

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #4

FILED

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Insurance Commissioner TITLE NUMBER: 114

CITE AUTHORITY W. Va. Code §§ 33-2-9 and 33-2-10

AMENDMENT TO AN EXISTING RULE: YES NO

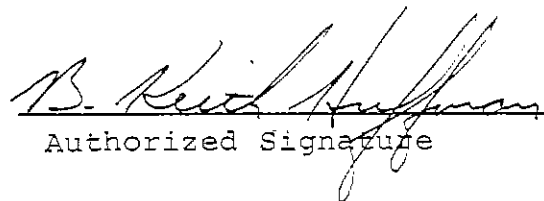
IF YES, SERIES NUMBER OF RULE BEING AMENDED: Series 15

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

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

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.


Authorized Signature

4.20

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

§ 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~~ Commissioner 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.

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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~~ 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 ~~regulation~~ rule.

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~~ 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. ~~Such~~ The monies ~~se~~ 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~~ Commissioner's Accredited Examiners as specified in this ~~regulation~~ rule for any activities conducted pursuant to W. Va. Code § 33-2-9 or this ~~regulation~~ rule.

~~3-3-2-b.~~ Salaries and/or expenses of the Insurance ~~Department~~ Commissioner's Special Deputies or other employees for activities conducted pursuant to W. Va. Code § 33-2-9 or this ~~regulation~~ rule.

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~~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~~ rule.

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

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~~ the entity, individual or person;

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

~~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~~ 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 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.

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

§ 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

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recommended by the Financial Condition Examiners Handbook of the National Association of Insurance Commissioners for Insurance Company Examiners.

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

4.3. Accrued Time. -- Examiners shall accrue a Annual leave and sick leave ~~shall accrue~~ at the rates and in the manner established by current West Virginia Division of Personnel ~~regulations~~ rules 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. The Examiner must request a ~~Approval must be requested~~ 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.

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 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 ~~such the~~ absence shall be verified by a physician's statement. An examiner ~~will be~~ is 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 rule shall not be undertaken unless authorized by the

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Commissioner, Deputy Commissioner or Chief Examiner. Travel expenses ~~shall be~~ are subject to the following limitations:

~~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~~ rules or an equivalent compensation plan adopted by the State of West Virginia.

~~5.1.1.b.B.~~ When an automobile is used, and the distance traveled shall be not to an examination or to an assignment is equal to or greater than four hundred (400) miles. the distance traveled per day shall not be 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~~ is 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: or

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

~~5.2.2.b.~~ The Commissioner shall not authorize 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~~ rules or an 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~~ rules or an 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~~ rule who are billing directly as authorized in Section 3.4 of this ~~regulation~~ rule shall file a schedule of their fees and charges with the Commissioner prior to incurring any charges. ~~Such other~~ These 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.~~ The Commissioner shall authorize a ~~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 the Commissioner shall not authorize an examiner 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 the~~ such the travel. It is understood that ~~such the~~ such the travel will be done with a minimum amount of work time lost. For purposes of this subsection of this ~~regulation~~ rule, "place of residence" ~~shall refers~~ refers to an examiner's place of legal residence as on file with the ~~Department of Insurance Commissioner~~. An examiner shall immediately inform the department of any change in legal residence.

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

~~6.1.1.a.~~ The pPeriod of time the report covers;

~~6.1.2.b.~~ The nName of entity, individual or person that examiner has been examining and their normal hours of operation;

~~6.1.3.c.~~ The mMailing address and street address, including county, of the facility housing the examiner;

~~6.1.4.d.~~ The tTelephone 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.~~ The tTentative 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;

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~~6.1.11.b.B.~~ Each category shall be totalled at the bottom of the schedule;

~~6.1.12.1.~~ The examiners name, signature and a statement that the information provided is true and correct; and

~~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 Subsection 6.1 of this ~~regulation rule~~ is necessary to satisfy the substantiation of business expenses requirement of the Internal Revenue Service placed upon the Insurance ~~Department~~ Commissioner 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~~ the changes could affect the Insurance ~~Department~~ Commissioner's ability to consider an examiners business expenses as substantiated.



STATE OF WEST VIRGINIA
Offices of the Insurance Commissioner

GASTON CAPERTON
Governor

HANLEY C. CLARK
Insurance Commissioner

November 27, 1995

HAND DELIVERED

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

Dear Ms. Cooper:

Enclosed please find for filing one (1) copy of the following:

- (1) Notice of Rule Modification of a Proposed Rule and Filing with the Legislative Rule-Making Review Committee;
- (2) The proposed rule entitled "Examiners' Compensation, Qualification and Classifications" (Series 15).

Please contact me if further information is required.

Very truly yours,

Donna S. Quesenberry
Donna S. Quesenberry
Associate Counsel

DSQ/sar
Enclosures

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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West Virginia Legislature
Legislative Rule-Making Review Committee
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Room MB47-State Capitol
Charleston, West Virginia 25305
(304) 347-4840

Senator Mike Ross, Co-Chair
Delegate Vickie Douglas, Co-Chair

Debra A. Graham, Counsel
Joe Altizer, Associate Counsel
Marie Nickerson, Admr. Assistant

November 15, 1995

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Mr. B. Keith Huffman
General Counsel
Office of Insurance Commissioner
2019 Washington St., East
Charleston, WV 25305

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Examiners' Compensation, Qualifications and Classification

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed
 - (b) as modified by the agency
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached.

X

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

cc: Donna S. Quesenberry
Associate Counsel

114-15