

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

Form #2

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FILED

2002 MAY 29 P 2:28

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Insurance Commissioner TITLE NUMBER: 114
RULE TYPE: Legislative CITE AUTHORITY: W. Va. Code §§ 33-2-9 and 33-2-10
AMENDMENT TO AN EXISTING RULE: YES NO
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 15
TITLE OF RULE BEING AMENDED: Examiners' Compensation, Qualifications and Classification
IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____
TITLE OF RULE BEING PROPOSED: _____

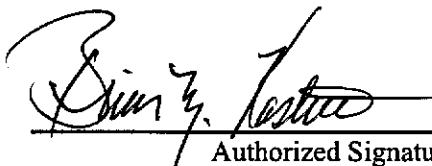
IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 1, 2002 AT 4:30 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Jack M. Rife, Associate Counsel

West Virginia Insurance
Commission
P.O. Box 50540

Charleston, WV 25305-0540

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

SCANNED

\$5.40

Department of Tax and Revenue
Agency Questionnaire

Re: Administrative Rule to be Filed

EXAMINERS' COMPENSATION, QUALIFICATIONS AND CLASSIFICATION

TITLE 114, SERIES 15

Question 1: Are regulations required?

No, just an amendment to 114 CSR 15.

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

No.

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

No, it is an amendment to an existing rule.

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?

The 2002 amendments to Section Nine, Article Two, Chapter Thirty-Three of the Code of West Virginia relating to the hiring of contract examiners exempted the insurance commissioner from the purchasing requirements set forth in Article Three, Chapter Five-a of the code and required that any examiner hired to conduct an examination post a bond.

The proposed revisions to Series Fifteen, Title One Hundred Fourteen of the code of State Rules pertaining to the compensation, qualifications and classification of examiners incorporates the recent amendments to Section Nine, Article Two, Chapter Thirty-Three and further elaborates the process for issuance and submission of the bond to the insurance commissioner.

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BRIEF SUMMARY OF RULE

West Virginia Code Sections 33-2-10 and 33-11-6 direct that the Insurance Commissioner shall promulgate any rule or regulation relating to insurance as is necessary to discharge his/her duties, to effectuate the provisions of Chapter 33 and to protect and safeguard the interests of policy holders and the public of this state.

This proposed rule amends Title 114, Series 15, Sections 5, 6 and 7 of the current rule. The amended language reflects changes made by the legislature to Section Nine, Article Two, Chapter Thirty-Three of the Code of West Virginia which authorizes the Insurance Commissioner to hire, as necessary, contract examiners, reinsurance examiners, investment of information systems analysts for the purpose of conducting examinations of insurance companies transacting the business of insurance in West Virginia, and requiring any of the above individuals to furnish an acceptable bond in an amount sufficient to cover the anticipated cost of the examination.

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STATEMENT OF CIRCUMSTANCES

Section Nine, Article Two, Chapter Thirty-Three of the Code of West Virginia, pertaining to the examination of domestic insurance companies, brokers and solicitors, requires that the insurance commissioner, in her discretion, conduct periodic examinations of insurers doing business in West Virginia. The examinations are, at a minimum, required to be conducted at least once every five years and shall involve a thorough examination of their financial condition and methods of doing business for the purpose of ascertaining whether they have complied with all of the laws and regulations of this state.

In order to comply with these requirements, the insurance commissioner must either have a full-time examiner on staff, or solicit bids and retain an examiner to conduct the examination. Few qualified examiners reside in West Virginia, and the insurance commissioner currently has no examiner on staff. Moreover, the bidding process can be time consuming and may prevent the commissioner from conducting an expedient examination of a domestic insurer should she become aware of certain facts which would warrant an immediate examination.

On March 9, 2002, the legislature passed House Bill 4669 which amended Section Nine, Article Two, Chapter Thirty-Three and granted the commissioner authority to retain contract examiners, reinsurance examiners, financial or information systems analysts, and exempted the insurance commissioner from the competitive bidding process in the hiring of the above individuals. The proposed amendments to Series 15, Title 114 are for the purpose of making the rule consistent with the statute and to provide further detail concerning the procedure the commissioner shall be required to follow in procuring the services of contract examiners, reinsurance examiners, financial or information systems analysts.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Examiners' Compensation, Qualifications and
Classifications
Title 114, Series 15

Type of Rule: X **Legislative** **Interpretive** **Procedural**

Agency: Insurance Commissioner

Address: Post Office Box 50540
1124 Smith Street, Greenbrooke Building
Charleston, West Virginia 25305-0540

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1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	Increase	Decrease	Current	Next	Thereafter
ESTIMATED TOTAL COST	None	None	None	None	None
PERSONAL SERVICES	None	None	None	None	None
CURRENT EXPENSE	None	None	None	None	None
REPAIRS AND ALTERATIONS	None	None	None	None	None
EQUIPMENT	None	None	None	None	None
OTHER	None	None	None	None	None

2. Explanation of above estimates:

The amendment to the existing rule will have no additional fiscal impact on local, state or federal governments.

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3. Objectives of these rules:

The objective of the amendment to the existing rule is to allow for the insurance commissioner to hire examiners, reinsurance examiners, financial or information systems analysts to conduct examinations of insurance companies transacting the business of insurance in West Virginia without having to comply with the purchasing department requirements, and to require any contract examiner so hire to furnish a bond in an amount sufficient to cover the proposed examination.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

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

None

C. Economic Impact on Citizens/Public at Large.

None

Date: May 29, 2002

Signature of Agency Head or Authorized Representative



JACK W. RIFE, ASSOCIATE COUNSEL

114CSR15

**TITLE 114
LEGISLATIVE RULE
INSURANCE COMMISSIONER**

**SERIES 15
EXAMINERS' COMPENSATION, QUALIFICATIONS AND CLASSIFICATION**

Section

- 114-15-1. General.
- 114-15-2. Definitions.
- 114-15-3. Examination, Analysis and Review Funding.
- 114-15-4. Examination, Analysis and Review Activities.
- 114-15-5. Contracts for Services and Bond Requirements for Other Individuals.
- 114-15-~~56~~. Compensation and Accrued Time of Accredited Examiners.
- 114-15-~~67~~. Travel and Living Expenses.
- 114-15-~~78~~. Examiner Reporting Requirements.

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LEGISLATIVE RULE
INSURANCE COMMISSIONER

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

SERIES 15
EXAMINERS' COMPENSATION, QUALIFICATIONS AND CLASSIFICATION

§114-15-1. General.

1.1. Scope. -- This legislative rule establishes standards for the compensation, qualifications and classification of persons who conduct or participate in any analysis, review or examination provided for in W. Va. Code §33-2-9.

1.2. Authority. -- W. Va. Code §§33-2-9(n), 33-2-10.

1.3. Filing Date. -- ~~May 30, 2001.~~

1.4. Effective Date. -- ~~July 1, 2001.~~

§114-15-2. Definitions.

As used in this legislative rule:

2.1. "Accredited examiner" or "examiner" means a person who is an employee of the Insurance Commissioner and has been classified according to his or her qualifications as either Insurance Company Examiner, Market Conduct Examiner or Insurance Company Examiner Supervisor pursuant to the classification plan of the West Virginia Division of Personnel or such other equivalent classification plan as the state of West Virginia may adopt.

2.2. "Additional examination assessment fee" means any additional or increased examination assessment fee levied by order of the commissioner in excess of the annual examination assessment fee as allowed by the provisions of W. Va. Code §33-2-9.

2.3. "Commissioner" means the Insurance Commissioner of the state of West Virginia.

2.4. "Deputy" means any individual appointed by the commissioner as Deputy or Special Deputy Commissioner of Insurance.

2.5. "Examination assessment fee" means the annual fee due on or before the first day of July of every year, as specified in W. Va. Code §33-2-9.

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2.6. "Governor's Travel Rules" means those rules promulgated by the governor pursuant to the authority granted by W. Va. Code §12-3-11.

2.7. "Incidental Expense" means any reasonable travel-related expense other than charges for lodging, meals or mileage, including but not limited to tolls, parking, gratuities or public transportation.

2.8. "Lodging" means a temporary place of abode, such as a hotel, maintained by the examiner for the convenience of being closer to the examination site, and at which the examiner has no intention of establishing residence.

2.9. "On-site" or "site" means at or conveniently proximate to the business location of the entity being examined, as listed on the examiner's semi-monthly days worked report, but does not include the offices of the Insurance Commissioner when work related to an examination is performed there.

2.10. "Other employee" means any individual who is an employee of the offices of the Insurance Commissioner of West Virginia, excluding the commissioner's Accredited Examiners.

2.11. "Other individual or entity" means any individual, corporation, partnership or other business entity that who is not an employee of the offices of the Insurance Commissioner, to include but not be limited to independent certified public accountants, independent actuaries, qualified insurance examiners, reinsurance examiners, investment or information systems specialists or other individuals, corporations, partnerships or other business entities with particular skills or areas of expertise, considered competent by the commissioner to conduct or participate in any examination, analysis or review as allowed by W. Va. Code §33-2-9 or this rule.

2.12. "Residence" means a permanent or semi-permanent place of abode, maintained solely for the convenience of the examiner and not in connection with an on-site examination assignment, including the examiner's domicile and any temporary residence established by the examiner.

§114-15-3. Examination, Analysis and Review Funding.

3.1. Every entity subject to the provisions of W. Va. Code §33-2-9 shall remit the examination assessment fee specified by the code or as increased by the commissioner on or before the first day of July of each year.

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3.2. Every entity subject to the provisions of W. Va. Code §33-2-9 shall remit any additional examination assessment fee ordered by the commissioner on or before the date specified by the order.

3.3. The monies collected by the commissioner from the examination assessment fee and any additional examination assessment fee shall be deposited as specified in W. Va. Code §33-2-9. The monies deposited into the commissioner's Examination Revolving Fund may be used for any of the following:

a. Salaries and expenses of the Insurance Commissioner's accredited examiners as specified in this rule for any activities conducted pursuant to W. Va. Code §33-2-9 or this rule.

b. Salaries and/or expenses of the Insurance Department's special deputies or other employees for activities conducted pursuant to W. Va. Code §33-2-9 or this rule.

c. Salaries, contract rates, fees and/or expenses of other individuals or entities for activities conducted pursuant to W. Va. Code §33-2-9 or this rule.

d. Equipment, supplies, travel, education, and training and other incidental expenses for the commissioner, his or her deputies, other employees and accredited examiners as considered necessary by the commissioner for the performance of the duties and activities conducted pursuant to W. Va. Code §33-2-9 or this rule.

§114-15-4. Examination, Analysis and Review Activities.

4.1. Examination, analysis and review activities shall include the following as they relate to the operation of entities, individuals or persons subject to the provisions of W. Va. Code §33-2-9:

a. Examination of the financial condition or market conduct practices of the entity, individual or person;

b. On-site analysis or review of any practice or condition affecting the entity, individual or person; and

c. Review of any statements, reports, or reviews of an entity, individual or person's financial condition, performance or market conduct practices including the review or development of any forecasts or projections or any type of filing made or intended to be made with the Insurance Commissioner. This review shall include but not be limited to the review or investigation of any audited financial report, compilation or review performed by a certified

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public accountant, actuarial statement or certification, documents submitted in application for licensure or registration in the state, or other matters or materials deemed necessary by the commissioner to fulfill his or her statutory obligations.

4.2. Other individuals or entities may, as the commissioner considers necessary, bill and receive payments directly from the entities subject to the provisions of W. Va. Code §33-2-9 and this rule for their work, travel and living expenses at rates approved by the commissioner while involved in any of the activities set forth in this section.

§114-15-5. Contracts for Services and Bond Requirements for Other Individuals.

5.1 The commissioner may, as he or she considers necessary, retain any other individual or entity as defined in subsection 2.11 of this rule, to conduct, supervise, or participate in any examination, analysis or review as provided in W. Va. Code §33-2-9, or this rule.

5.2 Any contract between the commissioner and any other individual or entity, whose services are retained pursuant to this section, is specifically exempt from the competitive bidding requirements contained in W. Va. Code §5A-3-1 et seq.

5.3. The commissioner may, as he or she considers necessary, require any other individual or entity, whose services are retained pursuant to this section, to furnish an appropriate bond prior to conducting, supervising, or participating in any examination, analysis or review as provided in W. Va. Code §33-2-9 or this rule, as follows:

a. The bond shall be in an amount which in the commissioner's discretion is sufficient to complete the examination, analysis or review, but in no event shall be in an amount of less than ten thousand dollars (\$10,000.00).

b. Should the commissioner require any other individual or entity, whose services are retained pursuant to this section, to provide a bond, it shall be issued by a company licensed to transact surety insurance in the state of West Virginia as provided in W. Va. Code § 33-19-1 and which has received at least an A rating by A.M. Best Company, Inc. in the year immediately preceding the date of the bond's issuance.

c. Proof of payment for and issuance of the bond shall be submitted to the commissioner prior to commencement of any examination, analysis or review by any other individual or entity whose services are retained pursuant to this section.

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§114-15-56. Compensation and Accrued Time of Accredited Examiners.

56.1. Salary. -- Subject to the commissioner's approval, Insurance Company Examiner Supervisors and Market Conduct Examiner Supervisors shall receive the salary recommended for Insurance Examiners In-charge by the Financial Condition Examiners Handbook of the National Association of Insurance Commissioners. Subject to the commissioner's approval, insurance company examiners and market conduct examiners shall receive the salary recommended for Insurance Company Examiners by the Financial Condition Examiners Handbook of the National Association of Insurance Commissioners.

56.2. An examiner's salary shall be calculated based upon a five-day work week.

56.3. Accrued Time. -- Examiners shall accrue annual leave and sick leave at the rates and in the manner established by current West Virginia Division of Personnel rules for state employees or by such other equivalent method as may be adopted by the state of West Virginia.

a. On any West Virginia state or national holiday that a company being examined chooses to remain open and an examiner chooses to work, the examiner shall be properly compensated.

b. Annual leave may be taken by the examiner only upon written approval by the commissioner, deputy commissioner or chief examiner. The examiner must request approval at least as far in advance of the leave as the length of leave requested, i.e., for four (4) days leave, the request must be submitted at least four (4) days in advance. In a case of emergency, the requirement periods for advance request may be waived by the commissioner, deputy commissioner or chief examiner.

c. Examiners shall not be reimbursed for travel or living expenses for any day authorized as annual leave, except travel expenses may be reimbursed in connection with an authorized trip home as provided for in subsection 67.5 hereof.

d. On any day that the examiner is absent due to illness, the examiner shall telephone and inform the chief examiner directly of his or her planned absence before 9:30 a.m. on the day of the absence. In cases in which sick leave extends beyond three (3) working days, the reason for the absence shall be verified by a physician's statement. An examiner is subject to the appropriate disciplinary action for failure to comply with this subdivision.

e. Examiners shall continue to be reimbursed for living expenses during times of sick leave as long as the examiner remains at his or her on-site lodging during the illness.

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§114-15-67. Travel and Living Expenses.

67.1. Travel. -- Travel by examiners in connection with activities conducted pursuant to W. Va. Code §33-2-9 or this rule shall not be undertaken unless authorized by the commissioner, deputy commissioner or chief examiner. Travel expenses shall be subject to the following limitations:

a. All travel shall be by automobile unless otherwise authorized by the commissioner, deputy commissioner or chief examiner.

1. Examiners shall be compensated for the actual mileage traveled and other incidental expenses for in-state and out-of-state travel as allowed by the Governor's travel rules.

2. When an automobile is used, and the distance to an examination or to an assignment is four hundred (400) miles or more, the distance traveled per day shall not be less than four hundred (400) miles per day.

b. When air travel is authorized, a maximum of one (1) day's travel time is allowed and the examiner shall be reimbursed for actual travel expenses incurred.

67.2. Living expenses will be reimbursed as follows:

a. Lodging: The cost of the examiner's on-site lodging will be reimbursed at a rate equal to the actual cost of the lodging or \$100 per night, whichever is less, as verified by the lodging receipts attached to the request for reimbursement.

1. Examiners may be reimbursed for lodging expenses exceeding \$100 per night if they have obtained prior approval, in writing, from the chief examiner, deputy commissioner, or commissioner.

b. Meals and incidental expenses will be reimbursed at a per-diem rate equal to the rate then in effect for travel under the Governor's travel rules. Receipts are not required for reimbursement of meals and incidental expenses.

1. Meals and incidental expenses for single-day travel are not reimbursable. Single day travel is travel without an overnight stay.

2. When meals are provided for an examiner, the traveler's maximum per diem rate shall be reduced by an appropriate amount as set out in paragraph 4 of this subdivision.

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3. Meals and incidental expenses not actually incurred shall not be reimbursed, and the maximum per diem rate will be reduced by the amounts set forth in paragraph 4 of this subdivision.

4. The maximum per diem rate will be reduced as follows for each meal period which is not reimbursable:

- A. Breakfast - 20% of the maximum per diem rate.
- B. Lunch - 20% of the maximum per diem rate.
- C. Dinner - 60% of the maximum per diem rate.
- D. First day of travel - 20% of the maximum per diem rate.

c. The street address of the examiner's on-site lodging shall be used in determining the per diem allowance.

d. Weekend and holiday expenses: The examiner shall be reimbursed for lodging, meals and incidental expenses actually incurred on the basis of a seven-day week as long as the examiner actually occupies his or her on-site lodging on each day for which reimbursement is requested.

1. Examiners may be reimbursed for travel expenses incurred for their travel to their domiciles or residences on weekends and holidays if the expenses do not exceed the expenses the examiner would have incurred if he or she stayed on-site.

e. The commissioner may not authorize living expenses if the examination takes place in a location within fifty (50) miles (one way) of an examiner's residence. However, the examiner will be compensated for actual mileage traveled and other incidental expenses as allowed by the Governor's travel rules.

f. Examiners and other employees may, with the approval of the commissioner or deputy commissioner, be compensated for travel and living expenses in accordance with the Governor's travel rules when attending training, educational courses, conferences, seminars or other activities authorized by the commissioner. Registration fees may be included as expenses that can be reimbursed to the examiners or other employees.

67.3. Examiners may, with the commissioner's approval, be reimbursed for examination fees incurred as a consequence of examination for designation as a Certified Financial Examiner,

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or Certified Insurance Examiner provided that a passing score is achieved on the examination. Other expenses incurred in connection with the examination, including travel, lodging and meals, may not be reimbursed.

67.4. Other individuals or entities involved in activities conducted pursuant to W. Va. Code §33-2-9 or this rule who are billing directly as authorized in subsection 4.1 of this rule shall file a schedule of their fees and charges with the commissioner prior to incurring any charges. These individuals or entities shall submit copies of their billings to the commissioner simultaneously with their submission to the billed entity, individual or person.

67.5. The commissioner may authorize trips home for an examiner to return to his or her domicile twenty-four (24) times in any one fiscal year. Provided, however, that the commissioner may not authorize an examiner to return to his or her place of residence more than eight (8) times in any one quarterly period. The examiner will be reimbursed the lesser of air fare or mileage in lieu of living expenses. An examiner shall utilize his or her accrued leave time for the travel. Travel will be done with a minimum amount of work time lost. For purposes of this subsection of this rule, "domicile" refers to an examiner's place of legal residence as on file with the Insurance Commissioner. An examiner shall immediately inform the department of any change in legal residence.

a. Travel requests for authorized trips home must be submitted and approved at least twenty (20) days in advance. All airline travel arrangements must be made through the commissioner's Director of Administration.

§114-15-78. Examiner Reporting Requirements.

78.1. Each examiner shall prepare an "Examiner's Semimonthly Days Worked Report" to be submitted on a form prescribed by the commissioner. The form shall be submitted to the commissioner within three (3) days of the end of each semimonthly pay period. The report shall contain the following information:

- a. The period of time the report covers;
- b. The name of entity, individual or person that examiner has been examining and their normal hours of operation;
- c. The mailing address and street address, including county, of the business location of the entity being examined, and the mailing address and street address of the examiner's on-site lodging;

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- d. The telephone number(s) and extension(s) where the examiner can be reached at all times;
- e. The domiciliary state, if the examination is being performed on a non-domestic entity;
- f. The Examiner In Charge or Insurance Company Examiner Supervisor, if other than the reporting examiner;
- g. A listing of any other examiners participating in the assignment and their domicile or zone representation;
- h. A description of the phases of the examination or assignment that the examiner worked on during the reporting period;
- i. Comments on any unusual or controversial items;
- j. The tentative closing date of the assignment;
- k. A schedule of each of the days in the reporting period and the examiners status on that day, to include the following work status categories:
 - 1. Work day, annual day, sick day, expense day;
 - 2. Each category shall be totaled at the bottom of the schedule;
- l. The examiner's name, signature and a statement that the information provided is true and correct; and
- m. The name and signature of the ~~Examiner In Charge~~ Chief Examiner, or Insurance Company Examiner Supervisor, or Examiner In Charge, if other than the reporting examiner, verifying the information.

78.2. The information identified in subsection 78.1 of this rule is necessary to satisfy the substantiation of business expenses requirement of the Internal Revenue Service placed upon the Insurance Commissioner as an employer. Failure on the part of the examiner to provide any of the information could require the offices of the Insurance Commissioner of West Virginia to report expense amounts as income of the examiner to the Internal Revenue Service.

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78.3. An examiner shall report changes to his or her telephone number and extension to the commissioner between reporting periods. Failure to report the changes could affect the commissioner's ability to consider an examiner's business expenses as substantiated.