

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #3

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2007 JUL 27 PM 3:59

SECRETARY OF STATE
STATE OF WEST VIRGINIA

**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 WV Code §33-2-9(n) and 33-2-10

AMENDMENT TO AN EXISTING RULE: YES X NO

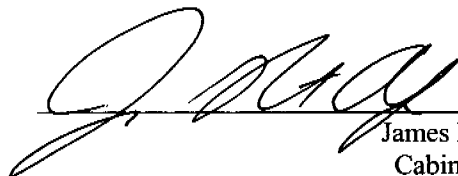
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 15

TITLE OF RULE BEING AMENDED: Examiners and Examinations

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.



James Robert Alsop
Cabinet Secretary
West Virginia Department of Revenue

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: July 27, 2007

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: Examiners and Examinations -
Title 114, Series 15

1. Authorizing statute(s) citation:

WV Code §§33-2-9(n) and 33-2-10.

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

May 30, 2007 - Comment Period.

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

N/A

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

Comment period ended July 2, 2007.

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

Attached X No comments received

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

July 27, 2007 (following Public Comment Period).

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

Timothy R. Murphy, Associate Counsel
West Virginia Insurance Commission
Legal Division
P.O. Box 50540
Charleston, WV 25305-0540
Phone: (304) 558-6279, Ext. 1210
Fax: (304) 558-1362
E-mail: timothy.murphy@wvinsurance.gov

- 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)

Same.

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:

N/A

- 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.

N/A

- b. Date of hearing or comment period:

N/A

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

N/A

- d. Attach findings and determinations and reasons:

N/A

One comment was received from the American Council of Life Insurers (ACLI) criticizing the language in §4.9 of the proposed rule regarding encryption of information submitted to the Commissioner. Specifically, ACLI noted that (1) a requirement that the company provide the necessary technology to access encrypted information could violate agreements between the companies and their software providers, and (2) limiting data security methods to encryption ignores the fact that there are other means of securing data. ACLI suggests replacing the language in §4.9 with the following: “Companies may secure by encryption or by any other method or technology that renders non-public health or financial information unreadable or unusable prior to submission to the commissioner, provided they provide the commissioner the necessary technology or software to access the information.”

In recognition of the complex and evolving nature of the technologies used to secure information, the Commissioner has amended §4.9 to read as follows: “Companies may secure by encryption or by any other method that renders non-public information unreadable or unusable, provided they provide at no cost the commissioner with the means to decode the information; the commissioner may, in his or her sole discretion, prohibit any method that he or she determines is inadequate for the purposes of the examination.” The Commissioner believes this language strikes the proper balance between the companies’ desire to use the most efficient means of transmitting non-public information with the OIC examiners’ need to be able to adequately access such information.



Leah J. Walters
Counsel, State Relations

June 29, 2007

Mr. Timothy R. Murphy
Associate Counsel
Offices of the Insurance Commissioner
1124 Smith Street
Charleston, WV 25305

RE: Proposed Series 15, Examiners and Examinations

Dear Mr. Murphy:

This letter is submitted on behalf of the American Council of Life Insurers (ACLI), a national trade association of legal reserve life insurance companies whose 373 member companies account for 93 percent of total assets, 91 percent of the life insurance premiums, and 95 percent of annuity considerations in the United States. Two hundred and ninety six ACLI member companies are licensed to do business in West Virginia and account for 93 percent of life insurance premiums and 97 percent of annuity considerations. ACLI appreciates the opportunity to comment on the above-captioned proposed Rule regarding Examiners and Examinations.

This proposed Rule would add additional provisions to Series 15, Examiners and Examinations. ACLI has some concerns regarding the amendment to Section 114-15-4.9 of the proposed rule which adds the following language: "Companies may encrypt data containing non-public health or financial information prior to submission to the commissioner, provided they provide the commissioner a licensed copy of the encryption software."

ACLI is concerned with this particular language for two reasons. First, this language may interfere with the licensing agreements insurers have with their technology/software companies. If an insurer contracts for its encryption needs, it may be a violation of its contract to share the licensed encryption software, even with an Insurance Commissioner. Second, this language limits data security to encryption. While encryption may be the current popular choice for data security, encryption is not the only means for data security. Technology is ever-evolving and encryption itself may very well be superseded in the future as other controls have already been.

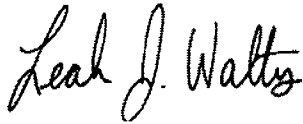
To address these concerns, ACLI recommends the following language as an alternative and would respectfully request that West Virginia consider this language in place of the language added to Section 114-15-4.9:

"Companies may secure by encryption or by any other method or technology that renders non-public health or financial information unreadable or unusable prior to submission to the commissioner, provided they provide the commissioner the necessary technology or software to access the information."

Mr. Timothy R. Murphy
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June 29, 2007

Again, thank you for the opportunity to comment on this proposed Rule. If you have any questions regarding this proposed language, please let me know.

Sincerely,

A handwritten signature in black ink that reads "Leah J. Walters". The signature is written in a cursive style with a large, stylized 'L' and 'W'.

Leah J. Walters
Legislative Director - Mid-Atlantic States

Insurance Commissioner
Legislative Rule
Title 114, Series 15

EXAMINERS AND EXAMINATIONS

TITLE 114, SERIES 15

BRIEF SUMMARY OF RULE

Several changes are proposed to Rule 15 regarding financial and market conduct examinations of insurers. These changes involve the addition of certain documents, including any premium audit file and any document related to the termination of an insurance producer's appointment, that must be retained and available for examinations performed by the Commissioner pursuant to WV Code §33-2-9. It would also allow companies to supply certain information in encrypted form as long as the encryption software is supplied to the Commissioner. The rule adds the Market Regulation Handbook to the resources used to set salaries of insurance company examiner supervisors and market conduct examiner supervisors. The rule contains a provision that all workpapers resulting from a contract for examination, analysis or review services between the Commissioner and a contract examiner remain the property of the Commissioner.

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EXAMINERS AND EXAMINATIONS

TITLE 114, SERIES 15

STATEMENT OF CIRCUMSTANCES

Series 15 addresses the examinations provided for in WV Code §33-2-9, including standards for retention of records and documents that the Commissioner may require to be produced by an insurer in connection with such examinations. The rule applies to all entities subject to examination by the Commissioner. The changes also address the use and retention of additional documents pertaining to the examinations.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Examiners and Examinations (Title 114 - Series 15)

Type of Rule: X Legislative Interpretive Procedural 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:

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
Other	None	None	None
2. Estimated Total Revenues	None	None	None

Rule Title: Examiners and Examinations (Title 114 - Series 15)

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

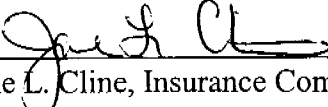
N/A

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: July 27, 2007

Signature of Agency Head or Authorized Representative



Jane L. Cline, Insurance Commissioner

114CSR15

**LEGISLATIVE RULE
INSURANCE COMMISSIONER
SERIES 15**

EXAMINERS AND EXAMINATIONS

Section

- 114-15-1. General.
- 114-15-2. Definitions.
- 114-15-3. Examination, Analysis and Review Funding.
- 114-15-4. Examination, Analysis, Review Activities and Record Retention Requirements.
- 114-15-5. Contracts for Services and Bond Requirements for Other Individuals.
- 114-15-6. Compensation and Accrued Time of Accredited Examiners.
- 114-15-7. Travel and Living Expenses.
- 114-15-8. Examiner Reporting Requirements.

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**LEGISLATIVE RULE
INSURANCE COMMISSIONER
SERIES 15**

SECRETARY OF STATE
STATE OF WEST VIRGINIA

EXAMINERS AND EXAMINATIONS

§114-15-1. General.

1.1. Scope. --This legislative rule establishes:

a. 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; and

b. Standards for retention of records and documents that the commissioner may require to be produced by an insurer in connection with any analysis, review or examination provided for in W. Va. Code §33-2-9.

c. This rule applies to all insurers authorized to transact insurance in this state by the commissioner, health maintenance organizations, hospital, medical, dental and health service corporations, health care corporations, fraternal benefit societies, and prepaid limited health service organizations.

1.2. Authority. -- W. Va. Code §§33-2-9(n) and 33-2-10.

1.3. Filing Date. -- ~~May 6, 2005.~~

1.4. Effective Date. -- ~~May 6, 2005.~~

§114-15-2. Definitions.

As used in this legislative rule:

2.1. "Accredited examiner" or "examiner" means a person who is an employee of the insurance commissioner whose principle duty is to conduct, supervise, or provide technical support for financial or market conduct examinations, including but not limited to the following division of personnel job classifications: insurance company examiner, or insurance company examiner supervisor, market conduct examiner, market conduct examiner supervisor, or computer audit specialist, 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.

2.2. "Additional examination assessment fee" means any additional or increased

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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.

2.3. "Application and accompanying records" means any written or electronic application form, any enrollment form, any document or record thereof, used to add coverage under any existing policy, questionnaire, telephone interview form, paramedical interview form or any other document used to question or underwrite an applicant for any policy issued by an insurer or for any declination of coverage by an insurer.

2.4. "Claim file and accompanying records" means the file maintained so as to show clearly the inception, handling and disposition of each claim. The claim file shall be sufficiently clear and specific so that pertinent events and dates of these events can be reconstructed.

2.5. "Commissioner" means the insurance commissioner of the state of West Virginia.

2.6. "Complaint" means a written communication primarily expressing a grievance.

2.7. "Declination" or "declined underwriting file" means all written or electronic records concerning coverage for which an application has been completed and submitted to the insurer or its producer but the insurer has made a determination not to issue a policy or not to add additional coverage when requested.

2.8. "Examination assessment fee" means the annual fee due on or before the first day of July of every year, as specified in W. Va. Code §33-2-9.

2.9. "Governor's travel rules" means those rules promulgated by the governor pursuant to the authority granted by W. Va. Code §12-3-11.

2.10. "Grievance" for health insurance purposes, means a written complaint submitted by or on behalf of a covered person regarding the:

a. Availability, delivery or quality of health services, including a complaint regarding an adverse determination made pursuant to utilization review;

b. Claims payment, handling or reimbursement for health care services; or

c. Matters pertaining to the contractual relationship between a covered person and a health carrier.

2.11. "Incidental expense" means any reasonable travel-related expense other than

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charges for lodging, meals or mileage, including but not limited to tolls, parking, gratuities or public transportation.

2.12. "Inquiry" means a specific question, criticism or request made in writing to an insurer by an examiner.

2.13. "Insurer" as used in this rule, means any entity covered by the scope of this rule pursuant to subdivision c, subsection 1.1 of this rule, unless otherwise specified herein.

2.14. "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.

2.15. "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 does not include the offices of the insurance commissioner when work related to an examination is performed there.

2.16. "Other employee" means any individual who is an employee of the offices of the insurance commissioner of West Virginia, excluding the commissioner's accredited examiners.

2.17. "Other individual or entity" means any individual, corporation, partnership or other business entity that is not an employee of the offices of the insurance commissioner, to include but not be limited to independent certified public accountants, independent actuaries, qualified insurance examiners, reinsurance examiners, investment or information systems specialists or other individuals, corporations, partnerships or other business entities 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.

2.18. "Related entity" means a person authorized to act on behalf of the insurer in connection with the business of insurance.

2.19. "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.

§114-15-3. Examination, Analysis and Review Funding.

3.1. Every entity subject to the provisions of W. Va. Code §33-2-9 shall remit the

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examination assessment fee specified by the code or as increased by the commissioner on or before 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:

- a. Salaries and expenses of the insurance commissioner's 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 commissioner's special deputies or other employees for activities conducted pursuant to W. Va. Code §33-2-9 or this rule;
- c. Salaries, contract rates, fees and/or expenses of other individuals or entities for activities conducted pursuant to W. Va. Code §33-2-9 or this rule; and
- 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. Other individuals or entities, when authorized in writing by the commissioner, may, and to the extent the commissioner considers necessary, bill and receive payments directly from the entities subject to examination under 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. Examination, Analysis, Review Activities and Record Retention Requirements.

4.1. 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;

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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.

4.2. For the purpose of examination, analysis and review activities conducted pursuant to W. Va. Code §33-2-9 or this rule, an insurer or related entity licensed to do business in this state shall maintain its books, records and documents in a manner so that the commissioner can readily ascertain during an examination the insurer's compliance with the insurance laws and rules of this state, the standards outlined in the NAIC Financial Conditions Examiner Handbook, and with the standards outlined in the NAIC Market Conduct ~~Examiners~~ Regulation Handbook, including, but not limited to, company operations and management, policyholder service, marketing, producer licensing, underwriting, rating, complaint/grievance handling, and claims practices.

a. For an insurer subject to 114CSR51 or 114CSR53, the insurer or related entity shall, in addition, maintain its books, records, and documents in a manner so that the practices of the entity regarding network adequacy, utilization review, quality assessment and improvement and provider credentialing may be ascertained during a market conduct examination.

b. All insurer records within the scope of this rule must be retained for the lesser of:

1. The current calendar year plus five (5) calendar years;
2. From the closing date of the period of review for the most recent examination by the commissioner; or
3. A period otherwise specified by statute as the examination cycle for the insurer.

c. The producer of record shall maintain a file for each policy sold, and the file

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shall contain all work papers and written communications in his or her possession pertaining to the policy documented therein. These records shall be retained for the current calendar year plus additional years as set forth in subdivision b of this subsection.

d. During an examination of the insurer, the insurer shall provide a copy of the written contract entered into with each third party vendor or service provider as requested by an examiner within the time frames set forth in subsection 4.9 of this section.

4.3. All policy record files shall be maintained for each policy issued, and shall be maintained for the duration of the current policy term plus additional years as set forth in subdivision b, subsection 4.2 of this section: Provided, That for life insurance policies and annuity contracts, such files must be maintained from the original inception date of the policy or contract through termination, plus additional years as set forth in subdivision b, subsection 4.2 of this section. Policy records shall be maintained so as to show clearly the policy period, basis for rating and any imposition of additional exclusions from or exceptions to coverage. If a policy is terminated, either by the insurer or the policyholder, documentation supporting the termination and account records indicating a return of premiums, if any, shall also be maintained. Policy records need not be segregated from the policy records of other states so long as the records are readily available to market conduct examiners as required under this rule.

a. Policy records shall include the following:

1. Any application and accompanying records for each contract. The application shall bear a clearly legible means by which an examiner can identify a producer involved in the transaction. The examiners shall be provided with information clearly identifying the producer involved in the transaction.

2. Any declaration pages (the initial page and any subsequent pages), the insurance contract, any certificates evidencing coverage under a group contract, any endorsements or riders associated with a policy, any termination notices, and any written or electronic correspondence to or from the insured pertaining to the coverage. If any of these records have already been filed with the commissioner, a separate copy of the record need not be maintained in the individual policy files to which the record pertains, provided it is clear from the insurer's other records or systems that the record applies to a particular policy and that any data contained in the record relating to the policy, as well as the actual policy issued to the insured, can be retrieved or recreated;

3. Any binder; and

4. Any guidelines, manuals or other information necessary for the

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reconstruction of the rating, underwriting, policy owner service and claims handling of the policy. The maintenance at the site of a market conduct examination of a single copy of each of the above shall satisfy this requirement. These types of records include, but are not limited to, the application, the policy form including any amendments or endorsements, rating manuals, underwriting rules, credit reports or scores, claims history reports, previous insurance coverage reports (e.g. reports obtained from the Medical Information Bureau), questionnaires, internal reports, and underwriting and rating notes; and

5. Any premium audit file.

b. A declined underwriting file shall be maintained and shall include an application, any documentation supporting the decision to decline an issuance of a policy, any binder issued without the insurer issuing a policy, any documentation supporting the decision not to add additional coverage when requested and, if required by law, any declination notification. Notes regarding requests for quotations that do not result in a completed application for coverage need not be maintained for purposes of this rule.

4.4. Claim files shall be maintained as follows:

a. A claim file and accompanying records shall be maintained for the calendar year in which the claim is closed plus additional years as set forth in subdivision b, subsection 4.2 of this section. The claim file shall be maintained so as to show clearly the inception, handling and disposition of each claim. The claim files shall be sufficiently clear and specific so that pertinent events and dates of these events can be reconstructed. A claim file shall, at a minimum, include the following items:

1. For property and casualty: the file or files containing the notice of claim, claim forms, proof of loss or other form of claim submission, settlement demands, accident reports, police reports, adjustors' logs, claim investigation documentation, inspection reports, supporting bills, estimates and valuation worksheets, medical records, correspondence to and from insureds and claimants or their representatives, notes, contracts, declaration pages, certificates evidencing coverage under a group contract, endorsements or riders, work papers, any written communication, any documented or recorded telephone communication related to the handling of a claim, including the investigation, payment or denial of the claim, copies of claim checks or drafts, or check numbers and amounts, releases, all applicable notices, correspondence used for determining and concluding claim payments or denials, subrogation and salvage documentation, any other documentation created and maintained in a paper or electronic format, necessary to support claim handling activity, and any claim manuals or other information necessary for reviewing the claim;

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2. For life and annuity: the file or files containing the notice of claim, claim forms, proofs of loss, medical records, correspondence to and from insureds and claimants or their representatives, claim investigation documentation, claim handling logs, copies of checks or drafts, check numbers and amounts, releases, correspondence, all applicable notices, and correspondence used for determining and concluding claim payments or denials, any written communication, any documented or recorded telephone communication related to the handling of a claim, including the investigation, and any other documentation, maintained in a paper or electronic format, necessary to support claim handling activity; and

3. For health: the file or files containing the notice of claim, claim forms, medical records, bills, electronically submitted bills, proofs of loss, correspondence to and from insureds and claimants or their representatives, claim investigation documentation, health facility pre-admission certification or utilization review documentation, claim handling logs, copies of explanation of benefit statements, any written communication, any documented or recorded telephone communication related to the handling of a claim, including the investigation, copies of checks or drafts, or check numbers and amounts, releases, correspondence, all applicable notices, and correspondence used for determining and concluding claim payments or denials, and any other documentation, maintained in a paper or electronic format, necessary to support claim handling activity.

b. Where a particular document pertains to more than one file, insurers may satisfy the requirements of this section by making available, at the site of an examination, a single copy of each document.

c. Documents in a claim file received from an insured, the insured's agent, a claimant, the commissioner or any other insurer shall bear the initial date of receipt by the insurer, date stamped in a legible form in ink, in an electronic format, or some other permanent manner. Unless the company provides the examiners with written procedures to the contrary, the earliest date indicated on a document will be considered the initial date of receipt.

d. If an insurer, as its regular business practice, places the responsibility for handling certain types of claims upon company personnel other than its claims personnel, the insurer need not duplicate its files for maintenance by claims personnel. These claims records shall be maintained as part of the records of the insurer's operations and shall be readily available to examiners.

4.5. Records to be maintained relating to the insurer's compliance with licensing requirements shall include the licensing records of each producer associated with the insurer. Licensing records shall be maintained so as to show clearly the licensing status of the producer at the time of solicitation, negotiation or procurement, ~~as well as the~~ dates of the appointments and

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terminations of each producer, and any document relating to a termination of the producer's appointment, including but not limited to producer termination letters that must include the specific reason for termination. A screenprint from the producer database (PDB) may serve to provide adequate proof only of a producer's current licensing status.

4.6. The complaint records required to be maintained shall include a complaint log or register, or grievance log or register for health insurers, in addition to the actual written complaints or grievances. The complaint log or register shall show clearly the total number of complaints for the period of time set forth in subdivision b, subsection 4.2 of this section, the classification of each complaint by line of insurance and by complainant, for example the insured, the commissioner, a third party, etc., the nature of each complaint, the insurer's disposition of each complaint, and the complaint number assigned by the commissioner, if applicable. If the insurer maintains the file in a computer format, the reference in the complaint log or register for locating the documentation shall be an identifier such as the policy number or other code. The codes shall be provided to the examiners at the time of an examination.

4.7. Records required to be maintained by this rule may be saved as follows:

a. Any record required to be maintained by an insurer may be created and stored in the form of paper, photograph, magnetic, mechanical or electronic medium; or any process that accurately forms a durable reproduction of the record, so long as the record is capable of duplication to a hard copy that is as legible as the original document. Documents that are produced and sent to an insured by use of a template and an electronic mail list shall be considered to be sufficiently reproduced if the insurer can provide proof of mailing of the document and a copy of the template. Documents that require the signature of the insured or insurer's producer shall be maintained in any format listed above provided that evidence of the signature is preserved in that format.

b. The maintenance of records in a computer-based format shall be archival in nature, so as to preclude the alteration of the record after the initial transfer to a computer format. Upon request of an examiner, all records shall be capable of duplication to a hard copy that is as legible as the original document. The records shall be maintained according to written procedures developed and adhered to by the insurer. The written procedures shall be made available to the commissioner during an examination.

c. Photographs, microfilms, or other image-processing reproductions of records shall be equivalent to the originals and may be certified as the same in actions or proceedings before the commissioner unless inconsistent with the state administrative procedure act, chapter twenty-nine-a of the West Virginia Code.

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4.8. Records required to be maintained by this rule shall be located as follows:

a. All records required to be maintained under this rule shall be kept in a location that will allow the records to be produced for examination within the time period required. When, under normal circumstances, someone other than the insurer maintains a required record or type of record, the other person's responsibility to maintain the records shall be set forth in a written agreement, a copy of which shall be maintained by the insurer and shall be available to the examiners for purposes of examination.

b. If required by law or otherwise available, the insurer shall maintain disaster preparedness or disaster recovery procedures that include provisions for the maintenance or reconstruction of original or duplicate records at another location. These procedures shall be provided for review during the examination.

4.9. Initial data requests will be submitted to a company at least thirty (30) days prior to the commencement of the on-site examination, desk audit or other form of review to provide ample time for the company to prepare the materials requested. Subdivisions a and b below apply to requests for supplemental data and information not anticipated at the time of the initial request. Companies may secure by encryption or by any other method that renders non-public information unreadable or unusable, provided they provide at no cost the commissioner with the means to decode the information; the commissioner may, in his or her sole discretion, prohibit any method that he or she determines is inadequate for the purposes of the examination.

a. As a means to facilitate the examination and to aid in the examination in accordance with W. Va. Code §33-2-9, an insurer shall provide any requested document or written response to an inquiry submitted by an examiner within five (5) working days, or such other time period as mutually agreed upon by the examiner and the insurer. It is a violation of this rule for an insurer to fail to produce a requested document within the specified time period unless the insurer can demonstrate to the satisfaction of the commissioner that the requested record cannot reasonably be provided within the specified time period of the request.

b. Additional records requested by the commissioner shall be made available for the examination upon the date specified by the examiner in charge.

4.10. Original records required to be provided during a market conduct examination will be returned to the insurer following the examination. If the records relate to an inquiry made by an examiner, copies of the records will become a part of the work papers of the examination. W. Va. Code §33-2-9 shall govern the public access to the work papers of the examination.

§114-15-5. Contracts for Services and Bond Requirements for Other Individuals.

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5.1. The commissioner may, as he or she considers necessary, retain any other individual or entity, as defined in subsection 2.17 of this rule, to conduct, supervise, or participate in any examination, analysis or review as provided in W. Va. Code §33-2-9, or this rule.

5.2. Any contract between the commissioner and any other individual or entity, whose services are retained pursuant to this section, is specifically exempt from the competitive bidding requirements contained in W. Va. Code §5A-3-1 et seq.

5.3. The commissioner may, as he or she considers necessary, require any other individual or entity, whose services are retained pursuant to this section, to furnish an appropriate bond prior to conducting, supervising, or participating in any examination, analysis or review as provided in W. Va. Code §33-2-9 or this rule, as follows:

a. The bond shall be in an amount which in the commissioner's discretion is sufficient to complete the examination, analysis or review, but in no event shall be in an amount of less than ten thousand dollars (\$10,000.00).

b. Should the commissioner require any other individual or entity, whose services are retained pursuant to this section, to provide a bond, it shall be issued by a company licensed to transact surety insurance in the state of West Virginia as provided in W. Va. Code §33-19-1 and which has received at least an A rating by A.M. Best Company, Inc. in the year immediately preceding the date of the bond's issuance.

c. Proof of payment for and issuance of the bond shall be submitted to the commissioner prior to commencement of any examination, analysis or review by any other individual or entity whose services are retained pursuant to this section.

5.4. Any contract between the commissioner and any other individual or entity whose services are retained pursuant to this section shall provide that all workpapers generated as a result of such contract are property of the commissioner and that all copies of such workpapers, including but not limited to electronic media, documents and communications, shall be returned to the commissioner by the later of the date on which the report is adopted or the expiration of the appeal period: *Provided*, That the commissioner may, in his or her sole discretion, direct that the workpapers be destroyed in lieu of being returned.

§114-15-6. Compensation and Accrued Time of Accredited Examiners.

6.1. Subject to the commissioner's approval, insurance company examiner supervisors and market conduct examiner supervisors shall receive the salary recommended for insurance

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examiners in-charge by the Market Regulation Handbook or Financial Condition Examiners Handbook of the National Association of Insurance Commissioners. Subject to the commissioner's approval, insurance company examiners and market conduct examiners shall receive the salary recommended for insurance company examiners by the Market Regulation Handbook or Financial Condition Examiners Handbook of the National Association of Insurance Commissioners.

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

6.3. Examiners shall accrue and use 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, and as supplemented by agency policies regarding use of annual and sick leave established by the commissioner.

a. On any West Virginia state or national holiday that a company being examined chooses to remain open and an examiner chooses to work, the examiner shall be properly compensated.

b. Examiners shall not be reimbursed for travel or living expenses for any day authorized as annual leave.

c. Examiners shall continue to be reimbursed for living expenses during times of sick leave as long as the examiner remains at his or her on-site lodging during the illness.

§114-15-7. Travel and Living Expenses.

7.1. Travel by 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 or his or her designee. Travel expenses are subject to the following limitations:

a. All travel shall be by automobile unless otherwise authorized by the commissioner or his or her designee.

1. Examiners shall be compensated for the actual mileage traveled and other incidental expenses for in-state and out-of-state travel as allowed by the Governor's travel rules.

2. When an automobile is used, and the distance to an examination or to an assignment is four hundred (400) miles or more, the distance traveled per day shall not be less

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than four hundred (400) miles per day.

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.

c. Examiners may travel during regular working hours to and from the examination site no more frequently than every two weeks, and must be reimbursed for travel expenses associated with the travel: *Provided*, That if travel expenses do not exceed the expenses that the examiner would incur if he or she remained on-site, examiners may travel to and from their residences more frequently than every two weeks and must be reimbursed for travel expenses.

7.2. Living expenses will be reimbursed in accordance with the Governor's travel rules.

a. The street address of the examiner's on-site lodging shall be used in determining the per diem allowance.

b. 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.

c. The commissioner may 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 will be compensated for actual mileage traveled and other incidental expenses as allowed by the Governor's travel rules.

d. Examiners and other employees may, with the approval of the commissioner or his or her designee, be compensated for travel and living expenses in accordance with the Governor's travel rules when attending training, educational courses, conferences, seminars or other activities authorized by the commissioner. Registration fees may be included as expenses that can be reimbursed to the examiners or other employees.

7.3. Other individuals or entities involved in activities conducted pursuant to W. Va. Code §33-2-9 or this rule who are billing directly as authorized in subsection 3.4 of this rule shall file a schedule of their fees and charges with the commissioner prior to incurring any charges. These individuals or entities shall submit copies of their billings to the commissioner simultaneously with their submission to the billed entity, individual or person.

§114-15-8. Examiner Reporting Requirements.

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8.1. The examiner in charge 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 is being examined and their normal hours of operation;
- c. The mailing address and street address, including county, of the 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;
- f. A listing of any other individual or entity participating in the assignment and their domicile or zone representation, if applicable;
- g. A description of the phases of the examination or assignment that the examiner worked on during the reporting period;
- h. Comments on any unusual or controversial items;
- i. The tentative closing date of the assignment;
- j. A schedule of each of the days in the reporting period and the examiner's status on that day, to include the total of days designated as work days, annual days, sick days and expense days; and
- k. The name and signature of the examiner in charge completing the report and a statement that the information provided is true and correct.

8.2. The information identified in subsection 8.1 of this section is necessary to satisfy the substantiation of business expenses requirement of the Internal Revenue Service placed upon the

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commissioner as an employer. Failure on the part of the examiner to provide any of the information could require the offices of the insurance commissioner of West Virginia to report expense amounts as income of the examiner to the Internal Revenue Service.

8.3. 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 commissioner's ability to consider an examiner's business expenses as substantiated.