WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION

Form #5

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2005 JUL 20 P 12: 17

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), 23-2B-2

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: 23

TITLE OF RULE BEING AMENDED: Loss Prevention

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 September 1, 2005

Authorized Signature

#6.40

WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION

Form #1

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FILED

2005 MAY 18 P 4: 11

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: W. Va. Code §§23-1-1a(j)(3); 23-2B-2

AMENDMENT TO AN EXISTING RULE: YES X NO ___

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 23

TITLE OF RULE BEING AMENDED: Loss Prevention

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: ___

TITLE OF RULE BEING PROPOSED: ___

DATE OF PUBLIC HEARING: June 23, 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, General Counsel
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

May 18, 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 23
"Loss Prevention"

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. 23 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 23: Loss Prevention

Type of Rule: X 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	0	0	0	0	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	0	0	0	0	N/A

2. Explanation of above estimates:

Proposed changes since the last filing for this rule address issues related to the 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). There should be no significant change in the estimated costs associated with implementing workplace health and safety programs and encouraging compliance with occupational safety and health laws thru 12/31/05. After 12/31/05, 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, this rule will terminate.

3. Objectives of this rule:

This rule is intended to promote workplace health and safety programs and encourage compliance with occupational safety and health laws with the goal of reducing occupational injuries and illnesses in the State of West Virginia and consequently reducing the workers' compensation fund deficit.

Rule Title: Title 85, Series 23: Loss Prevention

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 from the 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.

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

Date: 5/18/05

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 23
Loss Prevention

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 also amended to address the termination of the Commission and to terminate the rule upon termination of the Commission.

FILED

2005 JUL 20 P 12: 19

OFFICE WEST VIRGINIA
SECRETARY OF STATE

TITLE 85
LEGISLATIVE RULE
WORKERS' COMPENSATION ~~DIVISION~~ Commission

SERIES 23
LOSS PREVENTION

§85-23-1. General.

1.1. Scope. -- These rules implement the provisions of W. Va. Code, §23-2B-2, regarding mandatory safety programs.

1.2. Authority. -- W. Va. Code~~, §§21A-2-6(1), -6(2) & -6(14); 21A-2-19; 21A-3-7(b) & -7(c);~~ §§23-2B-2; 23-2-4; and 23-1-1. Pursuant to W. Va. Code~~, §21A-3-7(c)~~ §23-1-1a(j)(3), rules adopted by the ~~compensation programs performance council and the commissioner~~ board of managers and the commission are not subject to legislative approval as would otherwise be required under W. Va. Code, §29A-3-1 et seq. Public notice requirements of that chapter and article, however, must be followed. ~~Pursuant to enrolled committee substitute for house bill 4030, regular session, 1994, the department of commerce, labor and environmental resources was abolished. Pursuant to that same bill and to executive order no. 5-94 by the governor, the commissioner of the bureau of employment programs is empowered to promulgate rules and regulations without the consent or approval of a departmental secretary.~~

1.3. Filing Date. -- ~~January 7, 1997~~.

1.4. Effective Date. -- ~~February 6, 1997.~~

§85-23-2. Purpose.

The purpose of this rule is to implement the provisions of W. Va. Code, §23-2B-2, to promote workplace health and safety programs and encourage compliance with occupational safety and health laws, regulations and standards. The goal of this rule is to establish workers' compensation reforms which result in a reduction of occupational injuries and illnesses in the State of West Virginia and consequently a reduction in the workers' compensation fund deficit. This rule does not apply to employers who have elected to self insure their workers' compensation risk pursuant to the provisions of W. Va. Code §23-2-9.

a. In accordance with the provisions of Senate Bill 1004, as passed in the First Special Session of the two thousand-five Legislature, the board of managers terminates upon termination of the commission. Upon that occurrence, this rule will also terminate.

§85-23-3. Definitions.

As used in this rule, the following terms have the stated meanings unless the context of a specific use clearly indicates another meaning is intended.

3.1. "Commission~~er~~" means the ~~commissioner of the bureau of employment programs pursuant to W. Va. Code, §§21A-2-1, 23-1-1, and any deputies designated pursuant to W. Va. Code, §§21A-2-12 & -13~~ workers' compensation commission created pursuant to the provisions of W. Va. Code §23-1-1.

3.2. ~~"Division" means the workers' compensation division within the bureau of employment programs as~~

~~provided for by W. Va. Code §§21A-1-4 and §23-1-1 et seq.~~ "Board" means the workers'' compensation board of managers created pursuant to the provisions of W. Va. Code §23-1-1a.

3.3. "Evaluation criteria" means that level of performance criteria which results in an employer's designation as a focus program employer or a target program employer.

3.4. "Experience modification factor" means an actuarially determined multiplier of the premium tax base rate used to determine the premium tax rate. (Note: The experience modification factor has been historically referred to as the experience modification rate or EMR.)

3.5. "Focus program employer" means any employer, not excluded by the ~~division~~ commission under the provisions of section eight, whose combination of premium tax size, and experience modification factor meets the criteria of table 85-23A of this rule for a tier one employer. (See, Note: using table 85-23A attached to the table.)

3.6. "Injury" means compensable injuries for which costs are incurred by the ~~division~~ commission within the meaning of W. Va. Code §23-4-1 et seq.

3.7. "Joint labor and management safety committee" means a formally structured process to provide for and foster employee and employer involvement in safety reforms as provided in section two. Such structures include, but are not limited to, groups such as quality circles and self directed work teams. A tiered safety organization is permitted, if employees participate at each level of the organized committees. An employer operating under a collective bargaining agreement that contains provisions regulating the formation and operation of a safety committee that meets or exceeds the minimum requirements of this rule shall be considered to have met the requirements of this rule for safety committees.

3.7.1. A joint labor and management safety committee must exhibit the following characteristics to be considered acceptable:

a. Safety must be a priority of the group;

b. The group must have the authority to conduct safety inspections of the work area for which they are responsible and to determine and recommend corrective measures to management;

c. The group must meet regularly and minutes must be kept of the meetings;

d. Each member of the committee shall have an equal vote;

e. Members of the committee shall not experience any loss of wages or any other retaliation while attending safety committee meetings or performing duties at the direction of the safety committee;

f. At least fifty percent (50%) of the members of the tiered safety organization and of each committee (committees) shall be employee representatives; and

g. All members of the committee shall be trained in matters related to workplace safety, such training shall include attendance at a seminar on basic safety programs sponsored or approved by the ~~division~~ commission.

3.8. "Measurable improvement" means demonstrative evidence of safety improvement at the employer's workplace.

3.9. "New subscriber" means an employer that has not accumulated the necessary claims and premium tax experience to be afforded an experience modification factor by the ~~division~~ commission for purposes of ratemaking, but has accumulated sufficient claims and premium tax experience to be afforded an experience modification factor for purposes of this rule.

3.10. "Premium tax surcharge" means a percentage of the premium tax added to an employer's quarterly premium tax as a result of the employer's classification as a tier three employer.

3.11. "Performance criteria" means the measurement of an employer's safety performance including, but not limited to, the combination of the premium tax size and experience modification factor as per table 85-23A of this rule.

3.12. "Quarter" means the four calendar quarters: January 1 through March 31; April 1 through June 30; July 1 through September 30; and October 1 through December 31 of each calendar year.

3.13. "Review period" means a period of two consecutive quarters.

3.14. "Target program employer" means any employer, not excluded by the ~~division~~ commission under the provisions of section eight, whose combination of premium size and experience modification factor meets the criteria of table 85-23A of this rule for a tier two employer. (See, Note: using table 85-23A, attached to the table.)

3.15. "Tier three employer" means any employer who chooses not to participate in the focus program employer or target program employer mandates or any employer who fails to comply with the mandates of the target program employer classification.

§85-23-4. Tier One: Focus Program Employer.

4.1. Notification. The ~~division~~ commission shall notify all employers whose performance criteria falls within the focus program employer classification. The ~~division~~ commission shall include in such notification an analysis of the occupational injuries and diseases incurred by the employer and a list of qualified safety consultants and agencies.

4.2. Seminar. All focus program employers must attend a seminar on basic safety programs sponsored or approved by the ~~division~~ commission.

4.3. Reports. The workers' compensation ~~division~~ commission shall provide a report to each focus program employer at the conclusion of each review period. The report shall detail claims information for the review period.

4.3.1. The focus program employer shall provide a copy of each report required under this section to all bargaining units or bargaining agents representing the employees.

4.4. Reclassification. The ~~division~~ commission shall review the employer's performance criteria at the conclusion of each review period. Such review shall be completed within thirty (30) days following the conclusion of the review period.

4.4.1. When an employer's performance criteria is below the evaluation criteria for a focus program employer for two (2) consecutive review periods, the employer shall no longer be classified as a focus program employer and shall not be subject to further review, unless the performance criteria rises above the evaluation criteria for two consecutive review periods.

4.4.2. The focus program employer must show continued safety improvement to maintain the classification of focus program employer. The focus program employer shall be reclassified, subject to the discretion of the ~~division~~ commission under section eight, as a target program employer if, (1) measurable safety improvement is not made by the focus program employer over three review periods, or (2) the employer's experience modification factor exceeds the criteria for a focus program employer.

4.5. Notification of reclassification. The ~~division~~ commission shall notify all employers who are reclassified as a target program employer under these provisions. The notification shall include the reason for such reclassification as well as that material required under the notice provisions for a target program employer.

§85-23-5. Tier Two: Target Program Employer.

5.1. Notification. The ~~division~~ commission shall notify all employers whose performance criteria falls within the target program employer classification. The ~~division~~ commission shall include in such notification an analysis of the occupational injuries and diseases incurred by the employer and a list of qualified safety consultants and agencies.

5.2. Seminar. All target program employers must attend a seminar on basic safety programs sponsored or approved by the ~~division~~ commission.

5.3. Joint Safety Committee. All target program employers shall establish a joint labor and management safety committee.

5.3.1. An employer that is a member of a multi-employer group operating under a collective bargaining agreement that contains provisions regulating the formation and operation of a safety committee that meets or exceeds the minimum requirements of this rule shall be considered to have met the requirements of this rule.

5.4. Plan. Within sixty (60) days of the target program employer notification of classification, all target program employers shall submit a plan to the ~~division~~ commission, detailing the manner in which they will comply with the requirements to establish a joint labor and management safety committee and improve workplace safety.

5.4.1. Within sixty (60) days of receipt, the ~~division~~ commission shall review the target program employer's plan and notify the employer of any required changes.

5.5. Reports. All target program employers shall submit quarterly reports to the ~~division~~ commission detailing the activities of the safety committee. The report shall provide the number of meetings held during the quarter, copies of the minutes of the joint labor and management safety committee, and results of facility inspections.

5.5.1. Quarterly reports shall be due on or before the last day of the month following the end of the quarter.

5.5.2. The target program employer shall provide a copy of each report required under this section to all bargaining units representing the employees and to the joint labor and management safety committee established under this section.

5.6. Inspections. All target program employers shall be subject to inspection by authorized safety representatives contracted by or employed by the ~~division~~ commission. The authorized safety representative may enter and inspect any target program employer's property, premises, or place on or at which employees are located at any reasonable time for the purpose of ascertaining the cause of employment injury trends and the remedial action necessary to reduce such injury trends. No person shall refuse entry or access to any authorized safety representative of the ~~division~~ commission who requests entry for purposes of inspection, and who presents appropriate credentials; nor shall any person obstruct, hamper, or interfere with any such inspection: Provided, that nothing contained herein eliminates any obligation to follow any process that may be required by law.

5.6.1. Within thirty (30) days following the completion of any inspection performed pursuant to this subsection, the authorized safety representative shall prepare a report regarding the findings of the inspection. The authorized safety representative shall provide a copy of each report required under this subsection to the target program employer and to all bargaining units or bargaining agents representing the employees.

5.7. Reclassification. The ~~division~~ commission shall review the employer's performance criteria at the conclusion of each review period. Such review shall be completed within thirty (30) days following the receipt of the employer's quarterly report for the second quarter of each review period.

5.7.1. When an employer's performance criteria is below the evaluation criteria for a target program employer for two (2) consecutive review periods, the employer shall no longer be classified as a target program employer. If the employer's evaluation criteria meets the requirements for classification as a focus program employer, the employer shall meet the reporting requirements for a focus program employer.

5.7.2. If the employer's performance criteria is below the evaluation criteria for a focus program employer, the employer shall not be subject to further review, so long as the employer's performance criteria remains below the evaluation criteria for a focus program employer.

5.7.3. The target program employer must show measurable continued safety improvement to continue as a target program employer. If measurable safety improvement is not made over three review periods, the employer shall be reclassified subject to the discretion of the ~~division~~ commission under section eight, as a tier three employer.

5.8. Notification of reclassification. The ~~division~~ commission shall notify all employers who are reclassified as tier three employers under these provisions. The notification shall include the reason for such reclassification as well as that material required under the notice provisions for a tier three employer.

§85-23-6. Tier Three Employer.

6.1. Classification. The ~~division~~ commission shall classify as tier three employers all properly classified (for ratemaking purposes under the provisions of W. Va. Code §23-2-4) employers:

6.1.1. Who do not participate in the focus program employer program requirements;

6.1.2. Who do not participate in the target program employer program requirements; or

6.1.3. Who do not comply with the requirements of a target program employer.

6.2. Notification. The ~~division~~ commission shall notify all employers who are classified as a tier three employer. The ~~division~~ commission shall include in the notification the reason or reasons for such classification as a tier three employer. The ~~division~~ commission shall include in the notification an analysis of the occupational injuries and diseases incurred by the employer and a list of qualified safety consultants and agencies.

6.3. Requirements. Every tier three employer shall be subject to all requirements of the target program employer group.

6.4. Premium tax surcharge. In addition to other requirements of this rule, tier three employers may, in the discretion of the ~~division~~ commission, be subject to quarterly premium tax surcharges not to exceed twenty-five percent (25%) of premium tax due on a quarterly basis. Premium tax, for purposes of calculating the surcharge only, shall not include the penalty premium tax under W. Va. Code §23-2-5(f)(1).

6.4.1. The premium tax surcharge shall continue for such additional quarters as may be determined by the ~~division~~ commission.

6.4.2. The ~~division~~ commission shall not be required to impose a premium tax surcharge on every tier three employer. The ~~division~~ commission shall consider, but not be limited to, the following criteria, in its determinations of (1) whether to impose a premium tax surcharge, (2) what percentage of premium tax surcharge to apply to the quarterly premium tax, and (3) how long the premium tax surcharge shall be applied to the quarterly premium tax:

a. Whether the employer has been properly classified for purposes of determining the employer's experience modification factor;

b. Whether the experience modification factor is an effective method of determining the employer's mandated status under this rule;

c. Whether the employer is engaged in a unique employment category such that there is no suitable classification for purposes of determining the employer's experience modification factor;

d. Whether the employer has experienced significant changes in the number of payroll employees so as to adversely affect the employer's experience modification factor;

e. Whether the employer has experienced a catastrophic loss or other anomalous circumstance so as to adversely affect the employer's experience modification factor; and

f. Whether the employer is in substantial compliance with the requirements of a target program employer.

6.4.3. Upon the imposition of premium tax surcharges, the ~~division~~ commission shall provide a written notification as to the reasons for such a determination. The written determination shall include such factors as the ~~division~~ commission deems appropriate, including but not limited to, the five factors outlined in the previous paragraph.

6.5. Reclassification. The ~~division~~ commission shall review the employer's performance criteria at the conclusion of each review period. Such review shall be completed within thirty (30) days following the receipt of the employee's quarterly report for the second quarter of each review period.

6.5.1. After full participation as a tier three employer for two (2) consecutive review periods and after demonstration by the employer of measurable improvement, the tier three employer shall be reclassified. If the employer's evaluation criteria meets the requirements for classification as a target program employer, the employer shall be subject to the requirements for a target program employer. If the employer's evaluation criteria meets the requirements for classification as a focus program employer, the employer shall be subject to the requirements of a focus program employer.

6.5.2. If the employer's performance criteria is below the evaluation criteria for a focus program employer, the employer shall not be subject to further review, so long as the employer's performance criteria remains below the evaluation criteria for a focus program employer.

§85-23-7. New Subscriber Employers.

7.1. All employers without the requisite experience to calculate an experience modification factor shall be afforded a new subscriber experience modification factor for purposes of classification as a focus program employer or target program employer under the provisions of this rule.

7.1.1. A new subscriber experience modification factor shall be calculated for each employer at the close of the second full quarter after business start-up or after the effective date of this rule, if the employer has accumulated two (2) full quarters of claims experience, whichever is applicable.

7.1.2. The new subscriber experience modification factor shall be calculated in a similar manner as other experience modification factors.

7.2. The new subscriber employer shall be classified as a focus program employer or target program employer based upon the new subscriber experience modification factor and projected premium tax size as applied to table 85-23A.

7.3. The new subscriber employer shall be notified of its classification and subject to the same duties, responsibilities and requirements as other employers of like classification under the provisions of this rule.

§85-23-8. General Provisions: Classification and Reclassification.

8.1. Discretion. In matters involving classification and reclassification, the ~~division~~ commission shall not be required to classify or reclassify an employer solely as a result of the measurement of performance criteria. The ~~division~~ commission shall have discretion to consider other relevant issues as contained in, but not limited to, the provisions of 10.4.1 of this rule.

§85-23-9. Notification.

The ~~division~~ commission shall notify each employer classified or reclassified as a focus program employer, target program employer, or tier three employer under the provisions of this rule by certified mail addressed to the employer at the employer's last known residence or place of business: Provided, That, if an employer is represented by an attorney or other representative, then notice to the attorney or other representative shall be sufficient notice to the party so represented.

§85-23-10. Administrative Protests and Hearings.

10.1. Protest. An employer may protest any order, decision, designation or redesignation made under the provisions of this rule.

10.2. Petition. In order to preserve its right to protest, the employer must file a written petition with the ~~division~~ commission, stating the order or decision protested and the exact nature of the issue in controversy. In the written petition, the employer must designate a person or entity to receive official notices related to the protest and the employer must provide the address of the person or entity. The written petition must be received by the ~~division~~ commission within thirty (30) days after the employer receives notice of the objectionable order or decision or within sixty (60) days of the date of the objectionable order or decision, regardless of notice. This period may not be extended or waived.

10.3. Acknowledgment. Within thirty (30) days after receiving the written protest, the ~~division~~ commission shall issue a notice acknowledging the protest and providing an opportunity for hearing. Filing of a written protest temporarily stays the order or decision protested until a decision is rendered on such protest by a hearing examiner: Provided that, such temporary stay shall not exceed ninety (90) days from the date of the order or decision protested unless the employer is not provided an opportunity for hearing within that ninety (90) day period, in which case the temporary stay shall not exceed that date which the employer is provided an opportunity for hearing. The ~~division~~ commission may grant a further stay provided that the safety of the employer's employees is not compromised.

10.4. Subsequent administrative hearing proceedings shall be in accordance with 85 C.S.R. 7 "Rules for Selected Hearings."

10.4.1. In classification and reclassification of contested matters, the hearing examiner shall consider all relevant evidence relating to the totality of the circumstances surrounding the contested issue. Relevant issues for the hearing examiner's consideration shall include, but not be limited to the following:

a. Whether the employer has been properly classified for purposes of determining the employer's experience modification factor;

b. Whether the experience modification factor is an effective method of determining the employer's mandated status;

c. Whether the employer is engaged in a unique employment category such that there is a suitable classification for purposes of determining the employer's experience modification factor;

d. Whether the employer has experienced significant changes in the number of payroll employees so as to adversely affect the employer's experience modification factor; and

e. Whether the employer has experienced a catastrophic loss or other anomalous circumstance so as to adversely affect the employer's experience modification factor.

§85-23-11. Experience Modification Factors.

Calculations of experience modification factors for purposes of this rule shall not affect ratemaking procedures under the provisions of any other ~~division~~ commission rule, except to the extent that such other rule expressly incorporates the provisions of this rule.

§85-23-12. Forms.

The ~~division~~ commission ~~in conjunction with the compensation programs performance council~~ shall prepare and make available to all mandated employers standardized forms for reports required under the provisions of this rule.

§85-24-13. Retaliation Complaint Procedure.

13.1. A member of a joint labor and management safety committee shall not experience any loss of wages or other retaliation while attending safety committee meetings or performing duties at the direction of the safety committee.

13.2. Filing. Any member of a joint labor and management safety committee who experiences such loss of wages or retaliation may file a complaint within thirty (30) days of occurrence regarding such activity.

13.2.1. The complaint shall be filed with the president or chief executive officer of the employer, if the employer is a corporation or a limited corporation; with the managing partner if the employer is a partnership; with the general partner if the employer, parent or related business is a limited partnership; or, with all the members if the employer is a limited liability company; or with the owner if the employer is a sole proprietorship.

13.2.2. A copy of the complaint shall be filed with a ~~division~~ commission designee.

13.2.3. A copy of the complaint shall be filed with the joint labor and management safety committee and shall be made a part of the minutes of their next scheduled meeting.

13.3. The individual with whom the complaint is lodged at the employer' s level shall be the responsible party to investigate the complaint and make a detailed report and response to the member of the committee who has complained. Said report will detail any remedial action taken by the employer.

13.3.1. A copy of the report and response shall be filed with a ~~division~~ commission designee.

13.3.2. A copy of the report and response shall be filed with the joint labor and management safety committee and shall be made a part of the minutes of their next scheduled meeting.

13.4. Remedies. The remedies contained herein shall not preclude any other action, either state or federal, for which the committee member is eligible.

§85-23-14. Severability.

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

Table 85-23A

STANDARDS FOR LOSS CONTROL ACTIVITIES

Experience Modification Factors Exceeding Given Value Qualify Employer for Given Group

3-Year Premium (in dollars)		Tier One Focus Group	Tier Two Target Group
From	To		
0	4,999	1.40	1.50
5,000	12,499	1.50	1.60
12,500	24,999	1.60	1.70
25,000	49,999	1.70	1.80
50,000	& Over	1.80	1.90

Note: Non-merit-rated employers would have calculation analogous to experience modification factor calculation.
Note: Using Table 85-23A

(1) Calculate the premium tax paid over the last three full calendar years. This calculation will yield the three year premium as contained in the two columns at the left side of the table.

For example during the calendar years 1992, 1993, and 1994, XYZ, Inc., paid $32,850 in premium tax. XYZ, Inc., falls with the $25,000 to $49,999 premium range.

(2) Obtain the experience modification factor from the workers' compensation ~~division~~ commission.

For example. XYZ, Inc., has an experience modification factor of 1.73.

(3) Determined whether XYZ, Inc., falls within the focus employer or target employer groups by examining the two columns on the right side of the table.

(4) For an employer who falls within the three year premium tax range of $25,000 to $49,999:

(a) Focus program employers have experience modification factors equal to or exceeding 1.70 which do not equal or exceed 1.80 and

(b) Target program employers have experience modification factors equal to or exceeding 1.80.

(5) In the instant case, XYZ, Inc., with a premium tax range from $25,000 to $49,999 and an experience modification factor of 1.73 falls within the focus program employer group.

ORIGINAL

WEST VIRGINIA WORKERS' COMPENSATION BOARD OF MANAGERS

IN THE MATTER OF:	)	
	)	
PUBLIC HEARING,	)	RULE 23, LOSS PREVENTION
WORKERS COMPENSATION	)	
BOARD OF MANAGERS	)	
JUNE 23, 2005	)	

****

Transcript of proceedings had in the above-styled matter, were held as therein appears at the Charleston Civic Center, Rooms 207-209, 100 Civic Center Drive, Charleston, West Virginia, on the 23rd day of June, 2005, 1:05 p.m., pursuant to notice, before David T. Bolin, Court Reporter and Notary Public in and for the State of West Virginia.

****

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

APPEARANCES

BOARD MEMBERS

ROB ALSOP, BOARD CHAIR

GENE F. BAILEY

CHRIS JARRETT

DOUGLAS MERRITT

PAUL THOMPSON

RICHARD HUMPHREYS

PAUL HARDESTY

BOB PHALEN

EVERETTE SULLIVAN

CRAIG SLAUGHTER

P R O C E E D I N G S

1:05 p.m.

CHAIRMAN ALSOP: I will open up the public hearing with respect to Rule 23, Loss Prevention. Now one has signed up with respect to that rule, but again, if anyone would like to come forward and speak, they may do so now.

(No response.)

If not, we'll close the public hearing with respect to Rule 23.

(WHEREUPON, the hearing was adjourned.)

REPORTER'S CERTIFICATE

I, DAVID T. BOLIN, a Court Reporter and Notary Public in and for the State of West Virginia, hereby certify that the foregoing is a true and correct transcript of all proceedings had and evidence adduced, together with all the objections made and rulings thereon, and exceptions thereto, as stated in the caption hereto, as reported by me by means of the stenomask and stenographic characters and transcribed into the English language.

Given under my hand and official seal this 30th day of June, 2005.

DAVID BOLIN
Court Reporter and
Notary Public

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
JUNE 23, 2005 – 1:00 P.M.
RULE 23 – LOSS PREVENTION

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)

Response to Comments

85CSR23, "Loss Prevention"

No comments received.