WEST VIRGINIA
SECRETARY OF STATE
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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-3

AMENDMENT TO AN EXISTING RULE: YES X NO ___

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 24

TITLE OF RULE BEING AMENDED: Qualified Loss Management Programs

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

$15.00

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 24
"Qualified Loss Management Programs"

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. 24 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 RULES

Rule Title: Title 85, Series 24: Qualified Loss Management Programs

Type of Rule: X Legislative Exempt ___Interpretive ___Procedural

Agency Workers' Compensation Commission

Address 4700 MacCorkle Avenue, S.E.

Charleston, WV 25304

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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 qualified loss management programs 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 voluntary implementation of qualified loss management programs through the provision of a prospective premium tax credit 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 24: Qualified Loss Management Programs

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 24
Qualified Loss Management Programs

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.

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

SERIES 24
QUALIFIED LOSS MANAGEMENT PROGRAMS

§85-24-1. General.

1.1. Scope. -- This rule implements the provisions of W. Va. Code §23-2B-3, regarding qualified loss management programs.

1.2. Authority. -- W. Va. Code §§~~21A-2-6(1), 6(2) & 6(14); 21A-2-19; 21A-3-7(b) & 7(e);~~ 23-2-B-3; 23-2-4; and 23-1-1. Pursuant to W. Va. Code, ~~§21A-3-7(e)~~ §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~~.

§85-24-2. Purpose of Rule.

The purpose of this rule is to implement the provisions of W. Va. Code, §23-2B-3, to promote the voluntary implementation of qualified loss management programs through the provision of a prospective premium tax credit. The goal of this rule is to establish workers' compensation reforms by increasing employer and employee commitment to workplace safety and injury prevention, resulting in a reduction of occupational fatalities, injuries and illnesses, and post-injury assistance to the worker which will result in the rendering of higher quality health care to the employee and a reduction in the workers' compensation fund deficit.

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.

§85-24-3. Definitions.

As used in these rules, the following terms have the stated meanings unless the context of a specific use clearly indicates 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 et seq.

3.2. "Client employer" means an employer who participates with a qualified loss management service provider in accordance with and under the provisions of this rule.

3.3. "Commissioner" 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.

3.4. "Credit factor" means a multiplier, determined in accordance with this rule, utilized to calculate premium tax credits.

3.5. "Director" means the executive director of the workers' compensation ~~division~~ commission~~, who is appointed by the commissioner and~~ who serves as the chief ~~operating~~ executive officer of the ~~daily operations of the~~ workers' compensation ~~division~~ commission, provided by W. Va. Code §23-1-4.

3.6. ~~"Division" means the workers' compensation division within the bureau of employment programs as provided for by W. Va. Code §§21A-1-4, 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.

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

3.8. "Good standing" with the ~~division~~ commission means that the employer has not defaulted on its obligations to make payments to the ~~division~~ commission. Being in delinquent status, as provided for in W. Va. Code §23-2-5(b), is not equivalent to being in default and does not deprive the employer of good standing. The term default is defined in W. Va. Code, §§23-2-5(d), -5(e), -6, & -8. The term default also includes those situations under W. Va. Code, §23-2-5(f)(2)-(4), where an employer returns to default status upon breaching a reinstatement agreement. If an employer fails to meet the requirements of those sections, then it is in default and is not in good standing with the ~~division~~ commission.

3.9. "Incurred losses" are claims reserves consisting of compensation awards, medical payments, and claims expense payments.

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

3.11. "Joint labor and management safety committee" means a formally structured process to provide for and foster employee and employer involvement in safety reforms. 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.

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 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 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.

3.12. "Loss costs" are incurred losses on an accrual basis per one hundred dollars ($100.00) of payroll for the period under measurement.

3.13. "Operating personnel" means those individuals employed or utilized by a qualified loss management service provider to provide qualified loss management services to client employers. Such individuals include all specialists in safety, rehabilitation, and occupational health utilized by the qualified loss management service provider. Such individuals do not include clerical employees.

3.14. "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.

3.15. "Regular subscriber" means an employer who is a subscriber to all parts of the compensation fund including the surplus fund.

3.16. "Self-insurer" and "self-insured employer" mean employers who have elected one or both of the options contained in W. Va. Code §23-2-9, and who pay individually and directly, or from their own benefit fund or system of compensation, the compensation and other benefits provided to injured employees or their dependents under the Act.

§85-24-4. Employer Participation; Eligibility.

4.1. Participation. Participation by an employer in a qualified loss management program is voluntary. No employer shall be required to participate in a qualified loss management program under the provisions of this rule.

4.2. Eligibility. Regular subscribers to the workers' compensation fund in good standing with an experience modification factor equal to or greater than 1.5 are eligible to participate in a qualified loss management program under the provisions of this rule. The failure of an employer to maintain good standing during its period of participation in a qualified loss management program shall result in the termination of participation by the employer. Self-insurers are not eligible to participate in the qualified loss management program established by this rule.

4.2.1. Individual employers, who have an experience modification factor less than 1.5, may participate in a qualified loss management program if the employer is a member of an employer group under section five of this rule and the employer group has an aggregate experience modification factor, developed from the aggregate experience of members of the group, equal to or greater than 1.5.

4.2.2. If the employer's or the group's experience modification factor drops below 1.5 during its participation in a qualified loss management program, the employer's eligibility will not be affected.

§85-24-5. Small Employer's Group Associations.

5.1. Description. Small employers may associate with other small employers to form an employer group for purposes of seeking qualified loss management services under the provisions of this rule.

5.2. Definitions. Small employer. For purposes of this rule, "small employer" means an employer with fifty (50) or less employees and a premium tax less than $40,000 per year.

Employer group. For purposes of this rule, "employer group" means an association of small employers with the same industrial classification code or an association of small employers with similar industrial classification codes as approved by the ~~division~~ commission.

5.3. Eligibility. an employer group may be formed from independent employers or in conjunction with an existing association of businesses.

5.4. Board of Governors. Each employer group shall appoint a board of governors composed of active members of the employer group. The board of governors shall be responsible for contracting with an approved qualified loss management service provider on behalf of the employer group.

5.4.1. Individual employer eligibility for the employer group shall be determined by the board of governors and the qualified loss management service provider. In no event shall an employer participate in the qualified loss management program if it does not meet the eligibility requirements of section four of this rule.

5.4.2. No additional individual employers shall be added to an employer group more than thirty (30) days after the appointment of the board of governors. No additional individual employer shall be added to an employer group after the onset date of a qualified loss management program for the employer group.

§85-24-6. Qualifications For Loss Management Service Providers.

In order to offer a credit to its client employers, a loss management service provider must submit and receive approval of its loss management program from the ~~division~~ commission following the procedures outlined below and containing the key elements indicated.

6.1. Loss management service providers must submit a loss management program to the workers' compensation ~~division~~ commission. The program shall be submitted in a time frame and form as prescribed by the ~~division~~ commission. Such submission shall be in a manner prescribed by the ~~division~~ commission and in accordance with the rules of the purchasing division of the West Virginia department of administration. Each loss management service provider shall meet the following minimum qualifications.

6.2. A loss management service provider must be recognized by the ~~division~~ commission.

6.3. Personnel. A loss management service provider must evidence its ability to perform services based upon qualifications of its operating personnel. All elements of operating personnel qualifications shall be reviewed.

6.3.1. Information regarding the job-related training and experience of all operating personnel must be submitted to the ~~division~~ commission.

6.3.2. Each loss management service provider shall have specialists on staff including experienced and qualified specialists in safety and occupational health.

6.4. Safety. A loss management service provider must have a structured approach to focus top level management of the employer, as well as other employer personnel, on safety.

6.4.1. A loss management service provider must provide a means of measuring and insuring the employer's commitment to implementing safe workplace practices.

6.4.2. A loss management service provider must provide for the implementation of a joint labor and management safety committee as part of its loss management program.

6.5. Safety audit. A loss management service provider shall provide an annual safety audit of each client employer. Such an audit shall include, but not be limited to, a report of all occupational injuries or illnesses.

6.5.1. Where such client employer is subject to the recording and reporting provisions of 29CFR Part 1904, the report shall include the information required in the format prescribed by the ~~division~~ commission (form OSHA No. 200 or successor).

6.5.2. Where such client employer is subject to the recording and reporting provisions of 30CFR Part 50, the report shall include the information required in the format prescribed by the ~~division~~ commission (MSHA Mine Accident, Injury, and Illness Report Form 7000-1 or successor).

6.5.3. Where such client employer is not subject to either of the foregoing federal reporting regulations, the report shall include the information required in the format prescribed by 29CFR Part 1904 (form OSHA No. 200 or successor).

6.6. Post injury response. A loss management service provider must provide a loss management program which:

6.6.1. Contains plans of action and specific techniques, consistent with the Act, which are designed to assist an injured worker in obtaining necessary medical care;

6.6.2. Contains specified means of maintaining contact with the injured worker and continuing claims control throughout the recuperation period;

6.6.3. Contains specified means of maintaining contact with medical providers throughout the recuperation period; and

6.6.4. Contains specified means to encourage an injured worker to return to work at the earliest possible time, including the development of modified work programs.

6.7. These additional elements must be included in a loss management program:

6.7.1. The approved loss management service provider may not discriminate against any eligible client employer desiring to avail itself of the credit assigned to the service provider by the ~~division~~ commission;

6.7.2. The program must contain a provision stating that the credit factor applicable to the first year is subject to change in the second and third years;

6.7.3. The program must contain a provision stating that a credit will not apply after the client employer has received a credit for three (3) years; and

6.7.4. The program must contain a provision stating that a client employer must be involved in the program for three (3) years before eligibility for the credit is established.

6.7.5. The program must contain a provision that the qualified loss management service provider shall notify the ~~division~~ commission, prior to commencement of qualified loss management services, of each participating client employer.

6.7.6. The program shall contain a provision to allow a qualified loss management service provider to terminate its services to a client employer or to a member or members of an employer group prior to the expiration of the one year eligibility requirement in the event the client employer is not committed to workplace safety, resulting in a reduction of occupational injuries and illnesses, and post injury assistance to the worker.

a. Disputes under this provision between qualified loss management service providers and client employers are not subject to resolution under the provisions of this rule.

b. Wrongful termination by a qualified loss management service provider may, in the ~~division's~~ commission's discretion, result in withdrawal of plan approval under section nine of this rule.

§85-24-7. Assignment of Credit Factors.

7.1. Each new qualified loss management service provider approved to offer a loss management program under the provisions of this rule shall be assigned a credit factor upon notice of approval or acceptance of proposal.

7.1.1. Loss management service providers approved or accepted under this rule shall be assigned an initial credit factor of .10 (10%).

7.1.2. Subsequent credit factors shall be assigned to loss management service providers based upon the aggregate performance of their client employers in accordance with the scale developed under the provisions of subsection 7.2.

7.2. Upon accumulation of sufficient program experience, as determined by the ~~compensation programs performance council~~ board of managers, the credit factor assigned to the loss management service provider shall be based upon the percentage of the aggregate reduction in loss costs for all of the loss management service provider's client employers or any industrial groupings determined to be appropriate by the ~~compensation programs performance council~~ board of managers.

7.2.1. The scale for determining credit factors shall be developed in the following manner:

a. The ~~compensation programs performance council~~ board of managers shall make the determination at a public meeting or meetings held in accordance with the provisions of 85 C.S.R. 14, "Procedural Rules for the ~~Compensation Programs Performance Council~~ Board of Managers."

b. Such a determination shall be filed with the office of the secretary of state for publication in the state register pursuant to the provisions of W. Va. Code, §29A-2-1 et seq.

c. Such a determination shall be filed with the office of the secretary of state at least thirty (30) days prior to the first day the determination becomes effective.

7.2.2. Loss costs for client employers who do not complete one year of the programs shall not be utilized in the ratio calculation.

7.3. The assigned credit factor shall be effective until the next July 1 after assignment. The credit factor shall be recalculated for every year thereafter in the fashion provided for in this section. The recalculated credit factor shall be effective during the fiscal year for which it is calculated.

§85-24-8. Credits.

8.1. Each client employer who participates in an approved loss management program for a three (3) year period and who achieves the necessary reductions in loss costs shall be entitled to a prospective credit to premium taxes.

8.2. Start-up calculations. Prior to and as a condition of the start-up of a qualified loss management program on behalf of a client employer, the ~~division~~ commission shall provide the following information to the loss management service provider and the client employer.

8.2.1. Baseline loss costs. The client employer's ultimate loss costs will be established for the three (3) most recent fiscal years, prior to the implementation of the employer's qualified loss management program, for which data is available. This is the baseline loss costs.

8.2.2. A loss costs modification factor will be determined for the client employer by dividing the baseline loss costs by the base loss costs established from the most recent rating study. This is the baseline modification factor.

8.2.3. Trended base loss costs shall be projected by the ~~division~~ commission for the three (3) years covering the period of participation in the qualified loss management program. Trended base loss costs shall be based on anticipated changes in costs, inflation and benefit changes.

8.3. Loss cost reductions. At the conclusion of each year of program participation, the ~~division~~ commission will calculate the loss costs for that year. The loss costs will be compared to the baseline loss costs to determine the percentage reduction in loss costs for each period.

8.3.1. Communications. The ~~division~~ commission shall communicate to the client employer and the loss management service provider the percentage of loss costs reductions and the amount of projected premium tax credit at the conclusion of each period. The ~~division~~ commission shall make such entries in its books to show the amount of prospective credit (subject to subsequent year adjustments) achieved thus far.

8.4. Amount of credit. The amount of prospective credit achieved by a client employer shall be based on the credit factor assigned its loss management service provider for each period and the percentage of its overall reduction in loss costs for the three (3) year period in accordance with the following table.

Table 85-24A

% Overall Loss Costs	% Of Credit Factor Reductions Allowed
40% and more	Full credit factor allowed
30% to 40%	80%
20% to 30%	60%
10% to 20%	40%
5% to 10%	30%
Less than 5%	0%

Example: A loss management service provider has been assigned a 10% credit factor for each year of the three year program period. The client employer achieves an overall three year percentage reduction in loss costs of 26%. The client employer is entitled to 60% of the loss management service provider's credit factor.

In other words, 60% of 10% = 6% (.6 x .1 = .06).

The client employer is entitled to a 6% (.06) credit for the first two years of the program and a 3% (.03) credit for the third year of the program. Note: The credit achieved in the third year of program participation is halved.

8.5. The maximum time a premium tax credit shall be allowed for any client employer is three (3) years.

8.6. The prospective credit shall be calculated using the credit factor assigned to the loss management service provider for each of the three (3) years of participation. The credit calculated for the third year of program participation shall be halved.

8.7. Changing loss management service providers. If a client employer's enrollment in an approved program terminates before such employer completes three (3) years of program participation and such employer subsequently becomes enrolled in another approved program, the employer's prior participation shall only be combined with the subsequent enrollment (1) if enrollment in the first program was for more than one year; (2) if enrollment in the first program resulted in a reduction in loss costs of at least 10% as calculated in accordance with the provisions of 8.4 (adjusted for any partial period in excess of one year participation); (3) if the employer subsequently enrolls in another approved program within thirty (30) days of such termination; and (4) if program participation terminates due to the fault of the qualified loss management service provider.

8.8. Prospective credit. Except as follows, within ninety (90) days following the conclusion of the third year of program participation, the ~~division~~ <u>commission</u> will refund to the client employer the amount of prospective credit achieved by the client employer.

~~8.8.1. Retrospective plans. For client employers participating in a retrospective rating plan, either group or individual, the prospective credit will be refunded ninety (90) days following the final reconciliation and adjustment of the client employer's retrospective rating plan for all periods covered by the three (3) years of program participation.~~

~~a. The prospective credit for a client employer participating in a retrospective rating plan will be based on the retrospectively adjusted premium tax for each period of program participation.~~

§85-24-9. Withdrawal of Plan Approval.

9.1. If the ~~division~~ commission determines, after a meeting with the loss management service provider, that the loss management service provider is not in compliance with program requirements, the ~~division~~ commission is authorized to withdraw approval of the loss management program previously approved or accepted under this rule.

9.2. Should the ~~division~~ commission withdraw approval of the loss management program, the ~~division~~ commission shall provide at least thirty days written notice that such approval is withdrawn and that its participation in the qualified loss management program authorized by W. Va. Code §23-2B-3, is terminated.

9.3. A copy of the required notice shall be sent by the ~~division~~ commission to each of the service provider's client employers.

§85-24-10. Termination of Participation By Client Employer.

10.1. The client employer may terminate participation in the loss management program upon three years of continuous participation in the program without penalty.

10.2. If the client employer terminates participation in the loss management program prior to three years of continuous participation in the program, no credit shall be granted to the client employer.

§85-24-11. Notification.

The ~~division~~ commission shall send all notices required under the provisions of this rule by certified mail addressed to the loss management service provider or client employer at their last known residence or place of business: Provided, That, if any loss management service provider or client 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.

§85-24-12. Administrative Protests and Hearings.

12.1. Protest. An aggrieved loss management service provider or employer may protest any order, decision, designation or redesignation made under the provisions of this rule.

12.2. Petition. In order to preserve its right to protest, the loss management service provider 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 loss management service provider must designate a person or entity to receive official notices related to the protest and the loss management service provider 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 loss management service provider 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.

12.3. 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 loss management service provider 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 loss management service provider is provided an opportunity for hearing.

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

§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.

§85-24-14. 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.