WEST VIRGINIA
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2005 APR 13 P 2:59

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Workers' Compensation Commission TITLE NUMBER: 85

RULE TYPE: Exempt Legislative CITE AUTHORITY: §23-1-1a(j)(3), 23-2-4, 23-2-9(i), 23-2C-22

AMENDMENT TO AN EXISTING RULE: YES X NO ___

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 19

TITLE OF RULE BEING AMENDED: Self Insurance Risk Pools

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: ___

TITLE OF RULE BEING PROPOSED: ___

DATE OF PUBLIC HEARING: May 17, 2005 TIME: 1:00 p.m.

LOCATION OF PUBLIC HEARING: Rooms 207-209
Charleston Civic Center
Charleston, West Virginia

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

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS:

T.J. Obrokta
Executive Offices
Workers' Compensation Commission
4700 MacCorkle Avenue, S.E.
Charleston, WV 25304

Fax # (304) 926-5372

The Department requests 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

Authorized Signature

$ 4.20

Insuring a Working West Virginia
Workers' Compensation Commission
Gregory A. Burton, Executive Director

Office of General Counsel
4700 MacCorkle Avenue, S. E.
Charleston, West Virginia 25304
Phone Number (304) 926-3423
Fax Number (304) 926-5441

April 6, 2005

The Honorable Betty Ireland
Secretary of State
State Capitol Complex
Building 1, Room W-157
Charleston, West Virginia 25305

Re: Proposed Rule
Title 85, Series 19
"Self Insurance Risk Pools"

Dear Secretary Ireland:

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. The Board of Managers of the Workers' Compensation Commission has approved the enclosed 85 C.S.R. 19 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 LEGISLATIVE RULES

Rule Title: Title 85 Series 19: Self Insurance Risk Pools

Type of Rule: X Legislative Exempt ___Interpretive __Procedural

Agency: Workers' Compensation Commission

Address: 4700 MacCorkle Ave. S.E.

Charleston, WV 25304

1. Effect of Proposed Rule

	Annual		Fiscal Year		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	Unknown	Unknown	Unknown	Unknown	N/A
PERSONAL SERVICES	0	0	0	0	N/A
CURRENT EXPENSE	0	0	0	0	N/A
REPAIRS & ALTERNATIONS	0	0	0	0	N/A
EQUIPMENT	0	0	0	0	N/A
OTHER:					
Benefit payments	Unknown	Unknown	Unknown	Unknown	N/A
Benefit related payments	Unknown	Unknown	Unknown	Unknown	N/A

2. Explanation of above estimates:

Proposed changes since the last filing for this rule address the vesting of authority for the administration of the self-insurance risk pools upon termination of the Workers' Compensation Commission (commission). The above estimates are based on the assumption that the rule changes become effective in the current fiscal year (FY'05). Subject to the governor issuing the proclamation set forth in chapter twenty-three, article 2C of the Code of West Virginia that terminates the Workers' Compensation Commission, administration of the Guaranty Pool and the Security Pool will reside with the insurance commissioner beginning January 1, 2006. The Security Pool pays claims for injuries prior to July 1, 2004 for bankrupt and defaulted self-insured employers and the Guaranty Pool pays claims for injuries on or after July 1, 2004 for bankrupt and defaulted self-insured employers. Both pools, together with their earnings, cannot be expended for any other purposes. An undetermined amount in benefit and benefit related payments might have to be paid from these pools. For the commission, the payments from these pools is contingent on the actual number of defaulted and bankrupt self-insured employers that occur before the transition to the insurance commissioner, together with the adequacy of their security and the amount of their future claims benefits at the time of their default or bankruptcy. Due to the unpredictable nature of these types of occurrences, the estimated amount of these potential payments cannot be reasonably estimated.

Rule Title: Title 85 Series 19: Self Insurance Risk Pools

3. **Objectives of this rule:**

   This rule defines the funding of two risk pools to secure the claims obligations of defaulted and bankrupt self-insured employers.

4. **Explanation of Overall Economic Impact of Proposed Rule.**

   A. **Economic Impact on State Government.**

      It is expected that the there will be no economic impact on State Government from the proposed rule changes.

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

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

   C. **Economic Impact on Citizens/Public at Large.**

      The rule changes would not have a direct economic impact on the citizens of West Virginia.

Date: April 11, **2005**

Signature of Agency Head or Authorized Representative

Gregory A. Burton
Executive Director, Workers' Compensation Commission

SUMMARY OF PROPOSED RULE
STATEMENT OF CIRCUMSTANCES
TITLE 85, SERIES 19
Self Insurance Risk Pools

Pursuant to Senate Bill 1004, First Special Session, 2005, the Workers' Compensation Commission may terminate. Thereafter, Workers' Compensation insurance in West Virginia will be provided through the successor to the Commission and other private insurance carriers.

This rule is amended to address the termination of the Commission and to transition the enforcement of this rule to the Office of the Insurance Commissioner.

TITLE 85
EXEMPT LEGISLATIVE RULE
WORKERS' COMPENSATION COMMISSION

FILED

SERIES 19
SELF INSURANCE
RISK POOLS

2005 APR 13 P 2:59

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§85-19-1. General.

1.1 Scope. -- This exempt legislative rule provides for the creation of risk pools for the benefit of self-insured employers to secure the payment of obligations of self-insured employers.

1.2. Authority. -- W. Va. Code §§23-1-1a, 23-2-4; 23-2-9(i). Pursuant to West Virginia Code §23-1-1a(j)(3), rules adopted by the Board of Managers and the Commission are not subject to legislative approval as would otherwise be required under West Virginia Code §29A-3-1 et seq. Public notice requirements of that chapter and article, however, must be followed. Upon termination of the Commission, regulatory enforcement of this exempt legislative rule shall transfer to the Insurance Commissioner. W.Va. Code §23-2-9(i) and W.Va. Code §23-2C-22.

1.3. Filing Date. -- ~~May 25, 2004~~.

1.4. Effective Date. -- ~~July 1, 2004~~.

§85-19-2. Purpose of Rule.

This rule provides for the creation and funding of two risk pools to secure the obligations of self-insured employers.

§85-19-3. Definitions.

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 and the context expressly indicates that another meaning is intended.

3.1. "Act" means the workers' compensation laws of the state of West Virginia which are codified at W. Va. Code §23-1-1 et seq.

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

3.3. "Code of West Virginia" and "West Virginia Code" mean the West Virginia Code of 1931, as amended.

3.4. "Commission" means the Workers' Compensation Commission created pursuant to the provisions of W. Va. Code §23-1-1.

3.5. "Default" for the purposes of a self-insured employer means the failure by a self-insured employer to make a payment or file a report due by it under the provisions of the Act or this rule and which has been notified of delinquency but has further failed to make the payment or file the report within the time period specified by the notice.

3.6. "Delinquent" means a self-insured employer has failed to timely pay premium taxes, to timely file a payroll report, to maintain an adequate premium deposit, to properly and timely pay workers' compensation benefits to their injured employees or to make any other payment due under the terms of this rule or the Act.

3.7. "Employee" has the meaning ascribed to that term by W. Va. Code §§23-2-1 and 23-2-1a.

3.8. "Employer" has the meaning ascribed to that term by W. Va. 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.

3.9. "Executive Director" means the executive director of the Workers' Compensation Commission as provided pursuant to the provisions of W. Va. Code §23-1-1b.

3.10. "Injury" means compensable injuries or illnesses within the meaning of W. Va. Code §23-4-1 et seq.

3.11. "Payments" are obligations of the employer for the purposes of this rule including, but not limited to, the payment of premium taxes, the payment of premium deposits, the payment of any obligations due to be paid by an employer authorized by the commission to be a self-insurer, and late reporting and payment penalties, interest.

3.12. "Premium" and "premium tax" mean the amounts of money due from an employer to the Fund or commission as a result of quarterly and other 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 all employers; and also, that portion of self-insured premium tax required to be paid by the employer for the benefit of the employer's claimant employees as required by law.

3.13. "Regular subscriber" and "subscriber" mean an employer who obtains coverage under any of the workers' compensation insurance plans offered by the commission.

3.14. "Self-insurer" and "self-insured employer" mean employers who are eligible and have been granted self-insured status under the provisions of W. Va. Code §23-2-9.

3.15. "This rule" means this legislative rule designated as 85CSR19, "Self Insurance Risk Pools."

3.16. "Insurance Commissioner" means the insurance commissioner of West Virginia as provided in W.Va. Code §33-2-1.

§85-19-4. Self Insurance Pools; Establishment; Application of Funds.

4.1 The Commission shall establish two pools of funds to cover claims payments of default and bankrupt self-insured employers.

4.2. The Commission shall establish a Security Pool. The Security Pool shall pay claims for bankrupt and default self-insured employers with dates of injury prior to July 1, 2004.

a. The Commission shall segregate all contributions to the Security Pool, including all investment income earned from Security Pool proceeds.

b. The Commission shall not expend proceeds from the Security Pool corpus or its earnings for any other purposes than for obligations of the security pool.

The Commission shall establish a Guaranty Pool. The Guaranty Pool shall pay claims for bankrupt and default self-insured employers with dates of injury on or after July 1, 2004.

a. The Commission shall segregate all contributions to the Guaranty Pool, including all investment income earned from Guaranty Pool proceeds.

b. The Commission shall not expend proceeds from the Guaranty Pool corpus or its earnings for any other purposes than for obligations of the Guaranty Pool.

§85-19-5. Participation.

5.1. All active self-insured employers and inactive self-insured employers having active claims shall participate in the Security Pool.

a. Inactive self-insured employers having active claims who decline to participate shall extinguish their liability through a buyout as calculated by the Commission.

5.2. All active self-insured employers shall participate in the Guaranty Pool. Active self-insured employers that become inactive on or after July 1, 2004, may be required to participate in the Guaranty Pool under the provisions of section ten of this rule.

§85-19-6. Surety Requirements.

6.1. All employers who participate in the Security Pool are required to fully secure their claims liabilities for all claims with dates of injury on or prior to June 30, 2004.

a. All employers who are fully secured for their claims liabilities as of the effective date of this rule shall maintain and increase their security as necessary to remain fully secured for their claims liabilities.

b. All employers who are not fully secured for their claims liabilities as of the effective date of this rule are required to fully secure their claims liabilities and maintain and increase that security as necessary.

The Commission shall establish the terms and conditions of a security increase plan for each employer.

The security increase plan is required to be completed such that the employer is fully secured on or before June 30, 2006.

Employers whose unsecured liabilities increase less than one million dollars shall not be eligible for a security increase plan and shall provide the full amount of security within the time frames as specified by the rules of the Commission.

c. The failure by an employer to fully secure and maintain security on their claims liabilities in accordance with this rule shall result in revocation of self-insurance status. The Commission is authorized by this rule to provide notice of the revocation to the self-insured employer without any action or approval by the Board of Managers. The provisions of other rules of the Commission requiring the Commission to present the revocation recommendation to the Board of Managers and for the Board of Managers to approve the revocation are expressly made inapplicable to revocation of self-insurance under this section.

1. An employer who receives a notification of revocation of self-insured status for failure to fully secure or maintain security on their claims liability may file a petition with the Board of Managers to be granted a six (6) month grace period to obtain security.

A. The employer shall file its petition for grace period with the Executive Director of the Workers' Compensation Commission who will distribute the petition to the Board of Managers.

B. The Board of Managers shall consider the petition for grace period at such time as is convenient to the Board. The Board shall consider the petition in an executive session. The Board may consider the written petition only or request the employer, the Commission or both to make an oral presentation. The Board shall make any decision regarding the petition for grace period in an open meeting.

C .The Board of Managers shall only grant a petition for grace period upon a unanimous vote of the Board.

D. An employer may only be granted one grace period.

6.2. New self-insured employers who were previously regular subscribers must secure their liability up through June 30, 2004 or must pay the Commission an amount equal to the liability amount attributable to periods through June 30, 2004, including incurred but not reported liabilities.

6.3. The Commission shall perform an annual surety review based upon the Commission's actuarial calculations to determine the required surety level for periods prior to July 1, 2004.

a. Existing surety using old bond language will be credited to the employer at the estimated actual value of the bond as determined by the Commission's actuary.

6.4. Self insured employers shall not be required to provide surety, other than through Guaranty Pool assessments, for liabilities attributable to claims with dates of injury on or after July 1, 2004.

a. The Commission may require additional surety for claims with dates of injury on or after July 1, 2004, if it is determined that an employer's financial condition has deteriorated compared to the previous year's financial analysis by the Commission. The employer's financial condition will be analyzed using objective benchmarks to determine a deteriorating financial condition as provided in the rule governing self-administration of self-insurance.

§85-19-7. Security Pool Funding.

7.1 The Security Pool shall be funded by the following sources:

a. Proceeds received from the draw-down on surety documents in the event of a self-insured employer's default;

b. All graduated premium tax payments made by participating self-insured employers for periods through the quarter ending June 30, 2004;

c. Assessments to fund the Security Pool generated under the provisions of W. Va. Code §23-2-9(i);

d. Beginning July 1, 2006, proceeds received from assessments pursuant to W. Va. Code §23-2-9(c)(2); and

e. Proceeds received from any alternative funds identified and made available through legislative enactment.

7.2. Should the proceeds identified in subsection 7.1 be inadequate to fully satisfy the obligations of the Security Pool, the Executive Director and the Board of Managers, and upon termination of the commission the insurance commissioner and Industrial Council, shall identify and pursue such alternative funding as shall be necessary.

§85-19-8. Security Pool Assessments Pursuant to W. Va. Code §23-2-9(i).

8.1. Beginning January 1, 2005, Security Pool assessments to self-insured employers shall be made as follows:

a. The Commission shall determine the projected claims payments to be made in the fiscal year, with the first projection based upon the period July 1, 2004 through June 30, 2005.

b. The Commission shall determine the amount necessary to fund the Security Pool through assessments.

c. The Commission shall determine the methodology employed to allocate to each self-insured employer, based upon the self-insured employer's claims reserves and financial strength, a fair and equitable portion of the projected claims payment.

d. In accordance with the methodology employed, the Commission shall determine the amount of each Security Pool assessment.

e. Notification. The Commission shall notify every employer who is assessed under this provision the amount of the assessment and the methodology employed to determine the assessment. The Commission shall provide notice to each affected employer at least thirty (30) days prior to the period for which the assessment is applicable.

f. Payments required under this provision shall be pro-rated and made on a quarterly basis.

§85-19-9. Guaranty Pool Funding.

9.1. Beginning the calendar quarter immediately following the effective date of this rule and in order to fund the Guaranty Pool, the Commission shall assess self-insured employers, as follows:

a. The initial annual assessment shall be equal to 2% of the self-insured employer's preceding fiscal year's annual claims indemnity payments [excluding payments to settle claims on a full and final basis] or a minimum of $5,000 whichever is greater. The initial annual assessment shall be imposed for each of Fiscal Years 2005 and 2006. For example, a self-insured employer has paid one million dollars ($1,000,000.00) in indemnity payments in the preceding fiscal year. Of the one million dollars ($1,000,000.00), two hundred thousand dollars ($200,000.00) has been paid to settle claims on a full and final basis. The self-insured employer would be assessed two percent (2%) of eight hundred thousand dollars ($800,000.00), which yields sixteen thousand dollars ($16,000.00) as an assessment to the self-insured employer; and

b. Beginning with Fiscal Year 2007 (July 1, 2006 through June 30, 2007), annual assessments shall be based on five percent of the projected claims liabilities of the self-insured employer for the fiscal year in which the charge is made or $5,000.00, whichever is greater.

c. Payments made under this subsection shall be pro-rated and made on a quarterly basis.

9.2. Employers who become self-insured after the establishment of the Guaranty Pool will be assessed an amount equal to 5% of the preceding year's base-rated premium, or a minimum of $5,000 whichever is greater, for a period of 3 years. Thereafter, assessments shall be made as needed in accordance with the same methodology utilized for other self-insured employers.

Assessments to fund the Guaranty Pool shall continue until the Guaranty Pool is fully funded. The Guaranty Pool shall be considered fully funded when it contains the sum of thirty million dollars ($30,000,000.00) or five percent (5%) of the total claims liability of all self-insured employers, whichever is greater.

b. If assessments cease because the Guaranty Pool is fully funded and thereafter the funding level for the Guaranty Pool drops below the required amount, the assessments shall resume in the same manner and amounts as required by this section.

9.4. In the event that actual claims defaults exceed the amounts of defaulted claims reserves recognized in the most recent audited financial statement of the Commission, the Board of Managers shall determine the methodology to assess additional amounts to self-insured employers to fund the Guaranty Pool.

§85-19-10. Converting to Regular Subscriber Status or Becoming Inactive.

Active self-insured employers who become regular subscribers or inactive, either voluntarily or involuntarily on or after July 1, 2004, and who do not buy out their liability shall leave all existing surety in place and shall be assessed the Security Pool and Guaranty Pool assessments for a period of up to ten (10) years with Security Pool assessments beginning January 1, 2005. In these circumstances, Guaranty Pool assessments shall be based upon five percent (5%) of the prior year's indemnity payments or $5,000.00, whichever is greater. This provision is not to be construed as excusing any obligation of a terminated self-insured employer imposed by the Act or by other rules of the Commission.

§85-19-11. Transfer to the Insurance Commissioner.

Upon termination of the Commission, regulatory enforcement of this exempt legislative rule shall transfer to the insurance commissioner to be administered in a manner otherwise consistent with chapter twenty-three of the West Virginia Code. W.Va. Code §23-2-9(i) and W.Va. Code §23-2C-22.

§85-19-1~~1~~2. Severability.

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