WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION

Form #7

Do not mark in this box
Filing Date

FILED

2006 JUN -8 P 12:53

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: Insurance Commissioner TITLE NUMBER: 114

CITE AUTHORITY WV Code §§33-1-10(e)(14) & 33-2-10

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES _____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: 80

TITLE OF RULE BEING AMENDED: Special Provisions Regarding Workers' Compensation Rates

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

PLEASE SEE ATTACHED

John C. Musgrave
Acting Cabinet Secretary
West Virginia Department of Revenue

Use additional sheets if necessary

$5.60

Title 114, Series 80 - Emergency Rule
Special Provisions Regarding Workers' Compensation Rates

FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY:

BrickStreet was created in legislation enacted in 2005 to act as the sole Workers' Compensation insurer in West Virginia until the market is opened up in 2008. In October 2005, the Insurance Commissioner designated the National Council on Compensation Insurance, Inc. ("NCCI") as the rating organization for worker's compensation insurers in West Virginia. As the rating organization, NCCI established a new classification system under which job classes were expanded from 94 (used by the old Workers' Compensation Commission) to 470. BrickStreet is now in the process of sending out its first set of premium notices (for the policy period covering the second half of 2006) based on the classifications established by NCCI. Some 27,000 employers will receive these notices, and NCCI estimates that some 7,000 are going to see increases in their premiums as a result of the new classification system; most of the increases will be more than 20% over the previous premium. Due to the enormous amount of work involved in reclassifying in accordance with the new system, errors were inevitable, and in fact a preliminary review found a number of incorrect premiums based on job misclassifications. Because BrickStreet is now attempting to review all of the invoices, the notices are going out later than was expected (instead of mid-May as originally planned, the new invoices will go out June 22-29 for the policy period beginning July 1).

As required by statute (WV Code §33-22-9(b)), NCCI has a dispute resolution process that has been approved by the Commissioner. This process entails preliminary informal contact with BrickStreet, a formal grievance procedure before an internal dispute panel within NCCI, and an appeal to the Commissioner. Although no one is able to accurately predict how many of these invoices will be disputed, there is concern that the number may be quite large (a correlative concern is that the larger the number of disputes, the longer it will take the NCCI panel to reach resolutions). A potential problem is that these employers would have to pay the amount of the invoice in order to maintain coverage pending resolution by the NCCI panel. Because some of these disputes could involve large (and possibly incorrectly calculated) amounts, payment of which could impose a hardship on some employers, the Commissioner wishes to set out a one-time procedure by which an employer could pay a partial premium and also maintain coverage until the matter is resolved by NCCI. The payment required to avoid cancellation would be based on the amount(s) that the employer paid in the first half of 2006 under the old classification system.

Because the anticipated problems are expected to decrease significantly after the first round of billings based on the new classification system, the Commissioner is only proposing that this rule be in effect for 90 days. It is hoped that this will allow sufficient time for NCCI to resolve all of the disputes.

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: June 8, 2006

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

EMERGENCY RULE TITLE: 114CSR80 - Special Provisions Regarding Workers' Compensation Rates

1. **Date of Filing:**

   June 8, 2006.

2. **Statutory authority for promulgating emergency rule:**

   WV Code §33-2-10 (Insurance Commissioner's general rulemaking authority) & §33-1-10(e)(1) (defining workers' compensation insurance as "casualty insurance").

3. **Date of filing of proposed legislative rule:**

   June 8, 2006.

4. **Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?**

   Emergency rule is entirely new.

5. **Has the same or similar emergency rule previously been filed and expired?**

   No.

6. **State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety and welfare.**

   N/A

7. **If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.**

   N/A

8. **State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to public interest.**

   The magnitude of the potential problem - disputes arising out of some 27,000 simultaneously-mailed premium notices, all of which will be based for the first time on an entirely revamped and greatly expanded job risk classification system -- is unknown, although a number of incorrect applications of the new classification system have already been discovered. Under the usual procedure, any invoice not paid within a relatively short period would result in cancellation of coverage. BrickStreet estimates that 6,919 of these new invoices will show an increase in premium and that 4,827 of these will be in excess of 20% over the previous period's premium.

   It is believed that many of these increased premiums will impose a hardship on the employers if they had to pay in full pending resolution of a dispute. Cancellation of coverage would place the employer on the default list and would result in any claims by their employees becoming the ultimate responsibility of the Uninsured Fund. In addition, once cancelled, an employer is subject to a penalty in twice the amount of premium unpaid, immunity from civil suit by injured employees is lost, the business is subject to an injunction closing down operations, the employer remains liable to the uninsured fund for every claim paid, and all business/professional licenses are subject to revocation by the issuing agencies.

Insurance Commissioner
Emergency Rule
Title 114, Series 80

SPECIAL PROVISIONS REGARDING
WORKERS' COMPENSATION RATES
TITLE 114, SERIES 80

BRIEF SUMMARY OF EMERGENCY RULE

This emergency rule would permit certain employers -- those who invoke the workers' compensation designated rating organization's (NCCI's) internal dispute resolution process with respect to classifications/allocations used by their insurer (Employers' Mutual, dba BrickStreet) in setting the premiums to be charged in the July 1, 2006 invoices -- to pay a partial premium (based on the premium paid in the previous policy period) and avoid cancellation pending resolution of the dispute by NCCI.

Insurance Commissioner
Emergency Rule
Title 114, Series 80

SPECIAL PROVISIONS REGARDING
WORKERS' COMPENSATION RATES
TITLE 114, SERIES 80

STATEMENT OF CIRCUMSTANCES

Employers' Mutual Insurance Company, dba BrickStreet, was created pursuant to H.B. 1004 (1st extraordinary session 2005) to act as the sole Workers' Compensation insurer in West Virginia until the market is opened up to other private carriers in July 2008. The Insurance Commissioner ("Commissioner") designated NCCI (National Council on Compensation Insurance, Inc.) as the rating organization for worker's compensation insurers in West Virginia. NCCI established a new classification system under which job risk classifications were expanded from 94 (under the former monopolistic Workers' Compensation Commission) to 470. Brickstreet must now charge premiums based on these new classifications and is now in the process of preparing its first set of premium invoices (for the policy period covering the second half of 2006) using the new and expanded classification system. More than 27,000 employers will receive these notices, and NCCI estimates that some 7,000 are going to see increases in their premiums as a result of the new classification system. Due to the enormous amount of work involved in reclassifying in accordance with the new system, errors were inevitable, and in fact a preliminary review found a number of incorrect premiums based on job misclassifications. Some of the mistakes resulted in large increases in premiums.

As required by statute [WV Code §33-20-9(b)], NCCI has a dispute resolution that has been approved by the Commissioner. There is concern that a large number of employers will invoke this process in the first weeks of July; pending resolution by NCCI, however, these employers could be subject to cancellation by BrickStreet unless they paid the full amount of the invoice. Because some of these disputes could involve amounts so large that requiring payment could impose a hardship on some employers, the Commissioner wishes to establish a procedure by which an employer could maintain coverage until the matter is resolved by NCCI by paying a partial premium. The payment required to avoid cancellation would be based on the amount(s) that the employer paid in the first half of 2006 under the old classification system.

Because the anticipated problems are expected to decrease significantly after the first round of billings, the Commissioner is only proposing that this rule be in effect for 90 days. It is believed that this will allow sufficient time for NCCI to resolve all or most of the disputes.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Special Provisions Regarding Workers' Compensation Rates (Title 114, Series 80)

Type of Rule: ____ Legislative ____ Interpretive ____ Procedural _X_ Emergency

Agency: Insurance Commissioner

Address: Post Office Box 50540

1124 Smith Street, Greenbrooke Building

Charleston, West Virginia 25305-0540

Phone Number: (304) 558-0401 Email: Timothy.Murphy@wvinsurance.gov

Fiscal Note Summary

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

It is expected that the rule impact will be minimal; some isolated disputes related to the partial premium payments permitted by the proposed rule may arise, but it is anticipated that these could be handled with existing resources. There are no new revenues associated with this rule.

Fiscal Note Detail

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

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	None	None	None
Personal Services	None	None	None
Current Expenses	None	None	None
Repairs & Alterations	None	None	None
Assets	None	None	None
Equipment	None	None	None
Other	None	None	None
2. Estimated Total Revenues	None	None	None

Rule Title: Special Provisions Regarding Workers' Compensation Rates (Title 114, Series 80)

3. Explanation of above estimates (including long-range effect):
Please include any increase or decrease in fees in your estimated total revenues.

N/A

MEMORANDUM

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

Date: June 8, 2006

Signature of Agency Head or Authorized Representative

Jane L. Cline, Insurance Commissioner

114CSR80

EMERGENCY RULE
WEST VIRGINIA INSURANCE COMMISSIONER

SERIES 80
SPECIAL PROVISIONS REGARDING WORKERS' COMPENSATION RATES

Section.

114-80-1. General.

114-80-2. Definitions.

114-80-3. Employer Right to Protest Rate Classification and Pay Prior Term's Premium Amount Pending Dispute Resolution.

Appendix A Dispute Resolution Process Approved by the Commissioner

114CSR80

FILED

2006 JUN -8 P 12: 53

OFFICE WEST VIRGINIA

EMERGENCY RULE
WEST VIRGINIA INSURANCE COMMISSIONER

SERIES 80
SPECIAL PROVISIONS REGARDING WORKERS' COMPENSATION

§114-80-1. General.

1.1. Scope.

a. The purpose of this rule is to prohibit cancellation of workers' compensation coverage upon the partial payment of a workers' compensation insurance premium pending resolution of certain disputes arising out of the initial use of the new classification system established by NCCI.

b. This rule applies to all employers and to all workers' compensation insurance carriers, policies and contracts within the state of West Virginia.

1.2. Authority. -- W. Va. Code §§33-1-10(e)(14) and 33-2-10.

1.3. Filing Date. -- June 8, 2006.

1.4. Effective Date. --

1.5. Expiration. -- This rule expires ninety (90) days after the effective date.

§114-80-2. Definitions.

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

2.2. "Private carrier" means any workers' compensation insurance carrier licensed to write workers' compensation insurance by the Commissioner.

2.3. "NCCI" means the National Council on Compensation Insurance, Inc., which is the Commissioner's designated rating organization for workers' compensation insurance in West Virginia.

2.4. "Basic Manual" means NCCI's Basic Manual for Workers' Compensation and Employers' Liability Insurance, as approved by the Commissioner on May 3, 2006.

2.5. "Dispute resolution process" means the process set forth in the Basic Manual as Exhibit 1, as approved by the Commissioner on April 21, 2006; a copy is attached hereto as Appendix A.

2.6. "Internal Review Panel" means the 3-member panel established by NCCI in the dispute resolution process to decide disputes regarding NCCI classifications, manual rules and rating plans.

2.7. "NCCI final decision" means a final denial of a request for review under the dispute resolution process or, in cases in which the request for review has been granted, a final decision by the Internal Review Panel.

§114-80-3. Employer Right to Protest Rate Classification and Pay Prior Term's Premium Amount Pending Dispute Resolution.

3.1. If any employer who disagrees with a classification assignment or payroll allocation assigned to some or all of its employees by its private carrier in any premium invoice issued with respect to the policy period beginning July 1, 2006 and who, in accordance with the terms of the invoice, timely remits a partial premium payment to its private carrier in an amount at least equal to the employer's initial payment made in the previous billing period (January 1 through June 30, 2006), then the employer may not be found to be in policy default and the private carrier may not issue a notice of intent to cancel based on nonpayment until after July 25, 2006.

3.2.1. If the employer who has made a timely partial premium payment in accordance with subsection 3.1 of this section also (a) makes a reasonable attempt to resolve its dispute directly with the private carrier and (b) in accordance with the dispute resolution process, sends a written request for review to NCCI that is received by NCCI by the close of business on July 25, 2006,

Then the employer may not be found to be in policy default and the private carrier may not issue a notice of intent to cancel based on nonpayment until after issuance of a NCCI final decision: Provided, That if a NCCI final decision has not been rendered by August 14, 2006, any employer who had chosen the two-payment option for the first half of 2006 shall not be found to be in policy default and the private carrier may not issue a notice of intent to cancel based on nonpayment if such employer, in accordance with the terms of the invoice for the second payment, timely remits a second partial premium payment in an amount at least equal to the employer's second payment made in the previous billing period (January 1 through June 30, 2006).

3.2.2. A reasonable attempt to resolve the dispute directly with the private carrier pursuant to subsection 3.2.1(a) above means compliance by the employer with any reasonable requests by the private carrier for information from the employer relevant to the employer's dispute, including but not limited to completion of a questionnaire provided to the employer by the private carrier. NCCI will deny a request for review if it determines that the employer has not made a reasonable attempt to resolve the dispute with the private carrier before requesting a dispute resolution review.

3.2.3. After issuance of a NCCI final decision, the private carrier shall send an amended invoice that affords the employer fifteen (15) days to pay any remaining premium due. The private

carrier may thereafter cancel any employer who does not pay in accordance with this amended invoice in the same manner as if the employer had not paid the initial invoice: Provided, That any cancellation effected pursuant to this subsection shall be effective from the date of the cancellation notice and shall not be retroactive to an earlier date.

3.3. Nothing in this rule shall be interpreted to permit an employer to withhold payment of premium beyond the time periods specified in subsection 3.1. or 3.2 of this section.

APPENDIX A

FILING MEMORANDUM

ITEM 03-WV-2006—WEST VIRGINIA DISPUTE RESOLUTION PROCESS

(To be effective 12:01 a.m. on July 1, 2006, applicable to new and renewal business only.)

PURPOSE

The purpose of this item is to provide an NCCI mechanism by which individual policyholders may obtain review of a workers compensation insurance carrier's application of NCCI classification code assignments, manual rules, and rating plans, as contained in NCCI's ***Basic Manual for Workers Compensation and Employers Liability Insurance***. This will be accomplished through the implementation of an Internal Review Panel. The Panel will:

- Expedite the delivery of dispute resolution services to carriers and employers in West Virginia
- Potentially keep costs down in providing such services
- Provide for rules for the administration of dispute resolution services
- Provide a clear and concise record of the decision in such disputes in West Virginia

BACKGROUND

Prior to October 14, 2005, West Virginia operated as a monopolistic state with no affiliation with NCCI. As of October 14, 2005, NCCI was granted a rating organization license by the West Virginia Insurance Commissioner. Pursuant to NCCI's responsibilities under that license, NCCI is filing for the establishment of a mechanism by which employers may dispute the application of NCCI's manual rules by a workers compensation insurance carrier licensed in West Virginia. This current filing does not apply to the rules contained in NCCI's ***Experience Rating Plan Manual for Workers Compensation and Employers Liability Insurance***, but, at a future date, another filing will be submitted to effect this. When this occurs, disputes involving the interpretation and application of the rules of NCCI's ***Experience Rating Plan Manual*** will be heard by the Internal Review Panel.

PROPOSAL

It is proposed that effective 12:01 a.m. on July 1, 2006, the West Virginia Insurance Commission adopt the Dispute Resolution Process included in this filing, applicable to new and renewal business only.

IMPACT

The approval and implementation of this filing will not impact premium levels but will expedite the delivery of the dispute resolution process to employers and insurance carriers.

IMPLEMENTATION

Upon approval of this item, the Dispute Resolution Process will be added under the Miscellaneous Rules in NCCI's ***Basic Manual for Workers Compensation and Employers Liability Insurance***. The attached exhibit details the procedures in the West Virginia Miscellaneous Rules pages of NCCI's ***Basic Manual***.

The enclosed materials are copyrighted materials of the National Council on Compensation Insurance, Inc. ("NCCI"). The use of these matrials may be governed by a separate contractual agreement between NCCI and its licensees such as an affiliation agreement between you and NCCI. Unless permitted by NCCI, you may not copy, create derivative works (by way of example, create or supplement your own works, databases, software, publications, manuals, or other materials), display, perform, or use the materials, in whole or in part, in any media. Such actions taken by you, or by your direction, may be in violation of federal copyright and other commercial laws. NCCI does not permit or acquiesce such use of its materials. In the event such use is contemplated or desired, please contact NCCI's Legal Department for permission.

© 2006 National Council on Compensation Insurance, Inc. All Rights Reserved.

EXHIBIT 1
BASIC MANUAL—2001 EDITION
WEST VIRGINIA MISCELLANEOUS RULES

DISPUTE RESOLUTION PROCESS

Authority, Purpose, and Scope of the Dispute Resolution Process

Pursuant to the authority granted under W. Va. Code Section 33–20–9(b), an Internal Review Panel (Panel) is hereby established to provide a mechanism by which policyholders may obtain review by the National Council on Compensation Insurance, Inc. (NCCI) of the application by an insurance carrier of NCCI classifications, manual rules, and rating plans.

1. The Panel will have authority only to hear written requests by policyholders for dispute resolution services relating to NCCI developed experience modification factors, payroll classification code assignments, and NCCI manual rules.
2. The Panel will not have the authority to interpret, apply or opine on state or federal laws, rules, or regulations, or decisions of courts or administrative proceedings; or to hear disputes brought by carriers.

Members of the Panel

The Panel will consist of three (3) employees of NCCI who will each have one vote. Each Panel member will be knowledgeable on the class codes, rules, and rating programs that are in dispute. Panel members will be appointed by NCCI. Members of the Panel are deemed not to have a conflict of interest with respect to any dispute brought before the Panel, based solely on the Panel member's affiliation with NCCI. The carrier or the employer involved in a dispute may submit a request to NCCI that a Panel member be replaced at any time prior to a review by the Panel. A Panel member will be replaced if NCCI determines, at its sole discretion, that the Panel member in question is related to any party to the dispute, or has any material interest in the outcome of any issue in dispute. The Panel is not an NCCI committee and does not report to the NCCI Board of Directors or any committee of NCCI.

Requesting Dispute Resolution Services

(1) A policyholder may obtain dispute resolution services of the Panel only after the policyholder has made a reasonable attempt to first resolve their dispute directly with the carrier.

(2) A policyholder may obtain dispute resolution services of the Panel by sending a written request for review to NCCI. Any request for review submitted under this Dispute Resolution Process must be in writing and must contain:

(a) The name, address, daytime telephone number, and (if the policyholder has one), the Federal Employer Identification Number (FEIN) of the policyholder;

(b) An explanation of what the policyholder is disputing;

(c) A statement of the relief sought by the policyholder;

(d) A statement that the policyholder has attempted to resolve their dispute directly with the carrier, but has not been able to do so;

(e) A statement that the policyholder has furnished a copy of the request for review to the carrier with which the policyholder has a dispute;

(f) A statement of how the policyholder wishes to appear before the Panel (by mail, by telephone, or by video conference);

(g) The signature of the policyholder; and

(h) A legible copy of any relevant policy of insurance, workers compensation experience rating worksheet, or audit information and any other correspondence the policyholder has received from the carrier with regard to the matters in dispute.

© 2006 National Council on Compensation Insurance, Inc. All Rights Reserved.

EXHIBIT 1 (CONT'D)
BASIC MANUAL—2001 EDITION
WEST VIRGINIA MISCELLANEOUS RULES

(3) The policyholder may also include any other information or copies of any other documentation in support of their position.

(4) This Dispute Resolution Process applies to any dispute arising out of a policy issued either on or after the approval of this item; however, policyholders seeking dispute resolution under this Dispute Resolution Process must file a written request for review with NCCI within three years of the expiration date of the policy in question. Any extension of time to file a request for review will be granted at the sole discretion of NCCI, and only in the interest of fairness to the policyholder or carrier as determined by NCCI. An extension of time to file a request for review will be granted only once.

(5) Within fifteen (15) business days of receipt by NCCI of a request for review, and no later than thirty (30) days after the written request is made, NCCI will grant or deny the request for this dispute to be heard by the Panel. If granted, NCCI will promptly give written notice to all parties of the date, time, and manner in which the Panel will consider the dispute; otherwise, NCCI will give written notice to the policyholder and the carrier that the request for review is not granted and will state the reasons the request is not granted, and will state the deadline for filing by the policyholder of an amended request for review, if applicable.

(6) "Receipt" by NCCI means the date a document is stamped as received by NCCI's Department of Regulatory Assurance.

(7) A request for review will be denied if:

(a) the request for review fails to state an issue in dispute that is within the authority of the Panel to hear; or

(b) the request for review has been untimely submitted; or

(c) any denial by NCCI of a request for review under paragraph (8) is final and the policyholder will not be given an opportunity to amend the request for review or resubmit it to NCCI.

(8) A request for review may be denied if the policyholder fails to provide adequate information for NCCI to evaluate the merits of the dispute. NCCI will notify the policyholder and the carrier in writing, if a request for review is denied pursuant to this paragraph, that the policyholder is allowed to file an amended request for review. The policyholder will be allowed to amend the request for review only one time. A denial pursuant to this paragraph is final and the policyholder will not be given an opportunity to amend the request for review or resubmit it to NCCI if an amended request for review is not received by NCCI within ten (10) business days of the date a denial pursuant to this paragraph is issued.

(9) Once a carrier is notified by NCCI that a policyholder's request for review has been granted, the carrier will have fifteen (15) business days to file with NCCI a written answer to the policyholder's request for review. The carrier is not required to file an answer; however, if the policyholder has chosen to appear before the Panel by mail, the Panel will only consider what is submitted to NCCI by the policyholder with his/her request for review; and by the carrier with its answer.

Appearances by Policyholder, Carrier, and Others

(1) Dispute resolution services under this Dispute Resolution Process are meant to be informal in nature and legal representation by either the employer or the carrier is not required. However, either the policyholder or the carrier may, at their own expense, be represented by an authorized representative, legal counsel properly licensed to practice law in any state or the policyholder's current agent of record.

(2) Policyholders must choose to appear before the Panel in one of two ways:

(a) In Writing—The Panel will only consider information contained in or attached to the policyholder's request for review, or provided by the carrier in writing as an answer to the policyholder's request for review. Either the policyholder or the carrier may submit statements by others for the Panel's consideration. All statements made by the policyholder or carrier or any other person must be in writing and signed by the person making the statement. No personal appearance before the

© 2006 National Council on Compensation Insurance, Inc. All Rights Reserved.

EXHIBIT 1 (CONT'D)
BASIC MANUAL—2001 EDITION
WEST VIRGINIA MISCELLANEOUS RULES

Panel by either the policyholder or the carrier or by any other person will be allowed, and no oral communications by any person will be considered by the Panel in making its decisions.

(b) By Telephone or Video Conference—The Panel will notify the policyholder and the carrier in writing of a date, time, and telephone number through which both will appear before the Panel by telephone or video conference. The Panel, in making its decisions, will consider information contained in or attached to the policyholder's request for review, and provided in writing to the Panel by the carrier in its answer to the policyholder's request for review, and any oral testimony given at the time of the dispute resolution review. An authorized representative, legal counsel or the current agent of record may appear for the carrier or the employer.

The carrier will appear by the same method that is chosen by the policyholder. Each person will be responsible for their own costs associated with their participation in the dispute resolution review, except that NCCI will absorb the cost of long-distance telephone charges if the employer chooses to appear by telephone.

Where to Send Documents

Every request for review, answer, and every other paper submitted to NCCI under this Dispute Resolution Process will be mailed or delivered by hand by the person making such a filing to the following address:

National Council on Compensation Insurance, Inc.
Regulatory Assurance Department—Internal Review Panel
901 Peninsula Corporate Circle
Boca Raton, Florida 33487

That person must also provide a copy simultaneously by mail or hand delivery to all other parties to the dispute, or their legal counsel or authorized reprsentative.

Date and Time of Dispute Resolution Review

NCCI will set a date and time for all dispute resolution reviews and will send written notice to the policyholder and the carrier at their last address of record. No less than fifteen (15) business days notice will be given for a review unless otherwise agreed to in writing by NCCI, the policyholder and the carrier. The Panel will review each request for review within forty-five (45) business days of the date the request for review is accepted by NCCI as complete, unless:

(1) The policyholder and the carrier agree to in writing to an extension of time; or

(2) NCCI, in its sole discretion, determines that an inspection of the policyholder's business is necessary, in which case the Panel will conduct a dispute resolution review within fifteen (15) business days of the issuance by NCCI of a final inspection report.

Conferences Prior to Review

Mandatory Participation—At any time after a dispute has been submitted to NCCI, the Panel may direct the policyholder and the carrier to confer for the purpose of clarifying and simplifying issues, and attempting to resolve issues in dispute. Failure by a policyholder to comply with a reasonable request by NCCI to confer may result in the dismissal of the policyholder's request for review. Failure by a carrier to comply with a reasonable request by NCCI to confer may result in a decision by the Panel in favor of the policyholder.

© 2006 National Council on Compensation Insurance, Inc. All Rights Reserved.

EXHIBIT 1 (CONT'D)
BASIC MANUAL—2001 EDITION
WEST VIRGINIA MISCELLANEOUS RULES

Interstate Appeals—This section applies where the resolution of the issue(s) disputed by the policyholder affect the business operations of the policyholder in West Virginia and at least one other state. In such cases, the Panel will hold a conference with the policyholder and all carriers that could potentially be affected by the disputed issue(s) raised by the policyholder. One purpose of the conference will be to determine if the policyholder and all potentially affected carriers can agree in writing that a resolution by the Internal Review Panel of the issue(s) in dispute will apply to all business operations of the policyholder regardless of the state in which the business operations are domiciled or otherwise located. The Panel decision will be in accordance with all applicable NCCI manual rules for any state in which the decision will apply. If the policyholder and all potentially affected carriers cannot come to such a written agreement, the dispute will be heard by the West Virginia Internal Review Panel, but the Panel's decision will only apply to the employer's business operations that are domiciled or located in West Virginia.

Continuances

The Panel may grant a request by either the employer or the carrier for a continuance of a dispute resolution review, but only one continuance per party will be granted. Except in cases of emergency, requests for continuances must be made in writing to NCCI at least three (3) business days prior to the date noticed for the dispute resolution review, or the request may be denied.

Decision of the Panel

(1) Proceedings under this Dispute Resolution Process will not be videotaped or audio recorded in any manner by NCCI or by any person, or witness or observer. The sole record of the proceedings will be created by NCCI in the form of a Summary of Proceedings attached to the Panel's decision.

(2) The decision of the Panel will be by majority vote of those Panel members present at the dispute resolution review, either in person or by telephone or video conference.

(3) The Panel will issue its decision in writing within twenty (20) business days of a dispute resolution review, and will issue that decision to all parties and the West Virginia Commissioner of Insurance by US Mail. The votes of the individual Panel members will not be recorded or noted in the Panel's decision or otherwise disclosed in any manner to any person. The Panel's decision will include a summary of the dispute resolution review proceedings including a copy of the policyholder's request for review, the carrier's answer, all attachments submitted with either the request for review or the answer, and a summary of any oral testimony given at the review if it was conducted via telephone or video conference. The Panel decision will state the facts in dispute (if any), the representations the Panel considered to be most credible, the NCCI classification code assignments, manual rules, and/or rating plans that are applicable to the dispute, and the Panel will provide a resolution to all disputed matters through the issuance of a Panel decision that will apply or interpret NCCI classification code assignments, manual rules, and/or rating plans.

Appeal of Panel Decisions

Pursuant to W. VA. Code Section 33–20–9(b), either the employer or the carrier may appeal a decision of the Panel to the West Virginia Commissioner of Insurance by sending a written request for an appeal to:

WEST VIRGINIA INSURANCE COMMISSION
LARRY M. BONHAM
ASSOCIATE COUNSEL

© 2006 National Council on Compensation Insurance, Inc. All Rights Reserved.

ITEM 03-WV-2006—WEST VIRGINIA DISPUTE RESOLUTION PROCESS

EXHIBIT 1 (CONT'D)
BASIC MANUAL—2001 EDITION
WEST VIRGINIA MISCELLANEOUS RULES

PO BOX 50540
CHARLESTON WV 25305-0540

A request for an appeal under this section must be made within thirty (30) days after the date of the issuance of the Panel's written decision or the decision of the Panel will become final and the parties will have waived their right for further review by the West Virginia Insurance Commission.

© 2006 National Council on Compensation Insurance, Inc. All Rights Reserved.