



WEST VIRGINIA
 SECRETARY OF STATE
 KEN HECHLER
 ADMINISTRATIVE LAW DIVISION

Form #7

FILED

JUN 27 4 11 PM '95

OFFICE OF WEST VIRGINIA
 SECRETARY OF STATE
 Effective Date

8/7/95

NOTICE OF AN EMERGENCY RULE

AGENCY: Insurance Commission TITLE NUMBER: 114

CITE AUTHORITY: W. Va. Code § 33-2-10

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: Series 20

TITLE OF RULE BEING AMENDED: Regulation Relating to Excess Line Brokers

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

TITLE OF RULE BEING FILED AS AN EMERGENCY: _____

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 35TH DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

6.00

Use additional sheets if necessary

B. Keith Hoffman
 General Counsel
 Signature



STATE OF WEST VIRGINIA
Offices of the Insurance Commissioner

Legal Division

GASTON CAPERTON
Governor

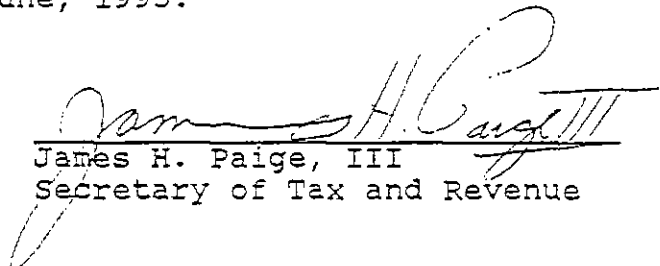
HANLEY C. CLARK
Insurance Commissioner

CONSENT TO FILING OF RULE

To Whom It May Concern:

Pursuant to West Virginia Code § 5F-2-2(a)(12), the undersigned hereby grants consent to the filing of the following rule proposed by the Insurance Commissioner of the State of West Virginia: Title 114, Series 20, "Regulation Relating to Excess Lines Brokers."

Signed this 26th day of June, 1995.


James H. Paige, III
Secretary of Tax and Revenue

Insurance Commissioner
Legislative Rule
Title 114, Series 20

REGULATION RELATING TO EXCESS LINE BROKERS

Title 114, Series 20

STATEMENT OF CIRCUMSTANCES

West Virginia Code § 33-12-11, as amended by House Bill 2266, was passed by the Legislature on March 2, 1995 and became effective on May 31, 1995. The Bill requires the commissioner to promulgate rules specifying the required reporting forms prior to August 1, 1995.

The purpose of this rule is to reduce the filing requirements of excess line brokers. Such a reduction in filing requirements will extend the current level of protection to policyholders while reducing the costs of the Office of the Insurance Commissioner and excess lines brokers.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 114, Series 20
Regulation Relating to Excess Lines Brokers

Type of Rule: X Legislative Interpretive Procedural

Agency: INSURANCE COMMISSIONER

Address: Post Office Box 50540
2019 Washington Street, East
Charleston, West Virginia 25305-0540

1. Effect of Proposed Rule

	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
ESTIMATED TOTAL COST	None				
PERSONAL SERVICES	None				
CURRENT EXPENSE					
REPAIRS AND ALTERNATIONS	None				
EQUIPMENT	None				
OTHER	None				

2. Explanation of above estimates:

There will be no additional fiscal impact upon state, local or federal government.

3. Objectives of these rules:

The objective of this rule is to reduce the filing requirements of excess line brokers. Such a reduction will extend the current level of protection to policyholders while reducing the costs of the Office of the Insurance Commissioner and excess line brokers.

Rule Title: Regulation Relating to Excess Line Brokers

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None.

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

None.

C. Economic Impact on Citizens/Public at Large.

This rule shall have no direct economic impact upon citizens or the public at large. This rule will protect the public in that it will extend a justifiable level of protection to policyholders.

Date: 6/26/95

Signature of Agency Head or Authorized Representative

B. Keith Hoffman, General Counsel

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: OFFICE OF THE INSURANCE COMMISSIONER

DATE: June 23, 1995

EMERGENCY RULE TITLE: REGULATION RELATING TO EXCESS LINES BROKERS

(Title 114, Series 20)

1. Date of filing: July 27, 1995
2. Statutory authority for promulgating the emergency rule:
W.Va. Code § 33-12-11
3. Date of filing of proposed legislative rule: July 27, 1995
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?
Amends current legislative rule
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 or welfare.
See next question
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.

West Virginia Code § 33-12-11, as amended by House Bill 2266, was passed by the Legislature on March 2, 1995, and became effective on May 31, 1995. This statute requires the commissioner to promulgate, prior to August 1, 1995, a rule specifying the reporting forms setting forth each excess line policy procured during the preceding calendar year.

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

The rule is necessary to verify that insurance coverage sought was not procurable from a licensed insurer authorized to transact insurance in this State, and to account for each excess line policy procured during a calendar year.

Insurance Commissioner
Legislative Rule
Title 114, Series 20

REGULATION RELATING TO EXCESS LINE BROKERS

Title 114, Series 20

BRIEF SUMMARY OF RULE

This proposed rule amending an existing rule, reduces the filing requirements of excess lines brokers. The current requirements do not afford a justifiable level of protection for policyholders compared to the costs levied on the Office of the Insurance Commissioner and licensed excess line brokers. This amended rule will extend the current level of protection to policyholders while reducing the costs of the Office of the Insurance Commissioner and excess line brokers.

114CSR20

EMERGENCY
WEST VIRGINIA LEGISLATIVE RULE
INSURANCE COMMISSIONER

SERIES 20
REGULATION RELATING TO EXCESS LINE BROKERS

Section

- 114-20-1. General.
- 114-20-2. Definitions.
- 114-20-3. Licensing of an excess line broker;
revocation, suspension or refusal to renew
license and penalty in lieu thereof.
- 114-20-4. Placement of excess line coverage.
- 114-20-5. Excess Line premium tax annual return and
report by broker.
- 114-20-6. Separability.

114CSR20

FILED

EMERGENCY
WEST VIRGINIA LEGISLATIVE RULE
INSURANCE COMMISSIONER

JUN 27 4 11 PM '95

SERIES 20
REGULATION RELATING TO EXCESS LINE BROKERS

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§ 114-20-1. General.

1.1. Scope. -- This legislative rule establishes certain requirements for the licensing and regulation of excess line brokers pursuant to article twelve, chapter thirty-three of the Code of West Virginia of 1931, as amended.

1.2. Authority. -- W. Va. Code §33-2-10

1.3. Filing Date. --

1.4. Effective Date. --

§ 114-20-2. Definitions.

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

2.2. "Evidence of Insurance" means written or printed statements evidencing the applicability and effectiveness of insurance coverages, including, but not limited to, policy forms, certificates, cover notes, binders and other traditionally acceptable evidences of insurance.

2.3. "Excess Line Insurer" means an insurer not licensed by the Commissioner to do insurance business, and considered to be a nonadmitted insurer, in the State of West Virginia.

2.4. "Excess Line Broker" means an individual licensed pursuant to the provisions of this ~~regulation~~ rule and West Virginia Code, section thirteen, article twelve, chapter thirty-three, for the purposes of placing insurance of risks resident, located or to be performed in this State, with an excess line insurer.

2.5. "Excess Line Market" means the entire scope of insurance business on risks resident, located or to be performed in this State, to be placed with an excess line insurer.

2.6. "Insolvent Insurer" means any insurer which is determined to be insolvent in accordance with the provisions of chapter thirty-three of the Code of West Virginia of 1931, as amended, or any insurer which is determined to be insolvent by the commissioner of any other state.

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2.7. "Licensed Insurer" means an insurer licensed by the Commissioner to do insurance business in the State of West Virginia.

§ 114-20-3. Licensing of an excess line broker; revocation, suspension or refusal to renew license and penalty in lieu thereof.

3.1. Licensing requirements. -- Any applicant for an excess line broker's license issued or renewed under the provisions of ~~West Virginia Code, section thirteen, article twelve, chapter thirty-three W. Va. Code § 33-12-13:~~

~~(a)~~a. Shall be a duly licensed West Virginia resident agent holding a current and valid license for the type(s) of insurance which the applicant expects and intends to export to the excess line market;

~~(b)~~b. Shall have held for at least three (3) consecutive years immediately preceding the date of application a valid agent's license for the type(s) of insurance the applicant expects and intends to export to the excess line market, and shall have held a valid West Virginia resident agent's license for such type(s) of insurance for at least one (1) of those three (3) years. The Commissioner, in his discretion, may waive this requirement if the applicant otherwise demonstrates the necessary trustworthiness and competence by education, experience or other relevant factors;

~~(c)~~c. Shall satisfactorily complete an examination administered by the office of the Commissioner or its designated agent. The Commissioner shall not require an examination for any person who holds a current and valid excess line broker's license in West Virginia on the effective date of this regulation rule;

~~(d)~~d. Shall pay the required license fee as established by the provisions of ~~West Virginia Code, section thirteen, article twelve, chapter thirty-three W. Va. Code § 33-12-13;~~

~~(e)~~e. Shall file with the Commissioner and thereafter maintain in force for so long as the license or any renewal thereof remains in effect, a bond in favor of the State of West Virginia in the penal sum as established by the provisions of ~~West Virginia Code, section thirteen, article twelve, chapter thirty-three W. Va. Code § 33-12-13,~~ with an authorized corporate

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surety approved by the Commissioner, conditioned that he shall conduct business under his license in accordance with this regulation rule and the West Virginia Code. No bond shall be terminated unless at least thirty (30) days' prior written notice thereof is filed with the Commissioner;

~~(f)~~f. Shall be deemed trustworthy for the purpose of conducting insurance business as an excess line broker, as required by the provisions of ~~West Virginia Code, section thirteen, article twelve, chapter thirty three~~ W. Va. Code § 33-12-13; and

~~(g)~~g. Shall satisfy any other criteria reasonably established by the Commissioner.

3.2. Revocation, suspension or refusal to renew license. -- Whenever, after notice and hearing, the Commissioner is satisfied that any excess line broker has violated any provisions of any administrative regulation rule of the Commissioner or any provisions of chapter thirty-three of the Code of West Virginia of 1931, as amended, or is incompetent or untrustworthy, he shall revoke, suspend or refuse to renew the license of such excess line broker as required by the provisions of ~~West Virginia Code, section twenty five, article twelve, chapter thirty three~~ W. Va. Code § 33-12-25. In lieu of revoking, suspending or refusing to renew such license, the Commissioner, in his discretion, may order such licensee to pay to the State of West Virginia a penalty in a sum not to exceed one hundred dollars (\$100) for each violation, and upon failure to such licensee to pay such penalty by delivery of such sum to the Commissioner within thirty (30) days of notice thereof, the Commissioner shall revoke, suspend or refuse to renew such license.

§ 114-20-4. Placement of excess line coverages.

4.1. Due diligence. -- In accordance with the provisions of ~~West Virginia Code subsection (b), section ten, article twelve, chapter thirty three~~ W. Va. Code § 33-12-10(b), the insurance coverage written by an excess line insurer and placed by an excess line broker shall not be procurable from licensed insurers authorized to transact that kind of insurance in this State. The broker shall submit to the Commissioner a sworn notarized ~~statement~~ affidavit, as provided in Section 4.4 of this regulation rule, that a diligent search has been made to place the risk with licensed insurers authorized to write and actually writing the particular type of risk sought to be placed in the excess line market. This ~~statement~~ affidavit also shall include a

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sworn statement that the reasons why the broker has been unable to place the risk with licensed insurers will be maintained as required by W. Va. Code § 33-12-15 as a part of the full and true record of each excess line contract procured.

4.2. Notification. -- Each excess line insurance policy or evidence of insurance shall have printed or stamped in contrasting color on the front page the following statement:

THIS COMPANY IS NOT LICENSED TO DO BUSINESS IN WEST VIRGINIA, AND IS NOT SUBJECT TO THE WEST VIRGINIA INSURANCE GUARANTY ACT.

4.3. Countersignature. -- In accordance with the provisions of ~~West Virginia Code, section seven, article twelve, chapter thirty three W. Va. Code § 33-12-7,~~ no contract of insurance covering a subject of insurance, resident, located or to be performed in this State, shall be executed, issued or delivered by an excess line broker unless the contract is signed or countersigned in writing by a duly licensed excess line broker. This section does not apply to: Reinsurance; credit insurance; any contract of insurance covering the rolling stock of any railroad or covering any vessel, aircraft or motor carrier used in interstate or foreign commerce, or covering any liability or other risks incident to the ownership, maintenance or operation thereof; any contract of insurance covering any property in interstate or foreign commerce, or any liability or risks incident thereto.

4.4. Excess line broker's affidavit and report. -- Each excess line broker shall execute and file with the Commissioner, in accordance with the provisions of ~~West Virginia Code, section eleven, article twelve, chapter thirty three W. Va. Code § 33-12-11,~~ the information requested on the Form LEB-3 Annual Affidavit of Excess Line Broker and the Annual Report of Written Excess Line Policies, as revised, attached to and made a part of this regulation rule. This affidavit and report shall be filed under oath, and shall be received by the Commissioner within forty five (45) days after the effective date of coverage, or within fifteen (15) days after delivery of the policy or other acceptable evidence of insurance, whichever is sooner on or before the first day of March in conjunction with the Annual Excess Line Tax Return Reconciliation, Form LEB-4A, as revised, and as provided in Section 5.1 of this rule. The Annual Affidavit of Excess Line Broker shall include a sworn statement that the Annual Report of Excess Line Policies is inclusive of every excess line policy procured by the Excess Line Broker during the

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preceding calendar year. The Commissioner may require that the Annual Report of Written Excess Line Policies be submitted in a computer-readable form compatible with the electronic data processing system of this agency.

4.5. Records of excess line broker. -- In accordance with the provisions of ~~West Virginia Code, section fifteen, article twelve, chapter thirty three~~ W. Va. Code § 33-12-15, each excess line broker shall keep in his office a full and true record of each excess line contract procured by him, and such records may be examined at any time thereafter by the Commissioner. The records shall include the following items as they are applicable:

- ~~(a)~~a. Name and address of the excess line insurer;
- ~~(b)~~b. Names and addresses of the insureds;
- ~~(c)~~c. Amount of insurance;
- ~~(d)~~d. Gross premium charged;
- ~~(e)~~e. Return premium paid, if any;
- ~~(f)~~f. Rate of premium charged on the several items of coverages;
- ~~(g)~~g. Effective date of the contract and the terms thereof;
and
- ~~(h)~~h. Brief general description of the risks insured against and the property insured.

4.6. Responsibilities of the excess line broker. -- Each licensed excess line broker who participates directly or indirectly in effecting any insurance contract on an excess line basis:

~~(a)~~a. In no instance shall knowingly place any coverage in an insolvent insurer, in accordance with the provisions of ~~West Virginia Code, section twenty two, article twelve, chapter thirty three~~ W. Va. Code § 33-12-22;

~~(b)~~b. May accept and place authorized excess line business from any insurance agent or broker licensed in this State for the kind of insurance involved, and may compensate such agent or broker thereof. The excess line broker shall have the right to receive from the excess line insurer the customary commission, in

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accordance with the provisions of ~~West Virginia Code, section fourteen, article twelve, chapter thirty three W. Va. Code § 33-12-14;~~ and

~~(e)c.~~ In those instances in which excess line business is produced to an excess line broker by an agent or broker licensed in this State for the kind of insurance involved, it ~~remains~~ is the excess line broker's responsibility to ~~make~~ include the necessary ~~filing of the Form Leb 3, as revised~~ information in the Annual Report of Written Excess Line Policies required by Section 4.4 of this rule and the Annual Excess Line Tax Return Reconciliation Form LEB-4A, as revised, as required by Section 5.1 of this rule.

4.7. Excess line insurance valid. -- In accordance with the provisions of ~~West Virginia Code, section twelve, article twelve, chapter thirty three W. Va. Code § 33-12-12,~~ any insurance contract procured as excess line coverage from an excess line insurer shall be fully valid and enforceable as to all parties, and shall be given recognition in all matters and respects to the same effect as like contracts issued by licensed insurers.

§ 114-20-5. Excess line premium tax annual return and report by broker.

5.1. Reporting of premiums placed and taxed. -- Each excess line broker licensed in accordance with the provisions of this regulation rule and ~~West Virginia Code, section thirteen, article twelve, chapter thirty three W. Va. Code § 33-12-13,~~ shall make under oath to the Commissioner, a quarterly return on or before the twenty-fifth day of the month succeeding the close of the quarter and an annually reconciliation return, under oath, on or before the first day of March, to the Commissioner, of the gross amount of premium charged the insured by excess line insurers for insurance procured by such licensee, including any so-called dividends on participating insurance policies applied in reduction of premiums, less premiums returnable for cancellation. Such returns shall be reported by the completion of the Quarterly Excess Line Tax Return, Form LEB-4 and Annual Excess Line Tax Return Reconciliation Broker's Annual Statement Form Leb-4A, as revised, prepared and supplied by the Commissioner.

5.2. Payment of excess line premium taxes. -- The annual tax required to be paid under the provisions of this regulation rule shall be a sum equal to that in accordance with the provisions of ~~West Virginia Code, section sixteen, article twelve, chapter thirty three and section sixteen a, article~~

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~~twelve, chapter thirty three W. Va. Code §§ 33-12-16 and 33-12-16(a), and shall be paid to the Commissioner on a calendar year basis and in quarterly estimated installments due and payable on or before the twenty-fifth day of the month succeeding the close of the quarter in which they accrued, except for the fourth quarter, in respect of which taxes shall be due and payable and final computation of the actual total liability for the prior calendar year shall be made, less credit for the three quarterly estimated payments on or before the first day of March. All such taxes paid to the Commissioner shall be paid by him into a special account in the state treasury, for the benefit of the state fund designated the "municipal pensions and protection fund," and after appropriation by the Legislature, shall be distributed in accordance with the provisions of W. Va. Code § 33-3-14d(c) unless otherwise required by the Code of West Virginia of 1931, as amended.~~

§ 114-20-6. Separability.

6.1. Partial invalidity. -- If any provision of this ~~regulation rule~~ is held invalid, the remainder of this ~~regulation rule~~ shall not be affected thereby.

COVERAGE TYPE CODES

<u>LINE OF BUSINESS</u>	<u>TYPE OF INSURANCE</u>	<u>LINE OF BUSINESS</u>	<u>TYPE OF INSURANCE</u>
FI - FIRE	CM - COMMERCIAL DW - DWELLING	MA - MARINE	EO - EQUIPMENT, AIRCRAFT, ETC. PP - PROPERTY/PERSON OT - OTHER
SU - SURETY	FD - FIDELITY C - PERFORMANCE OF CONTRACTS, ETC. IN - INDEMNITY FOR BANKS, ETC.	CA - CASUALTY	H - VEHICLE LI - LIABILITY/UMBRELLA BG - BURGLARY & THEFT GL - GLASS BO - BOILER CR - CREDIT INSURANCE MP - MALPRACTICE, PROF. LIABILITY ET - ENTERTAINMENT INSURANCE MS - MINE SUBSIDENCE OT - OTHER/EXCESS WRKS. COMP. MM - MEDICAL MALPRACTICE

PROPER CODE WILL CONSIST OF FOUR LETTERS - TWO LINE OF BUSINESS AND TWO TYPE OF COVERAGE.

EXAMPLE - A GENERAL CONTRACTOR PURCHASES LIABILITY INSURANCE TO PROTECT A JOB SITE. THE LINE OF BUSINESS CODE WOULD BE CA FOR CASUALTY. THE TYPE OF COVERAGE CODE WOULD BE LI FOR LIABILITY/UMBRELLA. CALL WOULD BE LISTED IN THE COVERAGE TYPE COLUMN.

PLACEMENT CODES

<u>CODE</u>	<u>DESCRIPTION</u>
ALE	ADVERSE LOSS EXPERIENCE Self-explanatory
SCP	SUBSTANDARD CONDITION OF PROPERTY AND BUSINESS Self-explanatory
UBA	UNIQUE BUSINESS ACTIVITY Service or activity not performed on a regular basis, such as building demolition
UBA	HAZARDOUS BUSINESS ACTIVITY Cleanup of a hazardous material spill
NCB	NEWLY CREATED BUSINESS Many restaurants are declined their first two years in business
RLP	REMOVELY LOCATED PROPERTY Self-explanatory
LLR	LARGE LIMITS REQUIRED Self-explanatory
OTH	OTHER Self-explanatory

ANNUAL AFFIDAVIT
OF EXCESS LINE BROKER
TO THE
WEST VIRGINIA
INSURANCE COMMISSIONER

STATE OF WEST VIRGINIA, COUNTY OF _____

Pursuant to the provisions of §33-12-10(b) of the West Virginia Code, I, _____, an Excess Line Broker duly licensed by the State of West Virginia, hereby make oath and state to the Insurance Commissioner of West Virginia, that the attached Annual Report of Excess Line Policies is inclusive of every excess line policy procured by me during the preceding calendar year and that for each policy listed on the attached Annual Report of Written Excess Line Policies a diligent effort has been made to procure the amount of insurance necessary to protect against loss of or damage to property or person from insurers licensed to transact and actually writing this type of insurance business in West Virginia, and that the placing of this insurance has not been for the purpose of securing advantages as to premium rate or terms of the insurance contract. I make oath and state that I will maintain as a part of the full and true record of each procured excess line policy the reasons why I was unable to place the risk with a licensed insurer.

Having failed to procure the required insurance with insurers licensed to transact business in West Virginia, I make oath that the following statements were printed or stamped in contrasting color on the face of each policy or other evidence of insurance:

"THIS COMPANY IS NOT LICENSED TO DO BUSINESS IN WEST VIRGINIA, AND IS NOT SUBJECT TO THE WEST VIRGINIA INSURANCE GUARANTY ACT."

Witness my signature this _____ day of _____, 19_____.

Affiant: _____

Subscribed and sworn to before me this _____ day of _____, 19_____.

Notary Public: _____

My Commission expires: _____



STATE OF WEST VIRGINIA
Offices of the Insurance Commissioner

Legal Division

GASTON CAPERTON
Governor

HANLEY C. CLARK
Insurance Commissioner

June 27, 1995

HAND DELIVERED

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

Dear Ms. Cooper:

Enclosed please find for filing fourteen copies of the following:

- (1) Notice of an Emergency Rule;
- (2) Notice of a Comment Period on a Proposed Rule (only one copy enclosed as required);
- (3) Consent of Tax and Revenue Cabinet Secretary to Proposed Rule;
- (4) Brief Summary of Rule;
- (5) Legislative Rule-Making Review Committee Questionnaire;
- (6) Fiscal Note;
- (7) The proposed emergency rule titled "Regulation Relating to Excess Lines Brokers" (Series 20).

Please contact me if further information is required.

Sincerely,

A handwritten signature in cursive script that reads "B. Keith Huffman".

B. Keith Huffman
General Counsel

BKH/cjs
Enclosures

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

STEPHEN N. REED
Deputy Secretary of State

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WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

PENNEY BARKER
Supervisor, Corporations

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

(Plus all the volunteer
help we can get)

August 7, 1995

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Insurance Commission

RULE: Amendments, Series 20, Regulation Relating to Excess Line Brokers

DATE FILED AS AN EMERGENCY RULE: June 27, 1995

DECISION NO. 13-95

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.


KEN HECHLER
Secretary of State

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

AUG 7 1 29 PM '95

FILED

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

STEPHEN N. REED
Deputy Secretary of State

CATHERINE FREROTTE
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SECRETARY OF STATE

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(Plus all the volunteer
help we can get)

EMERGENCY RULE DECISION (ERD 13-95)

AGENCY: Insurance Commission
RULE: Amendments, Series 20, Regulation Relating to Excess Line
Brokers

FILED AS AN EMERGENCY RULE: June 27, 1995

- par. 1 The Insurance Commission (Commission) has filed the above amendments to an existing rule as an emergency rule.
- par. 2 West Virginia Code 29A-3-15a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [(29A-3-15a)(b)].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the thirty-five day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The Commission filed this emergency rule with supporting documents with the Secretary of State June 27, 1995 and with the LRMRC June 27, 1995.

par. 7 It is the determination of the Secretary of State that the Commission has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §33-12-11 reads in part:

On or before March 1, 1996, and on or before the first day of March, thereafter, each excess line broker shall file, on a form prescribed the commissioner, a report under oath, setting forth facts from which it may be determined whether the requirements of §33-12-10 of this article have been met with respect to each excess line policy procured by the excess line broker during the preceding calendar year...

The commissioner shall promulgate rules pursuant to the provisions of §29A-1-1 of this code, specifying the reporting forms required by this section prior to August 1, 1995.

par. 9 It is the determination of the Secretary of State that the Commission has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency -- WV Code 29A-3-15(f) defines "emergency" as follows:

(f) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the Commission are as follows:

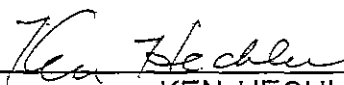
§33-12-11 requires the commissioner to promulgate, prior to August 1, 1995, a rule specifying the reporting forms setting forth each excess line policy procured during the preceding calendar year.

The rule is necessary to verify that insurance coverage sought was not procurable from a licensed insurer authorized to transact insurance in this State, and to account for each excess line policy procured during a calendar year.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(f). . . "time limitation".

par. 14

This decision shall be cited as Emergency Rule Decision 13-95 or ERD 13-95 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Insurance Commission, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
Secretary of State

Entered _____

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

AUG 7 1 29 PM '95

FILED