

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #1

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2010 JUN 11 PM 12:28

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE

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

RULE TYPE: Exempt Legislative CITE AUTHORITY WV Code §§23-1-1b(g)(16);

23-2C-15(d); and 23-2C-19(e)

AMENDMENT TO AN EXISTING RULE: YES ☒ 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 PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

DATE OF PUBLIC HEARING: Monday, July 12, 2010 TIME: 2:00 PM

LOCATION OF PUBLIC HEARING: Offices of the WV Insurance Commissioner

1124 Smith Street - 4th Floor - Room 400

Charleston, WV 25301

COMMENTS LIMITED TO: ORAL ☐ WRITTEN ☐ BOTH ☒

DATE WRITTEN COMMENT PERIOD ENDS: Monday, July 12, 2010 TIME: 2:00 PM

WRITTEN COMMENTS MAY BE MAILED TO: Ryan Sims, Associate Counsel

The Department request 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.

Offices of the Insurance Commissioner

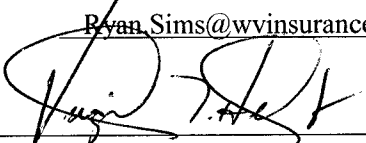
P.O. Box 50540

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

Charleston, WV 25305-0540

Ryan.Sims@wvinsurance.gov

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL


Virgil T. Helton
Cabinet Secretary

West Virginia Department of Revenue

Insurance Commissioner (Workers'
Compensation Rules)
Exempt Legislative 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**

TITLE 85, SERIES 32

BRIEF SUMMARY OF RULE

This amended rule sets forth certain processes and procedures applicable to the obligation of other WV state agencies to revoke licenses, permits, certificates, etc., of businesses who are in default status regarding workers' compensation. The last version of W. Va. Code St. R. § 85-32-1 et seq. ("Rule 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") was adopted by the Industrial Council with an effective date of November 8, 2009.

The current amendment is for the purpose of the rule is to create a process whereby state agencies may make a request to the Insurance Commissioner for the determination as to whether an employer is exempt from workers' compensation requirements. The changes are being made due to the pending elimination of the employer exemption letter process in Title 85, series 8, a process whereby any employer could make a request to the Commissioner for a letter of exemption from WV's workers' compensation requirement. In light of the elimination of this process, it was determined that there still needs to be a process for State agencies to confirm an employer's exempt status, and that the appropriate place to create this process is Rule 32.

Insurance Commissioner (Workers'
Compensation Rules)
Exempt Legislative Rule
Title 85, Series 32

**STATE AGENCY REVOCATION OR REFUSAL TO GRANT, ISSUE OR RENEW
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TITLE 85, SERIES 32

STATEMENT OF CIRCUMSTANCES

Pursuant to Senate Bill 1004, First Special Session, 2005, workers' compensation in West Virginia was changed from a state run, monopolistic system to a private market system. This bill also transferred all regulatory authority for workers' compensation insurance to the Insurance Commissioner.

To establish procedures and processes applicable to the obligation of other WV state agencies to revoke licenses, permits, certificates, etc., of businesses who are in default status regarding workers' compensation, the Industrial Council promulgated W. Va. Code St. R. § 85-32-1 et seq. ("Rule 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"), with an effective date of November 8, 2009. The Rule is now being amended to create a process for other state agencies to make a request to the Insurance Commissioner for a determination as to whether an employer is exempt from workers' compensation requirements. This change is described further in the "Brief Summary" submitted for this rule.

This amended rule is being promulgated for the purpose of implementing the above referenced changes necessary to Title 85, Series 32 of the West Virginia Code of State Rules.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 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 Obligation (Title 85, Series 32)

Type of Rule: X Exempt Legislative Interpretive Procedural

Agency: Insurance Commission

Address: Post Office Box 50540

1124 Smith Street, Greenbrooke Building

Charleston, West Virginia 25305-0540

Phone Number: (304) 558-0401 Email: Ryan.Sims@wvinsurance.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

This proposed amended rule addresses certain processes and procedures applicable to the obligation of other WV state agencies to revoke licenses, permits, certificates, etc., of businesses who are in default status regarding workers' compensation. The rule provides for a state agency to request that the Insurance Commissioner provide information regarding whether an employer is exempt from workers' compensation requirements.

The Insurance Commissioner already has a dedicated unit which processes exemption applications from employers. Therefore, there will be resources already in place to provide for this process. However, due to concurrent changes being made in Title 85, Series 8 which eliminate the ability for employers to unilaterally (i.e., without a request from a state agency) request an exemption, under the new process, less \$25 application fees will be collected. Therefore, there will be a reduction in the Insurance Commissioner's revenue.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	\$0	\$0	\$0
Personal Services	\$0	\$0	\$0
Current Expenses	\$0	\$0	\$0
Repairs & Alterations	\$0	\$0	\$0
Assets	\$0	\$0	\$0
Equipment	\$0	\$0	\$0
Other	Unknown	Unknown	-\$12,500
2. Estimated Total Revenues	\$0	\$0	\$0

Rule Title: 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 Obligation (Title 85, Series 32)

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

As explained above, this new amendment to Rule 32, along with the pending amendment to Rule 8, will result in a reduction in the receipt by the Insurance Commissioner of workers' compensation "exemption application" fees. This is because only employers who are required to do so by other state agencies will be permitted to complete applications, and employers will no longer be able to request an exemption "unilaterally". Currently, the OIC brings in approximately \$50,000 per year on exemption application fees. It is estimated that approximately 75% of these applications are the result of state agencies requiring employers to make the application. Therefore, the total receipt of fees will be reduced by 25%, or \$12,500 on an annual basis. It should be noted that this is only an estimate.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

N/A

Date: _____

Signature of Agency Head or Authorized Representative

Jane L. Cline, Insurance Commissioner

**Department of Revenue
Agency Questionnaire**

Re: Amendment to Rule 32

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**

Question 1: Are regulations required?

Yes. This amendment is necessary to create a process whereby state agencies may make a request to the OIC for a determination as to whether an employer is exempt from workers' compensation requirements.

Question 2: Is the rule you are proposing controversial? If yes, what are the pros and the cons?

No. This rule is not controversial.

Question 3: Is the rule you are proposing a copy of another state's rule? A model rule? Custom-drafted?

This rule amendment is not a copy of another state's rule or a model rule. It is custom-drafted.

Question 4: What are the really important things you think the Secretary of Tax and Revenue should know about this rule and the issues that surround it?

There are no major issues with this rule.

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. Exemption Request.
- 85-32-78. Procedures for Implementation.

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

FILED

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SERIES 32

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**STATE AGENCY REVOCATION OR REFUSAL TO GRANT, ISSUE OR RENEW
CONTRACTS, LICENSES, PERMITS, CERTIFICATES OR OTHER AUTHORITY TO
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§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.

**Offices of the Insurance Commissioner
Workers' Compensation Rules
Title 85, Series 32**

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.

**Offices of the Insurance Commissioner
Workers' Compensation Rules
Title 85, Series 32**

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.

**Offices of the Insurance Commissioner
Workers' Compensation Rules
Title 85, Series 32**

§85-32-7. Exemption Request.

7.1. An agency may request, on a form created by the Insurance Commissioner, that the Insurance Commissioner provide an opinion as to whether any person is exempt from the requirement of obtaining and maintaining mandatory workers' compensation coverage in this state. In connection with such a request, the person who is the subject of the agency's request shall complete an application for determination of exempt status. The application must be made on a form created by the Insurance Commissioner and a processing fee of \$25 will be charged to the applicant.

7.2. Nothing in this section may be construed to require any agency to make a request described in this section.

§85-32-78. 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.