

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #7

Do not mark in this box
Filing Date

FILED

2010 JUN 15 PM 2:40

WEST VIRGINIA
SECRETARY OF STATE
Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: Offices of the Insurance Commissioner TITLE NUMBER: 114

CITE AUTHORITY W.Va. Code §33-2-10 and 33-12B-12

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 25

TITLE OF RULE BEING AMENDED: Insurance Adjusters

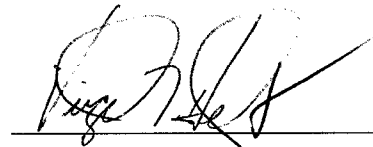
IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: _____

TITLE OF RULE BEING AMENDED: _____

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

PLEASE SEE ATTACHED



Virgil T. Helton
Cabinet Secretary
West Virginia Department of Revenue

Use additional sheets if necessary

**Title 114, Series 25 - Emergency Rule
Insurance Adjusters**

FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY:

The amendments to this rule are in order to comply with recent federal requirements and changes made to W.Va. Code §§33-12B-1 *et seq.* that was passed during the 2010 Regular Session (currently WV only has two types of adjuster licenses, public and company). The amendments to this rule would include crop adjusters in Series 25 and provide for proficiency testing and certification by a federally approved vendor. The amendments to this rule set forth how a crop license is obtained and also address other issues such as nonresident adjuster licensing and license renewal dates. The amendments are needed in order to be in compliance with the recently enacted federal requirements as well as the changes made to W.Va. Code §§33-12B-1 *et seq.*

Offices of the Insurance Commissioner
Emergency Rule
Title 114, Series 25

INSURANCE ADJUSTERS

TITLE 114, SERIES 25

BRIEF SUMMARY OF RULE

In reaction to recent federal requirements, HB 4260 (RS 2010) was enacted to create a crop adjuster license (currently WV only has two types of adjuster licenses, public and company). The amendment to this rule would include crop adjusters in Series 25 and provide for proficiency testing and certification by a federally approved vendor. The amendment would also address other aspects of the bill involving nonresident licensing and license renewal dates.

Department of Revenue
Agency Questionnaire

Re: Emergency Rule to be Filed

INSURANCE ADJUSTERS

TITLE 114, SERIES 25

Question 1: Are regulations required?

Yes, regulations are required by W.Va. Code §33-12B and by recent federal requirements.

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

The rule is not expected to be controversial as it is being passed in light of legislation passed during the 2010 regular session (HB 4260).

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

This rule is custom-drafted with some basis from the National Association of Insurance Commissioner's model 282, Adjusters Model Act.

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

In reaction to recent federal requirements, HB 4260 (RS 2010) was enacted to create a crop adjuster license (currently WV only has two types of adjuster licenses, public and company). The amendment to this rule would include crop adjusters in Series 25 and provide for proficiency testing and certification by federally approved vendor. The amendment would also address other aspects of the bill involving nonresident licensing and license renewal dates.

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:

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

EMERGENCY RULE TITLE: Insurance Adjusters (Title 114, Series 25)

1. **Date of Filing:**

2. **Statutory authority for promulgating emergency rule:**

W.Va. Code §33-2-10 and 33-12B-12

3. **Date of filing of proposed legislative rule:**

4. **Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?**

The emergency rule amends a current legislative rule.

5. **Has the same or similar emergency rule previously been filed and expired?**

No, this emergency rule has not been previously filed.

6. **State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety and welfare.**

N/A

Title 114, Series 25
EMERGENCY RULE

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.

N/A

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

In reaction to recent federal requirements, HB 4260 (RS 2010) was enacted to create a crop adjuster license (currently WV only has two types of adjuster licenses, public and company). The amendment to this rule would include crop adjusters in Series 25 and provide for proficiency testing and certification by a federally approved vendor. The amendment would also address other aspects of the bill involving nonresident licensing and license renewal dates.

Offices of the Insurance Commissioner
Emergency Rule
Title 114, Series 25

INSURANCE ADJUSTERS

TITLE 114, SERIES 25

STATEMENT OF CIRCUMSTANCES

The amendments to this rule are in order to comply with recent federal requirements and changes made to W.Va. Code §§33-12B-1 et seq. that was passed during the 2010 Regular Session. The changes create a crop adjuster license and provide that an examination is required for an adjuster that wants to obtain a crop license. The amendments to this rule set forth how a crop license is obtained and also address other issues such as nonresident adjuster licensing. The amendments are needed in order to be in compliance with the recently enacted federal requirements as well as the changes made to W.Va. Code §§33-12B-1 et seq.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Insurance Adjusters (Title 114, Series 25)

Type of Rule: Legislative Interpretive Procedural X 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: 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 as proposed is expected to have a nominal fiscal impact on the costs and revenues of state government. The rule requires a \$25 late renewal fee for adjusters. It is projected that this fee will generate an additional \$4,500 per year.

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			
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues		4,500	4,500

Rule Title: Insurance Adjusters (Title 114, Series 25)

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

Average - 180 adjusters late renew each year.

$180 \times \$25 = \$4,500.$

MEMORANDUM

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

Date: _____

Signature of Agency Head or Authorized Representative

Jane L. Cline, Insurance Commissioner

**TITLE 114
EMERGENCY RULE
INSURANCE COMMISSIONER**

**SERIES 25
INSURANCE ADJUSTERS**

Section.

- 114-25-1. General.
- 114-25-2. Definitions.
- 114-25-3. License Requirements.
- 114-25-4. Emergency Adjuster Licensing
- 114-25-~~4~~5. Categories and Types of Licenses.
- 114-25-~~5~~6. Qualifications.
- ~~114-25-6.~~ ~~Waiver of Examination Requirement.~~
- 114-25-7. Application for Licensure.
- 114-25-~~7~~8. Records Maintenance.
- 114-25-9. Standards of Conduct of Company and Crop Adjusters.
- 114-25-10. Standards of Conduct of Public Adjusters.
- 114-25-11. Contract Between Public Adjuster and Insured.
- 114-25-12. Public Adjuster Fees.
- 114-25-13. Escrow or Trust Accounts.
- 114-25-14. Assumed Names.
- 114-25-~~8~~15. Prohibited Practices; Voidable Contracts.
- 114-25-~~9~~16. Address of Adjusters; Filing.
- 114-25-~~10~~17. Change of Address; Notice.

114-25-~~11~~18. Licensing of Nonresident Adjusters.

~~114-25-12~~: Application.

114-25-~~13~~19. License Fee.

114-25-~~14~~20. Expiration of License; Renewal.

~~114-25-15~~: ~~Revocation, Suspension, Refusal to Renew or Issue License, Penalty in Lieu Thereof.~~

~~114-25-16~~: Severability.

TITLE 114
EMERGENCY RULES
INSURANCE COMMISSIONER

SERIES 25
INSURANCE ADJUSTERS

FILED
2010 JUN 15 PM 2:40
SECRETARY OF STATE

§114-25-1. General.

1.1. Scope. -- This legislative rule ~~established~~ establishes standards for licensing and regulation of insurance adjusters. It is partly based on the National Association of Insurance Commissioners' "Public Adjusters Licensing Model Act (Model 228)," as amended in the 3rd quarter of 2009.

1.2. Authority. -- W. Va. Code §§33-12B-12 and 33-2-10.

1.3. Filing Date. -- ~~April 19, 1990.~~

1.4. Effective Date. -- ~~April 19, 1990.~~

§114-25-2. Definitions.

2.1. "Adjuster" means any individual who, for compensation, fee or commission, investigates and settles claims arising under property, casualty or surety insurance contracts on behalf of either the insurer or the insured. As used in this rule, the term "adjuster" ~~shall include both~~ includes public adjusters, ~~and~~ company adjusters, ~~and~~ crop adjusters, unless specified otherwise.

2.2. "Code" means the W. Va. Code.

2.3. "Commissioner" means the West Virginia Insurance Commissioner ~~of the State of W.Va.~~

2.4. "Company adjuster" means an individual representing the interests of the insurer, including independent contractors with the insurer and salaried employees of the insurer.

2.5. "Crop adjuster" means a person who adjusts crop insurance claims under the federal crop insurance program administered by the United States Department of Agriculture.

2.6. "Home state" means the District of Columbia or any state or territory of the United States in which an adjuster maintains his or her principal place of residence or business and in which he or she is licensed to act as a resident adjuster: *Provided*, That if a person's principal

**Insurance Commissioner
Emergency Rule
Title 114, Series 25**

place of residence or business does not license adjusters for the type of adjuster license sought in this state, he or she shall designate as his or her home state any state in which he or she has such a license.

2.7. "Insurance emergency" means a temporary situation declared by the Commissioner pursuant to W. Va. Code §33-12B-11a when he or she finds that there is an inadequate number of licensed adjusters to meet the demands of the public.

2.58. "Public adjuster" means an independent contractor representing solely the financial interests of the insured named in the policy:

2.8.a. Any person who, for compensation or any other thing of value and solely in relation to first party claims arising under insurance contracts that insure the real or personal property of the insured, acts on behalf of the insured in negotiating for, or effecting the settlement of a claim for loss or damage covered by an insurance contract.

2.8.b. A person who advertises for employment as a public adjuster or solicits business or represents himself or herself to the public as a public adjuster.

2.8.c. A person who directly or indirectly solicits business, investigates or adjusts losses, or advises an insured about first party claims for losses or damages arising out of policies of insurance that insure real or personal property for another person engaged in the business of adjusting losses or damages covered by an insurance policy, for the insured.

§114-25-3. License Requirements.

~~3.1. On and after July 1, 1989, No person shall in West Virginia act as or hold himself to be an adjuster unless then so licensed by the Commissioner.~~

~~3.2. Persons performing the following activities will not be deemed to be acting as an adjuster so as to require licensure by the commissioner~~ The definition of adjuster does not include, and an adjuster's license shall not be required of, the following:

~~a. An attorney at law who investigates and settles claims incidental to an attorney/client relationship.~~

~~b. A licensed agent who without receiving specific compensation therefore, investigates, negotiates or settles undisputed claims solely for licensed insurers represented by such agent.~~

**Insurance Commissioner
Emergency Rule
Title 114, Series 25**

~~c. A salaried office employee who performs primarily clerical or administrative duties attendant to the disposition of uncontested claims.~~

~~d. A salaried employee of an insurer whose primary duties are other than adjusting, or investigating claims.~~

~~e. A person specially employed for the purpose of obtaining the facts surrounding a loss or furnishing technical assistance to a licensed adjuster, including but not limited to photographers, estimators/appraisers, marine surveyors, private detectives, engineers, handwriting experts and arbitrators.~~

~~f. A person who adjusts life, accident or health claims.~~

~~g. A person who adjusts claims for licensed farmers' mutual fire insurance companies.~~

~~h. A person who engages solely in appraising motor vehicle physical damage and who does not endeavor to determine liability or negotiate the settlement of claims arising under automobile insurance contracts.~~

~~i. A nonresident salaried employee of an insurer whose primary duty is supervision of adjusters licensed by the commissioner.~~

~~j. A person located in a central office of the insurer outside the State of West Virginia who adjusts claims by telephone only and does not enter the State of West Virginia in the course of adjusting such claims.~~

3.2.a. An attorney-at-law admitted to practice in this state, when acting in their professional capacity as an attorney;

3.2.b. A person employed solely to obtain facts surrounding a claim or to furnish technical assistance to a licensed company adjuster;

3.2.c. An individual who is employed to investigate suspected fraudulent insurance claims but who does not adjust losses or determine claims payments;

3.2.d. A person who solely performs executive, administrative, managerial or clerical duties or any combination thereof and who does not investigate, negotiate or settle claims with policyholders, claimants or their legal representative;

Insurance Commissioner
Emergency Rule
Title 114, Series 25

3.2.e. A licensed health care provider or its employee who provides managed care services so long as the services do not include the determination of compensability;

3.2.f. A managed care organization or any of its employees or an employee of any organization providing managed care services so long as the services do not include the determination of compensability;

3.2.g. A person who settles only reinsurance or subrogation claims;

3.2.h. An officer, director or manager of an authorized insurer or surplus lines insurer or a risk retention group or of a related holding company or an affiliated insurer, in the state, whether an individual or a business entity, or an attorney-in-fact of a reciprocal insurer;

3.2.i. A U.S. Manager of the United States branch of an alien insurer;

3.2.j. An individual under the exemption may enter the state to participate in mediations as the company representative with authority to settle, but may not participate in settlement or negotiation of the claim;

3.2.k. A person who investigates, negotiates or settles life, accident and sickness, annuity or disability insurance claims;

3.2.l. An individual who adjusts claims on behalf of a self insured entity;

3.2.m. A licensed insurance producer, attorney-in-fact of a reciprocal insurer or managing general agent of the insurer to whom claim authority has been granted by the insurer;

3.2.n. A person who adjusts claims for licensed farmers' mutual fire insurance companies; and

3.2.o. A person located in a central office of the insurer outside the State of West Virginia who adjusts claims by telephone only and does not enter the State of West Virginia in the course of adjusting such claims.

~~3.3. Claims arising out of a catastrophe or emergency which arises out of a disaster, act of God, riot, civil commotion, conflagration or other similar occurrence may be adjusted by a non-licensed adjuster upon registration with the commissioner, provided that the work of non-licensed persons working under a catastrophe or emergency situation are supervised by an adjuster licensed in this state or by an insurance company authorized to do business in this state or by an insurance company authorized to do business in this state. Registration shall be by letter~~

**Insurance Commissioner
Emergency Rule
Title 114, Series 25**

~~to the commissioner by the supervising adjuster or insurance company within twenty days of the date on which the non-licensed person begins adjusting activity in connection with the catastrophic or emergency situation. Such registration is valid for ninety days from the date of the registration letter. The commissioner may grant such ninety day extensions as he deems appropriate upon written request by the supervising adjuster or insurance company.~~

3.43. Claims arising out of a particular loss of unique or unusual character may be adjusted by a non-licensed adjuster upon registration with the Commissioner ~~provided that~~ as long as the work of the non-licensed person ~~must be~~ is supervised by ~~either~~ an adjuster licensed in this state or ~~by~~ an insurance company authorized to do business in this state; Provided, That the authority to work granted as provided herein to unlicensed persons is limited to three losses within any twelve month period.

§114-25-4. Emergency Adjuster Licensing.

4.1. Upon declaration of an insurance emergency, a licensed insurer may apply to the Commissioner requesting the issuance of emergency licenses to persons designated in the application to act as emergency adjusters.

4.2. The Commissioner shall act on the application within one business day after it has been received in his or her office: *Provided, That* an individual designated in the application may begin adjusting losses upon submission of the application to the Commissioner and may continue to do so unless the application is denied.

4.3. An emergency license is effective for a period not to exceed one hundred and twenty (120) days: *Provided, That* the Commissioner may, upon written request by the supervising adjuster or insurance company, grant such ninety-day extensions as he or she deems appropriate.

4.4. The Commissioner may, without notice and hearing, revoke the privileges of an individual holding an emergency license on grounds specified by this rule,

4.5. Emergency adjusters must keep in their possession at all times the West Virginia emergency license in order to be eligible to adjust emergency claims.

4.6. Insurers are responsible for their designated adjusters and will be held accountable for such adjusters' acts or failures to act.

§114-25-45. Categories and Types of Licenses.

45.1. The types of adjuster's licenses which may be issued are as follows:

**Insurance Commissioner
Emergency Rule
Title 114, Series 25**

~~4~~5.1.a. Company adjuster.

~~4~~5.1.b. Public adjuster.

5.1.c. Crop adjuster.

~~4~~5.2. An individual may be licensed concurrently under separate licenses as a company adjuster ~~and as a public~~, a public adjuster and as a crop adjuster but shall not act as a company or crop adjuster and a public adjuster with respect to the same claim.

§114-25-56. Qualifications.

~~5~~6.1. No individual may hold a license as an adjuster unless that individual:

~~5~~6.1.a. Is eighteen years of age or older;

~~5~~6.b. Is a resident of West Virginia, except for nonresident adjusters as provided in W.Va. Code §33-12B-9 and ~~§114-25-11~~ 114 WV CSR 25-11;

~~5~~6.c. Satisfies the Commissioner that he or she is trustworthy and competent. The Commissioner may, at his or her discretion, test the competency of all applicants for a license under this section by examination. If such examination is required by the Commissioner, each examinee shall pay a ~~twenty-five dollar~~ \$25 examination fee for each examination to the Commissioner ~~which fees shall be used for the purposes set forth in W.Va. Code §33-3-13~~. The Commissioner may, at his or her discretion, designate an independent testing service to prepare and administer such examination subject to direction and approval by the Commissioner, and examination fees charged by such service shall be paid by the applicant.

~~5.2. An individual licensed as a company adjuster may file with the commissioner an application in such form as the commissioner prescribes, and upon payment of the requisite license fee, shall be licensed as a public adjuster without being required to take and pass an examination.~~

~~5.3. An individual licensed as a public adjuster may file with the commissioner an application in such form as the commissioner prescribes, and upon payment of the requisite license fee, shall be licensed as a company adjuster without being required to take and pass an examination.~~

~~§114-25-6. Waiver of Examination Requirement.~~

**Insurance Commissioner
Emergency Rule
Title 114, Series 25**

~~6.1. Any individual who is a resident of West Virginia and is employed as an adjuster prior to July 1, 1989, may file with the commissioner on or before November 1, 1989, an application in such form as the commissioner prescribes, and upon payment of the requisite license fee, shall be licensed as a company adjuster and/or public adjuster without being required to take and pass an examination.~~

§114-25-7. Application For Licensure.

7.1. Application for a company, public or crop adjuster's license shall be made to the Commissioner on forms prescribed by him or her and shall contain such information and be accompanied by such supporting documents as the Commissioner may require and, if so required by the Commissioner, shall be made under oath. The fee for an adjuster's license is \$25 and shall be submitted with the application.

7.2. Applicants for a crop adjuster license must pass a written examination that tests the knowledge of the individual concerning the insurance laws of this state and the duties and responsibilities of a multi-peril crop adjuster: *Provided*, That in lieu of such an examination, the Commissioner may accept certification that the individual has passed a proficiency examination approved by the federal Risk Management Agency.

7.3. Willful misrepresentation of any fact in any such application or in any documents in support thereof is a violation of chapter thirty-three of the Code and this rule.

§114-25-78. Records Maintenance.

~~78.1. All public adjusters~~ A public adjuster shall maintain for three years after the termination of transactions with insureds a complete record of each of their transactions as an adjuster. The records required to be maintained by this Section include but are not limited to a complete record of each transaction as a public adjuster including:

78.1.a. the Name of the insured;

78.1.b. the Date, location and amount of loss;

78.1.c. a Copy of the contract between the public adjuster and the insured;

78.1.d. the amount Name of the insurer, amount, expiration date and number of each policy carried with respect to the loss;

**Insurance Commissioner
Emergency Rule
Title 114, Series 25**

~~7.1.e. an Itemized statement of the insured's and/or third party claimant's recoveries;~~

~~7.1.f. a copy of any settlement documents and/or releases executed in relation to the claim; and~~

~~7.1.g. a statement of any fee, commission or other compensation received or to be received by the adjuster on account of the adjustment.~~

8.1.f. Itemized statement of all compensation received by the public adjuster, from any source whatsoever, in connection with the loss;

8.1.g. A register of all monies received, deposited, disbursed, or withdrawn in connection with a transaction with an insured, including fees transfers and disbursements from a trust account and all transactions concerning all interest bearing accounts;

8.1.h. Name of the public adjuster who executed the contract;

8.1.i. Name of the attorney representing the insured, if any, and the name of the claims representatives of the insurance company; and

8.1.j. 10.2.a.10. Evidence of financial responsibility in a format prescribed by the Commissioner.

~~7.2. All company adjusters shall maintain in their claim files the information required in Section 7.1(a), (b), (d), (e) and (f). These files must be maintained by the company for three years after the termination of transactions with insureds and shall be open to examination by the Commissioner at any time.~~

8.2. Records of public adjusters must be maintained for at least five years after the termination of the transaction with an insured and shall be open to examination by the Commissioner at all times.

8.3. Records submitted to the Commissioner in accordance with this section that contain information determined to be proprietary by the Commissioner shall be treated as confidential by the Commissioner and shall not be subject to the public disclosure provisions of chapter twenty-nine-b of the Code.

§114-25-9. Standards of Conduct of Company and Crop Adjusters.

9.1. The standards of conduct of company and crop adjusters are as follows:

Insurance Commissioner
Emergency Rule
Title 114, Series 25

9.1.a. A company or crop adjuster shall not give legal advice, and shall not deal directly with any policyholder or claimant who is represented by legal counsel without the consent of the legal counsel involved.

9.1.b. A company or crop adjuster shall identify himself, herself or itself as an independent contractor and, if applicable, identify his or her employer when dealing with any policyholder or claimant.

9.1.c. A company or crop adjuster shall identify his or her employer when dealing with any policyholder or claimant.

9.1.d. A company or crop adjuster shall not have any financial interest in any adjustment or acquire for himself or herself any interest or title in salvage, without first receiving written authority from the principal.

§114-25-10. Standards of Conduct of Public Adjusters.

10.1. Public adjusters shall adhere to the following standard of conduct:

10.1.a. A public adjuster is obligated to serve his or her client with objectivity and complete loyalty, and to render to the insured such information, counsel and service, as within the knowledge, understanding and opinion in good faith of the licensee, as will best serve the insured's insurance claim needs and interest;

10.1.b. A public adjuster shall not solicit, or attempt to solicit, an insured during the progress of a loss-producing occurrence, as defined in the insured's insurance contract;

10.1.c. A public adjuster shall not permit an unlicensed employee or representative of the public adjuster to conduct business for which a license is required under this article;

10.1.d. A public adjuster shall not have a direct or indirect financial interest in any aspect of the claim, other than the salary, fee, commission or other consideration established in the written contract with the insured, unless full written disclosure has been made to the insured as set forth in subsection 11.4 of this rule;

10.1.e. A public adjuster shall not acquire any interest in salvage of property subject to the contract with the insured unless the public adjuster obtains written permission from the insured after settlement of the claim with the insurer;

Insurance Commissioner
Emergency Rule
Title 114, Series 25

10.1.f. The public adjuster shall not refer or direct the insured to get needed repairs or services in connection with a loss unless the adjuster discloses to the insured whether the adjuster may receive direct or indirect compensation for the referral;

10.1.g. The public adjuster shall disclose to an insured if he or she has any interest or will be compensated by any construction firm, salvage firm, building appraisal firm, motor vehicle repair shop or any other person that performs any work in conjunction with damages caused by the insured loss; and

10.1.h. The source and amount of any compensation or thing of value received by the public adjuster in connection with an insured's loss shall be disclosed in writing to the insured.

10.2. Public adjusters shall adhere to the following general ethical requirements:

10.2.a. A public adjuster shall not undertake the adjustment of any claim if the public adjuster is not competent and knowledgeable as to the terms and conditions of the insurance coverage, or which otherwise exceeds the public adjuster's current expertise;

10.2.b. A public adjuster shall not knowingly make any oral or written material misrepresentations or statements which are false or maliciously critical and intended to injure any person engaged in the business of insurance to any insured client or potential insured client;

10.2.c. No public adjuster, while so licensed by the Commissioner, may represent or act as a company adjuster on the same claim;

10.2.d. The contract with the insured shall not be construed to prevent an insured from pursuing any civil remedy after the three-business day revocation or cancellation period;

10.2.e. A public adjuster shall not enter into a contract or accept a power of attorney that vests in the public adjuster the effective authority to choose the persons who shall perform repair work;

10.2.f. A public adjuster shall ensure that all contracts for the public adjuster's services are in writing and set forth all terms and conditions of the engagement;

10.2.g. A public adjuster may not agree to any loss settlement without the insured's knowledge and consent; and

10.2.h. Public adjusters may not directly solicit a client for employment between

**Insurance Commissioner
Emergency Rule
Title 114, Series 25**

the hours of seven p.m. and nine a.m.

§114-25-11. Contract Between Public Adjuster and Insured.

11.1. Public adjusters shall ensure that all contracts for their services are in a document entitled "Public Adjuster Contract" containing the following:

11.1.a. Full name of the adjuster signing the contract;

11.1.b. Permanent home state business address and phone number;

11.1.c. License number;

11.1.d. The insured's full name, street address, insurance company name and policy number;

11.1.e. A description of the loss and its location;

11.1.f. Description of services to be provided to the insured;

11.1.g. Signatures of the public adjuster and the insured and date(s) signed; and

11.1.h. Full salary, fee, commission, compensation or other considerations the public adjuster is to receive for services.

11.2. The contract may specify that the public adjuster shall be named as a co-payee on an insurer's payment of a claim.

11.2.a. If the compensation is based on a share of the insurance settlement, the exact percentage shall be specified.

11.2.b. Initial expenses to be reimbursed to the public adjuster from the proceeds of the claim payment shall be specified by type, with dollar estimates set forth in the contract and with any additional expenses first approved by the insured.

11.2.c. Compensation provisions in a public adjusting contract shall not be redacted in any copy of the contract provided to the Commissioner.

11.3. If the insurer, no later than seventy-two hours after the date on which the loss is reported to the insurer, either pays or commits in writing to pay to the insured the policy limit of

**Insurance Commissioner
Emergency Rule
Title 114, Series 25**

the insurance policy, the public adjuster shall:

11.3.a. Not receive a commission consisting of a percentage of the total amount paid by an insurer to resolve a claim;

11.3.b. Inform the insured that loss recovery amount might not be increased by insurer; and

11.3.c. Be entitled only to reasonable compensation from the insured for services provided by the public adjuster on behalf of the insured, based on the time spent on a claim and expenses incurred by the public adjuster, until the claim is paid or the insured receives a written commitment to pay from the insurer.

11.4. A public adjuster shall provide the insured a written disclosure concerning any direct or indirect financial interest that the public adjuster has with or in any other party who is involved in any aspect of the claim, including but not limited to any ownership of, other than as a minority stockholder, or any compensation expected to be received from, any construction firm, salvage firm, building appraisal firm, motor vehicle repair shop, or any other person that provides estimates for work, or that performs any work in conjunction with damages caused by the insured loss.

11.5. A public adjuster contract may not contain any contract term that:

11.5.a. Allows the public adjuster's percentage fee to be collected when money is due from an insurance company, but not paid, or that allows a public adjuster to collect the entire fee from the first check issued by an insurance company, rather than as percentage of each check issued by an insurance company;

11.5.b. Requires the insured to authorize an insurance company to issue a check only in the name of the public adjuster;

11.5.c. Imposes collection costs or late fees; or

11.5.d. Precludes an insured from pursuing civil remedies.

11.6. Prior to the signing of the contract, the public adjuster shall provide the insured with a separate disclosure document regarding the claim process that states:

11.6.a. Property insurance policies obligate the insured to present a claim to his or her insurance company for consideration. There are two types of adjusters that could be involved

Insurance Commissioner
Emergency Rule
Title 114, Series 25

in that process. The definitions of the three types are as follows:

11.6.a.1. "Company adjuster" means an adjuster representing the interests of the insurer, including an independent contractor and a salaried employee of the insurer. The company adjuster should not charge the insured a fee for his or her services.

11.6.a.2. "Public adjuster" means an insurance adjuster who does not work for any insurance company. The public adjuster works for the insured to assist in the preparation, presentation and settlement of the claim. The insured hires the public adjuster by signing a contract agreeing to pay him or her a fee or commission based on a percentage of the settlement, or other method of compensation.

11.6.b. The insured is not required to hire a public adjuster to help the insured meet his or her obligations under the policy, but has the right to do so.

11.6.c The insured has the right to initiate direct communications with the insured's attorney, the insurer, the insurer's adjuster, and the insurer's attorney, or any other person regarding the settlement of the insured's claim.

11.6.d. The public adjuster is not a representative or employee of the insurer.

11.6.e. The salary, fee, commission or other consideration paid to a public adjuster is the obligation of the insured, not the insurer.

11.6.f. The contract shall be executed in duplicate to provide an original contract to the public adjuster and an original contract to the insured. The public adjuster's original contract shall be available at all times for inspection without notice by the Commissioner.

11.6.g. The public adjuster shall provide the insurer a notification letter, which has been signed by the insured, authorizing the public adjuster to represent the insured's interest.

11.6.h. The insured has the right to rescind the contract within three business days after the date the contract was signed. The rescission must be in writing and shall be delivered to the public adjuster at the address in the contract within the three business day period: Provided, That a rescission letter postmarked within the three-day rescission period shall be deemed to have been delivered within such period.

11.6.i. If the insured exercises the right to rescind the contract, anything of value given by the insured under the contract will be returned to the insured within fifteen business days following the receipt by the public adjuster of the cancellation notice.

**Insurance Commissioner
Emergency Rule
Title 114, Series 25**

§114-25-12. Public Adjuster Fees.

12.1. Any fee charged by a public adjuster must be reasonable.

12.2. A public adjuster shall not pay a commission, service fee or other valuable consideration to a person for investigating or settling claims in this state if that person is required to be licensed under this article and is not so licensed.

12.3. A person shall not accept a commission, service fee or other valuable consideration for investigating or settling claims in this state if that person is required to be licensed under this article and is not so licensed.

12.4. In the event of a catastrophe, no public adjuster shall charge, agree to or accept as compensation or reimbursement any payment, commission, fee, or other thing of value equal to more than ten percent of any insurance settlement or proceeds. No public adjuster shall require, demand or accept any fee, retainer, compensation, deposit, or other thing of value, prior to settlement of a claim.

§114-25-13. Escrow or Trust Accounts.

13.1. A public adjuster who receives, accepts or holds any funds on behalf of an insured towards the settlement of a claim for loss or damage shall deposit the funds in a non-interest bearing escrow or trust account in a financial institution that is insured by an agency of the federal government in the public adjuster's home state or where the loss occurred.

§114-25-14. Assumed Names.

14.11 A company, public or crop adjuster doing business under any name other than the adjuster's legal name is required to notify the Commissioner prior to using the assumed name.

§114-25-815. Prohibited Practices; Voidable Contracts.

815.1. A public adjuster shall not solicit or attempt to solicit employment during progress of a loss-producing occurrence nor while the fire department or its representatives are engaged at the damaged premises.

815.2. A public adjuster shall not collect or attempt to collect a fee or charge from a repair contractor for obtaining repair work for the contractor.

**Insurance Commissioner
Emergency Rule
Title 114, Series 25**

815.3. A public adjuster shall not advance money or any other valuable thing to an insured pending adjustment of a claim.

815.4. A public adjuster shall not provide his or her services to a client until the adjuster has contracted in writing with the insured or his or her authorized representative. A contract which is executed within forty-eight hours after conclusion of the loss producing occurrence shall be voidable at the option of the insured for ten days after execution of the contract. The written contract shall constitute the entire agreement between the adjuster and the insured and shall disclose all fees to be charged the insured by the public adjuster. A copy of the contract shall be given to the insured when the contract is executed.

§114-25-916. Addresses of Adjusters; Filing.

916.1. Each adjuster shall file with the Commissioner the complete address of his principal place of business and the complete address of his residence including the name and number of the street, or if the street where the business is located is not numbered, the number of the post office box. The Commissioner may require the filing of other information for the purposes of identifying the principal place of business and the place of residence.

§114-25-~~1017.~~ Change of Address; Notice.

~~1017.1.~~ Within thirty days of a change of business or residence address by an adjuster the adjuster must file with the Commissioner the current version of such information as is required by ~~Section 9~~ Section 16 of this rule. An adjuster's principal place of business may be either a home or a business address, but in either event, the adjuster must maintain such address as a permanent office.

§114-25-~~1118.~~ Licensing of Nonresident Adjusters.

~~1118.1.~~ An individual otherwise complying with the provisions of this rule ~~and Chapter 33 of W.Va. Code, who is a resident of another state and who is a licensed adjuster of such in his or her home state, may be licensed as a nonresident adjuster in this state, if the state of residence of such nonresident~~ apply with the Commissioner to become licensed as a nonresident company, public or crop adjuster in this state if his or her home state has established, by law or regulation like requirements for the licensing of a resident of this state as a nonresident adjuster and if the applicant's home state awards nonresident licenses to residents of this state on the same basis. Such an individual is exempt from the examination requirements of W.Va. Code §33-12B-5 if his or her home state required a substantially similar prelicensing examination.

~~1118.2.~~ The Commissioner may issue an adjuster's license to any applicant who is not a

**Insurance Commissioner
Emergency Rule
Title 114, Series 25**

West Virginia resident and who cannot meet the requirements of Section ~~11.1~~18.1 of this rule if the applicant passes a written examination in West Virginia.

~~11.3. Any individual who is a nonresident of West Virginia and is employed as an adjuster prior to July 1, 1989, may file with the commissioner on or before November 1, 1989, an application in such form as the commissioner prescribes, and upon payment of the requisite license fee, shall be licensed as a company adjuster and/or public adjuster without being required to take and pass an examination.~~

18.3. As a condition to the continuation of a nonresident adjuster license, the licensee shall maintain a resident adjuster license in his or her home state.

18.4. An individual who has obtained a nonresident adjuster license and who thereafter establishes legal residency in this state shall make application within ninety (90) days to obtain a resident license for the same line of authority; such applicant is exempt from any preclicensing examination requirements.

~~§114-25-12. Application.~~

~~12.1. Application for an adjuster's license or renewal thereof shall be made to the commissioner upon a form prescribed by the commissioner and shall contain such information and be accompanied by such supporting documents as the commissioner may require, and the commissioner may require such application to be made under the applicant's oath.~~

~~12.2. Wilful misrepresentation of any fact in any such application or any documents in support thereof is a violation of Chapter 33 of the W.Va. Code.~~

~~§114-25-13~~19. License Fee.

~~13~~19.1. The fee for an adjuster license shall be as provided in §33-12b-8 of the W.Va. Code.

~~§114-25-14~~20. Expiration of License; Renewal.

~~14~~20.1. All licenses of adjusters shall expire at midnight on ~~the May thirty-first~~ May 31 next following the date of issuance. ~~The commissioner shall renew annually the license of all such licensees who qualify and make application therefor.~~

20.2. An adjuster who allows his or her license to lapse may have such license reinstated if he or she makes application within twelve months of the expiration date and pays a penalty in

**Insurance Commissioner
Emergency Rule
Title 114, Series 25**

the amount of \$25 in addition to any other fees.

~~§114-25-15. Revocation, Suspension, Refusal to Renew or Issue License; Penalty in Lieu Thereof.~~

~~15.1. Whenever, after notice and hearing, the commissioner is satisfied that any adjuster has violated any provision of this rule, or is incompetent or untrustworthy, he shall revoke, suspend, or refuse to issue or, if renewal of license is pending, refuse to renew the license of such adjuster. In addition to revoking, suspending, or refusing to renew such license, the commissioner may in his discretion order such licensee to pay to the State of West Virginia an administrative penalty in a sum not to exceed one thousand dollars.~~

~~15.2 For the purposes of this regulation, it is considered to demonstrate lack of trustworthiness or competency if after notice and hearing, the commissioner determines such adjuster has:~~

~~15.2.a. Violated any insurance law or any lawful rule, regulation, or order of the commissioner;~~

~~15.2.b. Improperly withheld, misappropriated, or converted to his own use any money received in the course of business and belonging to policyholders, insurers, beneficiaries, or others;~~

~~15.2.c. Misrepresented the terms of any existing or proposed insurance contract to the detriment of the applicant or insured;~~

~~15.2.d. Engaged in any pattern of unfair methods of competition or unfair or deceptive acts or practices in the business of insurance as defined in W.Va. Code §33-11-1 et seq;~~

~~15.2.e. Forged another person's name to any document or fraudulently procured a forged signature to any document, knowing such signature to be forged;~~

~~15.2.f. Knowingly and willfully made or permitted a false or fraudulent statement or misrepresentation in or relative to the adjustment of any claim;~~

~~15.2.g. Been convicted of or pleaded nolo contendere to any felony;~~

~~15.2.h. Been convicted of or pleaded nolo contendere to a misdemeanor in connection with his activities as an adjuster.~~

**Insurance Commissioner
Emergency Rule
Title 114, Series 25**

~~15.2.i. Had an agent's, broker's, or adjuster's license suspended or revoked in any other state, district, or territory of the United States or any province of Canada;~~

~~15.2.j. Obtained a license as an agent, broker, or adjuster through misrepresentation, fraud, or any other act for which issuance of the license could have been refused had it been known to the commissioner at the time of issuance.~~

~~15.2.k. Committed any other act which inherently demonstrates untrustworthiness or lack of competence.~~

~~§114-25-16. Severability:~~

~~16.1. If any provision of this rule or the application thereof to any person or circumstances is for any reason held to be invalid, the remainder of the regulation and the application of such provision to other persons or circumstances shall not be affected thereby.~~