

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #2

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JUN 26 1 54 PM '95

OFFICE OF 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: Series 15

TITLE OF RULE BEING AMENDED: Examiners' Compensation, Qualifications
and Classification

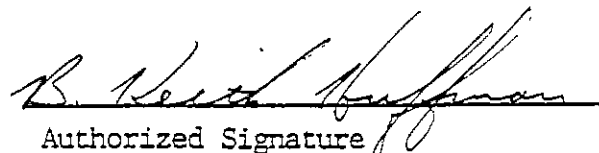
IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

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 26, 1995 AT 4:30 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Donna S. Quesenberry, Associate Counsel
WV Insurance Commission
Post Office Box 50540
2019 Washington Street, East
Charleston, West Virginia 25305-0540
(304)558-0401

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


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

5.20



STATE OF WEST VIRGINIA
Offices of the Insurance Commissioner

Legal Division

GASTON CAPERTON
Governor

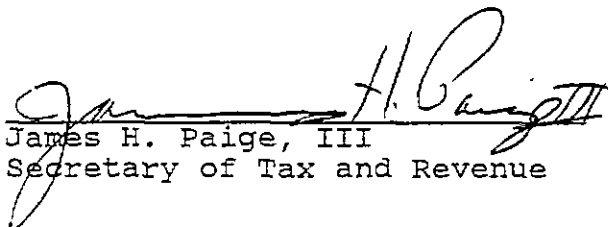
HANLEY C. CLARK
Insurance Commissioner

CONSENT TO FILING OF RULE

To Whom It May Concern:

Pursuant to West Virginia Code § 5F-2-2(a)(12), the undersigned hereby grants consent to the filing of the following rule proposed by the Insurance Commissioner of the State of West Virginia: Title 114, Series 15, relating to "Examiners' Compensation, Qualifications and Classification".

Signed this 16 day of June, 1995.


James H. Paige, III
Secretary of Tax and Revenue

Insurance Commissioner
Legislative Rule
Title 114, Series 15

EXAMINER'S COMPENSATION, QUALIFICATIONS AND CLASSIFICATION

Title 114, Series 15

STATEMENT OF CIRCUMSTANCES

The rule as it currently exists authorizes reimbursed travel by an examiner to their legal residence twice a year. This amended rule will allow an examiner to travel home six times a year. The National Association of Insurance Commissioner's guidelines recommend reimbursed travel home twice a month. The amendment is necessary to retain and attract qualified examiners.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

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

Type of Rule: X Legislative Interpretive Procedural

Agency: INSURANCE COMMISSIONER

Address: Post Office Box 50540
2019 Washington Street, East
Charleston, West Virginia 25305-0540

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	Increase	Decrease	Current	Next	Thereafter
ESTIMATED TOTAL COST	\$37,000		\$507,981	\$544,981	\$548,681
PERSONAL SERVICES	None		\$255,368	\$255,368	\$255,368
CURRENT EXPENSE	\$37,000		\$181,550	\$218,500	\$222,200
REPAIRS AND ALTERNATIONS	None				
EQUIPMENT	None				
OTHER (BENEFITS)	None		\$ 71,113	\$ 71,113	\$ 71,113

2. Explanation of above estimates:

The increase of \$37,000 is based upon the travel expenses for four financial examiners six times a year. These calculations are the costs for twenty-four roundtrip coach airfares. The places of domicile for these examiners are located outside this state. Consequently, the estimate for airfare is based upon roundtrip airfare from Charleston, West Virginia to each respective examiner's home.

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

3. Objectives of these rules:

By updating the number of times annually an insurance company examiner may be reimbursed for travel home, we are moving in the direction of the suggested guidelines of the National Association of Insurance Commissioners (N.A.I.C.)

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

The State government general revenue funds are not affected. The benefits for these examiners come solely from fees collected from licensed insurance companies; the fees are placed in a special revenue account to compensate examiners.

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

By expanding the travel home reimbursement benefit, the agency is better equipped to recruit and maintain qualified and experienced examiners. Using highly competent examiners further insures that companies with financial problems will be acted upon before considerable harm is inflicted upon other entities in the state's economy.

C. Economic Impact on Citizens/Public at Large.

The same logic prevails for consumers/public at large as is noted in the answer under 4B.

Date: 6/26/95

Signature of Agency Head or Authorized Representative

B. Keith Huffman, General Counsel

Insurance Commissioner
Legislative Rule
Title 114, Series 15

EXAMINER'S COMPENSATION, QUALIFICATIONS AND CLASSIFICATIONS

Title 114, Series 15

BRIEF SUMMARY OF RULE

This amended rule will increase reimbursed travel by an examiner to their legal residence from two to six times a year. The amendment is necessary to retain and attract qualified examiners.

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 Activities and Funding.
- 114-15-4. Compensation and Accrued time of Accredited Examiners.
- 114-15-5. Travel and Living Expenses.
- 114-15-6. Examiner Reporting Requirements.

114CSR15
TITLE 114
LEGISLATIVE RULE
INSURANCE COMMISSIONER

SERIES 15
EXAMINERS' COMPENSATION, QUALIFICATIONS AND CLASSIFICATION

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§ 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, 33-2-10

1.3. Filing Date. --

1.4. Effective Date. --

§ 114-15-2. Definitions.

As used in this legislative rule:

2.1. "Commissioner" means the Insurance Commissioner of the State of West Virginia.

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

2.3. "Other Employee" means any individual who is an employee of the Department of Insurance of the State of West Virginia, excluding the Commissioner's Accredited Examiners.

2.4. "Accredited Examiner" or "Examiner" means a person who is an employee of the Department of Insurance and has been classified according to his or her qualifications as either Insurance Company Examiner, Supervising Insurance Company Examiner, Market Conduct Examiner or Supervising Market Conduct Examiner 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.

**Insurance Commissioner
Legislative Rule
Title 114, Series 15**

2.5. "Other Individual" means any individual who is not an employee of the Department of Insurance, to include but not be limited to independent certified public accountants, independent actuaries, qualified insurance examiners or other individuals with particular skills or areas of expertise, deemed 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 regulation.

2.6. "Examination Assessment Fee" means the annual fee due on or before July 1 of every year, as specified in W. Va. Code § 33-2-9.

2.7. "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.

§ 114-15-3. Examination, Analysis and Review Activities and 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 July 1 of each year.

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 such 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. Such monies so deposited into the Commissioner's Examination Revolving Fund may be used for any of the following:

3.3.1.a. Salaries and expenses of the Insurance Department's Accredited Examiners as specified in this regulation for any activities conducted pursuant to W. Va. Code § 33-2-9 or this regulation.

3.3.2.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 regulation.

3.3.3.c. Salaries and/or expenses of other individuals for activities conducted pursuant to W. Va. Code § 33-2-9 or this regulation.

**Insurance Commissioner
Legislative Rule
Title 114, Series 15**

~~3-3-4.d.~~ Equipment, supplies, travel, education, and training and other incidental expenses for the Commissioner, his deputies, other employees and accredited examiners as deemed necessary by the Commissioner for the performance of the duties and activities conducted pursuant to W. Va. Code § 33-2-9 or this regulation.

3.4. 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:

~~3-4-1.a.~~ Examination of the financial condition or market conduct practices of any such entity, individual or person.

~~3-4-2.b.~~ On-site analysis or review of any practice or condition affecting the entity, individual or person.

~~3-4-3.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 Department of Insurance. This shall include but not be limited to the review or investigation of any audited financial report, compilation or review performed by a certified 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 statutory obligations.

3.5. Other individuals may, as the Commissioner deems necessary, bill and receive payments directly from the entities subject to the provisions of W. Va. Code § 33-2-9 and this regulation for their work, travel and living expenses at rates approved by the Commissioner while involved in any of the aforementioned activities.

§ 114-15-4. Compensation and Accrued Time of Accredited Examiners.

4.1. Salary. Subject to the Commissioner's approval, Supervising Insurance Company Examiners and Supervising Market Conduct Examiners shall receive the salary recommended by the Financial Condition Examiners Handbook of the National Association of Insurance Commissioners for Supervising Insurance Examiners. Subject to the Commissioner's approval, Insurance Company Examiners and Market Conduct Examiners shall receive the salary recommended by the Financial Condition Examiners Handbook of the National Association of Insurance Commissioners for Insurance Company Examiners.

**Insurance Commissioner
Legislative Rule
Title 114, Series 15**

4.2. Examiners salary shall be calculated based upon a five-day work week.

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

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

4.3.2.b. Approval. Annual leave may be taken by the Examiner only upon written approval by the Commissioner, Deputy Commissioner or Chief Examiner. Approval must be requested at least as far in advance of 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.

4.3.3.c. Examiners shall not be reimbursed for travel or living expenses for any day authorized as annual leave.

4.3.4.d. On any day that the examiner is absent due to sickness, said 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 such absence shall be verified by a physician's statement. An examiner will be subject to the appropriate disciplinary action for failure to comply with these notification and physician's statement requirements.

4.3.5.e. Examiners shall continue to be reimbursed for living expenses during times of sick leave as long as the examiner does not travel to his or her place of residence as a result of the illness.

§ 114-15-5. Travel and Living Expenses.

5.1. Travel. -- Travel by Examiners in connection with activities conducted pursuant to W. Va. Code § 33-2-9 or this regulation shall not be undertaken unless authorized by the Commissioner, Deputy Commissioner or Chief Examiner. Travel expenses shall be subject to the following limitations:

Insurance Commissioner
Legislative Rule
Title 114, Series 15

5.1.1.a. All travel shall be by automobile unless otherwise authorized by the Commissioner, Deputy Commissioner or Chief Examiner.

5.1.1.a.A. Examiners shall be compensated for the actual mileage traveled and other incidental expenses as allowed by the Governor's travel regulations or equivalent compensation plan adopted by the State of West Virginia.

5.1.1.b.B. When an automobile is used, the distance traveled shall be not less than four hundred (400) miles per day as determined by the Rand McNally road map; Provided, That examiners shall be compensated for actual mileage traveled if the distance to an examination or to an assignment is less than four hundred (400) miles.

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

5.2. Examiners shall be reimbursed for living expenses on a basis of seven (7) days per week for the duration of the on-site examination or assignment as follows:

5.2.1.a. Living expenses may be reimbursed by any one of the following three methods as authorized by the Commissioner:

5.2.1.a.A. Actual living expenses, provided that expenditures can be adequately substantiated and are approved by the Commissioner.

5.2.1.b.B. A per diem allowance selected by the Commissioner.

5.2.1.b.1.(a) The street address of the facility housing the examiners during their assignment shall be used in determining the per diem allowance.

5.2.1.b.2.(b) Changes in this per diem allowance due to the examiners performing work in connection with an assignment at a different street address shall only be authorized if the street address of the new facility is in excess of fifty (50) miles from the previous facility and if the examiner shall be housed in the new facility in excess of three (3) days.

5.2.1.c.C. The method recommended by the Financial Condition Examiners Handbook of the National Association of Insurance Commissioners.

**Insurance Commissioner
Legislative Rule
Title 114, Series 15**

5.2.2.b. Living expenses shall not be authorized if the examination takes place in a location within fifty (50) miles (one way) of an examiner's residence. However, the examiner shall be compensated for actual mileage traveled and other incidental expenses as allowed by the Governor's travel regulations or equivalent compensation plan adopted by the State of West Virginia.

5.2.3.c. 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 regulations or equivalent compensation plan adopted by the State of West Virginia when attending training, educational courses, conferences, seminars or other activities authorized by the Commissioner. Registration fees shall be included as expenses that can be reimbursed to the examiners or other employees.

5.2.4.d. 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, provided that a passing score is achieved on the examinations. Other expenses incurred in connection with the examination, including travel, lodging and meals, shall not be reimbursed.

5.2.5.e. Other individuals involved in activities conducted pursuant to W. Va. Code § 33-2-9 or this regulation who are billing directly as authorized in Section 3.4 of this regulation shall file a schedule of their fees and charges with the Commissioner prior to incurring any charges. Such other individuals shall submit copies of their billings to the Commissioner simultaneously with their submission to the billed entity, individual or person.

5.2.6.f. An examiner shall be authorized to return to his or her place of residence ~~twice~~ six times in any one fiscal year. Provided, however, that an examiner shall not be authorized to return to his or her place of residence more than three times in any one quarterly period. The examiner shall 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 such travel. It is understood that such travel will be done with a minimum amount of work time lost. For purposes of this subsection of this regulation, "place of residence" shall refer to an examiner's place of legal residence as on file with the Department of Insurance. An examiner shall immediately inform the department of any change in legal residence.

§ 114-15-6. Examiner Reporting Requirements.

6.1. Each examiner shall prepare an "Examiner's Semimonthly Days Worked Report" to be submitted on a form prescribed by the Commissioner. Said form shall be

**Insurance Commissioner
Legislative Rule
Title 114, Series 15**

submitted to the Commissioner within three (3) days of the end of each semimonthly pay period. Such report shall contain the following information:

- 6.1.1.a. Period of time the report covers.
- 6.1.2.b. Name of entity, individual or person that examiner has been examining and their normal hours of operation.
- 6.1.3.c. Mailing address and street address, including county, of the facility housing the examiner.
- 6.1.4.d. Telephone number and extension where the examiner can be reached at all times.
- 6.1.5.e. The domiciliary state, if the examination is being performed on a non-domestic entity.
- 6.1.6.f. The examiner in charge if other than the reporting examiner.
- 6.1.7.g. A listing of any other examiners participating in the assignment and their domicile or zone representation.
- 6.1.8.h. A description of the phases of the examination or assignment that the examiner worked on during the reporting period.
- 6.1.9.i. Comments on any unusual or controversial items.
- 6.1.10.j. Tentative closing date of the assignment.
- 6.1.11.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:
 - 6.1.11.a.A. Work day, annual day, sick day, expense day.
 - 6.1.11.b.B. Each category shall be totalled at the bottom of the schedule.
- 6.1.12.l. The examiners name, signature and a statement that the information provided is true and correct.

Insurance Commissioner
Legislative Rule
Title 114, Series 15

~~6.1.13.m.~~ The name and signature of the examiner in charge, if other than the reporting examiner, verifying the information.

6.2. The information identified in Section 6.1 of this regulation is necessary to satisfy the substantiation of business expenses requirement of the Internal Revenue Service placed upon the Insurance Department as an employer. Failure on the part of the examiner to provide any of the information could require the Insurance Department to report expense amounts as income of the examiner to the Internal Revenue Service.

6.3. An examiner shall report changes to his or her telephone number and extension to the Commissioner between reporting periods. Failure to report such changes could affect the Insurance Department's ability to consider an examiners business expenses as substantiated.



STATE OF WEST VIRGINIA
Offices of the Insurance Commissioner

Legal Division

GASTON CAPERTON
Governor

HANLEY C. CLARK
Insurance Commissioner

June 26, 1995

HAND DELIVERED

Ms. Judy Cooper, Director
Administrative Law Division
Office of Secretary of State
State Capitol
Charleston, WV 25305

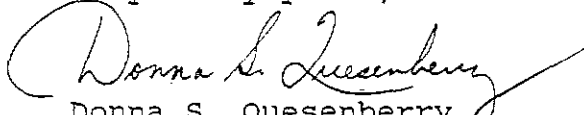
Dear Ms. Cooper:

Enclosed please find for filing one copy of the following:

- (1) Notice of A Comment Period on a Proposed Rule;
- (2) Consent of Tax and Revenue Cabinet Secretary to Proposed Rule;
- (3) Brief Summary of Rule;
- (4) Statement of Circumstances;
- (5) Fiscal Note;
- (6) The proposed rule entitled "Examiners' Compensation, Qualifications and Classifications" (Series 15).

Please contact me if further information is required.

Very truly yours,


Donna S. Quesenberry
Associate Counsel

DSQ/cjs
Enclosures

FILED
JUN 26 1 54 PM '95
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE