

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE TENNANT**

ADMINISTRATIVE LAW DIVISION

Form #5

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2009 OCT -9 PM 2: 50
OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: Insurance Commissioner (Workers' Compensation Rules) TITLE NUMBER: 85

CITE AUTHORITY W.Va. Code §§23-1-1b(g)(16), 23-2C-15(d) and 23-2C-19(e)

RULE TYPE: PROCEDURAL _____ INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE X

CITE STATUTE (s) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

W.Va. Code §§ 23-2C-22, 33-2-10(b) and 33-2-21(a)

AMENDMENT TO AN EXISTING RULE: YES X NO _____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 32

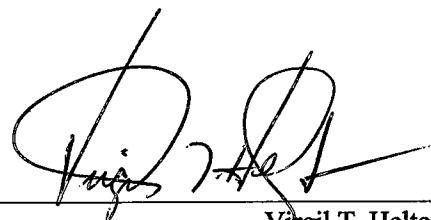
TITLE OF RULE BEING AMENDED: State Agency Revocation Or Refusal To Grant, Issue Or
Renew Contracts, Licenses, Permits, Certificates Or Other Authority To Conduct A Trade, Profession
Or Business To Or With An Employing Unit In Default Of Its Workers' Compensation Obligations

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: _____

TITLE OF RULE BEING ADOPTED: _____

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE

EFFECTIVE DATE OF THIS RULE IS November 8, 2009



Virgil T. Helton
Cabinet Secretary
West Virginia Department of Revenue

TITLE 85
EXEMPT LEGISLATIVE RULE
WORKERS' COMPENSATION COMMISSION

SERIES 32
STATE AGENCY REVOCATION OR REFUSAL TO GRANT, ISSUE OR RENEW
CONTRACTS, LICENSES, PERMITS, CERTIFICATES OR OTHER AUTHORITY TO
CONDUCT A TRADE, PROFESSION OR BUSINESS TO OR WITH AN EMPLOYING
UNIT IN DEFAULT OF ITS WORKERS' COMPENSATION OBLIGATIONS.

Section

- 85-32-1. General.
- 85-32-2. Definitions.
- 85-32-3. General Prohibition.
- 85-32-4. Timing of Review.
- 85-32-5. Revocation.
- 85-32-6. Procedure for Petitioning for Exemption.
- 85-32-7. Procedures for Implementation.

**TITLE 85
EXEMPT LEGISLATIVE RULE
WORKERS' COMPENSATION COMMISSION**

FILED
2009 OCT -9 PM 2:50

SERIES 32

**STATE AGENCY REVOCATION OR REFUSAL TO GRANT, ISSUE OR RENEW
CONTRACTS, LICENSES, PERMITS, CERTIFICATES OR OTHER AUTHORITY TO
CONDUCT A TRADE, PROFESSION OR BUSINESS TO OR WITH AN EMPLOYING
UNIT IN DEFAULT OF ITS WORKERS' COMPENSATION OBLIGATIONS.**

§85-32-1. General.

1.1. Scope. -- This legislative exempt rule is intended to set forth the procedures enabling the implementation of the provisions of W. Va. Code §§23-1-1b(g)(16), 23-2C-15(d) and 23-2C-19(e) that requires agencies to revoke and prohibits agencies from granting, issuing, or renewing any contract, license, permit, certificate, or other authority to conduct a trade, profession, or business to or with any employing unit which is on the workers' compensation default list.

1.2. Authority. -- W. Va. Code §§23-1-1b(g)(16), 23-2C-15(d) and 23-2C-19(e). Pursuant to W. Va. Code §§23-2C-22; 33-2-10(b) and 33-2-21(a), workers' compensation rules proposed by the Insurance Commissioner and approved by the Industrial Council are not subject to W. Va. Code §§29A-3-9 through 29A-3-16, inclusive.

1.3. Filing Date. -- October 9, 2009.

1.4. Effective Date. -- November 8, 2009.

§85-32-2. Definitions.

As used in this rule, the following terms and words have the meanings stated, unless the context clearly indicates otherwise.

2.1. "Agency" includes any unit of state government such as officers, agencies, divisions, departments, boards, commissions, authorities, or public corporations.

2.2. "Applicant" means an employing unit that is seeking the issuance, granting or renewal of an approval document.

2.3. "Application" means a completed form or other document, including a proposed contract, seeking the issuance, granting or renewal of an approval document regardless of the name assigned to it.

2.4. "Approval document" means any contract, license, permit, certificate, or other authority to conduct a trade, profession, or business

2.5. "Default" means being on the Workers' Compensation Default List as defined in W. Va. CSR §85-11-2.12.

2.6. "Employing unit" means an employer subject to chapter twenty-three of the West Virginia Code, as defined in the provisions of W. Va. Code §23-2-1.

2.7. "Grant" and "issue" include not only the original issuance or granting of an approval document but also any renewal, transfer, assignment or sale of the document, if otherwise, allowed.

2.8. "Default list" means the Workers' Compensation Default List as defined in W. Va. CSR §85-11-2.12.

2.9. "Person" means any public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or county; any governmental agency; political subdivision; county commission; municipality; industry; public service district; partnership; trust; estate; person or individual; and group of persons or individuals acting individually or as a group or any other legal entity whatever.

2.10. "Payment agreement" means an agreement under the provisions of W. Va. CSR §85-11-12.

2.11. "Review" means either to query a computerized database or list to determine if the applicant's name is included as being in default by the Commission or, upon termination of the Commission, the Insurance Commissioner.

2.12. "Insurance Commissioner" means the Insurance Commissioner of West Virginia as provided in section one, article two, chapter thirty-three of the West Virginia Code.

2.13. "Insurer" shall mean 1) a self-insured employer; or 2) a private carrier.

§85-32-3. General Prohibition.

Pursuant to the provisions of W. Va. Code §§23-1-1b(g)(16), 23-2C-15(d) and 23-2C-19(e), an agency shall not grant, issue, or renew any approval document to, or enter into an approval document with, any applicant who is on the Default List.

§85-32-4. Timing of Review.

4.1. After an application is complete and no further changes may be made to it prior to its final approval and before it is issued, an agency shall review the Default List. This does not prevent a review prior to that time and notifying the applicant of the results.

4.2. If the applicant's name appears on the Default List, an agency shall notify the applicant in writing, as in their normal course of business, that the agency has been informed that the applicant is on the Default List and that the approval document can not be issued until the applicant is no longer on the list.

4.3. Nothing in this section shall prevent the agency from providing any applicant, employing unit or person the standard due process which the agency avails to any party aggrieved by action of the agency with regard to the refusal to issue approval documents.

§85-32-5. Revocation.

5.1. Pursuant to the provisions of W. Va. Code §§23-1-1b(g)(16), 23-2C-15(d) and 23-2C-19(e), an agency shall revoke any approval document of any employing unit whose account is on the Default List.

5.2. If the Insurance Commissioner has reason to believe that an employing unit that is in default is conducting its business in West Virginia under the authority of an approval document issued by an agency, the Insurance Commissioner shall notify the agency of its duty to revoke the approval document.

5.3. If the agency determines that an employing unit subject to the notification in subsection 5.2. is conducting business under the authority of an approval document issued by the agency, the agency shall notify the employing unit in writing, as in their normal course of business, that the agency has been notified that the employing unit is on the Default List and that the approval document must be revoked until the employing unit is no longer on the list.

5.4. Nothing in this section shall prevent the agency from providing any applicant, employing unit or person the standard due process which the agency avails to any party aggrieved by action of the agency with regard to the revocation of approval documents.

§85-32-6. Procedure for Petitioning for Exemption.

6.1. An agency may petition the Insurance Commissioner for an exemption from the provisions of this rule.

6.2. If the agency petitions to be exempt, it must clearly demonstrate to the Insurance Commissioner that the provisions of the rule are unduly burdensome and that its efforts in complying with the rule do not result in an incentive for any significant number of employers to comply with West Virginia's workers' compensation laws.

§85-32-7. Procedures for Implementation.

Notwithstanding other provisions of this rule, the Insurance Commissioner and the Tax Commissioner may adopt mutually agreed procedures for automated review and matching of Tax Department databases with databases of the Insurance Commissioner for implementation of this rule.

PUBLIC HEARING

JULY 30, 2009

OFFICES OF THE WEST VIRGINIA INSURANCE COMMISSIONER WORKERS' COMPENSATION INDUSTRIAL COUNCIL

TITLE 85, SERIES 32

**State Agency Revocation or Refusal to Grant, Issue or Renew Contracts,
Licenses, Permits, Certificates or Other Authority to Conduct a Trade,
Profession or Business to or with an Employing Unit in Default of its
Workers' Compensation Obligations**

Transcript of the Public Hearing held on Thursday, July 30, 2009, at 3:00 p.m.,
Offices of the West Virginia Insurance Commissioner, 1124 Smith Street, Room 400,
Charleston, West Virginia.

Industrial Council Members Present:

Bill Dean, Chairman
Kent Hartsog
Dan Marshall
Walter Pellish (via telephone)

Chairman Bill Dean: This is Title 85, Series 32, State Agency Revocation or Refusal to Grant, Issue or Renew Contracts, Licenses, Permits, Certificates or Other Authority to Conduct a Trade, Profession or Business to or with an Employing Unit in Default of its Workers' Compensation Obligations. Ryan, do you have anything you would like to comment on?

Ryan Sims (Associate Counsel, OIC): No. We did not receive any written comments on Title 85, Series 32.

Chairman Dean: Does anybody from the general public have anything they would like to comment on? We will close the public hearing on Title 85, Series 32.

[There were no comments.]

Title 85, Series 32

July 30, 2009

[illegible]