

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #5

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2006 OCT 10 P 3 21

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

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

CITE AUTHORITY WV Code §§6-9A-3, 23-2C-5 & 29A-3-3

RULE TYPE: PROCEDURAL X INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE _____

CITE STATUTE (s) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW _____

AMENDMENT TO AN EXISTING RULE: YES X NO _____

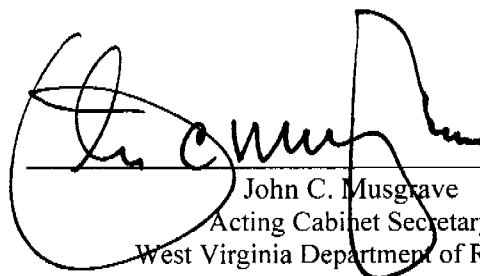
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 13

TITLE OF RULE BEING AMENDED: Procedural Rules for the Industrial Council

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: _____

TITLE OF RULE BEING ADOPTED: _____

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS November 9, 2006



John C. Musgrave
Acting Cabinet Secretary
West Virginia Department of Revenue

#4.80

PUBLIC HEARING

AUGUST 24, 2006

WEST VIRGINIA INSURANCE COMMISSION WORKERS' COMPENSATION INDUSTRIAL COUNCIL PROCEDURAL RULES FOR THE INDUSTRIAL COUNCIL TITLE 85, SERIES 13

Transcript of the Public Hearing held on Thursday, August 24, 2006, at 3:00 p.m., Charleston Civic Center, Rooms 207-209, 200 Civic Center Drive, Charleston, West Virginia related to proposed Procedural Rules for the Industrial Council (85CSR13) for the Workers' Compensation Industrial Council.

Industrial Council Members Present:

Charles Bayless, Chairman
Bill Dean, Vice-Chairman
Dan Marshall
Senator Brooks McCabe
Walter Pellish (via telephone)
Rick Slater

Chairman Bayless: We have had several readings and this is the final reading of Title 85, Series 13. This is the Procedural Rules for the Industrial Council and there was a minor change which we have considered. Mr. Sims. . .

Ryan Sims: Good afternoon Mr. Chairman and members of the Industrial Council. I am coming to you today with Rule 13. As you know this is for final filing. We are asking you to final file a small change in Rule 13 which clarifies that only "two" members of the Industrial Council have to appear live in order for a quorum to exist and give the Industrial Council the ability to pass rules and make other official decisions. I don't think there has been any controversy over this change. I have not received any public comments on it. I think everyone, as far as I know, the public, the Industrial Council and otherwise is in agreement that this is an appropriate change. Therefore we bring this change to you today and ask for permission to final file this version of this slight change in your procedural rule with the Secretary of State.

Chairman Bayless: Is there any member of the Commission that has any comments? Is there any member of the public that has any comments on the procedural rule? With that, I would move that we adopt a resolution permitting the staff to final file Title 85, Series 13, with the change that we have discussed.

Bill Dean: Second.

Chairman Bayless: Any discussion? All in favor signify by saying "aye." Opposed?

**Public Hearing on Procedural Rules for the Industrial Council
Workers' Compensation Industrial Council
August 24, 2006
Page 2**

[Mr. Pellish was briefly disconnected on the telephone. He called back and rejoined the meeting.]

Chairman Bayless: We just had a motion and you got right in the middle of the voting, so I think you can still cast your vote. This was the rule, if you recall, that we had considered two or three times. It is Series 13, which is the Procedural Rules for the Industrial Council, and the only change we voted on was that as long as "two members" were physically present in the room and the others were on the telephone then we would have a quorum. And just when you beeped we were all saying "aye." So, if you would like to get in your vote. . .

Mr. Pellish: Aye.

Chairman Bayless: Thank you. Motion passed. [Title 85, Series 13 passed.]

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

SERIES 13
PROCEDURAL RULES FOR THE INDUSTRIAL COUNCIL

Section

- 85-13-1. General.
- 85-13-2. Application and enforcement.
- 85-13-3. Definitions.
- 85-13-4. Meetings; Rules of Order; Selection of Vice-Chairman.
- 85-13-5. Agenda.
- 85-13-6. Opening the meeting.
- 85-13-7. Discussion.
- 85-13-8. Motions; voting.
- 85-13-9. Proceeding to be Open; Exceptions; Executive Session Permitted.
- 85-13-10. Citizen's right to address Council.
- 85-13-11. Subcommittees.
- 85-13-12. Minutes.
- 85-13-13. Records of the Council - Public.

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

FILED

2006 OCT 10 P 4: 01

SERIES 13
PROCEDURAL RULES FOR THE INDUSTRIAL COUNCIL

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§85-13-1. General.

1.1. Scope. -- The West Virginia Open Governmental Proceedings Law, W. Va. Code §6-9A-1, of 1931, as amended, requires in section three that governing bodies of state public bodies shall promulgate rules by which the time, the place, and the purpose of all regularly scheduled meetings and the time, place, and purpose of all emergency meetings are made available, in advance, to the public and the news media to the extent possible. Similarly, W. Va. Code §29A-3-3, requires that agencies adopt procedural rules. The purpose of this rule is to comply with these requirements.

1.2. Authority. -- W. Va. Code §§6-9A-3, 23-2C-5 and 29A-3-3.

1.3. Filing Date. -- October 10, 2006.

1.4. Effective Date. -- November 9, 2006.

§85-13-2. Application and Enforcement.

2.1. Application. This procedural rule applies to the Workers' Compensation Industrial Council created pursuant to W. Va. Code §23-2C-5. The enforcement of this rule is vested with the chairperson of the Council.

2.2. Except as specifically required by this rule, the Council shall not use any formal points of parliamentary order, personal privilege, parliamentary inquiry or other technical forms.

2.3. Any matter, procedure or order not covered by these rules shall be referred to the presiding officer who shall decide the matter in conformity with the purpose of these rules in a fair and expeditious manner. The decision of the presiding officer may be reversed by an affirmative vote of three (3) Members of the Council.

§85-13-3. Definitions.

3.1. "Advisory Member" means a non-voting member as more fully set forth in W. Va. Code §23-2C-5(b).

3.2. "Chairperson" means the member elected as provided for by W. Va. Code §23-2C-5(b)(2)(D).

3.3. "Commissioner" means the West Virginia Insurance Commissioner.

3.4. "The Council" means the Workers' Compensation Industrial Council created under W. Va. Code §23-2C-5.

3.5. "Decision" means any determination, action, vote or final disposition of a motion, proposal, resolution, order or measure on which a vote of the Council is required at any meeting at which a quorum is present.

3.6. "Meeting" means the convening of the Council for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter. For the purposes of W. Va. Code §23-2C-5(b)(3)(A), subcommittee meetings shall meet the definition of "Meeting" for those Members required to attend the subcommittee meeting: *Provided*, That when subcommittee meetings are held on the same day as a full Council meeting, voting members may only receive compensation for the attendance of one meeting.

3.7. "Member" means a voting member as more fully set forth in W. Va. Code §23-2C-5(b).

3.8. "Quorum" means the presence of three (3) voting members of the Council. W. Va. Code §23-2C-5(b)(2)(D).

§85-13-4. Meetings; Rules of Order; Selection of Vice-Chairperson.

4.1. Meetings of the Council may be called by the chairperson, and the chairperson shall call a meeting upon the request of at least three (3) of the Members of the Council: *Provided*, That the Council must meet no less frequently than once every three (3) months. All meetings shall be held at locations and in facilities large enough to comfortably accommodate Members and Advisory Members and a reasonable number of public observers and participants.

4.2. The chairperson shall notify Members and Advisory Members in writing at least seven (7) days in advance of a meeting. The notice shall set forth the time and place of such meeting and the matters to be considered, except that such notice is not required if the time, the place, and the matters for consideration have been fixed in a meeting where all the members and advisory members are present.

4.3. The chairperson shall notify the public and the news media by filing with the office of the Secretary of State a public notice of the meeting. The notice shall be filed in a manner so as to allow each notice to appear in the state register at least five days prior to the date of the meeting. The public notice shall contain the time, the place, and purpose of the meeting. A copy of the notice shall be delivered to the press room located in the Capitol Building.

4.4. The provisions of this section shall not apply in the event of an emergency requiring immediate official action by the Council. In the event of an emergency requiring immediate official action, the Council may file an emergency meeting notice at any time prior to the meeting. The emergency meeting notice shall state the time, place, and purpose of the meeting

and the facts and circumstances of the emergency. A copy of the notice shall be delivered to the press room located in the Capitol Building.

4.5. Meetings may be continued to a set time and place by an affirmative vote of three (3) Members without further notice to the Members and Advisory Members and without further publication unless such continued meeting is scheduled for more than fourteen (14) days from the date of the voting.

4.6. All Members and Advisory Members present at a meeting shall have the same right to participate in discussion of matters before the Council.

4.7. The Council shall consider any matter brought before it by the chairperson or any Member or Advisory Member and may consider, at its discretion, any matter referred to it by a person not a Member or Advisory Member of the Council.

4.8. Meetings of the Council shall be conducted in accordance with the most recent edition of Robert's Rules of Order.

4.9. The Members of the Council shall select a member to serve as chairperson and another member to serve as vice-chairperson. The vice-chairperson shall preside in the absence of the chairperson. The terms of the chairperson and vice-chairperson shall be for one year, from July 1 to June 30, but the incumbent shall continue to serve until replaced. A vacancy may be filled by electing a new chairperson or vice-chairperson for the remainder of a term. A Member may be reelected as chairperson or vice-chairperson. The Members of the Council also shall select from one of their number a Member to serve as secretary. The term of the secretary shall be for one year, from July 1 to June 30, but the incumbent shall continue to serve until replaced. A vacancy may be filled by electing a new secretary for the remainder of a term. A Member may be reelected as secretary.

4.10. To allow more Members and Advisory Members of the Council to participate in public meetings and hearings the Council will allow Members and Advisory Members to participate using the telephone provided at least two (2) Members of the Council are physically present in the room where the public meeting is being held, and the sound system in the room and the electronic equipment is such that the Members and Advisory Members participating electronically can hear what is being said by all Members and Advisory Members participating in the meeting and any person from the public making a presentation or answering questions of the Council, and all of the Members and Advisory Members and the public physically present in the meeting or hearing room can reasonably hear what is being said by the Member(s) and Advisory Member(s) who is participating electronically.

4.11. A Member participating telephonically in a meeting may vote for or against any motion offered by a Member that is seconded by another Member. The moving Member and the seconding Member may be physically present or be participating telephonically or be any combination thereof.

4.12. In an effort to achieve desired efficiencies, the Chairperson will endeavor to set the

meetings of the full Council on the same day with any necessary subcommittee meetings.

§85-13-5. Agenda.

5.1. Prior to each regular meeting, the secretary of the committee shall publish an agenda that contains all items the Council anticipates acting upon at the meeting. The committee may adopt the agenda as presented, or may amend the agenda.

5.2. The secretary may utilize, for purposes of accomplishing his or her duties under this rule, clerical staff designated by the Commissioner or such clerical staff as the Council or Commissioner may employ for this purpose. This utilization may include, but is not limited to, the designation of staff to receive proposed Agenda items, preparation of the Agenda, and all necessary public filing duties.

5.3. Agenda deadline. Any Member or Advisory Member may have an item included on the agenda by requesting the secretary to include the item by 5:00 p.m. on the Tuesday preceding the Wednesday by which the agenda must be filed with the Secretary of State's Office for publication in the State Register in order to comply with the open meetings laws of this State.

5.4. Notice of meeting.

a. If a meeting is to be held on a Sunday, Monday, Tuesday or Wednesday, notice of the meeting must be filed with the Secretary of State's Office for publication in the State Register by noon on the second Wednesday immediately preceding the day of the meeting.

b. If a meeting is to be held on a Thursday, Friday or Saturday of the calendar week immediately following publication of the State Register, notice of the meeting must be filed with the Secretary of State's office by noon on the Wednesday preceding the Friday publication of the State Register.

5.5. Items requested or filed after 5:00 p.m. on the Tuesday preceding the deadline for filing the Agenda with the Secretary of State's Office for publication in the State Register shall not be included on the Agenda unless a Member or Advisory Member deems the item of sufficient urgency to warrant immediate Council action. These items shall be designated as "Extra" items and will be considered at the end of the regular Agenda. The secretary shall record on the Extra item the name of the sponsoring Member or Advisory Member.

5.6. Withdrawal of items. Only the Member or Advisory Member requesting the placement of an item on the Agenda may withdraw the item prior to the filing of the Agenda with the Secretary of State's Office for publication in the State Register.

5.7. A Member or Advisory Member wishing the committee to continue, defer, or not act on an Agenda item has a right to make and have his or her motion to continue, defer, or not act on any Agenda item considered before any other act that the Council may consider on the Agenda item.

§85-13-6. Opening the Meeting.

6.1. Call to order. The chair or vice chair of the Council shall call the meeting to order at the appointed hour. In the absence of the chair or vice chair, the secretary shall call the meeting to order and a temporary presiding officer shall then be selected as set forth under subsection 6.2 of this section.

6.2. Presiding officer. The chair, or in the chair's absence or incapacity, the vice chair, shall be the presiding officer at the meeting of the Council. If both the chair and the vice chair are absent, the secretary shall call the meeting to order and the Members present shall select a presiding officer by an affirmative vote of three (3) Members. In the absence of such an affirmative vote, the secretary shall remain and continue to be the presiding officer of the meeting.

6.3. Roll call. Before proceeding with the business of the Council, the secretary shall call the roll of Members and Advisory Members present, and enter the name in the minutes of the meeting. The secretary shall determine the presence of a quorum as required by these rules.

6.4. Order of consideration of agenda items. Except as otherwise provided in these rules, each Agenda item shall be considered in the numerical order assigned by the secretary. Each Agenda item shall be separately announced by the presiding officer, or the secretary, for purposes of discussion and consideration. To announce an item it shall be sufficient to identify the item by the number assigned and summary provided by the secretary.

§85-13-7. Discussion.

7.1. The presiding officer shall control the discussion of the Council on each Agenda item to assure full participation in accordance with these rules.

a. A Member or Advisory Member shall speak only after being recognized by the presiding officer. A Member or Advisory Member recognized for a specific purpose shall limit his or her remarks to that purpose. A Member or Advisory Member, after being recognized, shall not be interrupted except by the presiding officer to enforce these rules.

b. Each Member and Advisory Member shall limit his or her remarks to a reasonable length.

c. The presiding officer as a Member of the Council may enter into any discussion. The presiding officer has the right to close debate and speak last on any item.

7.2. Closing debate. Discussion may be closed on any item by the presiding officer. Such closure may be reversed by a vote of three (3) Members of the Council.

§85-13-8. Motions; Voting.

8.1. Motion to act on matters. At any appropriate place on the Agenda, any Member of

the Council may make a motion for the Council to act upon any matter if the motion is germane to the matter then under consideration.

8.2. Motion required. All action requiring a vote shall be moved by a Member and seconded by a different Member of the Council.

8.3. Recording names of moving members. The secretary shall record the name of the Council Member moving and seconding each motion.

8.4. Call for vote. At the conclusion of debate, the presiding officer shall call for a vote: *Provided*, That an affirmative vote of three (3) Members may require a vote at any time.

8.5. Prevailing vote required; Vote by Proxy Prohibited. The vote of three (3) Members of the Council shall be necessary to take any action.

8.6. Motion to reconsider. A motion to reconsider must be made by a Member who was on the prevailing side in the original action.

§85-13-9. Proceeding to be Open; Exceptions; Executive Session Permitted.

9.1. All meetings of the Council shall be open to the public; Except that, an executive session closed to the public may be held during a regular or emergency meeting, after the presiding officer has identified the authorization under W. Va. Code §6-9A-4 for the holding of such executive session and has presented it to the Council and to the general public. No decision by the Council may be made in the executive session.

9.2. An executive session may be held only upon an affirmative vote of three (3) Members for the following (as stated in W. Va. Code §6-9A-4) reasons:

a. Matters of war, threatened attack from a foreign power, civil insurrection or riot; or

b. The appointment, employment, retirement, promotion, demotion, disciplining, resignation, discharge, dismissal or compensation of any public officer or employee, or other personnel matters, or for the purpose of conducting a hearing on a complaint against a public officer or employee, unless such public officer or employee requests an open meeting; or

c. The issuance, effecting, denial, suspension or revocation of a license, certificate or resignation under the laws of this State or any political subdivision, unless the person seeking such license, certificate or registration or whose license, certificate or registration was denied, suspended or revoked requests an open meeting; or

d. The physical or mental health of any person, unless such person requests an open meeting; or

e. Matters which, if discussed in public, would be likely to affect adversely the

reputation of any person; or

f. The development of security personnel or devices; or

g. Matters involving or affecting the purchase, sale or lease of property, advance construction planning, the investment of public funds or other matters involving competition which, if made public, might adversely affect the financial or other interest of the state or any political subdivision.

9.3. The Council may limit the number of members of the public present for a meeting if there is not room enough for all members of the public who wish to attend. This limitation may take the form of a limit on the number of members of the public present or the amount of time individual members of the public may remain, or both.

9.4. The chairperson is authorized to order the removal from a meeting of any member of the public who is disrupting the meeting to the extent that orderly conduct of the meeting is compromised.

9.5. Upon an affirmative vote of three (3) Members, members of the public may be permitted to address the Council for a reasonable length of time or for such time as is fixed by the Council. Members of the public desiring to address the Council shall indicate their desire to do so by marking the register of attendance accordingly: *Provided*, That such person shall not be required to register to address the Council more than fifteen minutes prior to the time the scheduled meeting is to commence.

9.6. All members of the public present for a meeting of the Council shall indicate their presence by signing their name to a register of attendance which may also require the giving of each such person's address and who such person is representing. Persons desiring to address the Council will also be required to provide the information set forth in subsection 10.2 of this rule.

§85-13-10. Citizen's Right to Address Council.

10.1. Persons other than Members and Advisory Members shall be permitted to address the Council only upon specific Agenda items, which may include an Agenda item called "General Public Comment Period."

10.2. Persons desiring to address the Council shall register to speak prior to the start of the Council meeting. The form for registration shall require the following information: (1) name of the person, (2) mailing address, (3) telephone number where the person may be reached during the day, (4) the person's group affiliation, if any, and (5) the Agenda item to which the person desires to speak. If the person does not desire to speak to a particular Agenda item, the person shall identify the subject matter about which he or she wishes to speak.

10.3. A person desiring to address the Council shall, after being recognized, step to the podium, state his or her name, address, and group affiliation (if any), and speak clearly into the microphone.

10.4. Time limits. Citizens shall be limited to five minutes speaking time per item, unless additional time is granted by the presiding officer. Total citizen in-put on any subject under Council consideration can be limited to a fixed period by the presiding officer. An affirmative vote of three (3) Members may extend the time limitations of this rule.

10.5. The time limits set forth in subsection 10.4 of this section do not apply to persons whom the Council has asked to come and address the Council. They shall have such time as the presiding officer or the Council allows for the presentation, including any question and answer period.

10.6. Remarks of citizens to be germane.

a. Citizen comments must be directed to a specific item on the Agenda, unless the comments are offered during a general public comment period when the public may comment on any aspect of the work of the Council.

b. The presiding officer shall rule on the germaneness of citizen remarks. The ruling may be initiated by the presiding officer or pursuant to a point of order raised by a Member or Advisory Member of the Council.

c. Citizens making personal, impertinent, or slanderous remarks shall be barred by the presiding officer from further comment before the Council during that meeting.

10.7. Matters not on Agenda. An affirmative vote of three (3) Members may allow citizens who wish to raise a matter not on the Agenda to speak.

10.8. With regard to exempt legislative rules, a member of the public may request the Council hold a public hearing on the Rule no later than fifteen (15) days from the date the Rule is filed for public comment with the Secretary of State's office. Requests may be submitted to the Council or Insurance Commission contact person identified on the "Notice of a Comment Period on a Proposed Rule." Whether a public hearing is held is within the sole discretion of the Chairperson.

§85-13-11. Subcommittees.

11.1. The Council shall establish such subcommittees as it may from time to time determine are needed. Each subcommittee shall consist of at least two (2) Members. The chairperson shall designate each subcommittee's membership and chairperson. In addition, the Council chairperson may designate the subject matter to be considered by each such subcommittee. Only those Members assigned to the Subcommittee shall be required to attend a meeting of the subcommittee.

11.2. The Chairperson, in his or her discretion, may appoint Advisory Members as non-voting members of subcommittees.

§85-13-12. Minutes.

12.1. The Council shall provide for the preparation of written minutes of all its meetings. All such minutes shall be available to the public within a reasonable time after their approval by the Council and shall include the following information:

- a. The date, time and place of the meeting;
- b. The name of each Member and Advisory Member present or absent;
- c. All motions, proposals, resolutions, orders, ordinances and measures proposed, the name of the person proposing the same and their disposition; and
- d. The results of all votes and, upon request of a Member, the vote of each Member, by name.

12.2. Minutes of executive sessions may be limited to material the disclosure of which is not inconsistent with the provisions of W. Va. Code §6-9A-4 listed above.

§85-13-13. Records of the Council - Public.

Records of the Council are public records consistent with W. Va. Code §29B-1-3 and may be inspected and copied at a charge reasonably calculated by the Council or Commissioner to recover its reasonable costs associated with the production of documents.



STATE OF WEST VIRGINIA

Offices of the Insurance Commissioner

JOE MANCHIN III
Governor

JANE L. CLINE
Insurance Commissioner

October 10, 2006

HAND DELIVERED

Ms. Judy Cooper, Director
Administrative Law Division
Office of Secretary of State
State Capitol
Charleston, West Virginia 25305

**RE: TITLE 85, SERIES 13 - Procedural Rules for the Industrial
Council**

Dear Judy:

Please find attached Notice of Agency Adoption of a Procedural Rule, transcript of the public hearing held on August 24, 2006, and the agency adopted version of the Title 85, Series 13 procedural rule. No comments were received during the public hearing held on August 24 or during the comment period which ended on July 20, 2006.

Please contact our office if you have any questions regarding this rule or if additional information is required.

Sincerely,

Mary Jane Pickens
General Counsel

MJP/jz
Enclosures

