

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN III
ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In This Box

FILED

2003 OCT -6 P 4:17

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE WEST VIRGINIA
SECRETARY OF STATE

AGENCY: Workers' Compensation Commission

TITLE NUMBER: 85

RULE TYPE: Exempt Legislative

CITE AUTHORITY: W. Va. Code §§ 23-1-1a & 23-1-1b(g)(16)

AMENDMENT TO AN EXISTING RULE: YES NO X*

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: * Partial repeal and replacement of 96 CSR 1, a joint
Unemployment and former Workers' Compensation Divisions' rule, insofar as the rule relates to workers'
compensation matters.

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 32

TITLE OF RULE BEING PROPOSED: 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

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH
ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS
COMMENT PERIOD WILL END ON November 6, 2003 AT 5:00 p.m. ONLY WRITTEN
COMMENTS WILL BE ACCEPTED AND ARE TO 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 ISSUES TO BE HEARD SHALL BE
LIMITED TO THIS PROPOSED RULE.


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL



Gregory A. Burton, Executive Director

4700 MacCorkle Avenue, S. E.
Charleston, West Virginia 25304
Phone: (304) 926-1710

October 6, 2003

The Honorable Joe Manchin III
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 Manchin:

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. Pursuant to that same bill, the Board of Managers of the Workers' Compensation Commission have 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: ☐ 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
<u>ESTIMATED TOTAL COST</u>	Undetermined	Undetermined	Undetermined	Undetermined	Undetermined
PERSONAL SERVICES	Undetermined	Undetermined	Undetermined	Undetermined	Undetermined
CURRENT EXPENSE	Undetermined	Undetermined	Undetermined	Undetermined	Undetermined
REPAIRS & ALTERNATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	0	0	0

2. Explanation of above estimates:

The primary costs associated with providing a list of accounts that are in default with the Workers' Compensation Commission (the Commission) to other state agencies are related to personal services such as time spent on correspondence with other state agencies, coordination of required information within the Commission, and creating and maintaining the list. Additional direct costs would be incurred in providing and maintaining the list. These are costs that cannot be reasonably estimated such as postage, supplies, computer use, and phone use. Also, an estimate of these costs cannot be determined currently because there is no available analysis of relevant historical records on which to base an estimate.

3. Objectives of this rule:

The purpose of this rule is for the Commission to provide a list to other state agencies regarding any account that is in default with the Commission. As a result, any 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.

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.

Although it will require some additional communication and coordination of efforts between certain state agencies, it is expected that there will be no significant economic impact on state government from this rule.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

It is expected that there will be no impact from this rule.

C. Economic Impact on Citizens/Public at Large.

This rule is intended to increase the Commission's ability to collect the premiums related to a company's workers' compensation obligations. This will reduce the financial burden placed on other businesses and the citizens of West Virginia, who ultimately pay for the obligations associated with unpaid premiums.

Date: October 6, 2003

Signature of Agency Head or Authorized Representative

A handwritten signature in dark ink, appearing to read 'G. A. Burton', is written over the signature line.

Gregory A. Burton
Executive Director, Workers' Compensation Commission

**SUMMARY OF PROPOSED RULE
STATEMENT OF CIRCUMSTANCES
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**

This rule is a new rule of the Workers' Compensation Commission that partially repeals the provisions of 96 C.S.R. 1, a joint rule of the former Workers' Compensation and Unemployment Compensation Divisions of the Bureau of Employment Programs, insofar as that rule applies to matters concerning workers' compensation obligations.

Pursuant to Senate Bill 2013, Second Extraordinary Session, 2003, the Workers' Compensation Commission was created, effective October 1, 2003, as a stand-alone agency of State government. The Commission is required to establish rules under which agencies of the State shall revoke or refuse to grant, issue or renew 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 commission with regard to its workers' compensation obligations. W. Va. Code § 23-1-1b(g)(16).

This proposal incorporates much of the former Workers' Compensation and current Unemployment Compensation Divisions' joint rule, 96 C.S.R. 1, which originally became effective January 14, 2000.

The proposal changes the former joint rule to include revocations of approval documents in addition to refusals to grant or non-renewal of approval documents. This change was necessitated by the new legislation. In addition, the rule provides that the executive director of the Workers' Compensation Commission may issue stays of enforcement in the proper circumstances.

FILED

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

2003 OCT -6 P 4: 17

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**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) 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 with regard to the administration of chapter twenty-three of the West Virginia Code.

1.2. Authority. -- W.Va. Code §§23-1-1a and 23-1-1b(g)(16). Pursuant to West Virginia Code §23-1-1a(j)(3), rules adopted by the Board of Managers and the Commission are not subject to legislative approval as would otherwise be required under West Virginia Code §29A-3-1 et seq. Public notice requirements of that chapter and article, however, must be followed.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Repeal and Replacement. -- This rule repeals and replaces 96 C.S.R. 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 West Virginia 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).

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

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 transfer, assignment or sale of the document, if otherwise, allowed.

2.12. "List" means a paper or database identification of an employing unit that is in default with the Workers' Compensation Commission. 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.

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. "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.

§85-32-3. General Prohibition.

Pursuant to the provisions of W.Va. Code §23-1-1b(g)(16), 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 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. 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, 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 and that the approval document can not be issued until the applicant is no longer in default. 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

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), an agency shall revoke any approval document of any employing unit whose account is in default with the Commission.

5.2. If the Commission has reason to believe that an employing unit that is in default is conducting its business pursuant to an approval document with an agency, the Commission 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 and that the approval document must be revoked until the employing unit is no longer in default. 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

§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 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 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 list, the employing unit who is in default may 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

7.2. Requests for Reconsideration; Petitions for Hearing. All requests for reconsideration and petitions for hearing filed with the Commission as a result of decisions made under the provisions of this rule shall be in accordance with the provisions of 85 C.S.R. 7, "Rules for Selected Hearings".

7.3. Executive director may stay enforcement. If the employing unit files a request for reconsideration, the executive director 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 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.

b. 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 § 23-1-17, then the enforcement of the non-renewal or revocation of the approval document shall not be stayed.

c. The executive director 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.

7.4. Administrative Hearings. All administrative hearings conducted as a result of Commission 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 C.S.R. 7, "Rules for Selected Hearings".

7.5. Appeal to circuit court. The executive director may stay enforcement of the non-renewal or revocation of the approval document pending appeal of the Commission'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 to guarantee payment of the amount determined to be due and owing by the Commission. 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;
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;
3. A cash or corporate surety bond or a letter of credit in the full amount claimed due by the Commission; or
4. Any combination of the above three methods that guarantees payment in full to the Commission 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.

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 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 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.

§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.