WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION

Form #1

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2007 MAY -1 PM 2:51

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Insurance Commissioner (Workers' Compensation Rules) TITLE NUMBER: 85

RULE TYPE: Exempt Legislative CITE AUTHORITY WV Code §§23-2C-22; 33-2-10(b) & 33-2-21(a)

AMENDMENT TO AN EXISTING RULE: YES X NO ________

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 11

TITLE OF RULE BEING AMENDED: ~~Enforcement of Reporting and Payment Requirements~~ Employer Default, Enforcement, Collections and Related Matters

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: ________

TITLE OF RULE BEING PROPOSED: ________

DATE OF PUBLIC HEARING: Thursday, May 31, 2007 TIME: 3:00 PM

LOCATION OF PUBLIC HEARING: ________

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

NOTE: Comment Period for written comments will end on May 31, 2007 at 3:00 PM.

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS:

Ryan Sims, Associate Council
Offices of the WV Insurance Commissioner
P.O. Box 50540
Charleston, WV 25305-0540

The Department request 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

James Robert Alsop
Cabinet Secretary
West Virginia Department of Revenue

Insurance Commissioner (Workers' Compensation Rules)
Exempt Legislative Rule
Title 85, Series 11

EMPLOYER DEFAULT, ENFORCEMENT, COLLECTIONS AND RELATED MATTERS (New Title Pursuant to Amendment)

TITLE 85, SERIES 11

BRIEF SUMMARY OF RULE

This amended rule sets forth certain standards, clarification, guidelines and procedures applicable to workers' compensation employer default, enforcement, collections and related matters. The original draft of W. Va. Code St. R. § 85-11-1 et seq. ("Rule 11", "Enforcement of Reporting and Payment Requirements") was last amended by the former West Virginia Workers' Compensation Board of Managers with an effective date of October 1, 2005.

As with all Title 85 Rule amendments following the passage of SB 1004 in 2005, this new amendment includes general technical and stylistic cleanup reflecting the termination of the former WV Workers' Compensation Commission and Board of Managers, privatization of West Virginia's workers' compensation insurance market, and the transfer of regulatory authority for workers' compensation to the Insurance Commissioner and the Industrial Council. Additionally, several substantive changes were made to the Rule. Specifically, provisions were added for clarification and guidance as to current employer default and enforcement procedures utilized by the Insurance Commissioner, particularly in regard to changes in the law passed in SB 595 2007 eliminating the requirement that insurance carriers be required to not write employers in default. Additionally, provisions were added for the uninsured employer fine process.

Insurance Commissioner (Workers'
Compensation Rules)
Exempt Legislative Rule
Title 85, Series 11

EMPLOYER DEFAULT, ENFORCEMENT, COLLECTIONS AND RELATED MATTERS
(New Title Pursuant to Amendment)

TITLE 85, SERIES 11

STATEMENT OF CIRCUMSTANCES

Pursuant to Senate Bill 1004, First Special Session, 2005, workers' compensation in West Virginia was changed from a state run, monopolistic system to a private market system. This bill also transferred all regulatory authority for workers' compensation insurance to the Insurance Commissioner.

To provide standards, clarification, guidelines and procedures applicable to workers' compensation employer enforcement of reporting and payment requirements, the former West Virginia Workers' Compensation Commission Board of Managers promulgated W. Va. Code St. R. § 85-11-1 et seq. ("Rule 11", "Enforcement of Reporting and Payment Requirements"), last amended with an effective date of October 1, 2005. It has become apparent to the Insurance Commissioner that there is a need for certain stylistic, technical and substantive amendments to this Rule to properly reflect West Virgina's new privatized workers' compensation system and to otherwise reflect West Virgina's statutory law regarding workers' compensation. The substantive amendments are more specifically referenced in the "Brief Summary" for this Rule.

This amended rule is being promulgated to implement the above referenced changes necessary to Title 85, Series 11 of the West Virginia Code of State Rule.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: ~~Enforcement of Reporting and Payment Requirements~~ Employer Default, Enforcement, Collections and Related Matters - Title 85, Series 11

Type of Rule: X Exempt Legislative ____ Interpretive ____ Procedural

Agency: Insurance Commission

Address: Post Office Box 50540
1124 Smith Street, Greenbrooke Building
Charleston, West Virginia 25305-0540

Phone Number: (304) 558-0401 Email: Ryan.Sims@wvinsurance.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The rule will have no additional fiscal impact upon state government.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	None	None	None
Personal Services	None	None	None
Current Expenses	None	None	None
Repairs & Alterations	None	None	None
Assets	None	None	None
Equipment	None	None	None
Other	None	None	None
2. Estimated Total Revenues	None	None	None

Rule Title: ~~Enforcement of Reporting and Payment Requirements~~ Employer Default, Enforcement, Collections and Related Matters - Title 85, Series 11

3. Explanation of above estimates (including long-range effect):
Please include any increase or decrease in fees in your estimated total revenues.

N/A

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

N/A

Date: ________________________________

Signature of Agency Head or Authorized Representative

____

Jane L. Cline, Insurance Commissioner

TITLE 85
LEGISLATIVE RULES
WORKERS' COMPENSATION RULES OF THE WEST VIRGINIA INSURANCE COMMISSIONER

SERIES 11
~~ENFORCEMENT OF REPORTING AND PAYMENT REQUIREMENTS~~ EMPLOYER DEFAULT, ENFORCEMENT, COLLECTIONS AND RELATED MATTERS

Section

Section (cont'd)

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

TITLE 85
LEGISLATIVE RULES
WORKERS' COMPENSATION RULES OF THE WEST VIRGINIA INSURANCE COMMISSIONER

SERIES 11
~~ENFORCEMENT OF REPORTING AND PAYMENT REQUIREMENTS~~ EMPLOYER DEFAULT, ENFORCEMENT, COLLECTIONS AND RELATED MATTERS

§85-11-1. General.

1.1. Scope. -- This rule implements the provisions of W. Va. Code §§23-1-13 ~~and 16~~; §§23-2-1, 1b, 1d, 5, 5a, 5b, 5c, 5d, 8, 9, 13, 14, 15 and 17; and ~~§ 23-3-1~~ 33-2-22, regarding the determination of ~~delinquency and~~ workers' compensation employer default ~~by employers~~; ~~reporting and payment requirements;~~ enforcement of compliance by employers with ~~reporting and payment requirements~~ West Virginia's workers' compensation laws; and collection of ~~payments~~ obligations arising from those requirements and others.

1.2. Authority. -- W. Va. Code §§~~23-1-1 and 23-2-18~~ 23-2C-22; 33-2-10(b); and 33-2-21(a). Pursuant to W. Va. Code ~~§23-1-1a(j)(3), rules adopted by the board of managers and the commission~~ §§23-2C-5(c)(2) and 33-2-10(b), workers' compensation rules proposed by the Insurance Commissioner and approved by the Industrial Council are not subject to legislative approval as would otherwise be required under W. Va. Code §29A-3-1, et seq. Public notice requirements of that chapter and article, however, must be followed.

1.3. Filing Date. -- ~~August 31, 2005~~.

1.4. Effective Date. -- ~~October 1, 2005~~.

§85-11-2. Definitions.

2.1. As used in this rule, the following terms, words, and phrases have the meanings stated unless in any instance where such term, word, or phrase is employed the context expressly indicates that another meaning is intended.

2.2. ~~The term~~ "Act" or "West Virginia Workers' Compensation Act" means the workers' compensation laws of the state of West Virginia which are codified at chapter ~~23~~ twenty-three of the West Virginia Code of 1931, as amended.

~~2.3. The terms "West Virginia Code," "W. Va. Code" and "Code" mean the West Virginia Code of 1931, as amended.~~

~~2.4. "Commission" means the former workers' compensation commission created pursuant to the provisions of W. Va. Code §23-1-1.~~

~~2.5~~ <u>2.3</u>. ~~The term "default"~~ <u>"Default" or "default employer"</u> means ~~either or both of the following~~ <u>an employer who</u>:

~~a. The failure by a subscriber or a self insured employer which has not made a payment or filed a report due by it under the provisions of the Act and which has received a subsection 3.3. notice of delinquency but has further failed to make the payment or file the report within the time period specified by the notice. For the purposes of this definition, the employer may be a regular subscriber to the Fund or a self-insured employer with the Fund and either an employer required to subscribe to the Fund or an employer electing to subscribe to the Fund.~~

~~b.~~

~~1. The omission or failure by an employer to subscribe to and pay premiums into the Fund and to comply with the requirements of the West Virginia Workers' Compensation Act at chapter 23 of the W. Va. Code, and the rules prescribed by the commission and the board of managers, as provided by the Code at §23-2-1(a) prior to the first date of employment of any employee of the employer and thereafter, shall cause default to occur immediately prior to the moment of employment of any employee upon the employer's omission or failure to subscribe or comply by that time. Default, as defined in this subsection, shall immediately, without notice as required by W. Va. Code, §23-2-5, for delinquencies of subscribing employers, subject the employer to all the penalties prescribed by law, including interest on unpaid amounts, late reporting or payment penalty, and other penalties and collection actions prescribed by Code and these rules, including particularly the penalty prescribed by W. Va. Code at §23-2-8; that is, the default employer shall be liable to respond in damages at common law or by statute for the injury or death of any employee, however occurring, without the benefit of the common law defenses set forth in that section. This default may be cured through the employer's compliance with the Act and the rules. If the default employer has not filed an application for coverage, the application must be filed. The provisions at W. Va. Code, §23-2-5(f), are applicable to this default in providing for restoration of the benefits and protection of the Act, prospectively from the date of complete reporting and payment in full of the employer's delinquency and default liability or from the date of a complete filing of an application for reinstatement with adequate reinstatement deposit.~~

~~2. Default as defined in this rule is not affected or altered by the provisions for a grace period, for the first thirty (30) days from and including the date of employment of any employee; except that, if the employer files the application and deposit within thirty (30) days from the first date of employment, the employer may avoid the imposition of interest on payments unpaid when due, late reporting or payment penalty or other monetary penalties which may be imposed under law by the commission for the employer's omission or failure to file an application for coverage and premium deposit prior to the first date of~~

~~employment of any employee. Therefore, the provisions of W. Va. Code, §23-2-8, regarding civil liability for the injury or death of an employee, are not affected or altered by provision for such grace period. Furthermore, according to the exception set forth in the last sentence of W. Va. Code, §23-2-1(h), regarding coverage of sole proprietors, partners and corporate officers, notwithstanding the provision for a grace period from the imposition of certain other stated penalties, no sole proprietor, partner or corporate officer who may be lawfully elected out of mandatory coverage under subsections (g) and (h) of W. Va. Code, §23-2-1, may be afforded any benefits of coverage if injured within such thirty day grace period or thereafter until actual subscription occurs through application for coverage prior to the date of injury of such person.~~

a. Has an outstanding balance or liability to the Old Fund;

b. Has an outstanding balance or liability to the Uninsured Employers' Fund, including owing money to the fund for benefit payments, administration costs or attorney fees as well as any fines owed to the fund for being uninsured pursuant to W. Va. Code §23-2C-8(d)(3) and this rule;

c. Is in policy default;

d. Fails to carry mandatory workers' compensation coverage;

e. Is an electing employer who owes money to the Old Fund;

f. Is a former self-insured employer whose status has been revoked but who has remaining unsecured obligations pursuant to its previous status as a self-insured employer; or

g. Has any other outstanding obligation, balance, debt or other liability pursuant to the Act.

~~2.6. "Board" means the workers' compensation board of managers created pursuant to the provisions of W. Va. Code §23-1-1a.~~

~~2.7~~ 2.4. ~~The term "electing~~ "Electing employer" means an employer which is not required to ~~subscribe to the Fund~~ maintain workers' compensation insurance, but which chooses to do so as provided for by W. Va. Code §23-2-1.

~~2.8~~ 2.5. ~~The term "employee"~~ "Employee" has the meaning ascribed to that term by W. Va. Code §§23-2-1 and 23-2-1a.

~~2.9~~ 2.6. ~~The term "employer"~~ "Employer" means either or both of the following:

a. The term "employer" has the meaning ascribed to that term by West Virginia Code §23-2-1, which includes, but is not limited to, any individual, sole proprietor, firm, partnership, limited partnership, limited liability company, joint venture, association, corporation, company, organization, receiver, estate, trust, guardian, executor, administrator, government entity or any other entity regularly employing another person or persons for the purpose of carrying on any form of industry, service or business in this state.

b. The term "employer" shall also mean, for the purposes of this rule's enforcement provisions at subsection ~~7.2~~ 6.1. and sections ~~8~~ 7., ~~9~~ 8., ~~11~~ 10., and ~~12.~~ 11. any ~~"responsible person" as defined in subsection 3.10. of this rule, including owners, partners, officers and employees who are required or who have the duty under the Act, corporation law, or other applicable law, bylaw or rule to truthfully account for and pay to the commission, or to cause the same to occur, any premium tax, premium deposit, interest, penalty or other payment required by the Act~~ owners, officers, partners and directors of the employer.

~~2.10. The term "executive director" means the person who serves as the chief executive officer for the operations of the workers' compensation commission, as provided by W. Va. Code, §23-1-4.~~

~~2.11. The term "Fund" means the West Virginia Workers' Compensation Fund, as well as the "Disabled Workers' Relief Fund" created by W. Va. Code, §23-4A-1.~~

2.7. "Insurance Commissioner" means the Insurance Commissioner of West Virginia as provided for in section one, article two, chapter thirty-three of the West Virginia Code.

~~2.12~~ 2.8. ~~The term "payment"~~ "Payment" means any amount of money owed by an employer ~~to the commission by reason of the operation of any provision of the Act or any other applicable law, or the various rules promulgated by the commission and the board of managers~~ pursuant to the Act or any rules promulgated there under.

~~2.13. The terms "premium" and "premium tax" mean the amounts of money due from an employer to the Fund or commission as the result of the quarterly and periodic assessments by the commission under the provisions of the Act in order to establish, maintain, and replenish the Fund and to pay the expenses of administration of the Fund by the commission. "Premium" and "premium tax" includes, but is not limited to, assessments of: premium tax, premium deposit, and interest, assessed to regular subscriber employers and to self-insured employers alike; and also, that portion of self-insured premium tax assessed in arrears through benefit pay orders to the employer for the employer's claimant employees, on behalf of and for the benefit of the Fund as provided by law, assessed in arrears in lieu of direct, advance premium tax payments to the commission.~~

~~2.14. The term "premium deposit" means the amount of money an employer is required to pay and to maintain as an advance upon quarterly, or other periodic interval, premium tax pursuant to W. Va. Code, §§23-2-5 and 23-2-9.~~

~~2.15. The term "self-insurer" or "self-insured" means an employer who has applied for permission to elect and thereafter has elected to maintain its own benefit fund or system of~~

~~compensation to ensure the payment of benefits to its injured employees and their dependents in amounts at least equal in value to the workers' compensation benefits provided by law and ordered to be paid under the provisions of the Act.~~

~~2.16~~ 2.9. ~~The term "this rule" or "these rules"~~ "This Rule" or "these Rules" means the present exempt legislative rule which is designated in the caption hereof as Title 85, Series 11, and entitled ~~"Enforcement of Reporting and Payment Requirements"~~ "Employer Default, Enforcement, Collections And Related Matters."

~~2.17. "Commission Default List" means a paper or database identification of employing units that are in default with the Workers' Compensation Commission, the Old Fund or the uninsured employer fund. The list, which will be created by the Commission, may be provided to the agency in the form of either a computerized database or other databases that the agency can access. Upon termination of the Commission, the administration of the Commission Default List shall transfer to the insurance commissioner.~~

2.10. "Old Fund" means the fund created pursuant to W. Va. Code §23-2C-2(l).

~~2.18~~ 2.11. "Policy Default" means a West Virginia workers' compensation policy holder ~~that has failed~~ having their policy cancelled as a result of a failure to comply with the terms of ~~its workers' compensation insurance~~ the policy ~~and is consequently without workers' compensation coverage and shall include, but not be limited to, an employing unit's failure to pay the regulatory surcharge and deficit reduction surcharge required by article two-c of chapter twenty-three of the West Virginia Code~~.

~~2.18 "Policy holder" means an employer that has been issued a West Virginia workers' compensation insurance policy by a private carrier and currently has coverage under said policy.~~

~~2.19. "Private Market Default List" means a paper or database identification of employing units that are or have been in policy default with a private carrier or that are in default based upon failure to comply with self-insured premium requirements, including the payment of the regulatory surcharge and the deficit reduction surcharge imposed by article two-c of chapter twenty-three of the West Virginia Code. The list, which will be created by the insurance commissioner, may be provided to the agency in the form of either a computerized database or other databases that the agency can access.~~

2.12. The term "self-insurer" or "self-insured" means an employer who has applied for permission to elect and thereafter has elected to maintain its own benefit fund or system of compensation to ensure the payment of benefits to its injured employees and their dependents in amounts at least equal in value to the workers' compensation benefits provided by law and ordered to be paid under the provisions of the Act.

2.13. "Uninsured Employers' Fund" means the fund created pursuant to W. Va. Code §23-2C-2(o).

2.14. "West Virginia Code," "W. Va. Code" and "Code" mean the West Virginia Code of 1931, as amended.

2.15. "Workers' Compensation Default List" or "Default List," means a paper and/or database identification of employing units who are in default. This list, which may be created by the Insurance Commissioner, may be made accessible in the form of either a computerized database or other databases.

~~§85-11-3. Employer Delinquency and Default or Termination.~~

~~3.1. Delinquency. — An employer shall be declared to be delinquent by the commission if any one or more of the following omissions occurs:~~

~~a. The employer fails to timely pay its premium tax, if assessed to the employer. Premium tax shall be paid quarterly, or other permitted periodic interval, on or before the last day of the month following the end of the quarter or interval.~~

~~b. The employer fails to maintain an adequate premium deposit, including interest accrued on late payments, late reporting or payment penalty and other penalties and charges which may be assessed to the employer under applicable law. Increases in premium deposit, when necessary to be made, must be remitted with the applicable quarterly, or other permitted interval, premium tax, or timely upon notice as prescribed by W. Va. Code, §23-2-5(b) & 5(c), and subsection 3.3. of this rule.~~

~~c. The employer fails to timely file a gross wages payroll report, which report shall be due on or before the last day of the month following the end of each quarter, or other permitted interval, and which report shall be filed with the quarterly, or other interval, premium.~~

~~3.2. No employer will be declared delinquent or be assessed any penalty for such delinquency if the commission determines that such delinquency has been caused by delays in the administration of the Fund, including the commission of errors by the commission. An employer may demand an administrative hearing on this issue and the hearing, if granted by the commission, shall be conducted as provided for in section 14. of this rule.~~

~~3.3. Notice of delinquency. — Within sixty (60) days of the end of each quarter, the commission shall, in writing, notify all delinquent employers of their delinquency and the reason therefor. In any event when the notice of delinquency must be given at a later time because the delinquency is discovered later or it is discovered that the commission did not give notice within sixty (60) days of the end of the quarter for which the delinquency occurred, then the commission's notice shall provide for thirty (30) days within which the employer may cure the delinquency before default shall occur.~~

~~3.4. Contents of notice. — The notice required by subsection 3.3. of this rule and W. Va.~~

~~Code, §23-2-5, shall state the following:~~

~~a. A demand that the employer cure its failure before the end of the third month following the end of the preceding quarter or, if the notice of delinquency was not given timely within sixty (60) days of the end of the quarter for which the delinquency occurred, within thirty (30) days of the notice of delinquency and a statement that failure to cure the delinquency will result in the automatic default or termination of the employer at the end of the period provided by notice and by law for curing the delinquency but that such default employer's liability under the Code shall be retroactive to midnight of the last day of the month following the end of the quarter, or other interval, for which the delinquency occurs.~~

~~b. A demand that the employer pay interest if the delinquency arises from a delinquent premium tax payment or a delinquent premium deposit.~~

~~c. An explanation of the legal consequences of a subsequent default by the employer if the employer is one who is required to subscribe to the Fund or an explanation of the legal consequences of termination of any electing employer's account.~~

~~d. An explanation of how the employer may cure its delinquency.~~

~~e. A statement that, once the employer is in default or has been terminated, the employer's employees will receive written notice of that fact and of the legal consequences thereof.~~

~~f. An explanation that any person, firm or corporation which is required by the provisions of the Act to subscribe to the Fund and which knowingly fails to subscribe thereto, or which knowingly fails to make any report (including a gross wages payroll report) or perform any other act or duty required by the commission (including payments of premium tax, premium deposit, late reporting or payment penalty, interest or other charges, fees or penalties) within the time specified by the commission, or any person or firm or the officer of a corporation who knowingly and willfully makes a false report or statement under oath, affidavit or certification respecting any information required to be provided under the Act, shall be guilty of a felony and, upon conviction thereof, shall be fined from one thousand dollars to twenty-five thousand dollars or imprisoned in the penitentiary for one year to three years, as provided by W. Va. Code, §23-1-16.~~

~~3.5. An employer who is required to subscribe to the Fund (which includes a self-insured employer) and who fails to cure a delinquency within the time period provided by notice shall be in default and shall lose the benefits and protection of the Act and shall incur additional liabilities as noted below:~~

~~a. An employer who loses the benefits and protection of the Act shall be liable to respond in damages at common law or by statute for the injury or death of any employee, however occurring, sustained in the course of employment.~~

~~b. The additional liabilities of an employer include liability to its employees for all damages suffered by reason of personal injuries sustained in the course of employment caused by the wrongful action, neglect, or default of the employer or any of the employer's partners, officers, agents or employees, while acting within the scope of their employment and in the course of their employment and also to the personal representatives of such employees where death results from such personal injuries. The employer may also lose the right to assert certain defenses during the course of a civil action brought by its injured employee or the employee's personal representative to collect such damages.~~

~~c. The default liabilities described under subsection 3.5. of this rule are retroactive to Midnight of the last day of the month following the end of the quarter for which the delinquency occurs.~~

~~3.6. An employer who voluntarily elects to subscribe to the Fund and who fails to cure a delinquency shall have its election to pay into the Fund terminated and such an employer shall lose the benefits and protection of the Act and may incur the additional liabilities described in subsection 3.5. of this rule. The default liabilities of the employer are retroactive on the same basis as set forth in subsection 3.5.c. of this rule.~~

~~3.7. An employer who is a subscriber to the Fund, whether such subscription is mandatory or voluntary, or who is self-insured with the Fund and who does not cure its delinquency, as required by the subsection 3.3. notice of delinquency, shall be in default and, if an elective subscriber, have its account and the benefits and protection of the Act terminated upon default, without further action by or notice from the commission, by operation of the provisions of law for immediate and automatic default upon the employer's failure to cure timely the delinquency.~~

~~3.8. An employer who is required to subscribe to the Fund and who fails to subscribe and otherwise comply with the Act and the rules prior to the first date of employment of any employee of the employer shall be in default immediately prior to the moment of employment of any such employee and default shall occur without the need for notice of delinquency as required for an employer who has subscribed or has been permitted to be self-insured and is delinquent.~~

~~3.9. Notice of default.~~

~~a. After the delinquency and default of a subscriber or self-insured employer, the commission shall notify the default employer of the methods by which the employer may be reinstated and restored with the Fund to the benefits and protection of the Act through a notice of default.~~

~~b. After the default of a non-complying employer, as defined in subsection 2.5.b. of this rule, upon discovery of the occurrence and the name and address of the employer, the commission shall notify the default employer of the methods by which the employer may be~~

~~reinstated and restored with the Fund to the benefits and protection of the Act through a notice of default.~~

~~c. Upon default, although notice of default is not required prior to the initiation or commencement by the commission of any action to obtain the employer's compliance with the Act, notice of default and intention to levy, as provided in subsection 12.1.f., shall be given prior to any action of distraint or levy upon personal property of the employer or a responsible person.~~

~~3.10. Any person required to truthfully account for and pay over to the commission any premium tax, premium deposit, late reporting or payment penalty, interest or other penalty pursuant to the provisions of W. Va. Code, §23-2-1, et seq., or to cause the same to occur, who willfully fails to truthfully account for and pay over the premium tax, premium deposit, late reporting and payment penalty, interest or other penalty, or to cause the same to occur, or willfully attempts in any manner to evade or defeat any such premium, premium deposit, interest or penalty or the payment thereof, is, in addition to other penalties provided by law, liable for a sum equal to the total amount of the premium tax, premium deposit, late reporting or payment penalty, interest or other penalty evaded, or not accounted for and paid over. The sum of liability is a personal obligation of the responsible person, or persons, and is immediately due and owing to the commission and, in addition thereto, is a lien enforceable against all the property of the person or persons.~~

§~~85-11-4~~ 85-11-3. ~~Further Effects of Delinquency~~ Default Employer not Permitted to Dissolve or Withdraw.

~~4.1~~ 3.1. The ~~commission~~ Insurance Commissioner shall not certify to the secretary of state of West Virginia that all payments and interest due the ~~commission~~ Insurance Commissioner by an employer have been made until the employer cures any ~~delinquency,~~ default~~, or termination~~ or until the employer has made arrangements satisfactory to the ~~commission~~ Insurance Commissioner for that cure or until all payments ~~and reports~~ due by the employer under the Act have been made or arranged for by agreement with the ~~commission~~ Insurance Commissioner.

~~4.2~~ 3.2. Pursuant to W. Va. Code §23-2-5a, the secretary of state shall withhold the issuance of any certificate of dissolution or withdrawal in the case of any corporation organized under the laws of West Virginia or organized under the laws of any other state and admitted to do business in this state until the secretary of state receives the subsection ~~4.1.~~ 3.1. certification.

§~~85-11-5~~ 85-11-4. Notice to Employees of Default Employers.

~~5.1~~ 4.1. Upon the policy default ~~or termination of an employer~~ or discovery that an employer is otherwise not carrying mandatory West Virginia workers' compensation insurance, the ~~commission~~ Insurance Commissioner shall issue a written notice to the employees of that employer. The notice shall be in the form prescribed by the ~~commission~~ Insurance Commissioner.

~~5.2~~ 4.2. Contents of notice. -- The notice shall inform the employees of the default ~~or termination~~ of their employer and the effective date thereof. The notice shall also inform the employees of the legal consequences, as it affects the employees, of the default or termination of their employer. ~~In the case of an employer which is required to subscribe to the Fund, the notice shall inform the employees that the default employer is liable to its employees for injury or death, both in workers' compensation benefits and in damages at common law or by statute in a civil action in court. In the case of an employer which is not required to subscribe to the Fund, but has voluntarily elected to do so, the notice shall inform the employer and the employees that neither the default and terminated employer nor its employees are protected by the Act as to any injury or death after the date of default.~~ The notice shall also contain the following statement which shall be printed in conspicuous type: "Any person who shall, prior to the reinstatement to good standing of the said employer, as hereinbefore provided for, or prior to sixty (60) days after the posting of this notice, whichever shall first occur, remove, deface, or render illegible this notice, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined one thousand ~~($1,000.00)~~ dollars ($1,000.00)."

~~5.3~~ 4.3. Posting the notice. -- The ~~commission~~ Insurance Commissioner shall arrange for the posting of the ~~subsection 5.1.~~ notice as described in this section in a conspicuous place at the chief works of the employer, as the same appears in the records of the ~~commission~~ Insurance Commissioner. If the chief works of the employer cannot be found or identified, then the ~~subsection 5.1.~~ notice as described in this section shall be posted at the front door of the courthouse of the county in which the chief works are located, according to the ~~commission~~ Insurance Commissioner's records. A copy of the notice shall also be sent to the office of the secretary of state for publication in the State Register.

~~5.4~~ 4.4. The ~~commission~~ Insurance Commissioner may require any sheriff, deputy sheriff, or other official of the state of West Virginia, who may be authorized to serve civil process, to post the ~~subsection 5.1.~~ notice as described in this section and to make return thereof of the fact of such posting to the ~~commission~~ Insurance Commissioner, and any failure to post any notice within ten (10) days after he or she shall have received the same from the ~~commission~~ Insurance Commissioner, without just cause or excuse, shall constitute a willful failure or refusal to perform a duty required of him or her by law within the meaning of W. Va. Code §61-5-28. Any person actually injured by reason of such failure shall have an action against said official, and upon any official bond he or she may have given, for such damages as such person may actually have incurred, but not to exceed, in the case of any surety upon said bond, the amount of the penalty of said bond.

~~5.5~~ 4.5. Fee for posting. -- Any official posting the ~~subsection 5.1.~~ notice as described in this section shall be entitled to the same fee as is now or may hereafter be provided for the service of process in suits instituted in courts of record in the state of West Virginia, which fee shall be paid by the ~~commission~~ Insurance Commissioner out of any funds at his or her disposal, but shall be charged by him or her against the account of the employer to whose ~~delinquency~~ default such notice relates.

§~~85-11-6~~ 85-11-5. Audits of Employers.

~~6.1. Pursuant to W. Va. Code, §23-2-2(a), every employer shall furnish the commission, upon request, all information required by the commission to ascertain or verify the number of employees employed by the employer during a pertinent period, the wages paid to employees during a pertinent period, any payments owed to the Fund, as premium tax, premium deposit, interest, penalties, fees, or to carry out the various purposes of the Act.~~

~~6.2. In order to inspect the information specified in subsection 6.1. of this rule, the commission may direct that an agent or employee of the Fund audit the books and other records of the employer during the regular business hours of the employer or at another reasonable time whether located at the employer's place or places of business or elsewhere and the employer shall permit the audit to occur and shall cooperate with the auditors so that the audit may be successfully completed.~~

~~6.3. Either as an addition to or as an alternative to the audit permitted under subsection 6.2. of this rule, the commission may convene an administrative hearing or conduct a deposition for the purpose of receiving the subsection 6.1. information in testimonial or evidentiary form. The executive director, an inspector or a designated hearing officer may issue subpoenas and compel the attendance of witnesses and the production of pertinent books, accounts, papers, records, documents and testimony at any such hearing or deposition. Any such administrative hearing or deposition shall be convened and conducted in accordance with section 14. of this rule and the commission shall have the right to have any employer or officer, agent, or employee of any employer examined under oath or affirmation. A deposition may be held pursuant to this subsection even if a hearing regarding the employer has not been previously noticed or requested; but, in that event, adequate notice of the deposition shall be given to all interested parties known to the commission.~~

~~6.4. The request for information provided for by subsection 6.1., the audit provided for by subsection 6.2., or the hearing provided for by subsection 6.3. may be conducted at any time when necessary to carry out the purposes of the Act including when the commission has good cause to believe that the employer may be delinquent. Such times may be before the issuance of a subsection 3.3. notice of delinquency, after the issuance of a subsection 3.3. notice of delinquency, before or after an employer has defaulted pursuant to subsection 3.7. or has been terminated pursuant to subsection 3.8. of this rule, or before, during, or after the implementation of an attempt to collect or enforce upon the employer's delinquency as provided for in subsection 7.2. of this rule.~~

5.1. Pursuant to W. Va. Code §23-2-2(a), the Insurance Commissioner has authority to perform audits of any employer in order to determine the amount of money owed to the Old Fund. The audits shall be in a manner as prescribed by the Insurance Commissioner, and employers shall be required to comply with all requirements of such audits. Any employer refusing to comply with an Insurance Commissioner audit as described in this subsection shall be deemed in default based on the estimated liability to the Old Fund as calculated by the Insurance Commissioner based on available and credible information, and shall further be subject to all enforcement provisions as contained in the Act and this rule.

5.2. The Insurance Commissioner is entitled to hold administrative hearings, conduct depositions, and issue subpoenas for production of persons for deposition or documents for inspection in order to obtain relevant information for determination of amount owed to the Old Fund. All administrative hearings or depositions shall be convened and conducted in accordance with section 13. of this rule.

§~~85-11-7~~ 85-11-6. Methods of Collection of Payments and Enforcement.

~~7.1. Prior to a subsection 3.5. default or a subsection 3.6. termination, an employer may cure its delinquency by paying in full the amounts claimed to be owed by the commission and by filing a complete gross wages payroll report, if not filed. At this stage, the amounts claimed to be owed to the commission shall include a requirement for the payment of interest on all delinquent payments pursuant to W. Va. Code, §23-2-13.~~

~~a. Any employer who wishes to contest a decision made by the commission regarding amounts claimed to be owed to the commission or disputes the completeness or accuracy of an alleged delinquent gross wages payroll report, under the provisions of chapter twenty three, article two of the Code, may do so under the provisions of W. Va. Code, §23-2-17. The rule implementing that section requires the filing of a formal request for reconsideration, and following reconsideration, a petition within thirty days of the employer's receipt of notice of the disputed decision or action or reconsidered decision or, in the absence of such receipt, within sixty days of the date of the commission's making such disputed decision or taking such disputed action or making such reconsideration decision. (See 85 C.S.R. 7, "Rules for Selected Hearings." However, as a mandatory prerequisite to hearing a petition after a reconsideration decision, the employer must deposit sufficient assets with the commission to guarantee payment of the amount determined to be due and owing by the commission. The deposit of assets shall be required in the following form(s):~~

~~1. The full cash amount of the money determined to be due by the commission;~~

~~2. A reinstatement agreement issued and maintained in accordance with the provisions and terms of W. Va. Code §23-2-5 and, in accordance with the discretionary policies of the commission, as authorized by law, including the authority to refuse to enter into a reinstatement agreement;~~

~~3. A cash or corporate surety bond or a bank letter of credit in the full amount claimed due by the commission; or~~

~~4. Any combination of the above three methods that guarantees payment~~

~~in full to the commission in the event the employer does not prevail in the matter.~~

~~7.2.~~ 6.1. Following the default ~~or termination~~ of an employer, in addition to the remedies described in previous sections of this rule, the ~~commission~~ Insurance Commissioner shall have available to it the following remedies which shall each be described more fully below:

a. Initiation of a civil action~~, including a civil action against all officers and directors of~~ against the employer.

b. Filing of a lien or liens enforceable against all the property of the employer ~~and the persons, partners and officers who are or were responsible for payment or causing the payment of the default liability for which the liens were filed~~.

c. Initiation of an action in the ~~circuit court~~ Circuit Court of Kanawha County to enjoin the employer from continuing to carry on the business in which its liability was incurred or, in the alternative, to accept a bond from the employer.

d. Filing a claim in any bankruptcy proceeding or in a receivership or insolvency proceeding which involves the employer.

e. Informing the director of the commission of environmental protection when an employer is ~~delinquent,~~ in default ~~or terminated with the Fund~~ prior to the director's issuance of a coal mining permit so that the permit may not be issued until the applicant is in compliance with the Act, as provided in W. Va. Code §22-3-8.

f. Informing the director, commissioner or head of any state agency when an employer is ~~delinquent,~~ in default ~~or terminated~~, so that the director may take appropriate remedial action against the employer in regard to a contract, license, permit, certificate or other authority to conduct a trade, profession or business.

g. Requesting a criminal prosecution of any person, firm, corporation or other employer whose non-compliance with the Act is believed to be in violation of W. Va. Code §23-1-16 and section ~~17.~~ 16. of this rule.

~~7.3~~ 6.2. In addition to the other remedies set forth here, the ~~commission~~ Insurance Commissioner may also initiate a proceeding or proceedings in the name of the state to distrain upon any personal property, including intangible property, of any ~~delinquent~~ default employer ~~and responsible persons~~. If the ~~commission~~ Insurance Commissioner has good reason to believe that such property or a substantial portion thereof is about to be removed from the county in which it is situated, the ~~commission~~ Insurance Commissioner may initiate a distraint proceeding in the name of the state before the employer actually ~~becomes delinquent~~ enters default. In exercising the power of distraint, the ~~commission~~ Insurance Commissioner may do so as provided for in section ~~12.~~ 11. of this rule.

~~7.4~~ 6.3. In every case noted in this section ~~7.~~ where a monetary sum is to be collected, the ~~commission~~ Insurance Commissioner shall include a demand for interest as specified in section ~~15.~~ 14. of this rule.

~~7.5~~ 6.4. The remedies set forth in subsection ~~7.2. and 7.3~~ 6.1. and 6.2. of this section are described in greater detail in later sections of this rule.

§~~85-11-8~~ 85-11-7. Statutory Lien.

~~8.1~~ 7.1. Any payment and interest thereon due and unpaid under the Act, including, but not limited to, money owed to the Old Fund, money owed to the Uninsured Employers' Fund and money owed pursuant to liabilities accrued by the employer while the employer was self-insured constitutes a lien enforceable against all of the property of the owing employer. ~~By way of example, and not by limitation, payments owed may include delinquent or default premium taxes, premium deposits, late reporting or payment penalties, claims benefits paid by the Fund for employees, or their dependents, of a delinquent, defaulted, or terminated employer, costs of serving or posting notices, dishonored check service fees, court and hearing charges and fees and all other unresolved claims shown upon the account of an employer by the records of the commission, plus interest thereon as calculated under W. Va. Code, §23-2-13, and section 15. of this rule.~~ The property subject to the lien includes all of the ~~lienee's~~ employer's real estate, personal property of all types and combinations thereof.

~~8.2~~ 7.2. In accordance with W. Va. Code §§23-2-5a and 38-10C-2, the ~~commission~~ Insurance Commissioner shall file a written notice of the ~~subsection 8.1.~~ lien as described in this section in the office of the clerk of the county commission of the county in which the property of the employer or lienee against whom such lien is claimed, is situate, or if the employer's or lienee's property is situated in more than one county, then in each such clerk's office in each such county. The notice shall certify the amount of money that is owed ~~to the Fund~~ by the employer.

~~8.3~~ 7.3. Pursuant to W. Va. Code §38-10C-2, the clerk or clerks of the county commission or commissions shall, upon the filing of the notice, index the notice in the judgment or tax lien docket of his or her office against the employer or lienee in favor of the state of West Virginia and the ~~commission~~ Insurance Commissioner. Upon the satisfaction of such lien, a properly acknowledged release thereof for recordation shall be delivered or mailed to the employer or lienee by the ~~commission~~ Insurance Commissioner or shall be delivered or mailed to the clerk of the county commission in the county in which the lien was filed. Such notice or notices of the lien shall be supplemented by additional notices from time to time whenever any additional liability is incurred by the employer or is determined by audit or other proceeding.

~~8.4~~ 7.4. Until the lien is docketed as provided for in subsection ~~8.3~~ 7.3. of this ~~rule~~ section, the lien is unenforceable against purchasers (including a lien creditor) of real estate or personal property for a valuable consideration except for such purchasers with actual notice of the ~~commission~~ Insurance Commissioner's lien. However, if a purchaser (including a lien creditor) of real estate or personal property for a valuable consideration has actual knowledge of the lien, then that lien shall be enforceable against such a purchaser even before the lien is docketed as provided for in subsection ~~8.3~~ 7.3. of this ~~rule~~ section. Following the docketing pursuant to subsection ~~8.3~~ 7.3. of this section, the lien is enforceable against any purchaser (including a lien creditor) with or without actual notice of the lien.

~~8.5~~ 7.5. Once all amounts due from the employer are collected by the ~~commission~~ Insurance Commissioner, the ~~commission~~ Insurance Commissioner shall release the lien or liens as provided by law.

§~~85-11-9~~ 85-11-8. Civil Actions.

~~9.1~~ 8.1. The ~~commission~~ Insurance Commissioner in the name of the ~~state~~ State may commence a civil action against ~~an~~ a default employer~~, which includes for the purposes of this section a responsible person, as defined in subsection 3.10. of this rule, including its officers or directors or both, who, after due notice, defaults in any payment or duty required by the Act and this rule. Such payments may include, but are not limited to, premium taxes, premium deposit, late reporting or payment penalties, claims benefits paid by the Fund, costs of serving or posting notices, court and hearing charges and fees or any other amounts lawfully owed, and interest thereon, by employers in default; by employers who have been terminated from coverage by the Fund; or, by employers who elected to self insure~~ to recover any payment and interest thereon due and unpaid under the Act, including, but not limited to, money owed to the Old Fund, money owed to the Uninsured Employers' Fund and money owed pursuant to liabilities accrued by the employer while the employer was self-insured.

~~9.2~~ 8.2. Such a civil action may be pursued under the applicable provisions of W. Va. Code §14-1-1, et seq., ~~W. Va. Code,~~ chapter ~~38~~ thirty-eight of the West Virginia Code, or as otherwise provided by law. It is expressly noted that the provisions of sections 18a, 18b, and 18c of article 1, chapter ~~14~~ fourteen of the West Virginia Code are not applicable to ~~a subsection 9.1.~~ civil action as described in this section, but may be used as is otherwise proper.

~~9.3~~ 8.3. ~~Subsection 9.1 civil~~ Civil actions as described in this section shall be settled or dismissed only as provided by W. Va. Code §14-1-18 or the Act. All such settlement or dismissal orders shall be public information and shall not be placed under seal.

~~9.4~~ 8.4. Pursuant to W. Va. Code §23-2-5a, if the judgment entered in a ~~subsection 9.1.~~ civil action as described in this section is against the defendant employer, the defendant shall pay the costs of the action. In addition, a ~~subsection 9.1.~~ civil action as described in this section shall be given preference on the calendar of the court over all other civil actions.

~~9.5~~ 8.5. Upon obtaining a judgment in any civil action prosecuted under this section ~~9.~~, the ~~commission~~ Insurance Commissioner shall enforce and execute upon that judgment as provided for by W. Va. Code §14-1-1, et seq., or as otherwise provided for by law. Any agreement to accept less than the full value of the judgment together with interest thereon shall be made solely as set forth in subsection ~~9.3~~ 8.3. of this ~~rule~~ section and shall be stated in writing and that document shall be a public record.

§~~85-11-10~~ 85-11-9. Injunctions From Carrying On Business.

~~10.1~~ 9.1. ~~In any case when an employer required to subscribe to the Fund defaults in payment of premium, premium deposit, penalty, or interest thereon, for as many as two calendar quarters, which quarters need not be consecutive, and remains in default after due notice, the commission~~ Pursuant to the provisions of W. Va. Code §33-2-22(b), the Insurance Commissioner may bring an action against a default employer in the ~~circuit court~~ Circuit Court of Kanawha County to enjoin such default employer from continuing to carry on ~~the~~ business ~~in which such liability was incurred~~.

9.2. Pursuant to the provisions of W. Va. Code §33-2-22(c), the Circuit Court of Kanawha County shall issue an injunction prohibiting the default employer from operating its business if the Insurance Commissioner proves by a preponderance of the evidence that the employer is in default status.

~~10.2~~ 9.3. The ~~commission~~ Insurance Commissioner may, as an alternative to pursuing such an injunction as described in this section, require ~~such delinquent~~ a default employer to file a bond in the form prescribed by the ~~commission~~ Insurance Commissioner with satisfactory surety in an amount not less than fifty percent more than the payments and interest due. The bond must be issued by a corporate surety satisfactory to the ~~commission~~ Insurance Commissioner.

§~~85-11-11~~ 85-11-10. Receivership and Insolvency Proceedings; Bankruptcy.

~~11.1~~ 10.1. ~~In accordance with the provisions of W. Va. Code, §23-2-5a, in case a business subject to the payments and interest thereon imposed under the Act~~ In the event that a default employer owing payment and interest due thereon under the Act, including, but not limited to, money owed to the Old Fund, money owed to the Uninsured Employers' Fund and money owed pursuant to liabilities accrued by the employer while the employer was self-insured, shall be operated in connection with a receivership or insolvency proceeding in any state court in this state, the court under whose direction such business is operated shall, by the entry of a proper order or decree in the cause, make provisions, so far as the assets in administration will permit, for the regular payment of such payments as the same become due.

~~11.2~~ 10.2. In any such case as is described in subsection ~~11.1~~ 10.1. of this section, the ~~commission~~ Insurance Commissioner may file such pleadings, motions, and other documents and take any other legal action ~~so as to protect the interests of the Fund~~ necessary to protect the interests of West Virginia's workers' compensation market during the pendency and resolution of such case.

~~11.3~~ 10.3. In the event that ~~any~~ a default employer ~~which owes any~~ owing payment and interest under the provisions of the Act, including, but not limited to, money owed to the Old Fund, money owed to the Uninsured Employers' Fund and money owed pursuant to liabilities accrued by the employer while the employer was self-insured, files for or is placed in a bankruptcy proceeding under the laws of the United States, the ~~commission~~ Insurance Commissioner may become a party to such proceedings and take any and all actions needed to protect the interests of the ~~Fund~~ West Virgina's workers' compensation market during the pendency and resolution of the proceeding. The ~~commission~~ Insurance Commissioner may institute an involuntary proceeding against an employer in a bankruptcy court of the United States in any proper instance. All ~~premium tax assessments, as defined in subsection 2.13. and elsewhere in this rule and in the Act,~~ former premium tax assessments owed to the Old Fund and all surcharges and assessments owed by employers pursuant to the Act, including, but not limited to, the regulatory and Debt Reduction Fund surcharges and assessments pursuant to W. Va. Code §23-2C-3(f), assessments and liabilities owed to the Uninsured Employers' Fund pursuant to W. Va. Code §23-2C-8 and assessments for the Self-Insured Guaranty and Security Risk Pools as established in W. Va. Code §23-2C-1 et seq. and W. Va. Code St. R. §85-19-1 et seq., are special revenue taxes under and according to the provisions of state workers' compensation law and are deemed to be tax claims, as priority claims or administrative expense claims according to those provisions of law provided in the United States bankruptcy code.

§~~85-11-12~~ 85-11-11. Distraint Upon Personal Property.

~~12.1~~ 11.1. General authority and provisions.

a. Authority of the ~~commission~~ Insurance Commissioner. -- If any ~~premium tax, premium deposit, penalty, interest, claims benefit or other~~ payment required by the Act, including, but not limited to, money owed to the Old Fund, money owed to the Uninsured Employers' Fund and money owed pursuant to liabilities accrued by the employer while the employer was self-insured, is due and the employer is in default for nonpayment of such obligation and notice thereof has been given as provided for by this rule and the demand is not then the subject of administrative or judicial review, then, if any employer liable to pay such payment, ~~premium tax, or penalty~~ neglects or refuses to pay the same within the period of time provided for payment after notice and demand as provided in subdivision f. of this subsection ~~12.1.f.~~ hereof, it shall be lawful for the ~~commission~~ Insurance Commissioner to collect the amounts due and such further sums as are sufficient to cover the expense of the levy, by levy in the name of the state and ~~commission~~ Insurance Commissioner upon all personal property, including intangible property, and rights to property belonging to such employer or on which there is a lien as provided for by the Act for payment of the obligation due. If the ~~commission~~ Insurance Commissioner finds that the collection of such obligation is in jeopardy, notice and demand for immediate payment may be given by the ~~commission~~ Insurance Commissioner and, upon failure or refusal to pay such obligation, collection thereof by levy shall be lawful without regard to the time period provided in subdivision f. of this subsection ~~12.1.f.~~ If the ~~commission~~ Insurance Commissioner has good cause to believe that such property or a substantial portion thereof is about to be removed from the state in which it is situated, the ~~commission~~ Insurance Commissioner may likewise distrain before such ~~delinquency~~ default occurs.

b. The term "levy" as used in this section includes the power of distraint and seizure by any lawful means. Except as otherwise provided in this section, a levy shall extend only to property possessed and obligations existing at the time thereof. In any case in which the ~~commission~~ Insurance Commissioner may levy upon property or rights to property, the ~~commission~~ Insurance Commissioner may seize and sell such property in accordance with ~~section 12.4.~~ subsection 11.4. of this ~~rule~~ section.

c. The ~~commission~~ Insurance Commissioner may utilize the services of a sheriff, a sheriff's deputy, or a member of the department of public safety in levying upon any property under this section ~~12. of this rule~~ or in performing any of the tasks related to the disposition of the property once it is seized as are set forth in the remainder of this section of this rule.

d. Successive seizures. -- Whenever any property or a right to property upon which levy has been made by virtue of subdivision a. of this subsection ~~12.1.a.~~ is not sufficient to satisfy the claim of the for ~~commission~~ Insurance Commissioner which levy is made, the ~~commission~~ Insurance Commissioner may, thereafter, and as often as may be necessary, proceed to levy in like manner upon any other property liable to levy of the employer against whom such claim exists until the amount due, together with all expenses, is fully paid.

e. Distress warrant. -- The ~~commission~~ Insurance Commissioner may issue a distress warrant to the sheriff of any county of this state commanding him or her to levy upon and sell any such property or rights to property subject to levy in accordance with the provisions of this section. A distress warrant shall be executed within sixty (60) days from the date the warrant was issued. The sheriff shall return the warrant and any money collected to the ~~commission~~ Insurance Commissioner within sixty-five (65) days from the date the warrant was issued. A sheriff so collecting any payment shall be entitled to such compensation as is provided by law for his or her services in the levy and enforcement of executions.

f. Requirement of notice before levy.

~~A.~~ 1. In general. -- Levy may be made under ~~subsection 12.1.a.~~ subdivision a. of this subsection upon the salary or wages or other property or right to property of any employer with respect to any unpaid obligation only after the ~~commission~~ Insurance Commissioner has notified such employer in writing of his or her intention to make such levy. A notice shall also be given by the ~~commission~~ Insurance Commissioner or other officer in the manner provided by applicable law to all entities other than the employer of whom the ~~commission~~ Insurance Commissioner or other officer has knowledge and who have a higher priority lien or right to the property than that of the ~~commission~~ Insurance Commissioner.

~~B.~~ 2. Notice time period and hearing requirement. -- The notice required under ~~subsection 12.1.f.A.~~ paragraph 1. of this subdivision shall be given in person, or by attorney-in-fact, or sent by regular United States mail to such employer's last address of record at the ~~commission~~ Insurance Commissioner, no less than twenty (20) days prior to the day of levy,

~~unless the notice of intention to levy and right to a hearing are set forth in the notice of delinquency as required by subsection 3.3. of this rule and W. Va. Code, §23-2-5(b) and (c)~~; however, no notice need be given prior to levy if the ~~commission~~ Insurance Commissioner has made a finding under either of the last two sentences of ~~subsection 12.1.a.~~ subdivision a. of this subsection that collection of the obligation is in jeopardy; or, if the levy is made through the provisions of chapter ~~38, W. Va.~~ thirty-eight of the West Virginia Code, including notice and hearing provisions therein, for execution upon liens and a notice of ~~delinquency~~ default was given by the ~~commission~~ Insurance Commissioner as required by subsection ~~3.3.~~ 18.2. of this rule and a notice of lien was docketed as required by subsection ~~8.2.~~ 7.2. of this rule.

~~C.~~ 3. Continuing levy on salary and wages. -- The effect of a levy on salary or wages payable shall be continuous from the date such levy is first made until the liability out of which such levy arose is satisfied or becomes unenforceable by reason of lapse of time, at which time the ~~commission~~ Insurance Commissioner shall promptly release such levy and notify the employer upon whom such levy was made that such levy has been released.

~~12.2~~ 11.2. Property exempt from levy.

a. Enumeration. -- There shall be exempt from levy the greater of the value of exemptions as provided in chapter ~~38~~ thirty-eight of the West Virginia Code or as provided below. In any case where the entity subject to the processes set forth in this section ~~12~~. is an individual human being, then the term "individual" as used in this subsection ~~12.2~~. applies solely and exclusively to such a human being and if the entity proceeded against is not an individual human being then the term "individual" does not apply to that entity:

~~A.~~ 1. Wearing apparel and school books. -- Items of wearing apparel and school books that are necessary for the individual or for members of his or her family.

~~B.~~ 2. Fuel, provisions, furniture and personal effects. -- If the individual is the head of a family, so much of the fuel, provisions, furniture and personal effects in his or her household and of the arms for personal use, livestock and poultry of the individual, as does not exceed one thousand five hundred dollars ($1,500.00) in value, if the individual is not the head of a household, this exemption shall not exceed one thousand dollars ($1,000.00).

~~C.~~ 3. Books and tools of a trade, business or profession. -- So many of the books and tools necessary for the trade, business, or profession of the individual as do not exceed in the aggregate one thousand dollars ($1,000.00) in value.

~~D.~~ 4. Unemployment benefits. -- Any amount payable to an individual with respect to his or her unemployment (including any portion thereof payable with respect to dependents) under an unemployment compensation law of the United States, or of this state, or any other state.

~~E.~~ 5. Undelivered mail. -- Mail, addressed to any employer, which has not been delivered to the addressee.

~~F.~~ 6. Annuity and pension payments. -- Annuity or pension payments to any individual under any pension or retirement plan, including social security payments.

~~G.~~ 7. Workers' compensation. -- Any amount payable to an individual as workers' compensation (including any portion thereof payable with respect to dependents) under a workers' compensation law of the United States, or of this state, or any other state; except that if the individual who will be receiving such payment is a person who as sole proprietor, partner, or corporate officer, employee, or member was responsible for and is liable for the payment of the obligation levied upon, then the amount payable as workers' compensation may be levied upon.

~~H.~~ 8. Judgments for support of minor children. -- If the individual is required by a judgment of a court of competent jurisdiction, entered prior to the date of levy, to contribute to the support of minor children, so much of his or her salary, wages or other income as necessary to comply with such judgment.

~~I.~~ 9. Public assistance. -- Any amount payable to any individual from a public assistance or relief fund created under the law of the United States, of this state, or of any other state.

~~J.~~ 10. Wages, salary and other income. -- Any amount payable to or receivable by an individual as wages or salary for services provided by an employee to his or her employer, or as income derived from other sources, during any period, to the extent that the total for such period does not exceed the applicable exempt amount determined under the provisions of ~~chapter 38,~~ articles 5A and 5B, chapter thirty-eight of the ~~W. Va.~~ West Virginia Code, plus twenty-five dollars ($25.00) for each additional dependent of the individual.

~~K.~~ 11. If the employer is a natural person and if he or she owns a homestead located in this state, the first five thousand dollars ($5,000.00) thereof shall be exempt from levy.

b. Appraisal. -- The officer seizing property of the type described in subdivision a. of this subsection ~~12.2.a.~~ shall appraise and set aside to the owner the amount of such property declared to be exempt. If the individual objects at the time of the seizure to the valuation fixed by the officer making the seizure, the ~~commission~~ Insurance Commissioner shall summon three disinterested individuals who shall make the valuation.

c. No other property exempt. -- Unless required by some other law, no personal property or rights to property shall be exempt from levy other than property specifically made exempt by subdivision a. of this subsection ~~12.2.a~~.

~~12.3~~ 11.3. Surrender of property subject to levy.

a. Requirement. -- Any person in possession of, or obligated with respect to, property or rights to property subject to levy upon which a levy has been made shall, upon demand of the ~~commission~~ Insurance Commissioner, surrender such property or rights, or discharge such obligation, to the ~~commission~~ Insurance Commissioner, except such part of the property or rights as is, at the time of such demand, subject to any prior attachment, execution or levy.

b. Enforcement of levy and extent of personal liability. -- Any person in possession of or obligated with respect to property subject to levy upon which levy has been made, who fails or refuses to surrender any property or rights to property, subject to levy, upon demand by the ~~commission~~ Insurance Commissioner, shall be subject to prosecution as provided for in section ~~17.~~ 16. of this rule.

c. Effect of honoring levy. -- Any person in possession of or obligated with respect to property or rights to property subject to levy upon which levy has been made, who upon demand by the ~~commission~~ Insurance Commissioner, surrenders such property or rights to property or discharges such obligation to the ~~commission~~ Insurance Commissioner shall be discharged from any obligation or liability to the ~~delinquent~~ default employer with respect to such property or rights to property arising from such surrender or payment.

d. The term "person" as used in this subsection ~~12.3.~~ includes, but is not limited to, any individual, employee, sole proprietor, partner, officer, member, joint venturer, receiver, trustee, executor, administrator, guardian, committee or official of any sole proprietorship, firm, partnership, limited partnership, limited liability company, company, association, corporation, organization, joint venture, receivership, trust, estate, governmental entity or other entity who as such person is under a duty to surrender the money, property or rights to property or to discharge the obligation or demand.

~~12.4~~ 11.4. Sale of seized property.

a. Notice of seizure. -- At the time of seizure or as soon as practicable after seizure of property, notice in writing shall be given by the ~~commission~~ Insurance Commissioner to the owner of the property, and to the possessor thereof, or shall be left at his or her usual place of abode or business if he or she has such within the county where the seizure is made. If the owner cannot be readily located, or has no dwelling or place of business within such county, the notice may be mailed to his or her last known address by use of the certified mail, return receipt requested. Such notice shall specify the sum demanded and shall state the appraised value and identity of the property seized.

b. Notice of sale. -- The ~~commission~~ Insurance Commissioner may sell any property seized under this section ~~12.~~ of this rule. As soon as practicable after the seizure of the property, the ~~commission~~ Insurance Commissioner shall give notice to the owner, in the manner prescribed in ~~subsection 12.4.a.~~ subdivision a. of this subsection, and shall cause a notice of sale to be published as a class II legal advertisement in some newspaper published or generally circulated within the county wherein such seizure is made, or the county where the property is located, the last date of publication being not less than five (5) days prior to sale. This notice shall identify the property to be sold, and the date, time, place, manner, and conditions of the sale thereof, all of which shall be at the discretion of the ~~commission~~ Insurance Commissioner. The sale shall be conducted by public auction, or by public sale under sealed bids. Before the sale, the ~~commission~~ Insurance Commissioner may determine a minimum price for which the property shall be sold, and if no person offers to purchase such property at the sale for the amount of the minimum price, the property shall be declared to be purchased at such price for the state of West Virginia for the benefit of the ~~Fund~~ whichever particular area(s) of workers' compensation the sale benefits (i.e., the Old Fund, Uninsured Fund, etc.); otherwise, the property shall be declared to be sold to highest bidder. In determining the minimum price, the ~~commission~~ Insurance Commissioner shall take into account the expense of making the levy and sale.

c. Sale of indivisible property. -- If any property liable to levy is not divisible, so as to enable the ~~commission~~ Insurance Commissioner by sale of a part thereof to raise the whole amount of the sum due and the expenses of making the levy and sale, the whole of such property shall be sold. However, where the property sold is co-owned or jointly owned by the employer and an innocent third party, the proceeds of the sale shall be divided, based on the respective interests of the entities owning the property immediately prior to the levy and sale, and the proceeds attributable to the interest of the innocent owner or owners shall be distributed to them: *Provided*, that where the property to be sold is so co-owned or jointly owned by an innocent third party, who has no independent liability ~~to the Fund~~ under the Act, such innocent party may petition the circuit court of the county in which the property is located for relief, including postponement of the sale, in order that the court can determine if the property can be partitioned, so as to avoid sale of the innocent party's portion or grant and afford other relief by the court protective of the rights and interests of such innocent party as well as of the ~~Fund~~ West Virginia's workers' compensation market and whichever particular area(s) of workers' compensation the sale would benefit (i.e., the Old Fund, Uninsured Fund, etc.).

~~12.5~~ 11.5. Sale of perishable goods. -- If the ~~commission~~ Insurance Commissioner determines that any property seized is liable to perish or become greatly reduced in price or value by keeping, or that such property cannot be kept without great expense, the ~~commission~~ Insurance Commissioner shall appraise the value of such property and shall take one of the following actions:

a. Return to owner. -- If the owner of the property can be readily found, the ~~commission~~ Insurance Commissioner shall give him or her notice of such determination of the appraised value of the property. The property shall be returned to the owner if, within such time as may be specified in the notice, the owner either: (a) pays to the ~~commission~~ Insurance Commissioner an amount equal to the appraised value; or, (b) gives bond in such form, with such sureties, and in such amount as the ~~commission~~ Insurance Commissioner shall prescribe, to pay the appraised amount at such time as the ~~commission~~ Insurance Commissioner determines to be appropriate under the circumstances.

b. Immediate sale. -- If the owner does not pay such amount or furnish such bond in accordance with this subsection, the ~~commission~~ Insurance Commissioner shall, as soon as practicable, make public sale of the property.

~~12.6~~ 11.6. Redemption of property.

a. Before sale. -- Any entity whose property has been levied upon shall have the right to pay the amount due, together with the expenses of the proceeding, if any, to the ~~commission~~ Insurance Commissioner at any time prior to the sale thereof, and upon such payment, the ~~commission~~ Insurance Commissioner shall restore such property to that entity and all further proceedings in connection with the levy on such property shall cease from the time of such payment.

b. Subrogation to ~~commission~~ Insurance Commissioner's lien. -- Any entity redeeming the interest of another shall be subrogated to the lien of the ~~commission~~ Insurance Commissioner on such interest. Such entity shall lose his, her or its right to this lien, however, unless within thirty (30) days after receiving the certificate of sale of personal property, he, she or it shall file with the clerk of the county ~~commission~~ Insurance Commissioner of the county in which the personal property is located or where the ~~delinquent~~ default employer resides or has its business location, or if neither be in this state, the clerk of the county ~~commission~~ Insurance Commissioner of Kanawha County, his, her or its claim against the ~~delinquent~~ default employer and a copy of the certificate of sale of personal property.

~~12.7~~ 11.7. Certificate of sale. -- In the case of property sold as provided in subsection ~~12.4~~ 11.4. of this section, the ~~commission~~ Insurance Commissioner shall provide to the purchaser a certificate of sale upon payment in full of the purchase price.

~~12.8~~ 11.8. Legal effect of certificate of sale of personal property.

a. Certificate of sale of property. -- In all cases of sale of property pursuant to subsection ~~12.4~~ 11.4. of this section, the certificate of such sale:

~~A.~~ 1. As evidence. -- Shall be prima facie evidence of the right of the officer to make such sale, and conclusive evidence of the regularity of the proceedings in making the sale; and,

~~B.~~ 2. As conveyances. -- Shall transfer to the purchaser all right, title and interest of the employer in and to the property sold; and,

~~C.~~ 3. As authority for transfer of corporate stock. -- If such property consists of stocks, shall be notice of such transfer when received by any corporation, company or association and shall be authority to such corporation, company or association to record the transfer on its books and records in the same manner as if the stocks were transferred or assigned by the party holding the same, in lieu of any original or prior certificate, which shall be void, whether canceled or not; and,

~~D.~~ 4. As receipts. -- If the subject of sale is securities or other evidences of debt, shall be a good and valid receipt to the person holding the same, as against any person holding or claiming to hold possession of such securities or other evidences of debt; and,

~~E.~~ 5. As authority for transfer of title to motor vehicle. -- If such property consists of a motor vehicle, shall be notice, when received, to any public official charged with the registration of title to motor vehicles, of such transfer and shall be authority to such official to record the transfer on the books and records in the same manner as if the certificate of title to such motor vehicle has been transferred or assigned by the party holding the same, in lieu of any original or prior certificate, which shall be void, whether canceled or not.

b. Effect of junior encumbrances. -- A certificate of sale of personal property given pursuant to subsection ~~12.7~~ 11.7. of this section shall discharge such property from all liens, encumbrances and titles over which the lien of the ~~commission~~ Insurance Commissioner with respect to which the levy was made had priority.

~~12.9~~ 11.9. Records of sale. -- The ~~commission~~ Insurance Commissioner shall for each county, keep a record of all sales of property under subsection ~~12.4~~ 11.4. of this section and of redemptions of such property. The record shall set forth the debt for which any such sale was made, the date of seizure and sale, the name of the debtor and all proceedings in making such sale, the amount of expenses and the names of the purchasers and the date and a copy of the certificate of sale. A copy of such report, or any part thereof, certified by the ~~commission~~ Insurance Commissioner shall be evidence in any court of this state of the truth of the facts therein stated.

~~12.10~~ 11.10. Expense of levy and sale. -- The ~~commission~~ Insurance Commissioner shall determine the expenses to be allowed in all cases of levy and sale under this article.

~~12.11~~ 11.11. Application of levy.

a. Collection of liability. -- Any money realized from a levy shall be applied as follows: (a) first, against the expenses of the proceedings; (b) second, any amount remaining shall then be applied against the liability in respect of which the levy was made and the sale was conducted; and, (c) third, any amount still remaining shall then be applied against any other ~~delinquent~~ default liability of the employer for which levy may be made under this rule.

b. Surplus proceeds. -- Any surplus proceeds remaining after the application of ~~subsection 12.11.a.~~ subdivision a. of this subsection shall, upon application and satisfactory proof in support thereof, be credited or refunded by the ~~commission~~ Insurance Commissioner to the person or persons legally entitled thereto.

~~12.12~~ 11.12. Authority to release levy and return property.

a. Release of levy. -- It shall be lawful for the ~~commission~~ Insurance Commissioner to release the levy upon all or part of the property or rights to property levied upon where the ~~commission~~ Insurance Commissioner determines that such action will facilitate the collection of the liability, but such release shall not operate to prevent a subsequent levy.

b. Return of property. -- If the ~~commission~~ Insurance Commissioner determines that property has been wrongfully levied upon, it shall be lawful for the ~~commission~~ Insurance Commissioner to return: (a) the specific property levied upon; (b) an amount of money equal to the amount of money levied upon; or, (c) an amount of money equal to the amount of money received by the ~~commission~~ Insurance Commissioner from a sale of such property. Property may be returned at any time. An amount equal to the amount of money levied upon or received from such sale may be returned at any time before the expiration of nine (9) months from the date of such levy or thereafter if a demand in writing to the ~~commission~~ Insurance Commissioner has been made within such time period. For purposes of this subsection ~~12.12.b.~~, if property is declared purchased by the ~~commission~~ Insurance Commissioner at a sale pursuant to subsection ~~12.4.~~ 11.4. of this section, the ~~commission~~ Insurance Commissioner shall be treated as having received an amount of money equal to the minimum price determined pursuant to such subsection or, if larger, the amount received by the ~~commission~~ Insurance Commissioner from the resale of such property.

c. Public information. -- The ~~commission~~ Insurance Commissioner shall, upon request, make public the names and persons in whose favor a release of levy or return of property has been made as provided in ~~subsections 12.12.a. and 12.12.b~~ subdivisions a. and b. of this subsection.

§~~85-11-13~~ 85-11-12. ~~Applications for Reinstatement~~ Payment Agreements.

~~13.1. Any employer, who is required to subscribe to the Fund and subsequently defaults, or who elects to subscribe and whose account is subsequently terminated upon default, shall be restored immediately to the benefits and protection of the Act only upon the filing of all delinquent gross wages payroll and other reports required by the commission and upon payment into the Fund of all unpaid premium taxes, an adequate premium deposit, accrued interest, penalties and any other amount due under the Act or the rules promulgated by the commission and the board of managers.~~

~~13.2~~ 12.1. Any default employer ~~who is in default or who's account is terminated upon default under the Act may be reinstated to the benefits and protection of the Act by filing an application for reinstatement and entering~~ owing payment and interest due thereon under the Act, including, but not limited to, money owed to the Old Fund, money owed to the Uninsured Employers' Fund and money owed pursuant to liabilities accrued by the employer while the employer was self-insured, may, at the discretion of the Insurance Commissioner, make application, on a form provided by the Insurance Commissioner, to enter into a ~~reinstatement~~ payment agreement with the ~~commission~~ Insurance Commissioner which provides for ~~repayment~~ payment of the entire ~~delinquency and~~ default liability payment owed in installments~~, as provided by W. Va. Code, §23-2-5. No application for reinstatement may become effective until the applicant's default occurs, although the application may be filed prior to default. Application for reinstatement shall be made upon forms prescribed by the commission and shall include a report of the gross wages payroll of the employer during the entire period of delinquency and subsequent default or termination, which payroll information shall be verified by the employer or its authorized agent, and an application shall further include an application deposit payment equal to one half of one percent of the gross wages payroll during the entire period of delinquency and default, or one hundred ($100.00) dollars, whichever amount shall be greater, or equal to another portion of the liability as may be determined from time to time by rule but not to exceed the amount of the entire liability due and owing for the period of delinquency and default~~.

12.2. As a prerequisite to entering into a payment agreement, a default employer as described in subsection 12.1. of this section must make a good faith payment of ten percent (10%) of the total current outstanding liability owed under the Act. The Insurance Commissioner has discretion to increase or reduce the required amount of the good faith payment if, in the sole discretion of the Insurance Commissioner, such reduction would be in the best interest of the State's workers' compensation market.

~~13.3~~ 12.3. A default ~~or terminated~~ employer as described in subsection 12.1. of this section who ~~applies for reinstatement~~ enters into a payment agreement and also provides the Insurance Commissioner with a current certificate of workers' compensation insurance shall be ~~entitled to the benefits and protection of the Act on the day that a properly completed and acceptable application and proper application deposit is received by the commission and thereafter~~ removed from the Default List. ~~However, if the commission subsequently reinstates an employer subject to the terms of a reinstatement agreement, then the subsequent failure of the employer to make scheduled payments in accordance with the reinstatement agreement, to timely file and pay current premium tax or to restore the premium deposit to the required amount by the end of the repayment period shall cause the reinstatement agreement to be null, void and of no effect, and the employer shall be denied the benefits and protection of the Act effective from the date that such employer's account originally became delinquent. Similarly, the withdrawal of an application for reinstatement; the failure to timely file reports or make quarterly or current premium tax payments to the commission during the pendency of the application prior to execution of a reinstatement agreement; or refusal or failure to timely sign, execute and return to the commission, within thirty (30) days of the applicant's receipt of the agreement, the reinstatement agreement offered by the commission, shall cause the application for reinstatement to be null, void and of no effect and the employer shall be denied the benefits and protection of the Act effective from the date that such employer's account originally became delinquent.~~

~~13.4~~ 12.4. Pursuant to section ~~6.~~ 5. of this rule, the ~~commission~~ Insurance Commissioner may direct that a complete audit of the ~~employer's account~~ employer be made at any time after an application ~~for reinstatement~~ to enter into a payment agreement is received from the employer. Failure by the employer to comply with the audit shall be cause for the application to be denied, or for immediate nullification of the payment agreement, if entered into, and placement of the employer on the Default List.

~~13.5~~ 12.5. An employer may ~~file an application for reinstatement~~ make application to enter into a payment agreement despite the pendency of some other remedial action that may have been instituted by the ~~commission~~ Insurance Commissioner. The ~~commission~~ Insurance Commissioner may then delay or continue further pursuit of that remedial action if, in the ~~commission's~~ Insurance Commissioner's sole discretion, the interests of the ~~Fund~~ State's workers' compensation market will be protected or furthered despite such delay or continuance. One factor that the ~~commission~~ Insurance Commissioner may rely upon, but not to the exclusion of other possible factors, is whether ~~the application is the first~~ the employer has ~~filed or whether the employer has filed and then defaulted on previous applications~~ previously defaulted on a payment agreement with the Insurance Commissioner or on a reinstatement agreement with the Insurance Commissioner or former Workers' Compensation Commission or its predecessors. In the ~~latter~~ event of a default by the employer on a previous agreement, the ~~commission~~ Insurance Commissioner will generally, unless some other good cause exists to the contrary, continue to proceed with the other remedies.

~~13.6~~ 12.6. ~~In addition, entry~~ Permitting an employer to enter into a ~~reinstatement~~ payment agreement is discretionary with the ~~commission~~ Insurance Commissioner. Such discretion shall be exercised ~~in keeping with the fiduciary obligations owed to the workers' compensation fund~~ with regard to the best interests of the State's workers' compensation market, including, but not limited to, the administration of the Old Fund, Uninsured Employers' Fund and the self-insured community. Should the ~~commission~~ Insurance Commissioner decline to enter into a ~~reinstatement~~ payment agreement ~~and should the employer not comply with the provisions of subsection 13.1.~~, then the ~~commission~~ Insurance Commissioner may proceed with any of the collection and enforcement efforts provided for by these rules; by W. Va. Code §23-2-5a ~~of the W. Va. Code~~ or as otherwise provided for by the ~~W. Va. Code~~ West Virginia Code.

~~13.7~~ 12.7. The ~~commission~~ Insurance Commissioner may permit the payment of all amounts due to the Old Fund ~~or the filing of all reports due to the Fund, or both~~, Uninsured Employers' Fund, or owed pursuant to liabilities accrued by the employer while the employer was self-insured, or any combination thereof upon the terms stated in a ~~reinstatement~~ payment agreement. The ~~commission~~ Insurance Commissioner shall exercise ~~its~~ discretion to enter into such an agreement and shall prescribe the terms of an agreement. ~~The reinstatement agreement shall not authorize or permit the reduction or waiver of any part of the premium or premium deposit, or other amount due. Further, the reinstatement agreement shall provide for the payment of interest by the employer upon the amounts payable to the Fund over the life of the repayment agreement.~~

12.8. Pursuant to W. Va. Code §33-2-22(d), the Insurance Commissioner shall have authority, as part of a payment agreement, to waive or reduce penalty or interest due to the Old Fund. Additionally, pursuant to W. Va. Code §23-2C-8(d)(2)(C), and W. Va. Code St. R. §85-9-

7.3., the Insurance Commissioner shall have authority, as part of a payment agreement, to waive or reduce any amount owed to the Uninsured Employers' Fund as part of a payment agreement. In all cases when the Commissioner agrees to waive or reduce amounts owed to the Old Fund and/or Uninsured Employers' Fund as described in this subsection, such decision shall be made consistent with the best interests of the Old Fund and/or Uninsured Fund, as the case may be. If the employer defaults on the payment agreement, the waiver or reduction will be null and void, and the employer will be deemed to owe the original amount.

12.9. The interest rate agreed to in a payment agreement shall not change over the term of the agreement. ~~Except in extreme circumstances~~

12.10. Generally, absent exigent circumstances, the term of an agreement shall not exceed three (3) years, and in no instance shall the term of an agreement exceed five (5) years. The ~~commission~~ Insurance Commissioner shall set the ~~reinstatement~~ payment agreement's term of ~~repayment~~ payment for that period of months in which ~~it~~ the Commissioner believes the applicant is financially capable of repaying the default liability ~~and restoring the premium deposit to the required amount but the term shall be set at not more than thirty-six (36) months, unless the applicant employer shall file, with its application for reinstatement, a request for extension of up to twenty-four (24) additional months in the term, with financial proof of good cause why and for what extended term the request should be granted by the commission in the reinstatement agreement~~. Upon written request, an employer currently under a payment agreement and in good standing in regard to such agreement may make a written request for the time frame of the payment agreement to be extended by up to two (2) years, or an amount of time which would make the total time frame of the payment agreement five (5) years, whichever time period is longer. The granting of an extension to a payment agreement shall be in the sole discretion of the Insurance Commissioner based on the Commissioner's determination of good cause for the same. If an extension is granted, it shall be done by a new written draft of the previous payment agreement.

12.11. The breach of a ~~reinstatement~~ payment agreement by the employer shall render the ~~application for reinstatement and reinstatement of the employer~~ agreement void and of no legal effect and the breaching employer shall be ~~denied the benefits and protection of the Act effective from the date that such employer's account originally became delinquent~~ immediately placed on the Default List retroactive from the date that the employer's account originally entered default or delinquency in the case of certain Old Fund accounts~~; except that, the account of the~~ : *Provided*, That the employer shall be credited for any amounts paid by the employer under the payment agreement prior to defaulting on the agreement. Nothing in this section shall apply to any other type of collection or enforcement method under the Act or this rule.

§~~85-11-14~~ 85-11-13. Administrative Hearings.

All administrative hearings conducted pursuant to this rule will be held in accordance with the provisions of W. Va. Code § 29A-5-1, et seq., and with the provisions of Sections 4. through 10. of 85 C.S.R. 7, "Rules for Selected Hearings."

§~~85-11-15~~ 85-11-14. Interest.

~~15.1~~ 14.1. Any and all payments unpaid on the date on which due and payable, as prescribed by the ~~commission~~ Insurance Commissioner, shall immediately begin bearing interest. Interest shall be compounded quarterly until payment plus accrued interest is received by the ~~commission~~ Insurance Commissioner; except that future interest for ~~reinstatement~~ payment agreements shall be calculated and provided at a simple rate of interest. Interest collected pursuant to this subsection shall be paid into the ~~Fund~~ Old Fund, Uninsured Employers' Fund or Self-Insured Guaranty Risk Pool or Security Risk Pool (as established in W. Va. Code St. R. §85-19-1 et seq.), whichever is applicable.

~~15.2~~ 14.2. Notwithstanding the provisions of subsection ~~15.1~~ 14.1. of this ~~rule~~ section, in no event shall the rate of interest charged a political subdivision of the ~~state~~ State or a volunteer fire department exceed ten percent per annum.

§~~85-11-16~~ 85-11-15. Reserved.

§~~85-11-17~~ 85-11-16. Criminal Penalties.

In addition to all other remedies available to the ~~commission~~ Insurance Commissioner under this rule or as contained in the Act, the ~~commission~~ Insurance Commissioner may elect to request prosecution of any person, firm, partnership, association, corporation or other entity who violates any part of the Act in accordance with W. Va. Code §~~23-1-16~~ 61-3-24e. Notice should also be taken of the provisions of subsections ~~3.4.f., 5.2~~ 4.2. and ~~12.3.b.~~ subdivision b., subsection 11.3. of this rule for other specific provisions concerning criminal penalties.

§~~85-11-18~~ 85-11-17. Freedom of Information Act.

Pursuant to the Freedom of Information Act, W. Va. Code §29B-1-1, et seq., as part of any hearing or proceeding held under this rule, all of the evidence and records submitted during a hearing, or as part of a stipulation, except insofar as those records contain confidential medical information or other information confidential to a ~~Fund~~ workers' compensation claimant ~~or~~, employer ~~subscriber~~, or other person or entity~~,~~ shall be subject to public inspection and copying; except that, if under the rules of evidence certain testimony or documentary evidence may be deemed privileged or confidential and placed under seal, then upon such a ruling by the hearing officer, such testimony or documentary evidence shall not be disclosed. If the privileged or confidential information cannot be excised from a record, then the record as a whole will be deemed confidential and sealed; however, the ~~commission~~ Insurance Commissioner shall release in its place a statement explaining in detail the basis for the withholding of the record.

~~§85-11-19. Employers in Default With the Old Fund Upon Termination of the Commission.~~

~~19.1. Upon termination of the commission, private carriers shall not write workers' compensation insurance for any employers that are in default status with regard to obligations to old fund.~~

~~19.2. Default status employers will be placed on the Commission Default List with the Insurance Commissioner, and the Insurance Commissioner will have all of the available remedies against such employers as the commission had in regard to employers who were in default with the workers' compensation commission prior to the termination of the commission, as set forth in W. Va. Code §23-2-1 et seq.~~

~~19.3. Default status employers will be deemed to not be carrying mandatory workers' compensation coverage as described in W. Va. Code §§23-2-1 and 23-2C-15. Therefore, in accordance with the provisions of W. Va. Code §23-2C-19(f), the insurance commissioner may impose an administrative fine of up to $10,000 and take other actions, including referring the default status employer to other state agencies for adverse action pursuant to W. Va. Code §23-2C-19(g).~~

~~19.4. Default status employers will remain on the Commission Default List with the Insurance Commissioner until all of the employer's obligations to the old fund are paid or the employer enters into a reinstatement agreement in regard to such obligations.~~

§85-11-20. ~~Employers That Default to the Old Fund, or That Are Discovered to be in Default to the Old Fund After the Termination of the Commission.~~

~~20.1. Upon termination of the Commission, employers that default on a reinstatement agreement entered into with the Workers' Compensation Commission or the Insurance Commissioner in regard to Old Fund obligations, or are otherwise discovered to be in default to the Old Fund, will be deemed to be in default status with the Old Fund, retroactive to the date of the original default.~~

~~20.2. An employer that defaults on a reinstatement agreement will immediately be placed on the Commission's Default List. The Insurance Commissioner will have all of the available remedies against the employer as the Commission had in regard to employers who were in default with the workers' compensation fund prior to the termination of the Commission, as set forth in W. Va. Code §23-2-1 et seq.~~

~~20.3. The provisions of this section include employers that were required, but failed to, subscribe for workers' compensation coverage during a period prior to the termination of the Commission, but were not deemed to be in default or in non-compliance with the law because the Commission had no knowledge of the illegal status of such employers. Employers in this category are deemed to be in default status with the Old Fund, retroactive to the date on which they should have been subscribing to the Commission for workers' compensation coverage, and the money that should have been paid to the Commission will become a debt owed to the Old Fund.~~

~~20.4. The Insurance Commission shall immediately notify the private carriers of all such employers that have been placed on the Commission Default List, and, upon such notification, the private carriers shall immediately issue a notice of non-renewal to the default employer. The notice of non-renewal shall provide that the employer's policy shall not be renewed at the end of its current term, unless the private carrier receives notification from the Insurance Commissioner that the employer has been removed from the Commission Default List.~~

~~20.5. Default status employers will be deemed to not be carrying mandatory workers' compensation coverage as described in W. Va. Code §§23-2-1 and 23-2C-15. Therefore, in accordance with the provisions of W. Va. Code §23-2C-19(f), the insurance commissioner may impose an administrative fine of up to $10,000 and take other actions, including referring the default status employer to other state agencies for adverse action pursuant to W. Va. Code §23-2C-19(g).~~

~~20.6. Default status employers will remain on the Commission Default List with the Insurance Commissioner until all of the employer's obligations to the old fund are paid or the employer enters into a reinstatement agreement in regard to such obligations.~~

~~§85-11-21. Employers That Default to Private Carriers.~~

~~21.1. After termination of the Commission, private carriers shall notify the Insurance Commissioner, within one (1) business day, of employers that have their coverage cancelled or suspended as a result of failure to pay premiums. These Policy Default employers will then immediately be placed on the Private Market Default List with the Insurance Commissioner.~~

~~21.2. The Insurance Commissioner will have all of the available remedies against such employers (policy defaulting and others not carrying mandatory workers' compensation coverage) as the Commission had in regard to employers that were in default with the workers' compensation fund prior to the termination of the commission, as set forth in W. Va. Code §23-2-1 et seq.: Provided, That the Insurance Commissioner will have no duty to collect from such employers the premiums owed to private carriers.~~

~~21.3. Policy default status employers will be deemed to not be carrying mandatory workers' compensation coverage as described in W. Va. Code §§23-2-1 and 23-2C-15. Therefore, in accordance with the provisions of W. Va. Code §23-2C-19(f), the insurance commissioner may impose an administrative fine of up to $10,000 and take other actions, including referring the default status employer to other state agencies for adverse action pursuant to W. Va. Code §23-2C-19(g).~~

~~21.4. Employers shall remain on the Private Market Default List with the Insurance Commissioner until they regain good standing with the private carrier to which they defaulted on premiums, and obtain mandatory workers' compensation coverage as described in W. Va. Code §§23-2-1 and 23-2C-15.~~

~~§85-11-22. Employers Owing Money to the Uninsured Employers Fund.~~

~~22.1. All employers that incur liability under the uninsured employers' fund but, for whatever reason, were not on the Commission Default List or Private Market Default List prior to incurring such liability, will immediately be placed on the Commission Default List by the Insurance Commissioner.~~

~~22.2. Employers with obligations to the uninsured employers' fund will remain on the Commission Default List until they pay off all their obligations to the uninsured employers' fund or enter into a reinstatement agreement in regard to their obligations.~~

~~22.3. The Insurance Commissioner will have all of the available remedies against such employers as the Commission had in regard to employers who were in default with the workers' compensation fund prior to the termination of the commission, as set forth in W. Va. Code §23-2-1 et seq.~~

~~22.4. Employers that default on a reinstatement agreement entered into with the Insurance Commissioner in regard to obligations to the uninsured employers' fund will immediately be placed on the Commission Default List with the Insurance Commissioner, retroactive to the original date of liability to the uninsured employers' fund.~~

~~§85-11-23. Private Carriers Prohibited From Offering Insurance to Employers on the Commission or Private Market Default Lists.~~

~~23.1. The Insurance Commission shall notify the private carriers of all such employers that have been placed on the Commission or Private Market Default Lists.~~

~~23.2. Upon such notification, the private carriers shall immediately issue a notice of non-renewal to any default employer to which the private carrier is providing coverage. The notice of non-renewal shall provide that the employer's policy shall not be renewed at the end of its current term, unless the private carrier receives notification from the Insurance Commissioner that the employer has been removed from the Commission or Private Market Default List.~~

~~23.3. A private carrier shall not offer, reinstate or renew workers' compensation insurance coverage to any employers on the Commission or Policy Default List.~~

~~23.4. Any private carrier offering, reinstating or renewing workers' compensation insurance coverage to any employers on the Commission or Private Market Default List is subject to administrative action by the Insurance Commissioner, including an administrative fine of up to $10,000.~~

~~§85-11-24~~ 85-11-18. Placement on Workers' Compensation Default List; Due Process and Hearing.

18.1. As soon as the Insurance Commissioner is made aware that an employer is in default, the Commissioner will cause the employer to be placed on the Workers' Compensation Default List, subject to the due process and hearing provisions below.

~~24.1~~ 18.2. Prior to being placed on the ~~Commission or Private Market~~ Workers' Compensation Default List, all employers, except those who were in default with the ~~old fund~~ Old Fund upon termination of the former Workers' Compensation Commission, shall be sent a notice by the Insurance Commissioner informing the employer that they are being placed on the applicable ~~default list~~ Default List. The notice shall state the reason for the employer being placed on the list, and provide the employer ten (10) days to file with the Insurance Commissioner a petition for an expedited administrative hearing before the Insurance Commissioner if the employer believes that the action by the Insurance Commissioner is factually or legally erroneous.

~~24.2~~ 18.3. A petition for expedited administrative hearing, as described in this section, shall clearly identify why the employer believes the Insurance Commissioner's action of placing it on the ~~Commission or Private Market~~ Default List was erroneous. Upon receiving the petition, the Insurance Commissioner shall, within five (5) business days schedule a hearing which shall be conducted in accordance with the provisions of article five [§29A-5-1 et seq.], chapter twenty-nine-a of this code and W. Va. Code St. R. §85-7-4 through 10. An appeal from a final decision of the Insurance Commissioner shall be taken in accord with the provisions of articles five and six [§29A-6-1 et seq.] of said chapter: *Provided*, That all appeals shall be taken to the ~~circuit court~~ Circuit Court of Kanawha County.

~~24.3~~ 18.4. If the final decision of the Insurance Commissioner following the hearing is to keep the employer on the ~~Commission or Private Market~~ Default List, the employer shall remain on the default list unless a higher court reverses the decision of the Insurance Commissioner.

~~24.4~~. 18.5. The administrative appeal process described in this section does not interfere with or toll a private carrier's right to terminate the employer's workers' compensation coverage. The private carrier's right to terminate an employer's workers' compensation coverage is based upon the provisions of the insurance policy and the applicable law in chapter twenty-three of the West Virginia Code and the rules promulgated there under.

§~~85-11-25~~ 85-11-19. Removal From the Default List.

~~25.1~~ 19.1. If an employer has met all of its legal, fiscal or other obligations, including providing proof of current mandatory West Virginia workers' compensation coverage, thereby removing the employer from being in default, the Insurance Commissioner shall remove the employer from the ~~applicable default list~~ Default List.~~: Provided, That the Insurance Commissioner shall not have discretion to remove an employer from the Commission or Private Market Default List if the employer remains in default status with the old fund, a private carrier or the uninsured employers' fund: Provided further, That an employer shall not be considered to~~

~~be in default status with the old fund or uninsured employers' fund if the employer is under a reinstatement agreement with the Insurance Commissioner in regard to obligations to either or both funds, and shall not be considered to be in default status with a private carrier if the private carrier is willing to offer insurance to the employer or state that the employer is in good standing with the private carrier.~~

~~25.2~~ 19.2. Employers on the ~~Commission or Private Market~~ Default List shall be permitted at any time to make a written request to the Insurance Commissioner for removal from the ~~applicable default list~~ Default List: Provided, That such request is accompanied by evidence not previously submitted to the Insurance Commissioner which indicates that the employer making the request has met its legal, fiscal or other obligations and therefore is entitled to be removed from the ~~applicable default list~~ Default List. The Insurance Commissioner shall render a written decision on employers' request for removal within ten (10) days of the receipt of the same.

~~25.3~~ 19.3. Employers may file a petition with the Insurance Commissioner requesting an administrative hearing before the Insurance Commissioner if the they disagree with the decision of the Insurance Commissioner in regard to a request for removal pursuant to subsection 19.2. of this section, and the Insurance Commissioner shall schedule a hearing within thirty (30) days, to otherwise be conducted as described in the above section ~~(§85-11-24, "Hearing")~~ 18. of this rule: Provided, That the Insurance Commissioner reserves the right to summarily deny an employer's petition for a hearing if the Insurance Commissioner determines that the employer presented no new evidence to the Insurance Commissioner in support of its written request for removal, is presenting evidence of no probative value or is otherwise making a frivolous request which lacks merit.

§85-11-20. Uninsured Fines.

20.1. Any employer who is in policy default shall be fined by the Insurance Commissioner an amount equal to twice the amount of premium they would have owed to their private carrier for coverage up to the date on which the employer entered policy default. The fine shall be increased on a monthly basis using the same methodology until the employer obtains West Virginia workers' compensation policy.

20.2. Any employer discovered to be operating without mandatory West Virginia workers' compensation coverage, but who has never obtained a West Virginia workers' compensation policy, shall be fined an amount equal to twice the amount of premium they would have paid for coverage during the current half calendar year term had they obtained a West Virginia workers' compensation policy. The fine shall be increased on a monthly basis using the same methodology until the employer obtains West Virginia workers' compensation policy. The estimate of premium in this section shall be based on information available to the Insurance Commissioner through a reasonable investigation of the default employers' employment operations. If the default employer refuses to fully cooperate with the investigation, the maximum fine as set forth in subsection 20.3. of this rule shall be imposed.

20.3. Pursuant to W. Va. Code 23-2C-8(d)(3), no fine imposed in this section for any single instance of default shall exceed ten thousand dollars ($10,000). However, if an employer is removed from default status and re-enters default, a new fine as described in this section may be imposed.

§~~85-11-26~~ 85-11-21. Employer Violator System.

~~26.1~~ 21.1. Every employer subject to placement on the ~~Commission or Private Market~~ Default List shall also be placed in the Employer Violator System {W. Va. Code §23-1-1b(g)(25)}, and shall remain in the Employer Violator System until such time as the employer is removed from the ~~applicable default list pursuant to this rule~~ Default List.

~~26.2~~ 21.2. All individuals who own, are officers or partners of, control, have a 10% ownership interest in, or are otherwise deemed to have a substantive or active ownership interest in an employer company which is on the ~~Commission or Private Market~~ Default List shall be placed in the Employer Violator System, and shall remain in the Employer Violator System until such time as the employer is removed from the ~~applicable default list pursuant to this rule~~ Default List.

~~§85-11-27. Termination of the Commission.~~

~~Upon termination of the commission, this rule shall be administered by the insurance commissioner for the purposes of collecting Old fund assets as defined in W. Va. Code §23-2C-2(l), regulating self-insured employers, regulating employers in regard to maintaining mandatory workers' compensation coverage under chapter twenty three, article two-c, and collecting obligations owed to the uninsured employer fund, and the Insurance commissioner shall have the same rights, powers and duties which are conferred upon the commission in this rule. This rule shall have no force and effect over the collection of New Fund assets or other matters involving the collection of premiums by carriers from their insureds.~~

§~~85-11-28~~ 85-11-22. Severability.

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