WORKMEN'S COMPENSATION FUND

ADMINISTERED BY

STATE COMPENSATION COMMISSIONER

CHARLESTON 25305

September 7, 1973

FILED IN THE OFFICE
EDGAR F. HEISKELL III
SECRETARY OF STATE
THIS DATE 9/7/73

Series 2

Mr. Edgar F. Heiskell, III
Secretary of State
State of West Virginia
State Capitol
Charleston, West Virginia

Dear Mr. Heiskell:

Enclosed are two copies of emergency rules and regulations issued by this Commission regarding the administration of the Coal-Workers' Pneumoconiosis Fund. These emergency regulations are designated Series I of Chapter 23 - 4B of the West Virginia Administrative Regulations.

I hereby certify that the attached emergency regulations are true and accurate copies of official regulations adopted by this Commission September 7, 1973.

Very truly yours,

William D. Mitchell

William D. Mitchell
Acting Commissioner

obsolete emergency rule
valid Sept. 7, 1973
~~for 180 days~~
to Dec 1, 1973

gm

Enclosures

WORKMEN'S COMPENSATION FUND

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September 7, 1973

Mr. Edgar F. Heiskell, III
Secretary of State
State of West Virginia
State Capitol
Charleston, West Virginia

Dear Mr. Heiskell:

The purpose of this letter is to advise that we find that the preservation of the public welfare requires the immediate promulgation of rules and regulations governing the Coal-Workers' Pneumoconiosis Fund.

Since July 1, 1973, all coal operators in the State of West Virginia have been liable for the payment of pneumoconiosis benefits as provided by Title IV of the Federal Coal Mine Health and Safety Act. The Coal-Workers' Pneumoconiosis Fund will insure this liability and permit the continued operation of subscribers. There is essentially no other source of insurance available to the operators.

There is, however, a limited enrollment period for retroactive coverage. Those employers who subscribe after September 30, 1973, will receive coverage only from the date their election agreements are approved by the Fund.

Since the rules and regulations of the Fund constitute a vital part of the contract of insurance, it is essential that potential subscribers be given sufficient notice to enable them to properly decide upon a course of action.

Failure of a coal operator to properly insure against this liability may result in closure of his operations by the U. S. Department of Labor.

Therefore, I believe the protection of coal miners who are disabled by coal workers' pneumoconiosis, the protection of the livelihood of those who are now employed in the coal industry, and the protection of the coal industry, demand that these rules be filed under the emergency filing procedures of Section 5, Article 3, Chapter 29A of the Code of West Virginia (1931), as amended.

Very truly yours,

William D. Mitchell

William D. Mitchell
Acting Commissioner

WDM:gm

RULES AND REGULATIONS
OF THE
COAL-WORKERS' PNEUMOCONIOSIS FUND
STATE OF WEST VIRGINIA

FILED IN THE OFFICE
EDGAR F. HEISKELL III
SECRETARY OF STATE
THIS DATE 9/2/73

RULES AND REGULATIONS
OF THE
COAL-WORKERS' PNEUMOCONIOSIS FUND
STATE OF WEST VIRGINIA

FILED IN THE OFFICE
EDGAR F. HEISKELL III
SECRETARY OF STATE
THIS DATE 9/7/73

SECTION 1. GENERAL

1.01. Scope. - These rules and regulations are to provide for the general supervision of the Fund.

1.02. Authority. - These rules and regulations are issued in conformity with Article 4B, Chapter 23 of the West Virginia Code, 1931, as amended.

1.03. Effective Date. - These rules and regulations are promulgated on September 7, 1973, and become effective September 7, 1973.

1.04. Filing Date. - These rules and regulations were filed in the Office of the Secretary of State on September 7, 1973.

1.05. Certification. - These rules and regulations are certified authentic by the Secretary of State.

1.06. Definitions. - As used in these regulations:

(a) "Active subscriber" means any subscriber other than an inactive subscriber or non-operating subscriber.

(b) "Claimant" means any individual who files for benefits under the Federal Act.

(c) "Commissioner" means the West Virginia Workmen's Compensation Commissioner who is the administrator of the Fund.

(d) "Employee" means any employee within the employ of an operator subject to the Federal Act.

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

(f) "Fund" means the Coal-Workers' Pneumoconiosis Fund.

(g) "Inactive subscriber" means a subscriber who is still operating but whose payroll for the most recently completed calendar quarter is less than 60% of his payroll for the preceding calendar quarter and the reduction in payroll is attributable to a reduction in work force and such reduction in work force is not occasioned by a transaction subject to the provisions of Section 7 of these regulations.

(h) "Non-operating subscriber" means a subscriber who has no payroll occasioned by the deep or surface mining of coal or the preparation thereof at the time of filing of his election agreement or who during his subscription year ceases to have any such payroll.

(i) "Operator" means an operator (whether a sole proprietorship, partnership, firm, corporation or other legal entity) as that term is used in the Federal Act.

(j) "State Act" means Article 4B, Chapter 23 of the West Virginia Code, of 1931, as amended.

(k) "Subscriber" means any operator, subject to the provisions of the Federal Act, who shall elect to subscribe to the Fund and thereby be bound to pay the required premiums and deposits.

(l) "Subscription year" means a calendar year computed from the date of acceptance of a subscriber's election agreement, to the anniversary date thereof, except that as to any subscriber whose election agreement is accepted on or before September 30, 1973, the subscription year for such subscriber shall date from July 1, 1973.

(m) "Developed charge" means the sum of actual charges and an actuarial estimate of additional revenue necessary to meet future obligations of the fund for incurred liabilities not definitely ascertainable.

(n) "Preparation" means any ancillary operation pertaining to the mining of coal, including marketing, transportation, cleaning, 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 if such activities are within the purview of the Federal Coal Mine Health and Safety Act of 1969, as amended.

SECTION 2. SUBSCRIPTION

2.01. Application. - Any operator desiring to participate in the Fund for a particular subscription year shall apply for coverage by executing and forwarding to the Commissioner a subscription application form. An operator must seek coverage for his entire operations pertaining to the deep or surface mining of coal, or both, or the preparation thereof. Except as hereinafter provided, the entire payroll pertaining to such operations shall be used in computing premiums due. It is the purpose of this section to prohibit an operator from seeking partial coverage under the Fund of such operations.

2.02. Classification & Premium Rate. - Upon receipt of the subscription application, the applicant will be furnished classification and premium advice and the necessary election agreement form.

2.03. Election. - When the duly executed election agreement form has been returned to the Commissioner, together with a check for the required premium and deposit, the Commissioner, if satisfied that all requirements have been met, and if satisfied that the operator will be able to comply with the provisions of the Fund, particularly with regard to retrospective rating and withdrawal or cessation of participation in the Fund, shall promptly send the operator a notice of the acceptance of his election agreement to subscribe to the Fund for such subscription year, stating the date of such acceptance, and notice thereof shall be forwarded to the U. S. Department of Labor.

2.04. To insure an operator's ability to pay any additional premium required at the end of a subscription year, because of retrospective rating, hereinafter provided for, the Commissioner may at the beginning of such subscription year, in the exercise of his discretion, require such operator to file with him a corporate surety bond, cash bond, or other security, deemed adequate by the Commissioner for such purpose.

2.05. Renewals Required. - At the end of a subscription year, continuation as a subscriber to the Fund shall not be automatic and a renewal subscription application form and a renewal election agreement for the ensuing subscription year must be filed and accepted.

2.06. Failure to Provide Proper Information. - If the Commissioner discovers after an election agreement has been accepted that the operator has failed to provide proper information as required, or that the operator has applied only for partial coverage of his operations as specified in Section 2.09 of these Rules and Regulations, the Commissioner may revoke the coverage previously approved or collect from the operator all premiums that would have been chargeable against him had he applied for complete coverage of such operations, or provided the necessary information.

SECTION 3. QUARTERLY REPORTING

3.01. General. - On or before the last day of the month next succeeding the end of each calendar quarter, each subscriber must file with the Commissioner a quarterly payroll and premium report reflecting his payroll for the preceding quarter, and submit 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 on the payroll records maintained by the operator. If in a quarter no employees are engaged and no wages are paid, the report shall so state.

(1) For the purposes 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., snd 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.

(b) A statement of the premium rate assigned to the subscriber with respect to each classification. Upon request, the Commissioner shall provide necessary information concerning the premium rate and classification applicable to operations 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.

3.02. Subscriber's Deposit. - The deposit required of a subscriber shall not be less than an amount equal to the total premium paid by such subscriber for the last preceding quarter. Upon receipt of written notice from the Commissioner that the amount on deposit is less than the required amount, the subscriber shall promptly remit payment to the Commissioner of such additional amount as may be required.

3.03. Remittance. - All premiums and other payments shall be made payable to the order of "West Virginia Coal-Workers' Pneumoconiosis Fund" and shall be mailed or delivered with the payroll and premium report directly to "Coal-workers' Pneumoconiosis Fund," Charleston, West Virginia, 25305.

SECTION 4. AUDIT AND INSPECTION

4.01. General. - Every subscriber shall keep, maintain and preserve records which accurately reflect all expenditures for payroll and the separation of such expenditures according to the various classifications of the subscriber.

The Commissioner shall be authorized to audit and inspect, at any reasonable time, any or all records, papers, books, documents, etc., of a subscriber to verify the accuracy and validity of reports made by the subscriber. The Commissioner is authorized to conduct a physical inspection on the premises of any subscriber for the purpose of verification of activities.

All records pertaining to amounts and classifications of payroll expenditures of a subscriber shall be kept available for inspection. Non-operating subscribers and inactive subscribers shall make available for inspection such records as reflect such subscriber's past employment and payroll pertinent and necessary to classification and premium rate computation. If a subscriber fails to maintain and preserve, or to make available, such records, the

Commissioner may assess premiums on the basis of available information.

If the Commissioner has assigned two or more classifications for a subscriber's account, and the subscriber fails to maintain an accurate and verifiable separation of his payroll expenditures by such classifications, that part of the payroll which cannot be reasonably determined by the Commissioner 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 5. CLASSIFICATION, COMPUTATION AND ASSIGNMENT OF PREMIUM RATES

5.01 As soon as practicable after the first day of July of each year, the Commissioner shall prepare a readjusted Rate Schedule, determined in accordance with the experience of each classification. The Rate Schedule shall specify as to each classification the applicable minimum rate, maximum rate, base rate, and loading charge to cover administrative expense and potential losses to the Fund.

Initially there shall be two classifications designated-deep mining and surface mining respectively. 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 to the Commissioner shall be deemed appropriate. In the preparation and adoption of the merit rating classifications, the primary purpose of such classification shall be to assign the liability and secure the revenue from the given classification necessary to cover the expenses and liability developed by such classification. A subscriber may, at anytime during the first six months of a subscription year, make a written request for partial or total reclassification of his business, or for the exclusion of certain of his operations, or for specific employments. Upon receipt of such written application, the Commissioner shall direct that an investigation be made into the operation or employment in question, and, if proper, direct the reclassification or exclusion to be effective at the beginning of the next subscription year. During the first year of subscription, the operations shall be classified as either "deep mining" or "surface mining" and wages shall be reported for all employees regardless of the nature of their work.

Active Subscribers. The Commissioner shall develop a retrospective rating of subscribers to include an evaluation of the experience of the subscriber during the subscription year. This evaluation shall be made at the earliest possible date upon which it can be determined that the experience for such subscription year can be ascertained. If it is determined that the developed charges of a subscriber, administrative expense, and losses to the Fund, are less than the revenue generated by the subscriber's rate, such subscriber shall be entitled to a refund equal to the excess premium paid. In no event, however, shall the cost to the subscriber be less than 25% of the base rate for his classification. If it is determined that the developed charges of a subscriber, administrative expense, and losses to the Fund, are greater than the revenue generated by the subscriber's rate, such subscriber shall be required to deposit with the Commissioner an amount equal to such excess liability.

Such deposit, including premiums paid for the subscription year, shall not, however, exceed 400% of the base rate for his classification. In determining whether a subscriber is entitled to a refund or is required to make an additional deposit as aforesaid, the Commissioner shall first ascertain the total administrative expense of and losses to the Fund for all subscribers expressed in terms of cost per one hundred dollars of gross payroll of all subscribers, and then add to the developed charges of such subscriber that same cost per one hundred dollars of gross payroll of such subscriber. If, at any time, it can be determined that a deposit is in excess of the outstanding liability or potential liability pertaining to claims originating in the subscription year, the excess deposit shall be refunded to the subscriber.

Inactive Subscribers. It is recognized that solvency of the Fund will be difficult to maintain if an operator may subscribe to the Fund, and then after the liability for a number of claims has been created, substantially reduce his payroll. Consequently, the premium of an inactive subscriber shall be computed on the basis of the average payroll of such subscriber during the period of three years preceding such reduction in payroll, as specified in sub-paragraph (g), Section 1.06 of these rules and regulations. The Commissioner shall apply to inactive subscribers the same provisions for minimum and maximum rates and retrospective rating in the computation and assignment of premium rates as applied to active subscribers.

Inactive Subscribers. . . . . once a subscriber has been determined to be an inactive subscriber, he shall remain an inactive subscriber for the remainder of that subscription year and the following subscription year, unless his payroll should thereafter increase in which case the premium rates shall be computed as though he is an active subscriber, using the actual payroll, and shall also be computed as though he is an inactive subscriber, using the average payroll, and and the operator shall be required to pay the higher premium rate.

Individual Premium Rates. Each subscriber will be assigned his individual premium rate as follows:

(a) For a new subscriber, the base rate for his classification, plus the loading charge.

(b) For an active or inactive subscriber who has completed one year of coverage under the Fund, the Commissioner shall on the subscription renewal date compute a merit rate based on the subscriber's individual experience record.

To obtain the merit rate of a particular subscriber, the total of all developed charges against the subscriber's account during the previous subscription year shall be divided by the total payroll reported by him for the year (or the average payroll of an inactive subscriber as hereinabove provided), the quotient being the subscriber's loss ratio. The loading charge will then be added to the loss ratio. The sum will be the subscriber's assigned rate for the succeeding year, unless it is more than the maximum or less than the minimum rate, in which case the proper minimum or maximum will be assigned. Any rate assigned by the Commissioner is subject to change whenever, in his opinion, a re-adjustment is deemed necessary.

Non-operating Subscriber. Notwithstanding the foregoing provisions, a non-operating subscriber shall pay premiums and make deposits into the Fund in the following manner:

(a) The payroll upon which premiums are to be determined shall be the average quarterly payroll of the last three completed calendar years during which such non-operating subscriber maintained an operating payroll. An operating payroll is the total gross payroll of such subscriber at a time when operations pertaining to the deep or surface mining of coal, or both, or the preparation thereof, were being conducted. If during any quarter during the last three completed calendar years such non-operating subscriber did not have any payroll, such quarter shall be excluded in determining the average quarterly payroll for the period.

(b) If a subscriber has been a non-operating subscriber for a period of less than two years, such non-operating subscriber shall be assigned the premium rate of an active operator using the payroll as determined in sub-paragraph (a) above.

(c) If a subscriber has been a non-operating subscriber for a period of two years or more, such non-operating subscriber shall be assigned a premium rate in accordance with the following table:

Period of Inactivity		Rate Per $100.00 Gross Payroll
At least	But less than	
	Less than 3 years	25 % of Classification Rate for New Sub.
3 years	4 "	20 % " " " " "
4 "	5 "	16 % " " " " "
5 "	6 "	13 % " " " " "
6 "	7 "	10 % " " " " "
7 "	8 "	8 % " " " " "
8 "	9 "	7 % " " " " "
9 "	10 "	5 % " " " " "
10 "	11 "	4 % " " " " "
11 "	12 "	3 % " " " " "
12 "	13 "	2.5 % " " " " "
13 "	14 "	2 % " " " " "
14 "	15 "	1.5 % " " " " "
15 or more years		1 % " " " " "

Though the above table permits the participation in and the protection of the Fund by a non-operating subscriber at premium rates below those available to an active or inactive subscriber, nothing in this section shall be construed to relieve a non-operating subscriber of the liability for his claims as provided for by retrospective rating. The minimum rate for a non-operating subscriber shall be the rates set forth in the above table. The maximum rate for a non-operating subscriber shall be the maximum rate of active and inactive subscribers in the same classification.

5.02. Monthly Report of Charges and Credits. - The Commissioner shall send to each subscriber a monthly report of charges and credits made against his account. Charges against a subscriber's account are made as follows:

(a) The actual amount disbursed for medical or vocational rehabilitation services, legal fees or other services for which expenditures are required under the Federal Act.

(b) The actuarial cost of a permanent total disability or a fatal claim as determined by the Commissioner based on the life expectancy of the claimant and/or claimant's dependents.

5.03 Developed Charges for Rate Making Purposes. - In determining the developed charges of an operator for rate making purposes, the Commissioner shall include the following:

(a) Monthly charges made to the operator's account during the subscription year pertaining to claims filed during such year; and

(b) An amount, to be determined by the Commissioner, representing the potential liability of unresolved claims attributable to such operator; and

(c) An amount, to be determined by the Commissioner, representing the unpaid potential liability for medical or rehabilitation services, legal fees and such other services and expenses as the Federal Act may require.

SECTION 6. PAYMENT OF BENEFITS

6.01. General. - Upon receipt of an order from the U. S. Department of Labor directing payment of benefits or such other expenses as are provided for in the Federal Act, the Commissioner shall, if the responsible operator is determined to be a subscriber in good standing, forthwith issue payment in such amounts and in such installments to the claimant or such other persons as such order may direct.

SECTION 7. TRANSFER OF BUSINESS

7.01. If a subscriber shall sell, lease, or transfer in any way his organization, trade or business or substantially all of the assets thereof to another subscriber, the acquiring subscriber shall assume responsibility for all claims filed during the subscription year for which the transferring subscriber would otherwise be liable. When retrospective evaluation is performed after the close of the subscription year, the combined payroll, charges, potential liability, reserves, estimates on unresolved claims and every other computation factor of the transferring and acquiring subscriber shall be combined in determining the premium or deposit required of the acquiring subscriber.

7.02. If a subscriber shall sell, lease, or transfer in any way a part of his organization, trade or business to another subscriber, the acquiring subscriber shall assume responsibility for all claims filed during the subscription year attributable to the transferred portion for which the transferring subscriber would otherwise be liable. When retrospective evaluation is performed after the close of the subscription year, the combined payroll, charges, potential liability, reserves, estimates on unresolved claims and every other computation factor of the transferred portion of the transferring subscriber, shall be combined with the experience of the acquiring subscriber in determining the premium or deposit required of the acquiring subscriber.

<u>7.03</u>. If a subscriber shall acquire by means of purchase, lease, or any other form of transfer the entire organization, trade or business or substantially all the assets thereof of (1) an operator who has previously been self-insured under the Federal Act with the U. S. Department of Labor, or (2) a previously uninsured operator, the charges, potential liability, reserves, estimates on unresolved claims and every other computation factor pertaining to claims of the transferring operator for which the Fund may become liable, shall be combined with the experience of the acquiring subscriber in determining the premium or deposit required of the acquiring subscriber.

<u>7.04</u> If a subscriber shall acquire by means of purchase, lease or any other form of transfer a part of the organization, trade or business of (1) an operator who has previously been self-insured under the Federal Act with the U. S. Department of Labor, or (2) a previously uninsured operator, the charges, potential liability, reserves,

estimates on unresolved claims and every other cumputation factor pertaining to claims of the transferred portion of the transferring operator's claims for which the Fund may become liable shall be combined with the experience of the acquiring subscriber in determining the premium or deposit required of the acquiring subscriber.

7.05. The provisions of this section shall be construed and applied so as to minimize the liability assumed by the Fund for which no revenue is derived.

SECTION 8. WITHDRAWAL OR CESSATION OF PARTICIPATION IN THE COAL-WORKERS' PNEUMOCONIOSIS FUND

8.01. If a subscriber withdraws from the Fund or fails to continue as a subscriber for ensuing years after a single year of participation or less, such subscriber shall be required to deposit with the Commissioner an amount equal to the liability assumed by the Fund on behalf of such subscriber, making allowance for all prior premiums and deposits. In determining the amount of deposit required, the limits of minimum and maximum classification rates shall be disregarded. A proportionate share of administrative expense shall be assigned to the subscriber in determining the liability placed on the Fund by such subscriber.

8.02. If, at any time, it can be ascertained that the deposit no longer represents the outstanding liability of such subscriber, the remaining deposit may be refunded in whole or in part.

SECTION 9. CANCELLATION AND REINSTATEMENT

9.01. Notice of Cancellation. - Upon the failure of any subscriber to pay any premium due, or to file any quarterly payroll and premium report, or to pay any additional deposit required by the Commissioner, the Commissioner shall give written notice of cancellation to the subscriber and to the U. S. Department of Labor, not less than thirty days prior to the effective date of such cancellation.

9.02. Reinstatements. - Upon written request, a subscriber delinquent in the payment of premium, or the payment of any deposit required, or in the filing of required reports, may be reinstated provided such subscriber cures the delinquency and pays a penalty of one hundred dollars ($100.00). If cancellation has already been effected, reinstatement may be granted only following the filing and approval of a new election agreement. Such reinstatement shall be effective only after the date of acceptance of the new election agreement and the operator shall not be entitled to receive the Fund's protection during the period of cancellation. A reinstated subscriber's loss experience, classification and premium rate assessment within the subscription year prior to the cancellation of such subscriber's coverage shall be continued after reinstatement of such subscriber, and such subscriber may not file an election agreement as a new subscriber.

SECTION 10. ACCESS TO RECORDS

10.01. 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 11. LIQUIDATING THE ASSETS OF THE COAL-WORKERS' PNEUMOCONIOSIS FUND

11.01. If, at any time, the liability of the Fund shall cease, 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 his proportionate share of the unallocated revenue, in accordance with the experience of each subscriber.