of the Fund are private except as to the parties in interest and their duly authorized representatives. The Commissioner or his duly authorized representative may require any person to produce satisfactory evidence of his authority and interest in the records of the Fund before such person will be permitted to examine the records of the Fund.

Section 12. LIQUIDATING THE ASSETS OF THE COAL-WORKERS' PNEUMOCONIOSIS FUND

12.1. General. If, at any time, all liability of the Fund shall cease, so that liquidation of the assets of the Fund would be in order, the Commissioner shall, after making payment for all claims, services, administrative expense and any other form of liability assumed by the Fund, divide and return to each subscriber a proportionate share of the unallocated assets, in accordance with the amount of premium paid by and the experience of each subscriber.

WORKERS' COMPENSATION FUND

601 MORRIS STREET
CHARLESTON, WEST VIRGINIA 25301

ARCH A. MOORE, JR.
Governor

MARY MARTHA MERRITT
Commissioner

August 9, 1985

Mr. Ken Hechler
Secretary of State
State Capitol
Suite 157-K
Executive Office
Charleston, WV 25305

Re: Agency Approved Proposed
Legislative Rules
Revision of Series II

Dear Mr. Hechler:

Enclosed herewith for filing in the State Register are Agency Approved Proposed Legislative Rules. These rules were also filed this date with the Legislative Rule-Making Review Committee.

These rules constitute an extensive revision of Series II of the Commissioner's existing rules.

Emergency Rules were filed on June 24, 1985. Since that time, written public comment has been received during a comment period. Copies of all such comment are enclosed herewith.

Amendments to the Emergency Rules, which are based upon the public comment, have been incorporated in these Proposed Rules. The amendments are denoted by underscoring and strike-throughs.

Thank you for your cooperation in this matter.

Very truly yours,

Mary Martha Merritt

Mary Martha Merritt
Commissioner

MMM:cm

Enclosures

FILED
1985 AUG -9 PM 3:08

WORKERS' COMPENSATION FUND

601 MORRIS STREET
CHARLESTON, WEST VIRGINIA 25301

ARCH A. MOORE, JR.
Governor

MARY MARTHA MERRITT
Commissioner

August 9, 1985

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Administration of the Coal-Workers' Pneumoconiosis Fund

Type of Rule: X Legislative ___ Interpretive ___ Procedural

Agency: Workers' Compensation Fund Address: 601 Morris Street Charleston, WV 25301

1. Effect of Proposed Rule	ANNUAL Increase	Decrease	FISCAL YEAR Current	Next	Thereafter
Estimated Total Cost	$ None	$ None	$	$	
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates.

3. Objectives of these rules:

To conform the Fund's operation to the requirements of Federal Law, specifically Title IV of the Federal Coal Mine Health & Safety Act, and Federal Regulations promulgated pursuant thereto. To ensure solvency of the Fund. To ensure equitable treatment to all subscribers to the Fund.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None, other than the cost of promulgating the rules.

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

None, other than the indirect effect of ensuring solvency of the Fund and its continuing certification as a qualified insurer of liability imposed by Federal law.

C. Economic Impact on Citizens/Public at Large.

See B, above.

Mary Martha Merritt

Mary Martha Merritt
Commissioner