

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

Form #3

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Insurance Commissioner TITLE NUMBER: 114

CITE AUTHORITY: W. Va. Code §§ 33-2-9(n) and 33-2-10

AMENDMENT TO AN EXISTING RULE: YES NO

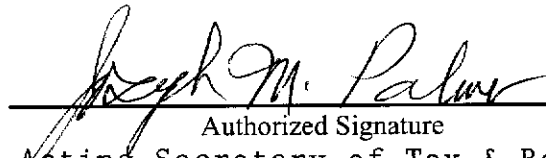
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 15

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

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


Authorized Signature
Acting Secretary of Tax & Revenue

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

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

Type of Rule: XX Legislative ___ Interpretive ___ Procedural

Agency: Insurance Commissioner

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

=====

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	Increase	Decrease	Current	Next	Thereafter
ESTIMATED TOTAL COST	\$13,680	0	\$322,475	\$336,155	\$366,155
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	\$13,680	0	\$101,235	\$114,915	\$114,915
REPAIRS AND ALTERNATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	0	0	0

2. Explanation of above estimates:

The increase is based on the increase in the number of authorized trips home under the amendment. Currently, the four examiners may travel home six times per year, at an average cost of \$350 less \$160 for meals and lodging not incurred when they travel home. The increase in cost represents an increase of 6 to 24 authorized trips home based on the current average cost.

Rule Title: Examiners' Compensation, Qualifications and
Classification
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3. Objectives of these rules:

The requirement of actual lodging receipts instead of a straight per diem reimbursement increases the integrity of the system. Increasing the authorized trips home falls within the national guidelines and facilitates the hiring and retention of examiners.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None. The state general revenue account is not used for these expenses. The Examination Revolving Account is a special revenue account and comes from annual fees collected from all licensed insurers authorized to do business in this state.

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


None. The fees collected from insurers to fund the examination revolving account need not be increased.

C. Economic Impact on Citizens/Public at Large.

None.

Date: 9/1/00

Signature of Agency Head or Authorized Representative



DONNA S. QUEISENBERRY, GENERAL COUNSEL

Insurance Commissioner
Legislative Rule
Title 114, Series 15

EXAMINERS' COMPENSATION, QUALIFICATIONS AND CLASSIFICATION

TITLE 114, SERIES 15

BRIEF SUMMARY OF RULE

West Virginia Code § 33-2-9(n) authorizes the Commissioner to promulgate the method of reimbursing insurance examiners. The current policy for doing so is unclear and is contained in several different sources such as the current Code, Rule, and a number of policy memoranda. The Chief Examiner has determined a need to clarify the rules and methods.

The Amendment will add integrity to the system of reimbursement by requiring actual lodging receipts rather than allowing reimbursement for lodging based on a straight per-diem rate. The increase in authorized trips home will help bring the state into alignment with the guidelines of the National Association of Insurance Commissioners, which should help facilitate the hiring and retention of qualified insurance company examiners. A staff of qualified examiners will lead to better financial solvency monitoring of insurance companies, which results in better protection of the insurance-buying public.

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EXAMINERS' COMPENSATION, QUALIFICATIONS AND CLASSIFICATION

TITLE 114, SERIES 15

STATEMENT OF CIRCUMSTANCES

The proposed amendments simplify and clarify the rules and procedures for reimbursement of travel expenses to examiners incurred in their performance of an on-site examination of an insurer. The amendment designates one method for calculating the rate of reimbursement for mileage, lodging and meals and incidental expenses. The amendment:

- Adds definitions for certain terms;
- Increases the number of authorized trips home per year;
- Eliminates the Commissioner's authority to choose one of three methods for reimbursing living expenses, and establishes the methods to be used;
- More closely aligns the methods used to reimburse examiners with the method used for other state employees;
- Adds a requirement that the location of an examiner's lodging be included on his or her work report; and
- Makes minor stylistic changes.

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period, Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: SEPTEMBER 1, 2000

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: OFFICE OF THE INSURANCE COMMISSIONER
ATTN: Legal Division
1124 Smith Street
Post Office Box 50540
Charleston, West Virginia 25305-0540

LEGISLATIVE RULE TITLE: EXAMINER'S COMPENSATION, QUALIFICATIONS
AND CLASSIFICATION (TITLE 114, SERIES 15)

1. Authorizing statute(s) citation:

West Virginia Code §§ 33-2-9(n) and 33-2-10

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

August 1, 2000

b. What other notice, including advertising, did you give of the hearing?

None

c. Date of Public Hearing(s) or Public Comment Period ended:

Public comment period ended August 31, 2000.

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received X

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

September 1, 2000

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Title 114, Series 15

- f. **Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule: (Please type)**

M. Paul Marteney, Associate Counsel
West Virginia Insurance Commission
Legal Division
P.O. Box 50540
Charleston, WV 25305-0540
Phone: (304) 558-0401
Fax: (304) 558-1362
E-mail: martenp@wvnm.wvnet.edu

- g. **IF DIFFERENT FROM ITEM 'f', please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)**

Not applicable

3. **If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:**

- a. **Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.**

Not applicable

- b. **Date of hearing or comment period:**

Not applicable

- c. **On what date did you file in the State Register the findings and determinations required together with the reasons therefor?**

Not applicable

- d. **Attach findings and determinations and reasons:**

Not applicable

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

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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. -- ~~April 2, 1996.~~

1.4. Effective Date. -- ~~April 15, 1996.~~

§ 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~~ offices of the Insurance Commissioner of West Virginia, excluding the Commissioner's Accredited Examiners.

2.4. "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 or ~~Supervising Insurance Company Examiner~~ Supervisor 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.

2.5. "Other individual" means any individual who is not an employee of the ~~Department of Insurance~~ offices of the Insurance Commissioner, to include but not be limited to independent certified public accountants, independent actuaries, qualified insurance examiners or other

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individuals 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.

2.6. "Examination assessment fee" means the annual fee due on or before ~~July 1~~ the first day of July 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.

2.8. "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 not the offices of the Insurance Commissioner when work related to an examination is performed there.

2.9. "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.

2.10. "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.

§ 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~~ the first day of July 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 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:

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a. Salaries and expenses of the Insurance Commissioner's ~~Accredited Examiners~~ 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 and/or expenses of other individuals 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.

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:

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 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 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.

§ 114-15-4. Compensation and accrued time of accredited examiners.

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

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

4.3. 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, such the examiner shall be properly compensated.

b. Annual leave may be taken by the ~~Examiner~~ examiner only upon written approval by the Commissioner, Deputy Commissioner or Chief Examiner. The ~~Examiner~~ 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 section 5.5 hereof.

d. On any day that the examiner is absent due to sickness, 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 these notification and physician's statement requirements.

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 remains at his of her on-site lodging during the illness.~~

§ 114-15-5. Travel and living expenses.

5.1. Travel. -- Travel by ~~Examiners~~ 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.

~~A.1. Examiners shall be compensated for the actual mileage traveled and other incidental expenses as allowed by the Governor's travel rules. or an equivalent compensation plan adopted by the State of West Virginia.~~

~~B.2. When an automobile is used, and the distance 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.~~

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.

~~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:~~

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

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

~~B. A per diem allowance selected by the Commissioner;~~

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

~~(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~~

~~(c) The method recommended by the Financial Condition Examiners Handbook of the National Association of Insurance Commissioners.~~

5.2. Living expenses shall be reimbursed as follows:

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

1. Examiners may be reimbursed for lodging expenses exceeding \$100 per night if they have obtained prior approval therefore, in writing, from the Chief Examiner, Deputy Commissioner, or Commissioner.

b. Meals and incidental expenses shall 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 a traveler, the traveler's maximum per diem rate shall be reduced by an appropriate amount as set out in paragraph 4 of this subdivision.

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

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

A. Breakfast - 20% of the maximum per diem rate.

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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.

be. The Commissioner shall 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 shall be compensated for actual mileage traveled and other incidental expenses as allowed by the Governor's travel rules. ~~or an equivalent compensation plan adopted by the State of West Virginia.~~

ef. 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 ~~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.

d5.3. 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, provided that a passing score is achieved on the examination. Other expenses incurred in connection with the examination, including travel, lodging and meals, shall not be reimbursed.

e5.4. Other individuals involved in activities conducted pursuant to W. Va. Code § 33-2-9 or this rule who are billing directly as authorized in Section 3.4 of this rule shall file a schedule of their fees and charges with the Commissioner prior to incurring any charges. These

individuals shall submit copies of their billings to the Commissioner simultaneously with their submission to the billed entity, individual or person.

f5.5. The Commissioner shall authorize an examiner to return to his or her ~~place of residence domicile~~ six twenty-four (24) 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~~ eight (8) 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 the travel. It is understood that the travel will be done with a minimum amount of work time lost. For purposes of this subsection of this rule, "~~domicile place of residence~~" 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.

§ 114-15-6. 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. 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 facility housing the examiner business location of the entity being examined, and the mailing address and street address of the examiner's on-site lodging;
- 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;

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f. The ~~examiner in charge~~ 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:

~~A.1.~~ A.1. Work day, annual day, sick day, expense day;

~~B.2.~~ B.2. Each category shall be ~~totalled~~ totaled at the bottom of the schedule;

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

m. The name and signature of the ~~examiner in charge~~ Examiner In Charge or Insurance Company Examiner Supervisor, if other than the reporting examiner, verifying the information.

6.2. The information identified in Subsection 6.1 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 ~~Insurance Department~~ offices of the Insurance Commissioner of West Virginia 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 the changes could affect the ~~Insurance~~ Commissioner's ability to consider an examiners business expenses as substantiated.



STATE OF WEST VIRGINIA
Offices of the Insurance Commissioner

Legal Division

CECIL H. UNDERWOOD
Governor

HANLEY C. CLARK
Insurance Commissioner

September 1, 2000

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 Agency Approval of a Proposed Rule and Consent of Acting Secretary of Tax and Revenue;
- 2) Fiscal Note for Proposed Rule;
- 3) Brief Summary of Rule;
- 4) Statement of Circumstances;
- 5) Legislative Rule-Making Review Committee Questionnaire;
- 6) Agency approved proposed rule entitled "Examiner's Compensation, Qualifications and Classification" (Title 114, Series 15).

Please contact me if further information is required.

Sincerely,

Donna S. Quesenberry
General Counsel

DSQ/jz
Enclosures

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SECRETARY OF STATE