WEST VIRGINIA
SECRETARY OF STATE
Betty Ireland
ADMINISTRATIVE LAW DIVISION

Form #1

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SECRETARY OF STATE

NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Offices of the 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) & 33-2-21(a)

AMENDMENT TO AN EXISTING RULE: YES ☒ NO ☐

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 6

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

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

TITLE OF RULE BEING PROPOSED: ______

DATE OF PUBLIC HEARING: Thursday, May 29, 2008 TIME: 3:00 PM

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

COMMENTS LIMITED TO: ORAL ☐ WRITTEN ☐ BOTH ☒

DATE WRITTEN COMMENT PERIOD ENDS: Thursday, May 29, 2008 TIME: 3:00 PM

WRITTEN COMMENTS MAY BE MAILED TO:

Ryan Sims, Associate Counsel
Offices of the Insurance Commissioner
P.O. Box 50540
Charleston, WV 25305-0540
Ryan.Sims@wvinsurance.gov

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

Virgil T. Helton
Cabinet Secretary
West Virginia Department of Revenue

Department of Revenue
Agency Questionnaire

Re: Amendments to Rule 6

TITLE 85, SERIES 6
WORKERS' COMPENSATION DEBT REDUCTION FUND
ASSESSMENTS AND REGULATORY SURCHARGES

Question 1: Are regulations required?

Yes. W. Va. Code § 23-2C-3(f) requires the Insurance Commissioner to implement Debt Reduction Fund and regulatory surcharges to workers' compensation private carriers and self-insured employers.

Question 2: Is the rule you are proposing controversial? If yes, what are the pros and the cons?

Not particularly. As with any rule amendment, it is anticipated that there will be stakeholder and public comment by those potentially affected.

Question 3: Is the rule you are proposing a copy of another state's rule? A model rule? Custom-drafted?

This rule amendment is not a copy of another state's rule or a model rule. It is custom-drafted.

Question 4: What are the really important things you think the Secretary of Tax and Revenue should know about this rule and the issues that surround it?

The Rule is necessitated by the provisions of W. Va. Code § 23-2C-3(f) regarding workers' compensation surcharges. The Rule provides additional guidance to private carriers and self-insured employers on how to properly remit these surcharges.

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

WORKERS' COMPENSATION DEBT REDUCTION FUND ASSESSMENTS AND REGULATORY SURCHARGES

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 version of W. Va. Code St. R. § 85-6-1 et seq. ("Rule 6" - Workers' Compensation Debt Reduction Fund Assessments) was last amended by the OIC on May 12, 2007.

This Rule is being updated with necessary technical and stylistic cleanup. Additionally, several substantive changes are being made. The most significant substantive change is amendments to reflect the fixed percentage amounts for private carriers (9% for the Debt Reduction surcharge and 5.5% for the regulatory surcharge) from July 1, 2008 until July 1, 2013, which were established by HB 4636, passed during the regular session of 2008.

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

WORKERS' COMPENSATION DEBT REDUCTION FUND ASSESSMENTS AND REGULATORY SURCHARGES

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), last amended by the OIC on May 12, 2007.

It has become apparent to the Insurance Commissioner that there is a need for certain stylistic, technical and substantive amendments to this Rule to properly reflect West Virginia's new privatized workers' compensation system and to otherwise reflect West Virginia's statutory law regarding workers' compensation. The substantive amendments in the instant draft are more specifically referenced in the "Brief Summary" for this Rule.

This amended rule is being promulgated to implement the above referenced changes necessary to Rule 6.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Debt Reduction Fund Assessments & Regulatory Surcharges (Title 85, Series 6)

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	N/A	N/A	N/A
Personal Services	N/A	N/A	N/A
Current Expenses	N/A	N/A	N/A
Repairs & Alterations	N/A	N/A	N/A
Assets	N/A	N/A	N/A
Equipment	N/A	N/A	N/A
Other	N/A	N/A	N/A
2. Estimated Total Revenues	N/A	N/A	N/A

Rule Title: Debt Reduction Fund Assessments & Regulatory Surcharges (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.

Date: ______________________________

Signature of Agency Head or Authorized Representative

____
Ryan Sims, Associate Counsel

TITLE 85
EXEMPT LEGISLATIVE RULE
WORKERS' COMPENSATION COMMISSION

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

§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~~ 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~~ Insurance Commissioner for the regulatory costs associated with regulating West Virginia's workers' compensation market.

1.2. Authority. -- W. Va. 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 33-2-21(a). Pursuant to W. Va. Code §§23-2C-5(c)(2) and 33-2-10(b), workers' compensation rules proposed by the Insurance Commissioner and approved by the Industrial Council 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. -- ~~April 12, 2007~~.

1.4. Effective Date. -- ~~May 12, 2007~~.

§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 premiums surcharge on private carrier workers' compensation policy holders for deposit into the "West Virginia Workers' Compensation Debt Reduction 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";

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. "Industrial Council" means the Industrial Council created pursuant to W. Va. Code §23-2C-5.

3.2. "Code of West Virginia" and "West Virginia Code" mean the West Virginia Code of 1931, as amended.

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

3.4. "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.

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

3.6. "Private carrier" means any insurer authorized by the ~~insurance commissioner~~ Insurance Commissioner to provide workers' compensation insurance pursuant to chapters twenty-three and thirty-three of the West Virginia Code.

3.7. "Private carrier regulatory surcharge" is the surcharge described in subsection 2.3. of this rule.

3.8. "Self-insured employer regulatory surcharge" is the surcharge described in subsection 2.4. of this rule.

3.9. "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.

3.10. "Total Assessable Workers' Compensation Premium Due" means the premium payable at each payment interval to a private carrier by an employer for its West Virginia workers' compensation coverage under ~~Chapter 23~~ chapter twenty-three of the West Virginia Code, including, but not limited to, the base rate premium as adjusted by any experience modification factor. "Total assessable workers' compensation premium due" shall also include all discounts based on deductible provisions in policies~~:~~. ~~*Provided*, That the~~ 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~~ chapter thirty-three of the West Virginia Code: *Provided ~~further~~*, That under no circumstances shall any premiums be subject to both the surcharges under ~~Chapter 23~~ chapter twenty-three and this ~~Rule~~ rule and taxes and surcharges under Chapter 33 of the West Virginia Code. Premium payable for insurance coverage necessitated by federal law, including, but not limited to, Federal Black Lung and USL&H coverage, and for any type of employer's liability coverage, including, but not limited to, coverage for liability arising under W. Va. Code § 23-4-2(d)(2)(ii), shall not be included as "total assessable workers' compensation premium": Provided, That, with the exception of premium for coverage necessitated by federal law, premium for standard limits of employer's liability coverage included in a workers' compensation policy shall be included as "total assessable workers' compensation premium due".

3.11. "WCDRF premiums surcharge" is the surcharge described in subsection 2.1. of this rule.

3.12. "WCDRF self-insured employer surcharge" is the surcharge described in subsection 2.2. of this rule.

§85-6-4. Surcharges on Private Carrier Premiums.

4.1. The ~~insurance commissioner~~ Insurance Commissioner shall assess private carriers the following statutory percentage surcharges:

a. The private carrier regulatory surcharge; and

b. The WCDRF premiums surcharge.

Beginning on July 1, 2008, the private carrier regulatory surcharge shall be 5.5%, and the WCDRF premiums surcharge shall be 9%; the Insurance Commissioner shall be permitted to change the percentage amount of the private carrier regulatory surcharge as the Commissioner deems necessary beginning on July 1, 2013: *Provided*, That the commissioner shall provide private carriers at least sixty (60) days notice prior to changing the private carrier regulatory surcharge percentage amount. The private carrier shall collect such surcharges and shall remit such surcharges to the ~~insurance commissioner~~ Insurance Commissioner. ~~The percentage amounts for such surcharges shall be set by the insurance commissioner annually on or before May 1, and shall be effective on July 1. The Insurance Commissioner may change the~~

~~percentage amounts 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 at least thirty (30) days notice to private carriers prior to changing percentage amounts.~~ Any change to the percentage amounts shall only be implemented by private carriers in policies issued or renewed on or after the effective date of the change.

~~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 amounts for the next year, so that the running average collected for the Insurance Commissioner is consistent with the aggregate monetary amount required to be collected under the statute.~~

~~4.3~~ 4.2. The surcharges described in this section shall also be applicable to all uninsured employers [W. Va. Code §23-2C-8] to the extent that the ~~insurance commissioner~~ Insurance Commissioner is able to collect the same and all employers assigned to the adverse risk fund [W. Va.. Code §23-2C-10].

~~4.4~~ 4.3. The obligation of the private carrier is to collect and remit the surcharges described in this section, as set by the ~~insurance commissioner~~ Insurance Commissioner, from the total assessable workers' compensation premium due and received by the private carrier. The private carrier has no obligation to the ~~insurance commissioner~~ Insurance Commissioner or to the Workers' Compensation Debt Reduction Fund to make up for surcharge amounts not collected as a result of the insured's failure to pay their premium.

~~4.5~~ 4.4. Failure by an insured to pay the percentage surcharge amounts as invoiced by their private carrier on the premium invoice shall be grounds for cancellation of the workers' compensation policy for failure to pay premium.

§85-6-5. Surcharges on the Self-insured Employer Community.

5.1. The ~~insurance commissioner~~ Insurance Commissioner shall assess self-insured employers the following statutory percentage surcharges:

a. The self-insured employer regulatory surcharge; and

b. The WCDRF self-insured employer surcharge.

Such percentage surcharges shall apply to the payroll of each self-insured employer. Each self-insured employer shall remit such surcharges to the ~~insurance commissioner~~ Insurance Commissioner on a quarterly basis. The percentage amounts for such surcharges set by the ~~insurance commissioner~~ Insurance Commissioner shall be effective July 1 of that year. The Insurance Commissioner may change the percentage amounts 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 at least ~~thirty (30)~~ sixty (60) days notice to self-insured employers prior to changing the percentage amounts.

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 amounts for the next year, so that the running average collected for the Insurance Commissioner is consistent with the aggregate monetary 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 surcharges imposed by section four of this ~~Rule~~ rule shall be reflected on each premium invoice issued by a private carrier, regardless of the payment interval. The surcharge percentage amounts shall be applied against the total premium due and both the percentage amounts and the total monetary amounts of the surcharges shall be clearly stated as line items on the premium invoice.

6.2. The surcharges shall be remitted by the private carrier within ninety (90) days of the receipt of premium payments no later than the twenty-fifth day of the month succeeding the end of the calendar quarter on which they are collected, except if the surcharges are collected in the fourth quarter, the surcharges shall be remitted no later than the first day of March the succeeding year.

~~6.2~~ 6.3. 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 ~~Rule~~ rule.

~~**§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.~~