

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

Form #2

Do Not Mark In This Box

FILED

2003 OCT -6 P 4: 16

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Workers' Compensation Commission TITLE NUMBER: 85

RULE TYPE: Procedural CITE AUTHORITY: Code 6-9A-3, 23-1-1a(j)(3), 29A-3-3

AMENDMENT TO AN EXISTING RULE: YES ☐ NO ☒ *

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: *Repeal and replacement of 85CSR14 entitled, "Procedural Rules
for the Compensation Programs Performance Council"

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 14

TITLE OF RULE BEING PROPOSED: Procedural Rules for the Workers' Compensation Board of
Managers

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH
ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS
COMMENT PERIOD WILL END ON November 6, 2003 AT 5:00 p.m. ONLY WRITTEN
COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

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

THE ISSUES TO BE HEARD SHALL BE
LIMITED TO THIS PROPOSED RULE.



Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL



Gregory A. Burton, Executive Director

4700 MacCorkle Avenue, S. E.
Charleston, West Virginia 25304
Phone: (304) 926-1710

October 6, 2003

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

Re: Proposed Rule
Title 85, Series 14
"Procedural Rules for the Workers'
Compensation Board of Managers"

Dear Secretary Manchin:

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

Pursuant to Senate Bill 2013, Second Extraordinary Session, 2003, the Workers' Compensation Commission is established as a government entity separate from the Bureau of Employment Programs. Pursuant to that same bill, the Board of Managers of the Workers' Compensation Commission have approved the enclosed 85 C.S.R. 14, entitled, "Procedural Rules for the Workers' Compensation Board of Managers," for filing as a proposed rule of the Workers' Compensation Commission.

Thank you very much for your assistance in this matter.

Very truly yours,

Gregory A. Burton
Executive Director

Enclosure

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 85, Series 14: Procedural Rules for the Workers' Compensation Board of Managers.

Type of Rule: ☐ Legislative Exempt ☐ Interpretive ☒ Procedural

Agency Workers' Compensation Commission

Address 4700 MacCorkle Avenue, S.E.

Charleston, WV 25304

1. Effect of Proposed Rule

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	Undetermined	Undetermined	Undetermined	Undetermined	Undetermined
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	Undetermined	Undetermined	Undetermined	Undetermined	Undetermined
REPAIRS & ALTERNATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	0	0	0

2. Explanation of above estimates:

There should be no significant change in the estimated costs associated with conducting the Workers' Compensation Board of Managers meetings than what were previously incurred in conducting the meetings of its predecessor, the Performance Council of the Bureau of Employment Programs. The transferring of all of the fiduciary responsibilities of the Performance Council to the Board of Managers, effective October 1, 2003, will result in an increase in the number of voting members from eight to eleven. Each appointed voting member of the Board shall receive not more than \$350 per day for each day during which the voting member is required to and does attend a meeting of the Board. Any other changes in costs associated with conducting the meetings of the Board, such as travel to and from the meetings, the cost of the facilities used to conduct the meetings and the number of meetings held, cannot be reasonably determined.

3. Objectives of this rule:

The purpose of this rule is to establish the rules and procedures for conducting the meetings of the Workers' Compensation Board of Managers.

Rule Title: Title 85, Series 14: Procedural Rules for the Workers' Compensation Board of Managers.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

It is expected that there will be no economic impact on State Government. This rule results in the Workers' Compensation Board of Managers assuming the duties and responsibilities of its defunct predecessor, the Performance Council of the Bureau of Employment Programs, for the new standalone State agency, the Workers' Compensation Commission, created October 1, 2003.

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

It is expected that there will be no impact from this rule.

C. Economic Impact on Citizens/Public at Large.

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

Date: October 6, 2003

Signature of Agency Head or Authorized Representative

A handwritten signature in black ink, appearing to read 'G. A. Burton', is written over the signature line.

Gregory A. Burton
Executive Director, Workers' Compensation Commission

**SUMMARY OF PROPOSED RULE
STATEMENT OF CIRCUMSTANCES
TITLE 85, SERIES 14**

Procedural Rules for the Workers' Compensation Board of Managers

This rule repeals and replaces the provisions of 85 C.S.R. 14, entitled "Procedural Rules for the Compensation Programs Performance Council."

Pursuant to Senate Bill 2013, Second Extraordinary Session, 2003, the Workers' Compensation Commission was created, effective October 1, 2003, as a stand-alone agency of State government. Under that Bill, the Commission is required to revise each of its rules prior to July 1, 2006. W. Va. Code § 23-1-1d.

Pursuant to Senate Bill 2013 and also effective October 1, 2003, the Compensation Programs Performance Council was abolished and replaced by the Workers' Compensation Commission's Board of Managers.

The proposed rule substantially revises the procedures of the Board of Managers. The rule relates to:

- (1) How meetings shall be set;
- (2) The selection of officers;
- (3) How meetings are conducted;
- (4) The establishment of agendas;
- (5) How meetings are noticed to the public;
- (6) How executive sessions are conducted;
- (7) The establishment of sub-committees;
- (8) Public comment at the meetings; and
- (9) Minutes for the meetings.

TITLE 85
PROCEDURAL RULE
WORKERS' COMPENSATION COMMISSION

FILED

SERIES 14
PROCEDURAL RULES FOR THE WORKERS' COMPENSATION
BOARD OF MANAGERS

2003 OCT -6 P 4: 16

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§ 85-14-1. 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, 23-1-1a(j)(3) and 29A-3-3.

1.3. Filing date. --

1.4. Effective date. --

1.5. Repeal and replacement. -- This rule repeals and replaces 85 C.S.R. 14, entitled, "Procedural Rules for the Compensation Programs Performance Council." Under the provisions of Senate Bill 2013, as passed in the Second Extraordinary Session of the two thousand-three Legislature, the Compensation Programs Performance Council of the Bureau of Employment Programs was replaced, effective October 1, 2003, by the Board of Managers of the Workers' Compensation Commission.

§ 85-14-2. Application and enforcement.

2.1. Application. This procedural rule applies to the Workers' Compensation Board of Managers created pursuant to W. Va. Code §23-1-1a et seq. The enforcement of this rule is vested with the chairperson of the Board.

2.2. Except as specifically required by this rule, the Board 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 six (6) Members of the Board.

§ 85-14-3. Definitions.

3.1. "Chairperson" means the member elected as provided for by W. Va. Code §23-1-1a(f).

3.2. "The Board" means the Workers' Compensation Board of Managers created under W. Va. Code §23-1-1a.

3.3. "Decision" means any determination, action, vote or final disposition of a motion, proposal,

resolution, order or measure on which a vote of the Board is required at any meeting at which a quorum is present.

3.4. "Meeting" means the convening of the Board 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 West Virginia Code Section 23-1-1a(h)(1), subcommittee meetings shall meet the definition of "Meeting" for those Members required to attend the subcommittee meeting.

3.5. "Quorum" means the presence of six (6) voting members of the Board. W.Va. Code §23-1-1a(f).

3.6. "Member" means a voting member as more fully set forth in W.Va. Code §23-1-1a(b)(1), et seq.

3.7. "Advisory Member" means a non-voting member as more fully set forth in W.Va. Code §23-1-1a(b)(2), et seq.

§ 85-14-4. Meetings; Rules of Order; Selection of Vice-Chairperson.

4.1. Meetings of the Board 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 Board: Provided that, the Board 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 Board. In the event of an emergency requiring immediate official action, the Board 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 six (6) 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 Board.

4.7. The Board 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 Board.

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

Rules of Order.

4.9. The Members of the Board shall select from one of their number a member to serve as vice-chairperson who shall preside in the absence of the chairperson. The term of the vice-chairperson shall be for one calendar year; from October 1 to September 30; but the incumbent shall continue to serve until replaced. A vacancy may be filled by electing a new vice-chairperson for the remainder of a term. A Member may be reelected as vice-chairperson. The Members of the Board also shall select from one of their number a Member to serve as secretary. The term of the secretary shall be for one calendar year; from October 1 to September 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 Board to participate in public meetings and hearings the Board will allow Members and Advisory Members to participate using the telephone provided at least four Members of the Board 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 Board, 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 Board in the afternoon with any necessary subcommittee meetings to take place in the morning of the same day.

§ 85-14-5. Agenda.

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

5.2. 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 in the State Register in order to comply with the open meetings laws of this State.

5.3. Notice of meeting.

a. If a meeting is to be held on a Sunday, Monday, Tuesday or Wednesday, notice of the meeting must be published in the State Register by noon on the second Wednesday immediately preceding the day of 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 by noon on the Wednesday preceding the Friday publication of the State Register.

5.4. Items requested or filed after 5:00 p.m. on the Tuesday preceding the deadline for filing the Agenda in the State Register shall not be included on the Agenda unless a Member or Advisory Member

85 C.S.R. 14

deems the item of sufficient urgency to warrant immediate Board 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.

5.5. 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 in the State Register.

5.6. 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 a his or her motion to continue, defer, or not act on any Agenda item considered before any other act that the Board may consider on the Agenda item.

§ 85-14-6. Opening the meeting.

6.1. Call to order. The chair or vice chair of the Board 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 under subsection 6.2.

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 Board. 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 six (6) 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 Board, the secretary shall call the roll call 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.

§ 85-14-7. Discussion.

7.1. The presiding officer shall control the discussion of the Board 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 Board 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 six (6) Members of the Board.

§ 85-14-8. Motions; voting.

8.1. Motion to act on matters. At any appropriate place on the Agenda, any Member of the Board may make a motion for the Board 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 seconded by a different Member of the Board.

8.3. Recording names of moving members. The secretary shall record the name of the Board 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 six (6) Members may require a vote at any time.

8.5. Prevailing vote required; Vote by Proxy Prohibited. The vote of six (6) Members of the Board 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.

§ 85-14-9. Proceeding to be Open; Exceptions; Executive Session Permitted.

9.1. All meetings of the Board 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 Board and to the general public, but no decision shall be made in such executive session.

9.2. An executive session may be held only upon an affirmative vote of six (6) 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 Board 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 six (6) Members, members of the public may be permitted to address the Board for a reasonable length of time or for such time as is fixed by the Board. Members of the public desiring to address the Board 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 Board 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 Board 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. The register of attendance shall also provide a place for members of the public who wish to address the Board to so indicate.

§ 85-14-10. Citizen's right to address Board.

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

10.2. Persons desiring to address the Board shall register to speak prior to the start of the Board 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 Board 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 Board consideration can be limited to a fixed period by the presiding officer. An affirmative vote of six (6) Members may extend the time limitations of this rule.

10.5. This rule shall not apply to persons whom the Board has asked to come and address the Board. They shall have such time as the presiding officer or the Board 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 Board.

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 Board.

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

10.7. Matters not on Agenda. An affirmative vote of six (6) Members may allow citizens who wish to raise a matter not on the Agenda to speak.

§ 85-14-11. Subcommittees.

11.1. There shall be the following subcommittees: 1) Audit; 2) Claims; 3) Finance and Administration and 4) Risk Management. Each subcommittee shall consist of three (3) Members. The chairperson shall designate each subcommittee's membership and chairperson. In addition, the Board chairperson may designate the subject matter to be considered by each such subcommittee and may create additional subcommittees. 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.

11.3 As set forth in paragraph 4.12, in an effort to achieve desired efficiencies, the Chairperson will endeavor to set the meetings of the full Board in the afternoon with any necessary subcommittee meetings to take place in the morning of the same day.

§ 85-14-12. Minutes.

12.1. The Board 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 the meeting 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.

§ 85-14-13. Records of the Board - Public.

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