WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION

Form #1

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Insurance Commissioner (Workers' Compensation Rules) TITLE NUMBER: 85

RULE TYPE: Exempt Legislative CITE AUTHORITY WV Code §§23-2C-3(f)(1) through (3); 23-2C-5(c)(2); 23-2C-22; 23-2D-5; 23-2D-6; 33-2-10(b); and 33-2-20(a)

AMENDMENT TO AN EXISTING RULE: YES X NO ____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 6

TITLE OF RULE BEING AMENDED: Workers' Compensation Debt Reduction Fund Assessments and Regulatory Surcharge

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

TITLE OF RULE BEING PROPOSED: ____

DATE OF PUBLIC HEARING: Thursday, February 15, 2007 TIME: 3:00 PM

LOCATION OF PUBLIC HEARING: Offices of the WV Insurance Commissioner
1124 Smith Street
4th Floor, Main Conference Room #400
Charleston, WV 25301

COMMENTS LIMITED TO: ORAL ____, WRITTEN ____, BOTH X

NOTE: Comment period for written Comments will end on February 15, 2007 At 3:00 PM.

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Ryan Sims, Associate Counsel
Offices of the WV Insurance Commissioner
P.O. Box 50540
Charleston, WV 25305-0540

The Department request that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

James Robert Alsop
Cabinet Secretary
West Virginia Department of Revenue

$4.40

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ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

James Robert Alsop
Cabinet Secretary
West Virginia Department of Revenue

Insurance Commissioner (Workers' Compensation Rules)
Exempt Legislative Rule
Title 85, Series 6

WORKERS' COMPENSATION DEBT REDUCTION FUND ASSESSMENTS AND REGULATORY SURCHARGE

TITLE 85, SERIES 6

BRIEF SUMMARY OF RULE

This amended rule sets forth procedures and processes for the administration of the Workers' Compensation Debt Reduction Fund and regulatory surcharges pursuant to W. Va. Code § 23-2C-3(f). The original draft of W. Va. Code St. R. § 85-6-1 et seq. ("Rule 6" - Workers' Compensation Debt Reduction Fund Assessments) addressed only the Debt Reduction Fund surcharge, but not the regulatory surcharge. This amended rule addresses the regulatory surcharge in addition to the Debt Reduction Fund surcharge. Further, the amended rule provides clarification that the Debt Reduction Fund and regulatory surcharges shall only be assessed upon the base premium, and cannot be "compounded" upon each other. Finally, the amended rule clarifies that the Insurance Commissioner has discretion to determine which specific types of insurance are subject to the surcharges when the same is not clarified in the Code(for example, excess liability workers' compensation coverage).

Insurance Commissioner (Workers' Compensation Rules)
Exempt Legislative Rule
Title 85, Series 6

WORKERS' COMPENSATION DEBT REDUCTION FUND ASSESSMENTS AND REGULATORY SURCHARGE

TITLE 85, SERIES 6

STATEMENT OF CIRCUMSTANCES

Pursuant to Senate Bill 1004, First Special Session, 2005, workers' compensation in West Virginia was changed from a state run, monopolistic system to a private market system. As part of this Bill, there was established a Workers' Compensation Debt Reduction Fund surcharge and regulatory surcharge to be assessed against insured and self-insured employers. Specifically, see W. Va. Code § 23-2C-3(f). The Workers' Compensation Commission drafted a rule to address the Debt Reduction Surcharge provided for in W. Va. Code § 23-2C-3(f)(3). This is the current version of W. Va. Code St. R. § 85-6-1 et seq. ("Rule 6" - Workers' Compensation Debt Reduction Fund Assessments).

To provide a clear structure and process for the employer community regarding the mandatory surcharges created by W. Va. Code § 23-2C-3(f), it would be appropriate to also include the regulatory surcharge against both insured and self-insured employers pursuant to subdivisions two and three of W. Va. Code § 23-2C-3(f). Additionally, it necessary to clarify in Rule 6 that the Debt Reduction Fund and regulatory surcharges should be only assessed on the base premium and not be "compounded" on each other - an oversight during the initial draft of Rule 6. Finally, it is necessary to clarify in Rule 6 that the Insurance Commissioner has discretion to determine which specific types of insurance are subject to the surcharges when the same is not clarified in the Code(for example, excess liability workers' compensation coverage).

This amended rule is being promulgated to implement the above referenced changes necessary to Title 85, Series 6 of the West Virginia Code of State Rule.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Workers' Compensation Debt Reduction Fund Assessments and Regulatory Surcharge

Type of Rule: X Exempt Legislative ___ Interpretive ___ Procedural

Agency: Insurance Commission

Address: Post Office Box 50540

1124 Smith Street, Greenbrooke Building

Charleston, West Virginia 25305-0540

Phone Number: (304) 558-0401 Email: Ryan.Sims@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.

The rule will have no additional fiscal impact upon state government.

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: Workers' Compensation Debt Reduction Fund Assessments and Regulatory Surcharge (Title 85, Series 6)

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.

N/A

Date: January 16, 2007

Signature of Agency Head or Authorized Representative

Jane L. Cline, Insurance Commissioner

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

TITLE 85
EXEMPT LEGISLATIVE RULE
WORKERS' COMPENSATION COMMISSION

SERIES 6
WORKERS' COMPENSATION
DEBT REDUCTION FUND ASSESSMENTS AND REGULATORY SURCHARGE

§85-6-1. General.

1.1. Scope. -- This exempt legislative rule provides for the establishment and collection of statutory percentage surcharges to be remitted to the insurance commissioner for deposit in the workers' compensation debt reduction fund as created in W. Va. Code §23-2D-5 and for statutory percentage surcharges to be remitted to the insurance commissioner for the regulatory costs associated with regulating West Virginia's workers' compensation market.

1.2. Authority. -- W. Va. Code §§~~23-1-1a~~, 23-2C-3(f)(1) through (3); 23-2C-5(c)(2); 23-2C-22; 23-2D-5; 23-2D-6; 33-2-10(b); and 33-2-20(a). Pursuant to W. Va. Code ~~§23-1-1a(j)(3), rules adopted by the Board of Managers and the Commission~~ §§23-2C-5(c)(2) and 33-2-10(b), rules adopted by the Industrial Council and the Insurance Commissioner are not subject to legislative approval as would otherwise be required under W. Va. Code §29A-3-1 et seq. Public notice requirements of that chapter and article, however, must be followed.

1.3. Filing Date. -- ~~July 20, 2005~~.

1.4. Effective Date.. -- ~~September 1, 2005~~.

§85-6-2. Purpose of Rule.

This rule provides for the implementation of the following:

2.1. Pursuant to W. Va. Code §23-2C-3(f)(3), a ~~policy~~ premiums surcharge on private carrier workers' compensation policy holders ~~and assessments on self-insured employers~~ for deposit into the "West Virginia Workers' Compensation Debt Reduction Fund" and, to the extent necessary, ultimately into the "West Virginia Workers' Compensation Debt Reduction Revenue Bond Debt Service Fund";

2.2. Pursuant to W. Va. Code §23-2C-3(f)(3) an assessment on the self-insured employer community for deposit into the "West Virginia Workers' Compensation Debt Reduction Fund" and, to the extent necessary, ultimately into the "West Virginia Workers' Compensation Debt Reduction Revenue Bond Debt Service Fund";

2.3. Pursuant to W. Va. Code §23-2C-3(f)(1), a percentage surcharge on private carrier workers' compensation policy holders to pay for the costs attributable to the regulation of the workers' compensation insurance market; and

2.4. Pursuant to W. Va. Code §23-2C-3(f)(2), a percentage surcharge on self-insured employers to be remitted to the Insurance Commissioner to pay for the costs attributable to the regulation of the self-insured employer market.

§85-6-3. Definitions.

As used in this rule, the following terms, words, and phrases have the meanings stated unless in any instance where such term, word, or phrase is employed and the context expressly indicates that another meaning is intended.

3.1. ~~"Act" means the workers' compensation laws of the state of West Virginia which are codified at W. Va. Code §23-1-1 et seq.~~ "Industrial Council" means the Industrial Council created pursuant to W. Va. Code §23-2C-5.

~~3.2. "Board" means the Workers' Compensation Board of Managers created pursuant to the provisions of W. Va. Code §23-1-1a.~~

3.~~3~~2. "Code of West Virginia" and "West Virginia Code" mean the West Virginia Code of 1931, as amended.

3.3. "Payroll" means the term as defined in the most current approved filing of the Insurance Commissioners' designated rating organization for workers' compensation.

~~3.4. "Commission" means the Workers' Compensation Commission created pursuant to the provisions of W. Va. Code §23-1-1.~~

~~3.5. "Executive Director" means the executive director of the Workers' Compensation Commission as provided pursuant to the provisions of W. Va. Code §23-1-1b.~~

~~3.6. "Gross wages" include: W-2 items, vacation pay, including accrued vacation at time of dismissal, holiday pay, sick pay (excluding 3rd party sick pay), partnership and S Corporation distributions of ordinary income from trade or business activities (do not report losses), draws taken for items other than business expenses, retroactive wages, bonuses, commissions, including draws against commissions, wages paid to summer interns, overtime wages, profit sharing, incentive programs, per diem payments to employees not directly related to travel, allocation to employees for such things as tools, equipment, machinery, etc. regardless if such allocation is labeled as per diem, hourly expense or other titles, stipend or other non-travel related payments to board members who are being covered under the employer's workers' compensation account, other compensation and perquisites paid to employees, owners and~~

~~officers that have value, but are not per diem travel related, and value of gifts given to employees, owners, officers and board members.~~

~~"Gross wages" do not include: per diem expenses related to travel, the value of any special discount or markdown allowed a worker on goods or services purchased from or supplied by the employer if the purchase is optional with the worker and does not constitute regular or systematic remuneration for services, facilities or privileges such as cafeterias, restaurants, medical services or so called 'courtesy discounts' on purchases furnished or offered by an employer merely as a convenience to workers or as a means of promoting their health, goodwill or efficiency, partnership and S Corporation distributions other than ordinary income from trade or business activities, payments, not required under any contract of hire, made to an individual with respect to a period of training or service in the armed forces of the United States, severance pay, savings plan proceeds, third party sick pay, and disability pay.~~

3.~~7~~4. "Insurance Commissioner" means the insurance commissioner of West Virginia as provided in section one, article two, chapter thirty-three of the West Virginia Code.

3.~~8~~5. "Payment interval" means each periodic payment of the employer's workers' compensation coverage obligation to the private carrier as established by the workers' compensation policy.

3.~~9~~6. "Private carrier" means any insurer~~, including the successor to the Commission,~~ authorized by the insurance commissioner to provide workers' compensation insurance pursuant to chapters twenty-three and thirty-three of the West Virginia Code.

3.~~10~~7. "Self-insurer" and "self-insured employer" mean employers who are eligible and have been granted self-insured status under the provisions of W. Va. Code §23-2-9.

~~"This rule" means this legislative rule designated as 85 C.S.R. 6, "Debt Reduction Fund Assessments."~~

3.~~16~~8. "Total Premium Due" means the ~~total amount payable~~ premium payable at each payment interval to a private carrier by an employer for its West Virginia workers' compensation coverage under Chapter 23 of the West Virginia Code, including, but not limited to, the base rate premium as adjusted by any experience modification factor, ~~and shall include any amount due pursuant to an insurance commissioner regulatory budget assessment and any policy debits applied to a private carrier policy, but shall exclude any policy credit allowed by a private carrier~~: Provided, That the Insurance Commissioner shall have discretion to determine which premiums constitute premiums for West Virginia workers' compensation coverage and which premiums constitute other insurance coverage subject to premium taxes and surcharges under Chapter 33 of the West Virginia Code: Provided further, That under no circumstances shall any premiums be subject to both the surcharges under Chapter 23 and this Rule and taxes and surcharges under Chapter 33 of the West Virginia Code.

~~§85-6-4. Initial Surcharge and Assessments Made Pursuant to W. Va. Code §23-2C-3(f)(3).~~

~~4.1. From the termination of the Commission through June 30, 2006, a surcharge shall be levied against every employer of 10.5% to the total premium due from each policy holder. The successor to the Commission shall collect said surcharge, and shall remit said surcharge to the insurance commissioner. The Insurance Commissioner may change the percentage surcharge at any time, as needed to meet the annual funding requirements as set forth in W. Va. Code §23-2C-3(f). The Insurance Commissioner shall provide sufficient notice to employers and the successor to the Commission prior to changing the percentage amount.~~

~~a. If the annual statutory amount collected for the Insurance Commissioner exceeds or is less than the annual statutory funding requirements, the excess or shortage shall be applied in the determination of the percentage surcharge for the next year, so that the running average collected for the Insurance Commissioner is consistent with the amount required to be collected under the statute.~~

~~4.2. From the termination of the Commission through June 30, 2006, a monthly gross wages payroll assessment shall be levied against each self insured employer at the rate of (0.0035) times each month's payroll. Each self-insured employer shall, as otherwise provided in this Rule, remit the assessment to the insurance commissioner within calendar ten (10) days of the end of each month. The Insurance Commissioner may change the percentage surcharge at any time, as needed to meet the annual funding requirements as set forth in W. Va. Code §23-2C-3(f). The Insurance Commissioner shall provide sufficient notice to employers and the successor to the Commission prior to changing the percentage amount.~~

~~a. If the annual statutory amount collected for the Insurance Commissioner exceeds or is less than the annual statutory funding requirements, the excess or shortage shall be applied in the determination of the percentage surcharge for the next year, so that the running average collected for the Insurance Commissioner is consistent with the amount required to be collected under the statute.~~

§85-6-~~5~~4. ~~Subsequent~~ Surcharge and Assessment Rates ~~Set by the Insurance Commissioner Pursuant to W. Va. Code §23-2C-3(f)(3)~~ on Private Carrier Premiums.

~~5~~4.1. ~~Beginning on July 1, 2006, the~~ The insurance commissioner shall assess~~, as otherwise provided for in this Rule, a surcharge percentage to the total premium due from each policy holder~~ private carriers the following percentage surcharge amounts:

a. A percentage surcharge pursuant to subsection 2.1. of this Rule; and

b. A percentage surcharge pursuant to subsection 2.3. of this Rule.

The private carrier shall collect said ~~surcharge~~ surcharges and shall remit said ~~surcharge~~ surcharges to the insurance commissioner. The ~~surcharge percentage~~ rates shall be set by the insurance commissioner annually on or before May 1. The ~~rate~~ rates set by the insurance commissioner shall be effective July 1 of that year. The Insurance Commissioner may change the ~~percentage surcharges~~ rates at any time, as needed to meet the annual funding requirements as set forth in W. Va. Code §23-2C-3(f). The Insurance Commissioner shall provide sufficient notice to ~~employers and the successor to the Commission~~ private carriers prior to changing ~~the percentage amount~~ rates.

~~a.~~ 4.2. If the annual statutory amount collected for the Insurance Commissioner under either of the surcharges as described in this section exceeds or is less than the annual statutory funding requirements, the excess or shortage shall be applied in the determination of the ~~percentage surcharge~~ rates for the next year, so that the running average collected for the Insurance Commissioner is consistent with the amount required to be collected under the statute.

~~b.~~ 4.3. The ~~policy surcharge~~ surcharges applicable to each policyholder shall also be applicable to all uninsured employers [W. Va. Code §23-2C-8] to the extent that the insurance commissioner is able to collect the same and all employers assigned to the adverse risk fund [W. Va.. Code §23-2C-10].

~~5.2.~~ 4.4. The obligation of the private carrier is to collect and remit the ~~surcharge percentage~~ surcharges described in this section, as set by the insurance commissioner, from the total premiums received by the private carrier. The private carrier has no obligation to the insurance commissioner or to the Debt Reduction Fund to make up any difference in the amount projected to be collected as a result of the surcharge percentage set by the insurance commissioner and the amount actually collected.

§85-6-5. Surcharge and Assessment Rates on the Self-insured Employer Community.

5.~~3~~1. ~~Beginning on July 1, 2006, a monthly payroll assessment shall be levied against each~~ The insurance commissioner shall assess self-insured ~~employer~~ employers the following amounts at a rate established annually by the insurance commissioner on or before May 1:

a. A percentage surcharge pursuant to subsection 2.2. of this Rule; and

b. A percentage surcharge pursuant to subsection 2.4. of this Rule.

The percentage surcharges shall apply to the payroll of each self-insured employer. Each self-insured employer shall~~, as otherwise provided for in this Rule,~~ remit the ~~assessment~~ assessments to the insurance commissioner ~~within ten (10) calendar days of the end of each month~~ in a time frame consistent with W. Va. Code §§ 23-2C-3(f). The ~~rate~~ rates set by the insurance commissioner shall be effective July 1 of that year. The Insurance Commissioner may change the ~~percentage surcharge~~ rates at any time, as needed to meet the annual funding requirements as set forth in W. Va. Code §23-2C-3(f). The Insurance Commissioner shall provide sufficient notice to self-insured employers ~~and the successor to the Commission~~ prior to changing the ~~percentage amount~~ rate.

~~a.~~ 5.2 If the annual statutory amount collected for the Insurance Commissioner under the surcharges as described in this section exceeds or is less than the annual statutory funding requirements, the excess or shortage shall be applied in the determination of the ~~percentage surcharge~~ rates for the next year, so that the running average collected for the Insurance Commissioner is consistent with the amount required to be collected under the statute.

§85-6-6. Surcharge and Assessment Methodology for Collections of Surcharges Made Pursuant to W. Va. Code §23-2C-3(f)(3).

6.1. The ~~policy surcharge~~ surcharges imposed by section five of this ~~section~~ Rule shall be reflected on each premium invoice issued by a private carrier, regardless of the payment interval. The ~~premium~~ surcharge percentage ~~rate~~ rates shall be applied against the total premium due and shall be a clearly ascertainable line item on the premium invoice. The ~~policy surcharge~~ surcharges shall be remitted by the private carrier ~~to the insurance commissioner within ten (10) days of receipt~~ in a time frame consistent with W. Va. Code §§ 23-2C-3(f).

6.2. Each self-insured employer, group self-insurer, or insurance carrier shall provide any information and submit any reports the Insurance Commissioner may require to effectuate the provisions of this ~~section~~ Rule. In addition, the funding commission may enter reciprocal agreements with other governmental agencies for the exchange of information necessary to effectuate the provisions of this section.

§85-6-7. Severability.

If any provision of these rules or the application thereof to any entity or circumstance shall be held invalid, such invalidity shall not affect the provisions or the applications of these rules which can be given effect without the invalid provisions or application and to this end the provisions of these rules are declared to be severable.

STATE OF WEST VIRGINIA
Offices of the Insurance Commissioner
JOE MANCHIN III
Governor
JANE L. CLINE
Insurance Commissioner

January 16, 2007

HAND DELIVERED

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

RE: TITLE 85, SERIES 6 - WORKERS' COMPENSATION DEBT REDUCTION FUND ASSESSMENTS AND REGULATORY SURCHARGE

Dear Judy:

Please find herewith one (1) copy of the following for filing:

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2007 JAN 16 PM 3:32
OFFICE WEST VIRGINIA
SECRETARY OF STATE

1) Notice of Public Hearing on a Proposed Rule (Form #1) (includes public comment information)

2) Brief Summary of the Rule;

3) Statement of Circumstances;

4) Fiscal Note; and

5) The proposed rule.

Please contact our office if you have any questions regarding the above or if further information is required.

Sincerely,

Joy Zirkle
Offices of the
Insurance Commissioner

Attachments