

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

Form #2

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2005 JUN 22 A 11: 03

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: Insurance Commissioner TITLE NUMBER: 114

RULE TYPE: Legislative CITE AUTHORITY W. Va. Code §§ 33-2-10 & 33-20A-3(b)

AMENDMENT TO AN EXISTING RULE: YES X NO \_\_\_\_\_

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 21

TITLE OF RULE BEING AMENDED: West Virginia Essential Property Insurance Association

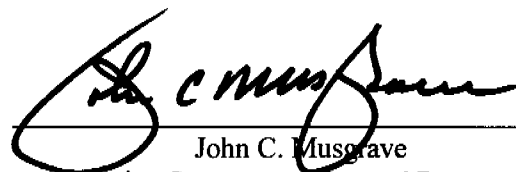
IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 22, 2005 AT 5:00 PM. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Timothy Murphy, Associate Counsel  
West Virginia Insurance Commission  
P.O. Box 50540  
Charleston, WV 25305-0540

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

  
John C. Musgrave  
Acting Secretary of Tax and Revenue

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

#4.20

Insurance Commissioner  
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Title 114, Series 21

**WEST VIRGINIA ESSENTIAL PROPERTY INSURANCE ASSOCIATION**

**TITLE 114, SERIES 21**

**BRIEF SUMMARY OF RULE**

The West Virginia Essential Property Insurance Association or "Fair Plan" is intended to make "fire and extended coverage insurance" available to persons who cannot obtain such coverage in the voluntary insurance market. See W. Va. Code §33-20A-2. The Fair Plan, which was established by the Insurance Commissioner and operated with funds from all insurers in the state, is limited by the current rule to coverages of \$100,000 for homes and \$300,000 for commercial property. The rule would increase these limits to \$200,000 and \$500,000, respectively. In addition, while W. Va. Code §33-20A-5(b)(15) expressly exempts the Fair Plan from the valued policy law in W. Va. Code §33-17-9, the current rule does just the opposite and expressly makes the valued policy law applicable (114 CSR 21-8.2); the proposed amendment will reflect the statutory exemption. The rule is also amended to require that the Plan's annual report be filed by July of each year rather than March because the annual meeting occurs in April.

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**TITLE 114, SERIES 21**

**STATEMENT OF CIRCUMSTANCES**

The current rule governing the operation of the Plan, which rule has not been updated in almost twenty (20) years, limits the Association to offering a standard fire policy with coverage limits of \$100,000 for residential property (\$75,000 for the structure) and \$300,000 for commercial structures. These limits are by far the lowest among the thirty (30) other fair plans. See attachment 1, Table 4 - Summary of Property Plans Operations ("2005 Compendium of Property Insurance Plans," prepared by The Property Insurance Plans Services Office, Inc.). The proposed rule would increase these limits to \$200,000 for residential and \$500,000 for commercial properties.

The current rule, which was written in 1988, specifically provides that Fair Plan policies are subject to the valued policy law in W. Va. Code §33-17-9; the proposed amendment brings the rule into conformity with 1989 legislation (W. Va. Code §33-20A-5(b)(15)) that specifically exempts the Fair Plan from the valued policy law.

***FISCAL NOTE FOR PROPOSED RULES***

Rule Title: West Virginia Essential Property Insurance Association (Title 114, Series 21)  
 Type of Rule:  X  Legislative   Interpretive   Procedural  
 Agency: Insurance Commissioner  
 Address: Post Office Box 50540  
1124 Smith Street, Greenbrooke Building  
Charleston, West Virginia 25305-0540  
 Phone Number: (304) 558-0401 Email: Timothy.Murphy@wvinsurance.gov

**Fiscal Note Summary**

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

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.

<b>FISCAL YEAR</b>			
<b>Effect of Proposal</b>	<b>2005 Increase/Decrease (use "-")</b>	<b>2006 Increase/Decrease (use "-")</b>	<b>Fiscal Year (Upon Full Implementation)</b>
<b>1. Estimated Total Cost</b>	None	None	None
Personal Services	None	None	None
Current Expenses	None	None	None
Repairs & Alterations	None	None	None
Assets	None	None	None
Equipment	None	None	None
Other	None	None	None
<b>2. Estimated Total Revenues</b>	None	None	None

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

N/A

### MEMORANDUM

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

Date: June 21, 2005

Signature of Agency Head or Authorized Representative

Jane L. Cline  
Jane L. Cline, Insurance Commissioner

**114CSR21**

**TITLE 114  
LEGISLATIVE RULE  
INSURANCE COMMISSIONER**

**SERIES 21  
WEST VIRGINIA ESSENTIAL PROPERTY INSURANCE ASSOCIATION**

Section

- 114-21-1. General.
- 114-21-2. Definitions.
- 114-21-3. Type of Organization.
- 114-21-4. Administration.
- 114-21-5. Management.
- 114-21-6. Commencement and Termination of Operation.
- 114-21-7. Rates.
- 114-21-8. Policy Forms.
- 114-21-9. Coverage Limits and Types.
- 114-21-10. Underwriting.
- 114-21-11. Application For Insurance and Policy Issuance.
- 114-21-12. ~~Agent~~ Producer Commissions.
- 114-21-13. Inspection of Property.
- 114-21-14. Appeal Procedures.
- 114-21-15. Premium Taxes
- 114-21-16. Annual Report.
- 114-21-17. Severability.

TITLE 114  
LEGISLATIVE RULE  
INSURANCE COMMISSIONER

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SERIES 21  
WEST VIRGINIA ESSENTIAL PROPERTY INSURANCE ASSOCIATION  
OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**§114-21-1. General.**

1.1. Scope. -- This legislative rule sets forth the plan of operation of the West Virginia Essential Property Insurance Association.

1.2. Authority. -- W. Va. Code §§33-20A-3(b) and §33-2-10.

1.3. Filing Date. -- ~~April 4, 1988.~~

1.4. Effective Date. -- ~~April 4, 1988.~~

**§114-21-2. Definitions.**

As used in this legislative rule:

2.1. ~~Agent~~ ~~Shall mean~~ Producer means an individual insurance producer licensed by the Commissioner to sell property and casualty insurance in West Virginia.

2.2. Association ~~Shall mean~~ means the West Virginia Essential Property insurance Association.

2.3. Board ~~Shall mean~~ means the Board of Directors of the Association.

2.4. Commissioner ~~Shall mean~~ means the West Virginia Insurance Commissioner of the State of West Virginia.

2.5. Eligible applicant ~~Shall mean~~ means any person having an insurable interest in habitational or commercial property eligible for coverage under the provisions of this legislative rule and the Association's Plan of Organization.

2.6. ~~Essential Property Insurance Coverage~~ Extended coverage insurance ~~Shall mean~~ means indemnification against loss caused by the perils of fire, lightning, riot, explosion, vehicle, smoke, hail, aircraft, and wind.

2.7. Essential Property Insurance Coverage means fire and extended coverage insurance as well as any other kind of insurance that the Commissioner finds is required by the public

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interest but which is not readily available in the voluntary insurance market. Such a finding may only be made after a public hearing conducted by the Commissioner.

~~2.7.~~ 2.8. Insurer ~~shall mean~~ means any insurance company authorized to write and engage in writing essential property insurance coverage in West Virginia.

**§114-21-3. Type of Organization.**

3.1. Nonprofit unincorporated organization. The Association shall be a nonprofit unincorporated organization.

**§114-21-4. Administration.**

4.1. Board of Directors. The Association shall be administered by a Board of Directors under the general supervision of the Commissioner.

a. The Board shall be appointed by the Commissioner with due consideration given to the composition of the membership of the Association and to the interests of the insureds who are provided essential property insurance coverage by the Association.

b. The Board shall consist of not less than five (5) nor more than nine (9) members serving terms of one (1) year or until their successors are appointed.

**§114-21-5. Management.**

5.1. Servicing facilities. The Board may contract with one or more servicing facilities and/or hire its own employee as are necessary to issue and service policies on risks insured by the Association.

5.2. Approval by Commissioner. Designation of a servicing facility by the Board is subject to approval by the Commissioner.

**§114-21-6. Commencement and Termination of Operation.**

6.1. Commencement of operation. The Association shall begin issuing policies of insurance for risks found insurable by the Association effective November 1, 1986.

6.2. Termination of operation. The Association shall be dissolved at the earliest date when essential property insurance coverage becomes readily available in the voluntary market.

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a. Dissolution of the Association is subject to approval of the Commissioner.

b. Dissolution of the Association shall be accomplished under the supervision of the Commissioner in an equitable and reasonable manner.

**§114-21-7. Rates.**

7.1. Establishment of rates. The Association shall establish appropriate rates, rate classifications and rating adjustments in accordance with the provisions of ~~West Virginia~~ W. Va. Code §33-20A-5(b)(6).

7.2. Approval of rates. The Association's rates, rate classifications and rating adjustments are subject to approval by the Commissioner.

**§114-21-8. Policy Forms.**

8.1. Standard fire policy. All policies issued by the Association shall conform with the provisions of ~~West Virginia~~ W. Va. Code §33-17-2.

8.2. Total or partial fire loss. ~~All policies issued by the Association shall conform with the~~ The provisions of West Virginia W. Va. Code §33-17-9 do not apply to policies issued by the Association.

8.3. Policy term. All policies issued by the Association shall be for a term of one (1) year.

8.4. Policy form approval. Policies and endorsements may be issued on forms approved by the Commissioner.

**§114-21-9. Coverage Limits and Types.**

9.1. Coverage limits. Coverage for risks found insurable by the Association shall be provided in an amount up to the reasonable insurable value of the property; but in no event shall coverage provided by the Association exceed the amount of ~~one two~~ two hundred thousand dollars (~~\$100,00.00~~) (~~\$200,000~~) for any one habitational risk or ~~three five~~ five hundred thousand dollars (~~\$300,000.00~~) (~~\$500,000~~) for any one commercial risk.

9.2. Coverage types. Coverage issued by the Association shall be limited to indemnification against loss caused by the perils of fire, lightning, riot, explosion, vehicle, smoke, hail, aircraft and wind.

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**§114-21-10. Underwriting.**

10.1. Underwriting standards. The Board shall adopt reasonable and equitable underwriting standards.

10.2. Approval by commissioner. Underwriting standards adopted by the Board are subject to approval by the Commissioner.

**§114-21-11. Application For Insurance and Policy Issuance.**

11.1. Method of application. An eligible applicant ~~shall~~ may authorize ~~an agent a producer~~ to make ~~written~~ application to the Association for essential property insurance coverage. The application shall be accompanied by proof, in such form as may be prescribed or approved by the Commissioner, of the applicant's effort and inability to obtain essential property insurance in the voluntary market.

11.2. Policy issuance. Upon approval by the Association of an application for coverage and upon receipt by the Association of the ~~full amount of the~~ premium due, the Association shall issue a policy and a binding receipt. The Association may decline to issue a policy and binding receipt when the applicant owes premium monies to the Association for previous insurance coverage.

**§114-21-12. Agent Producer Commissions.**

12.1. New and renewal business. Agent Producer commission shall be ten percent (10%) of the premium on new business and at such level as the Board shall determine on renewal business, not to exceed ten percent (10%) of the renewal commission.

12.2. Cancellation of business. Upon cancellation of a policy, the agent producer shall refund commissions on the return premium to the Association at the same rate at which such commissions were originally paid.

**§114-21-13. Inspection of Property.**

13.1. Inspection of property. Upon submission to the Association of a completed application for insurance, the property requested to be insured may be physically inspected.

13.2. Cost of inspection. Any physical inspection shall be made without cost to the eligible applicant.

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13.3. Inspection report. A written inspection report shall be made for each property inspected and a copy provided to the eligible applicant.

**§114-21-14. Appeal Procedures.**

14.1. Initial appeal to board. Any applicant for insurance, person insured by the Association or member insurer aggrieved by any ruling, action or decision of the Association or the designated servicing facility may appeal to the Board within fifteen (15) days of such ruling, action or decision. The appeal shall be in writing. The Board or an Appeals Committee designated by the Board shall hear and determine the appeal within fifteen (15) days after the appeal is filed.

14.2. Appeal to commissioner. The determination of the Board may be appealed in writing to the commissioner within ten (10) days of such determination. The Commissioner shall render a decision concerning the appeal within thirty (30) days.

**§114-21-15. Premium Taxes.**

15.1. Premium tax liability. The Association shall be liable for premium taxes to the same extent and in the same manner as a licensed insurer engaged in writing fire and extended coverage insurance in West Virginia.

**§114-21-16. Annual Report.**

16.1. Annual report. The Board shall, on or before ~~March~~ July 1 of each year, submit to the Commissioner a report of the operation of the Association for the previous calendar year.

**§114-21-17. Severability.**

17.1. Severability. If any provision of this legislative rule is held invalid, the remainder of the rule shall not be affected thereby.