

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #1

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2005 APR 13 P 2:58

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), 23-1-1b(g)(16), 23-2C-15(e)

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 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:

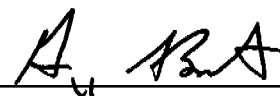
The Department requests that persons wishing to make
comments at the hearing make an effort to submit written
comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

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

Fax # (304) 926-5372



Authorized Signature

§ 4.20

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 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"

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. 32 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 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.

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	Undetermined	N/A
PERSONAL SERVICES	0	0	0	Undetermined	N/A
CURRENT EXPENSE	0	0	0	Undetermined	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 vesting of certain regulatory enforcement related to any employing unit which is in default or policy default with regard to chapter twenty-three of the West Virginia Code subsequent 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). 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 authority will reside with the insurance commissioner beginning January 1, 2006. This will result in a decrease in total costs for the commission for FY'06 that cannot be reasonably estimated or pro-rated.

3. Objectives of this rule:

The purpose of this rule is provide a list to other state agencies regarding any employing unit that is in default with their workers' compensation insurance coverage. As a result, any agency shall not grant, issue, or renew any approval document to, or enter into an approval document with, any employing unit in default.

Rule Title: 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.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

It is expected that 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 will 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 21**

**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**

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. This rule also provides for the enforcement of the provisions of W. Va. Code §23-1-1b(g)(16) and the new provisions of §23-2C-15(e) with regard to the business license and other arrangements between State agencies and employers who fail to honor their workers' compensation obligations with regard to the Commission's Old Fund liabilities and with regard to private market defaults.

TITLE 85
EXEMPT LEGISLATIVE RULE
WORKERS' COMPENSATION COMMISSION

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2005 APR 13 P 2:58

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) and W.Va. Code §23-2C-15(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 ~~whose account is in default with the Workers' Compensation Commission which is in default or policy default~~ with regard to the administration of chapter twenty-three of the W. Va. Code.

1.2. Authority. -- W. Va. Code §§23-1-1a and 23-1-1b(g)(16) and W.Va. Code §23-2C-15(e). Pursuant to W. Va. 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 W. Va. 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 §23-2C-22.

1.3. Filing Date. -- ~~January 29, 2004.~~

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

~~1.5. Repeal and Replacement. This rule repeals and replaces 96 CSR 1, a joint rule of the former Workers' Compensation Division and the Unemployment Compensation Division of the Bureau of Employment Programs insofar as the provisions apply to workers' compensation matters.~~

§85-32-2. Definitions.

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

2.6. "Code" means the W. Va. Code of 1931, as amended.

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

2.8. "Default", for purposes of the administration of chapter twenty-three of the Code, means being in default as provided in W. Va. Code §23-2-5(d) and W. Va. Code §23-2-9(f).

2.9. "Employing unit" means an employer subject to chapter twenty-three of the Code of W. Va., as defined in the provisions of W. Va. Code §23-2-1. The Commission shall gather individual and other ownership information concerning the employing units in default for examination under the Commission's Employer Violator System.

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

2.11. "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.

2.12. "Commission Default List" means a paper or database identification of ~~an~~ employing units that ~~is~~ are in default with the Workers' Compensation Commission ~~or the Old Fund~~. The list, which will be created by the Commission, may be provided to the agency in the form of either a computerized database or other databases that the agency can access. Upon termination of the Commission, the administration of the Commission Default List shall transfer to the insurance commissioner.

2.13. "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.

2.14. "Repayment agreement" means a written agreement to pay in full all delinquent amounts owed to the Commission, including interest and penalties, under the provisions of chapter twenty-three of the Code.

~~2.15.~~ ~~2.15.~~ "Review" means either to query a computerized database or list to determine if the applicant's name is included as in default by the Commission.

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

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

2.18. "Policy Default" means a policy holder that has failed to comply with the terms of its workers' compensation insurance policy and is consequently without workers' compensation coverage and shall include, but not be limited to, an employing unit's failure to pay the regulatory surcharge and deficit reduction surcharge required by article two-c of chapter twenty-three of the West Virginia Code.

2.19. "Private Carrier" means any insurer authorized by the insurance commissioner to provide workers' compensation insurance pursuant to chapters twenty-three and thirty-three of the West Virginia Code, but shall not include self-insured employers.

2.20. "Private Market Default List" means a paper or database identification of employing units that are or have been in policy default with a private carrier or that are in default based upon failure to comply with self-insured premium requirements, including the payment of the regulatory surcharge and the deficit reduction surcharge imposed by article two-c of chapter twenty-three of the West Virginia Code. The list, which will be created by the insurance commissioner, may be provided to the agency in the form of either a computerized database or other databases that the agency can access.

§85-32-3. General Prohibition.

Pursuant to the provisions of W. Va. Code §23-1-1b(g)(16) and W.Va. Code §23-2C-15(e), an agency shall not grant, issue, or renew any approval document to, or enter into an approval document with, any applicant whose account is in default with the Commission is on the Commission Default List or the Private Market Default List, with regard to the administration of chapter twenty-three of the Code.

§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 list Commission Default List and the Private Market 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 as being in default on the Commission Default List or the Private Market 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 in default with the Commission with regard to the administration of chapter twenty-three of the Code on the Commission Default List or the Private Market Default List and that the approval document can not be issued until the applicant is no longer in default on said list. A copy of the notice shall be sent to the Commission addressed as follows:

Workers' Compensation Commission
Attention: Director, Receivables Management Unit
Post Office Box 153
Charleston, West Virginia 25321

Upon termination of the Commission, a copy of the notice shall be sent to the insurance commissioner and shall also be sent to the administrator of the Old Fund or the applicable private carrier, whichever appropriate.

4.3. If the approval document is not issued, granted or renewed within fourteen calendar days of the review that caused notice to be given to the applicant under subsection 4.2 of this section, a new review shall be conducted.

§85-32-5. Revocation.

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

5.2. If the Commission, insurance commissioner, or private carrier, as appropriate, has reason to believe that an employing unit that is in default or policy default is conducting its business pursuant to an

approval document with an agency, the Commission or private carrier shall notify the agency of its duty to revoke the approval document.

5.3. If the agency determines that the employing unit, that is subject of the notification in subsection 5.2., is conducting its business pursuant to 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 ~~in default with the Commission under the provisions of chapter twenty-three of the Code~~ on the Commission Default List or the Private Market Default List and that the approval document must be revoked until the employing unit is no longer ~~in default~~ on said list. A copy of the notice shall be sent to the Commission addressed as follows:

Workers' Compensation Commission
Attention: Director, Receivables Management Unit
Post Office Box 153
Charleston, West Virginia 25321

Upon termination of the Commission, a copy of the notice shall be sent to the insurance commissioner and shall also be sent to the administrator of the Old Fund or the applicable private carrier, whichever appropriate.

§85-32-6. Conditional Issue or Conditional Restoration.

An approval document shall be conditionally issued or conditionally restored if revoked, if the applicant has entered into repayment agreement with the Commission, the insurance commissioner, the administrator of the Old Fund, or the private carrier for payment in full of all payments, interest and penalties owed. If the applicant does not maintain continued compliance with the repayment agreement, the Commission, the insurance commissioner, the administrator of the Old Fund or private carrier shall notify the agency that the applicant is in noncompliance. Upon receiving the notice, an agency shall rescind or revoke the approval document, as appropriate.

§85-32-7. Request for Reconsideration; Petition for Hearing.

7.1. When an employing unit's contract, license, permit, certificate or other authority is revoked or not issued or renewed due to its ~~workers' compensation account being in default with the Commission and its name appearing on the~~ Commission Default List or the Private Market Default List, the employing unit ~~who is in default may, until termination of the commission,~~ request a reconsideration of the decision from the Commission at the address as follows:

Workers' Compensation Commission
Attention: Director, Receivables Management Unit
Post Office Box 153
Charleston, West Virginia 25321

Upon termination of the commission, the request for reconsideration shall be submitted to the insurance commissioner.

7.2. Requests for Reconsideration; Petitions for Hearing. All requests for reconsideration and petitions for hearing filed with the Commission or insurance commissioner as a result of decisions made under the provisions of this rule shall be in accordance with the provisions of 85 CSR 7, "Rules for Selected Hearings". The Commission or insurance commissioner shall deny a request for reconsideration if the request is made without a deposit of assets in an amount and in the form set forth in Section 7.5.a.

7.3. Executive director or insurance commissioner may stay enforcement. If the employing unit files a request for reconsideration, the executive director or insurance commissioner may stay the enforcement of the non-renewal or revocation of the approval document pending reconsideration, as long as the following conditions are met.

a. The executive director or insurance commissioner may only issue the stay of the enforcement of the non-renewal or revocation of the approval document if there are significant factual or legal issues regarding the placement of the employing unit on the ~~default list~~ Commission Default List or the Private Market Default List. If the Commission has properly issued a delinquency notice to which the employing unit has failed to timely request reconsideration or file a petition for hearing under W. Va. Code §23-2-17, then the enforcement of the non-renewal or revocation of the approval document shall not be stayed. The executive director or insurance commissioner shall not stay enforcement of the non-renewal or revocation of the approval document if the employing unit fails to meet its ongoing obligations as may be established by orders of the Commission in matters including, but not limited to, changes in classification or methods of reporting payroll or if it otherwise fails to maintain mandatory workers' compensation coverage.

7.4. Administrative Hearings. All administrative hearings conducted as a result of Commission or insurance commissioner decisions made under the provisions of this rule shall be held in accordance with W. Va. Code §§23-2-17, 29A-5-1, et seq., and 85 CSR 7, "Rules for Selected Hearings". The Commission or insurance commissioner shall deny a petition for hearing if the request is made without a deposit of assets in an amount and in the form set forth in Section 7.5.a.

7.5. Appeal to circuit court. The executive director or insurance commissioner may stay enforcement of the non-renewal or revocation of the approval document pending appeal of the Commission's or insurance commissioner's final order to circuit court, as long as the following conditions are met.

a. The employing unit must deposit sufficient assets to the Commission or insurance commissioner to guarantee payment of the amount determined to be due and owing by the Commission, the insurance commissioner, or private carrier. The deposit of assets shall be required in the following form(s):

1. The full cash amount of the money determined to be due by the Commission, the insurance commissioner, or private carrier;

2. A reinstatement agreement issued and maintained in accordance with the provision and terms of W. Va. Code §23-2-5 and, in accordance with the discretionary policies of the Commission, as authorized by law, including the authority to refuse to enter into a reinstatement agreement or a reinstatement agreement between an employing unit and the private carrier;

3. A cash or corporate surety bond or a bank letter of credit in the full amount claimed due by the Commission, the insurance commissioner, or private carrier; or

4. Any combination of the above three methods that guarantees payment in full to the Commission, the insurance commissioner, -or private carrier in the event the employing unit does not prevail in the matter.

§85-32-8. Procedure for Petitioning for Exemption.

8.1. After being subject to this rule for at least twelve months an agency, or any other interested person, may petition the Board of Managers to be exempt from the provisions of this rule. This provision shall expire upon termination of the commission.

8.2. If the agency petitions to be exempt, it must clearly demonstrate to the Board of Managers 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 the payment provisions of chapter twenty-three of the W. Va. Code.

8.3. If a person other than the agency petitions to be exempt, the person must clearly demonstrate that the rule is unreasonably burdensome, that the rule is not a significant incentive for the person's compliance with the payment provisions of chapter twenty-three of the W. Va. Code and that the person has an exemplary record of payment of amounts due under the provisions of chapter twenty-three of the Code.

§85-32-9. Procedures for Implementation.

Notwithstanding other provisions of this rule, the Executive Director and the Tax Commissioner shall adopt mutually agreed procedures for automated review and matching of Tax Department databases with databases of the Commission for implementation of this rule. This process shall transfer to the insurance commissioner upon termination of the commission.

§85-32-10. Severability.

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