WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION

Form #5

Do Not Mark In This Box

FILED

2005 JUN 29 P 4: 28

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: Workers' Compensation Commission TITLE NUMBER: 85

CITE AUTHORITY: W. Va. Code §§23-1-1a(j)(3), 23-2-4, 23-2-9(i), 23-2C-22

RULE TYPE: PROCEDURAL ____ INTERPRETIVE ____

EXEMPT LEGISLATIVE RULE X

CITE STATUTE(s) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

W. Va. Code §§23-1-1a(j)(3)

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: ____

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE EFFECTIVE DATE OF THIS RULE IS August 1, 2005

Authorized Signature

#6.00

WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION

Form #1

Do Not Mark In This Box

FILED

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

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,

G. A. B.

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

2005 JUN 29 P 4: 28

OFFICE WEST VIRGINIA
SECRETARY OF STATE

SERIES 19
SELF INSURANCE
RISK POOLS

§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. The requirements of Section 6.2 shall sunset upon termination of the Commission and shall not be applicable to any regular subscriber that applies for self-insured status upon termination of the Commission.

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 the 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. Upon termination of the Commission, functions of the Board of Managers with regard to matters related to the maintenance of self-insured status are transferred to the Insurance Commissioner and the Industrial Council, created under the provisions of W. Va. Code §23-2C-5.

§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.

COPY

BEFORE THE
WEST VIRGINIA WORKERS' COMPENSATION
BOARD OF MANAGERS

****

IN THE MATTER OF:	)	**HONORABLE JOE MANCHIN, III,**
	)	**CHAIRMAN**
PUBLIC HEARING	)	**RULE 19 - Self-Insurance**
(May 17, 2005)	)	**Risk Pools**

****

Transcript of proceedings had in the above-styled meeting were held as therein appears before the **WEST VIRGINIA WORKERS' COMPENSATION BOARD OF MANAGERS**, held at the Charleston Civic Center, Suite 209, 200 Civic Center Drive, Charleston, West Virginia, at 1:07 p.m., on the 17th day of May, 2005.

****

BILLANTI & ASSOCIATES
COURT REPORTERS
1033 RIDGEMONT DRIVE
ELKVIEW, WV 25071
304-965-7444

APPEARANCES:

MEMBERS OF THE WEST VIRGINIA
WORKERS' COMPENSATION BOARD OF MANAGERS

HONORABLE JOE MANCHIN, III, CHAIRMAN

Robert Alsop (Designee)

PAUL THOMPSON, Member

GENE BAILEY, Member

BOB PHALEN, Member

EVERETTE SULLIVAN, Member

CHRIS JARRETT, Member

DOUGLAS MERRITT, Member

RICHARD HUMPHREYS, Member

PAUL HARDESTY, Member

CRAIG SLAUGHTER, Member

MARGARET RICE, Recording Secretary

(P R O C E E D I N G S)

(1:05 P.M)

CHAIRMAN ALSOP: The next rule up for public hearing is 85CSR19, relating to self-insurance risk pools. No member of the public has signed up to speak to Rule 19. Are there any members of the public who didn't sign up who wishes to speak? (No Response.)

If not, we will close the public hearing for Rule 19.

(WHEREUPON, the hearing was adjourned at 1:07 p.m.)

REPORTER'S CERTIFICATE

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to wit:

I, the undersigned, David T. Bolin, Courter Reporter and Notary Public, do hereby certify that the foregoing is, to the best of my skill and ability, a true and accurate transcript of the proceedings had before the **West Virginia Workers' Compensation Board of Managers** as set forth in the caption hereof, and that this is the original transcript thereof for the files of the Board.

Given under my hand this
23rd day of May, 2005.

Court Reporter

MY COMMISSION EXPIRES JULY 27, 2014.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
DAVID T. BOLIN
1033 Ridgemont Drive
Elkview, WV 25071
My Commission Expires July 27, 2014

WEST VIRGINIA WORKERS' COMPENSATION BOARD OF MANAGERS
PUBLIC HEARING
MAY 17, 2005 – 1:00 P.M.
85CSR19 "SELF-INSURANCE RISK POOLS"

ATTENDANCE SHEET

The Board is required to keep a list of individuals attending its meetings and of those who wish to address the Board.

NAME	COMPANY	Do you wish To speak? (Yes/No)
Michael Keener	Acordia	No

WEST VIRGINIA WORKERS' COMPENSATION BOARD OF MANAGERS

ATTENDANCE SHEET

BOARD OF MANAGERS MEETING – MAY 17, 2005 – 1:00 P.M.

The Board is required to keep a list of individuals attending its meetings and of those who wish to address the Board.

Name	Company	**Mailing address if you wish to receive notices of meetings** (if previously provided, leave blank)	Do you wish to speak? (yes/no)
MARK D. CLARK	FRANK GATES	**Address** **City, state, zip**	No
Michael Keener	Acordia	**Address** **City, state, zip**	No
Susan Osborne	AMVEST	**Address** **City, state, zip**	NO
LARRY BOGGESS	PEABODY ENERGY	**Address** **City, state, zip**	NO
Randy Schoolcraft	Arme	**Address** **City, state, zip**	No
TREED McCallister	CMT	**Address** **City, state, zip**	NO

WEST VIRGINIA WORKERS' COMPENSATION BOARD OF MANAGERS

ATTENDANCE SHEET

BOARD OF MANAGERS MEETING – MAY 17, 2005 – 1:00 P.M.

The Board is required to keep a list of individuals attending its meetings and of those who wish to address the Board.

Name	Company	**Mailing address if you wish to receive notices of meetings** (if previously provided, leave blank)	Do you wish to speak? (yes/no)
Jon Snyder	Miller & Snyder	**Address** **City, state, zip**	no
T. Huffman	JK	**Address** **City, state, zip**	N
		Address **City, state, zip**	
		Address **City, state, zip**	
		Address **City, state, zip**	
		Address **City, state, zip**	

From: Thomas Obrokta
To: Suter, Randy
Date: 5/3/05 12:13PM
Subject: Fwd: Rules 5, 7 19, and 32

please comment

>>> "Ryan Sims" <Ryan.Sims@wvinsurance.gov> 04/21/05 11:06AM >>>
TJ -

Below are my suggested changes and comments regarding the other rules you sent out for comment on 03/31/05. Again, most of these are of the "semantic" nature, pertaining to adding the "transition language" being placed after places in which the WCC is mentioned. (This was discussed further in my last email on series 21). However, there are a few substantive suggestions as well, with which I have included comments, where appropriate. Perhaps the most significant substantive change is in series 7, regarding the Article 2 hearings. I think there is some language at the end of this rule which inappropriately limits the scope of Article Two hearings before the Insurance Commissioner under the new privatized system.

Series 5

* 85-5-2.8 - Only sentence, after "Commission or its predecessor agencies" add "self-insured employer or private carrier".

* 85-5-3.2 - Only sentence, after "Chapter 23" add "Chapter 33". (This is because under the new system, applicants would also be subject to the provisions of Chapter 33 as well).

* 85-5-3.7 - Second sentence, after "Commission" add "self-insured employer or private carrier".

Series 7

* 85-7-12, general comment - The rule appropriately includes "transition" language in section 12, making it clear that the IC assumes the administration of the Article 2 hearings upon termination of the WCC. However, there is some concern regarding this transition language. Specifically, it states that, upon termination of the WCC, the IC administers series 7 "for the sole purpose of processing then existing Article Two matters, or any subsequently filed Article Two matters, which involve the collection of the Old Fund assets as defined in West Virginia Code § 23-2C-2)(l)." The concern is that there are some decisions which the IC could be required to make under Article Two that do not necessarily pertain to "the collection of Old Fund assets", and that this limitation in the rule could cause some confusion as to the IC's ability to make such Article Two decisions. For example, if the IC made a decision under the new privatized system that a particular employer was not exempt from procuring WC coverage from a private carrier, pursuant to 23-2-1, this would be a decision that would be subject to an Article Two hearing. However, under the rule, the employer could not obtain such a hearing, because it would not involve "the

collection of Old Fund assets." Another example would be decisions as to applications by employers to obtain self-insured employer status; again, such decisions by the IC would be Article Two decisions, but under this rule, the employer could not obtain a hearing.

Therefore, I would suggest that the transition language in section 12 be revised, perhaps by the language limiting Article Two hearings to "Old Fund" subject matter being stricken altogether.

Series 19

* General comment - The rule appropriately includes the "transition" language in section 11, making it clear that the IC assumes the regulatory enforcement of this rule upon termination of the WCC. However, there are a number of duties also imposed upon the Board of Managers in the rule, such as considering petitions for grace periods under 6.1.c.1.A, and determining a methodology to assess additional amounts to self-insured employers for the guaranty pool under section subsection 9.4. It should probably be clarified in the "transition" language of section 11 which entity (either the IC or the Industrial Council, or both), assumes these various duties of the BOM under this rule.

Series 32

* 85-32-2.9 - Second sentence, after "Commission" add "or, upon termination of the Commission, the Insurance Commissioner." Also, in second sentence, after "Commission's" add "or Insurance Commissioner's".

* 85-32-2.14 - Only sentence, after Commission, add "Insurance Commissioner."

* 85-32-2.15 - Only sentence, after "included as" add "being". Also, after "Commission" add "or Insurance Commissioner."

* 85-32-7.3a. - Second sentence, after "If the Commission" add "or Insurance Commissioner. Also, in last sentence, after "Commission" add "Insurance Commissioner."

* 85-32-7.5a.2. - Only sentence, after "Commission" add "or Insurance Commissioner."

Note regarding the above comments: The above comments are ones similar to the comments made on Rule 21, regarding placing the "transition" language after each place where the WCC is mentioned in the rule. In series' 5, 21 and 32, it appears that attempts were made to place "transition" language throughout the rule, in each place where it is necessary, rather than to just have a comprehensive "transition section" which states that upon termination of the WC, the enforcement of the rule transfers to the IC (as was done in series' 7 and 19). It is probably fine to create the transfer of the rule to the IC in either manner; however, in the rules where it was decided to place the language throughout the rule, the transition language should be inserted everywhere where the WCC is mentioned, so there is no confusion regarding the duties which transfer to the IC.

* 85-32-8 - The BOM is given the duty of reviewing and granting or denying petitions from agencies or other persons to be exempt from the provisions of this rule. As with series 19, when a duty is conferred upon the BOM, the rule should make it clear which entity (either the IC, the Industrial Council, or both), assumes these duties upon termination of the WCC.

* General comment - This actually ties back into my comment on series 7, above. It is clear in section 7 of this rule that the employer is entitled to an Article Two hearing if they want to contest their status as being in default under series 32. This is another example of an "Article 2" issue which would deal with the new system, and not the old fund. Therefore, the scope of the Article Two hearings in series 7 should not be limited to matters involving old fund assets.

The Insurance Commission has an interest in these rules which are transferring from the WCC to the IC to be in a functional form at such time as the governor issues the proclamation terminating the WCC, and we certainly want to work with the BOM and the WCC to this end. Please feel free to contact me at your convenience so that we may discuss the above comments, as well as my previous comments on series 21.

Ryan M. Sims

Associate Counsel

West Virginia Insurance Commission

Legal Division

P.O. Box 50540

Charleston, WV 25305-0540

(304) 558-0401 ext. 139

Bowles Rice McDavid Graff & Love LLP

Sarah E. Smith
Telephone — (304) 347-1115
Facsimile — (304) 347-1196
E-Mail:ssmith@bowlesrice.com

600 Quarrier Street Charleston, West Virginia 25301 ❖ Post Office Box 1386 Charleston, West Virginia 25325-1386 (304) 347-1100 ❖ www.bowlesrice.com

May 16, 2005

T. J. Obrokta, Esquire
Executive Office
Workers' Compensation Commission
4700 MacCorkle Avenue, S.E.
Charleston, West Virginia 25304

Re: Public Comments
Series 19 – Self Insurance Risk Pools

Dear Mr. Obrokta:

Please consider these public comments related to Series 19, Self Insurance Risk Pools.

We propose the following language changes:

§ 85-19-3.4

"Commission" means the Workers' Compensation Commission created pursuant to the provisions of W. Va. Code § 23-1-1. Upon termination of the Commission, all references to the "Commission" in these rules shall become the "Insurance Commissioner."

[COMMENT: We believe this language might permit a longer period of effectiveness of the rule before requiring revision and updating.]

§ 85-19-6.1.

b. …

~~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.~~

[COMMENT: This last paragraph of subsection b. should be eliminated to permit all employers an equal opportunity and similar process related to security options. Other than administrative expediency for the Commission, there is no reason why an employer who must increase security by $950,000 should not have the same options and time frames to become fully secured as an employer who must increase security by $50,000 more.]

c. The failure by an employer to fully secure and maintain security on their claims liabilities in accordance with this rule shall result in a notification of 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

Bowles Rice
McDavid Graff & Love LLP

Managers and for the Board of Managers to approve the revocation are expressly made inapplicable to revocation of self-insurance under this section~~.~~; Provided, however, that ~~1. A~~ 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~~.~~, and no revocation shall occur pending a decision on the petition by the Board of Managers.

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

D. An employer may only be granted one grace period within any five (5) year period.

E. An employer denied a grace period shall be provided a prospective notice of revocation, and shall be entitled to request reconsideration in accordance with the provision of 85 CSR 7, "Rules for Selected Hearings" and to litigate any decision in accordance with the provisions of West Virginia Code § 23-2-17 and 29A-5-1 et.seq.; Provided, however, that the employer shall not remain self-insured during the pendency of that reconsideration/litigation but can be retroactively returned to self-insured status if ordered or agreed following or as a result of the reconsideration/litigation.

[COMMENT: These proposed language changes are generally self-explanatory. However, we do comment that a unanimous vote of the Board would require full attendance by the Board members at the relevant meetings, difficult to insure, and also is an onerous requirement. Providing some administrative process to contest decisions insures due process for all employers and some oversight of the process.]

Thank you for considering these comments.

Very truly yours,

Sarah E Smith

Sarah E. Smith

SES/pfl

STEPTOE & JOHNSON PLLC
ATTORNEYS AT LAW
Clarksburg Charleston Morgantown Martinsburg Wheeling Huntington

Bank One Center, Eighth Floor
P.O. Box 1588
Charleston, WV 25326-1588
(304) 353-8000 (304) 353-8180 Fax
www.steptoe-johnson.com

Writer's Contact Information
(304) 353-8128
bowenh@steptoe-johnson.com

May 13, 2005

Via Facsimile (304) 926-5441

T. J. Obrokta, Esquire
General Counsel
Workers' Compensation Commission
4700 MacCorkle Avenue, S.E.
Charleston, WV 25304

Re: Rule 19 Elimination of §6.2

Dear Mr. Obrokta:

On behalf of our client, ISG Weirton, Inc./Mittal Steel USA, I enclose the comment of Robert Rubicky, Corporate Manager, Benefits, regarding Rule 19. We ask that you consider Mr. Rubicky's comments regarding § 6.2 and urge that the section be sunset during calendar year 2005.

Thank you for your consideration.

Very truly yours,

Henry C. Bowen

/dlp

CH753783.1

Comment on Series 19 Rule
Self-Insurance Risk Pools

By Robert Rubicky
ISG Weirton/Mittal Steel

As one of the largest employers in the State of West Virginia, ISG Weirton is concerned that rules are currently being revised without full consideration of the changed environment created by Senate Bill 1004. It makes no sense to revise these rules now without making them compliant with our new law. To that end I am making the following comment on the Series 19 Rule on Self-Insurance Risk Pools.

Section 6.2 requires regular subscriber accounts that become self-insured to secure liability incurred through June 30, 2004 (i.e. take it with them under a self-insured program), or pay the Commission an amount equal to the liability. As proposed there is no change to Section 6.2, when based upon the new law it should be totally deleted. This provision is not valid under SB1004. The liabilities that it describes will be 100% contained in the "Old Fund", which will include all claims incurred through June 30, 2005. The defined and limited funds that are to apply to "Old fund liabilities", as stated in SB1004, includes funds transferred to it from the workers compensation fund and other sources, and those funds due and owing the workers compensation fund as of June 30, 2005, and that is all. This being the case, any regular subscriber account that applies to self insure after June 30, 2005 should not be subject to this requirement. Since this revised rule will not take effect until after that date, this provision should be removed.

While there is purely statutory logic to remove this language, it also makes common sense. SB 1004 added substantial new taxes and surcharges to all West Virginia employers to fund liabilities incurred by the system through June 30, 2005. Adding to this a buyout at the time an account self-insures, assuming it is after June 30, 2005, amounts to double charging the employer, since they will also be required to pay the substantial new surcharges and/or taxes to address the very same liability on a more universal scale.

One of the governor's and the legislature's main goals in passing SB1004 was to remove an impediment to a healthy business climate. Retaining through rule an archaic and business hostile policy that was removed by statute runs counter to the legislation's intent and is representative of the kind of approach that made workers compensation in West Virginia a burden to state employers. Section 6.2 should be deleted from Rule 19 and all rules yet to be revised or written should comply with the clear language and intent of SB1004 in this regard.

In closing, we understand that there has been some discussion on this matter and the commission has agreed to insert language that sunsets this provision in 2008. This is tacit admission that Section 6.2 is not in compliance with the law. If it can be removed in 2008, there is no language in SB1004 that allows it continuing in effect from 7/1/05 until then. Sun-setting in 2008 will have the effect of persuading some employers to remain in the mutual insurance company when they would otherwise leave to self-insure. SB1004 gives the mutual many advantages and ample time to ramp up its operations. Rules should not be passed by the Board of Managers that go beyond these advantages and serve to limit the options of West Virginia's employers.

West Virginia Self-Insurers Association
Post Office Box 1573
Charleston, West Virginia 25326
Tax ID# 55-0654337

WV SIA

May 12, 2005

Via Facsimile (304) 926-5441

T. J. Obrokta, Esquire
General Counsel
Workers' Compensation Commission
4700 MacCorkle Avenue, S.E.
Charleston, WV 25304

Re: Rule 19 Elimination of §6.2

Dear Mr. Obrokta:

We sincerely believe that this rule is in conflict with W. Va. Code §§ 23-2-4 and 5. Consequently, we do not believe there is any justification for retaining this subsection of the rule after January 1, 2006. On behalf of the Association, we urge you to consider sunsetting it as of December 31, 2005.

Thank you for your consideration.

Very truly yours,

Henry C Bowen

Henry C. Bowen

Response to Comments

Series 19

Insurance Commissioner. General comment - The rule appropriately includes the "transition" language in section 11, making it clear that the IC assumes the regulatory enforcement of this rule upon termination of the WCC. However, there are a number of duties also imposed upon the Board of Managers in the rule, such as considering petitions for grace periods under 6.1.c.1.A, and determining a methodology to assess additional amounts to self-insured employers for the guaranty pool under section subsection 9.4. It should probably be clarified in the "transition" language of section 11 which entity (either the IC or the Industrial Council, or both), assumes these various duties of the BOM under this rule.

Response: Agreed. The language was modified to read: "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. Upon termination of the Commission, functions of the Board of Managers with regard to matters related to the maintenance of self-insured status are transferred to the Insurance Commissioner and the Industrial Council, created under the provisions of W. Va. Code §23-2C-5."

Sarah E. Smith:
§ 85-19-3.4 -- (Suggestions are shown as marked revisions to the rule.)

"Commission" means the Workers' Compensation Commission created pursuant to the provisions of W. Va. Code § 23-1-1. Upon termination of the Commission, all references to the "Commission" in these rules shall become the "Insurance Commissioner."

[COMMENT: We believe this language might permit a longer period of effectiveness of the rule before requiring revision and updating.]

Response: This matter is addressed in the transition portion of the rule at §11.

Sarah E. Smith:
§ 85-19-6.1. (Suggestions are shown as marked revisions to the rule.)

b. ...

~~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.~~

[COMMENT: This last paragraph of subsection b. should be eliminated to permit all employers an equal opportunity and similar process related to security options. Other than administrative expediency for the Commission, there is no reason why an employer who must increase security by $950,000 should not have the same options and time frames to become fully secured as an employer who must increase security by $50,000 more.]

Response: There are some limited occasions when a self-insured employer's security requirements are increased substantially. The rule is meant to address instances concerning substantial increases. No change.

Sarah E. Smith:
§85-19-6.1.

c. The failure by an employer to fully secure and maintain security on their claims liabilities in accordance with this rule shall result in a notification of 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; Provided, however, that ~~1. A~~ 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~~.~~, and no revocation shall occur pending a decision on the petition by the Board of Managers.

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

D. An employer may only be granted one grace period within any five (5) year period.

E. An employer denied a grace period shall be provided a prospective notice of revocation, and shall be entitled to request reconsideration in accordance with the provision of 85 CSR 7, "Rules for Selected Hearings" and to litigate any decision in accordance with the provisions of West Virginia Code § 23-2-17 and 29A-5-1 et.seq.; Provided, however, that the employer shall not remain self-insured during the pendency of that reconsideration/litigation but can be retroactively returned to self-insured status if ordered or agreed following or as a result of the reconsideration/litigation.

[COMMENT: These proposed language changes are generally self-explanatory. However, we do comment that a unanimous vote of the Board would require full attendance by the Board members at the relevant meetings, difficult to insure, and also is an onerous requirement. Providing some administrative process to contest decisions insures due process for all employers and some oversight of the process.]

Response:
No change.
The suggestions of, no revocation during the pendancy of a grace period; changing from a unanimous vote to a 2/3 s vote; and allowing more than one grace period… all serve to weaken the application and thrust of the rule which is to guarantee that all self-insured employers are adequately insured to the benefit of all other self-insured employers. During the original passage of this rule, the unanimous vote to grant a grace period was insisted upon by the Board.

ISG Weirton, Inc./Mittal Steel USA – Henry Bowen:
Comment:
Request that provision 6.2 of the rule sunset.

Response: The rule was revised as shown by the following marked revision.
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. The requirements of Section 6.2 shall sunset upon termination of the Commission and shall not be applicable to any regular subscriber that applies for self-insured status upon termination of the Commission.