WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION

Form #2

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2002 MAY 29 P 2:30

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

AMENDMENT TO AN EXISTING RULE: YES X NO ____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 42

TITLE OF RULE BEING AMENDED: Continuing Education for Individual Insurance Producers

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 1, 2002 AT 4:30 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Gregory A. Elam, 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.

Brian Foster
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

SCANNED

$5.40

Department of Tax and Revenue
Agency Questionnaire

Re: Administrative Rule to be Filed

CONTINUING EDUCATION FOR INDIVIDUAL INSURANCE PRODUCERS

TITLE 114, SERIES 42

Question 1: **Are regulations required?**

Yes. The changes to the existing rule are required by the amendment of West Virginia Code §§ 33-12-1 et seq. made by H. B. 4497, which was passed March 9, 2002 and went into effect June 7, 2002.

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

There should be no controversy over the proposed rule.

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

The changes to the existing rule are custom-drafted.

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

West Virginia Code §§ 33-12-1 et seq. were amended by H. B. 4497 adopting the NAIC model producers licensing act. The current 114CSR42, which establishes the standards for continuing insurance education, must therefore be amended as well to conform to the amendment of the code.

Insurance Commissioner
Legislative Rule
Title 114, Series 42

CONTINUING EDUCATION FOR INDIVIDUAL INSURANCE PRODUCERS

TITLE 114, SERIES 42

BRIEF SUMMARY OF RULE

This rule sets forth the standards which the Insurance Commissioner deems necessary to carry out the provisions of Section 8, Article 12, Chapter 33 of the West Virginia Code dealing with continuing insurance education requirements for persons holding an insurance producer's license, establishing requirements for continuing insurance education courses and setting forth the sanctions to be imposed for failure to comply with the requirements.

The proposed amendment to the rule changes the term agent to insurance producer and amends code references to bring them into conformity with the amendment to the underlying statute made by H.B. 4497, passed March 9, 2002 and effective June 7, 2002.

Insurance Commissioner
Legislative Rule
Title 114, Series 42

CONTINUING EDUCATION FOR INDIVIDUAL INSURANCE PRODUCERS

TITLE 114, SERIES 42

STATEMENT OF CIRCUMSTANCES

H.B. 4497, which goes into effect June 7, 2002, amended Article 12, Chapter 33 of the West Virginia Code by adopting the NAIC model producers licensing act. Title 114, Series 42 of the Code of State Rules establishes the administrative standards for continuing education requirements, and must be amended to conform to the new language of the Code. This amendment reflects the changes in code references in the regulation and changes the term insurance agent to insurance producer.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Continuing Education for Individual Insurance Producers
Title 114, Series 42

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

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1. Effect of Proposed Rule

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

2. Explanation of above estimates:

The amendment to the existing rule will have no additional fiscal impact on local, state or federal governments.

3. Objectives of these rules:

The rule sets forth the provisions under which the Insurance Commissioner administers the responsibilities of W. Va. Code § 33-12-2a, which requires continuing insurance education for licensed insurance producers.

Rule Title: Continuing Education for Individual Insurance Producers
Title 114, Series 42

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.

None

Date: May 29, 2002

Signature of Agency Head or Authorized Representative

GREGORY A. ELAM, ASSOCIATE COUNSEL

114CSR42

WEST VIRGINIA LEGISLATIVE RULE
INSURANCE COMMISSIONER

SERIES 42
CONTINUING EDUCATION FOR INDIVIDUAL INSURANCE ~~AGENTS~~ PRODUCERS

Section

114-42-1. General.

114-42-2. Definitions.

114-42-3. Applicability.

114-42-4. Exemptions.

114-42-5. Continuing Insurance Education Course Requirements.

114-42-6. ~~Agent~~ Insurance Producer Continuing Insurance Education Requirements.

114-42-7. Proof of Completion.

114-42-8. Disciplinary Process.

114-42-9. Severability.

114CSR42

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2002 MAY 29 P 2:30

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATIVE RULE
INSURANCE COMMISSIONER

SERIES 42
CONTINUING EDUCATION FOR INDIVIDUAL INSURANCE ~~AGENTS~~ PRODUCERS

§114-42-1. General.

1.1. Scope. -- This legislative rule establishes standards for continuing insurance education requirements and the sanctions to be imposed for failure to comply with such requirements.

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

1.3. Filing Date. -- ~~May 30, 2001.~~

1.4. Effective Date. -- ~~May 30, 2001.~~

§114-42-2. Definitions.

2.1. ~~"Agent"~~ "Individual insurance producer" or ~~"active insurance agent"~~ "active individual insurance producer" means an individual licensed by the commissioner and appointed by an insurer with the commissioner to solicit, negotiate, effect or countersign insurance contracts on its behalf. For purposes of this rule, reference to the terms ~~"agent"~~ "individual insurance producer" and ~~"active insurance agent"~~ "active individual insurance producer" include the term "solicitor" unless specifically excluded.

2.2. "Approved course" means a course or program of instruction approved by the commissioner and the Board of Insurance Agent Education for continuing insurance education credit.

2.3. "Biennium" means the two-year reporting period beginning July 1, 1992 and ending June 30, 1994, and every two-year period thereafter until the thirtieth day of June, 2000.

2.4. "Board" means the Board of Insurance Agent Education ~~created and established~~ continued pursuant to ~~W. Va. Code §33-12-2(f)~~ W. Va.. Code §33-12-7.

2.5. "Cancelled license" means a license to engage in the sale of insurance which has been:

a. voluntarily voided by request of the ~~agent~~ individual insurance producer and approv~~al~~ed by the commissioner; or

b. terminated for failure to satisfy the mandatory continuing education requirements as of the last day of the reporting period following his or her suspension.

2.6. "Certificate of course completion" means a document acceptable to the commissioner which signifies satisfactory completion of an approved course and reflects hours of credit earned.

2.7. "Commissioner" means the Commissioner of Insurance of the state of West Virginia.

~~2.8. "Inactive agent" is an individual who has had all contractual relationships with the insurer(s) or employing agent(s) terminated for any reason.~~

~~2.9.~~2.8. "Provider" means a person, corporation, professional association or its local affiliates, an insurance company or other entity which is approved by the commissioner and provides approved continuing insurance education to ~~insurance agents~~ individual insurance producers.

~~2.10.~~ 2.9. "Reporting period" means the applicable biennium or triennium during which an ~~agent~~ individual insurance producer must meet his or her continuing insurance education requirements in order to maintain his or her license as required by ~~W. Va. Code §33-12-2a~~ W. Va. Code §33-12-8.

~~2.11.~~ 2.10. "Solicitor" means an individual appointed and authorized by an ~~agent~~ individual insurance producer to solicit and receive applications for insurance as a representative of the ~~agent~~ individual insurance producer.

~~2.12.~~2.11. ~~"Suspended agent"~~ "Suspended insurance producer" is an individual whose license to engage in the sale of insurance has been temporarily withdrawn until such time as the ~~agent~~ individual insurance producer has successfully completed his or her continuing insurance education requirements.

~~2.13.~~ 2.12. "Triennium" means the three-year reporting period beginning the first day of July, 2000, and ending on the thirtieth day of June, 2003, and every three-year period thereafter.

§114-42-3. Applicability.

3.1. This rule applies to solicitors and resident ~~agents~~ individual insurance producers licensed by the commissioner to engage in the sale of one or more of the following types of insurance:

a. Life insurance, annuity contracts, variable annuity contracts and variable life insurance;

b. Sickness, accident and health insurance;

c. All lines of property and casualty insurance;

d. Preneed burial insurance contracts;

e. All other lines of insurance for which an examination is required by the commissioner;

f. ~~Agents~~ Individual insurance producers appointed on behalf of a licensed health maintenance organization; and

g. ~~Agents~~ Individual insurance producers engaged in telemarketing insurance products.

114-42-4. Exemptions.

4.1. Continuing education requirements shall not apply to:

a. Persons holding resident licenses for any kind or kinds of insurance for which an examination is not required by the commissioner;

b. Persons selling only credit life or credit accident and health insurance;

c. Any such limited or restricted license as the commissioner may exempt;

~~d. Inactive agents;~~

~~c.~~d. ~~Agents~~ Individual insurance producers whose licenses have expired pursuant to ~~W. Va. Code §33-12-18~~ W. Va. Code §33-12-17;

~~f.~~e. ~~Agents~~ Individual insurance producers who have voluntarily cancelled their licenses;

~~g.~~ f. Non-resident ~~agents~~ individual insurance producers ; and

~~h.~~g. Adjusters.

4.2. ~~Agents~~ Individual insurance producers newly licensed on or after July 1 of the second year of a biennium are exempt from continuing insurance education requirements only for the biennium in which the license was issued.

4.3. ~~Agents~~ Individual insurance producers newly licensed on or after January 1 of the second year of a triennium are exempt from continuing insurance education requirements only for the triennium in which the license was issued.

§114-42-5. Continuing Insurance Education Course Requirements.

5.1. A continuing insurance education course shall not qualify for use as continuing insurance education credit unless it is filed with and approved by the commissioner and the Board.

5.2. A provider shall not implement any material change in a continuing insurance education course previously approved by the commissioner until the change has been filed with and approved by the commissioner and the Board.

5.3. The commissioner will not give an ~~agent~~ individual insurance producer credit for any continuing insurance education course which is taken prior to the issuance of written approval by the commissioner and the Board.

5.4. If a continuing insurance education course is taken more than once in a reporting period, the commissioner will give the ~~agent~~ individual insurance producer credit only for the first time that course was taken and completed during the applicable reporting period.

5.5. The commissioner may withdraw approval of a continuing insurance education course for any of the following reasons:

a. The continuing insurance education course teaching methods or course content have been materially changed without being filed with or approved by the commissioner and the Board;

b. The continuing insurance education course provider has certified to the commissioner that an ~~agent~~ individual insurance producer has satisfactorily completed the course when, in fact, the ~~agent~~ individual insurance producer has not done so;

c. The continuing insurance education course provider fails to certify to the commissioner that the ~~agent~~ individual insurance producer has satisfactorily completed the course when, in fact, the ~~agent~~ individual insurance producer has done so; or

d. There is other good reason to withdraw approval of a continuing insurance education course.

5.6. In those instances where the commissioner has withdrawn approval for a continuing

insurance education course, ~~agents~~ individual insurance producers who successfully completed the course prior to the withdrawal of approval shall receive credit toward their continuing education requirements.

5.7. Scripted presentations for ~~insurance agents~~ individual insurance producers involved in telemarketing insurance products pursuant to ~~W. Va. Code §33-12-2a~~ W. Va. Code §33-12-8 shall be filed with the commissioner no later than the first day of each reporting period or at least sixty (60) days prior to doing business in the state, whichever comes first.

§114-42-6. ~~Agent~~ Insurance Producer Continuing Insurance Education Requirements.

6.1. The commissioner may, upon application for good cause shown, grant an ~~agent~~ individual insurance producer an extension of time in which to meet the continuing insurance education requirements. Extensions may be granted for the following reasons:

a. The ~~agent~~ individual insurance producer has been engaged in active military duty outside the state for at least twelve (12) months during the biennium or at least eighteen (18) months during the triennium;

b. The ~~agent~~ individual insurance producer was or has become physically or mentally temporarily or permanently disabled by injury, illness or disease and was unable to perform adequately the duties required of him or her as a licensed ~~insurance agent~~ individual insurance producer for a period of at least twelve (12) months during the biennium or at least eighteen (18) months during the triennium; or

c. Any such other reason as the commissioner may determine on a case-by-case basis as constituting good cause.

6.2. An ~~agent~~ individual insurance producer should submit a request for an extension of time in which to meet the continuing insurance education requirements to the commissioner in writing at least thirty (30) days prior to the last day of the reporting period and shall include in the request an explanation together with reasonable verification of the hardship rendering an extension necessary.

6.3. The commissioner shall refuse to renew the appointments or issue new appointments for those lines of insurance specified in section 3 of this rule to any ~~agent~~ individual insurance producer who does not satisfy the minimum continuing insurance education requirements.

6.4. An ~~agent~~ individual insurance producer may not carry forward excess credit hours accumulated during one reporting period to satisfy the continuing insurance education requirements

of the following reporting period.

6.5. Any ~~agent~~ individual insurance producer who has not complied with the continuing insurance education requirements by the end of the reporting period may thereafter obtain credits to be carried back to meet the requirements of the preceding reporting period.

6.6. An ~~agent~~ individual insurance producer may use any continuing insurance education credit obtained to satisfy the mandatory continuing insurance education requirements of one reporting period only.

~~6.7. Inactive agents must satisfactorily complete one-half of the continuing insurance education requirements of one reporting period within the twelve (12) months immediately preceding his or her return to active status.~~

~~a. An agent may not count the continuing insurance education requirements completed for a return to active status toward the continuing insurance education requirements for the biennium in which active status is granted.~~

~~b. No agent shall be permitted to make use of a transfer from active to inactive status as a means to circumvent the mandatory continuing insurance education requirements.~~

~~6.8.~~ 6.7. ~~Agents~~ Individual insurance producers who have a cancelled license or an expired license pursuant to ~~W. Va. Code §33-12-18~~ W. Va. Code §33-12-17 shall successfully complete pre-licensing education and examination before qualifying for a new license, and shall thereafter successfully complete the continuing insurance education credits required pursuant to W. Va. Code §§33-12-1 et seq. and the guidelines established by the Board.

a. No ~~agent~~ individual insurance producer shall allow his or her license to expire as a means to circumvent the mandatory continuing education requirements.

~~6.9.~~6.8. The commissioner shall recognize the continuing insurance education requirements obtained during the reporting period through an approved provider of another state only in those instances where all the following conditions are met:

a. The ~~agent~~ individual insurance producer is a former resident ~~agent~~ individual insurance producer for whom a clearance letter was previously issued by the commissioner;

b. The ~~agent~~ individual insurance producer is currently licensed in good standing in another state and has been so licensed since leaving West Virginia; and

c. The ~~agent~~ individual insurance producer is in the process of establishing residency in West Virginia and has requested to have his or her resident ~~agent's~~ individual insurance producer's license reinstated.

§114-42-7. Proof of Completion.

7.1. Upon completion of a continuing insurance education course, the provider shall certify to the commissioner the names of all ~~agents~~ individual insurance producers who satisfactorily completed the continuing insurance education course. The certification shall be in the form prescribed by the commissioner.

a. The continuing education attendance roster shall be mailed by the provider to the commissioner within thirty (30) days after the continuing insurance education course is completed.

b. The provider of the continuing insurance education course shall furnish a certificate of completion to the ~~agent~~ individual insurance producer attending the course and the ~~agent~~ individual insurance producer shall retain a copy of the certificate for not less than four (4) years from the date the course is completed.

c. The provider shall retain a copy of the attendance roster for not less than four (4) years from the date the course is completed.

7.2. Providers of continuing insurance education courses and ~~agents~~ individual insurance producers shall make available to the commissioner or his or her designee copies of certificates upon request of the commissioner.

§114-42-8. Disciplinary Process.

8.1. No later than sixty (60) days prior to the end of the reporting period, the commissioner shall provide written notification to ~~agents~~ individual insurance producers subject to continuing insurance education requirements advising them as to the status of their continuing insurance education credits.

a. The commissioner shall provide the notification to each ~~agent~~ individual insurance producer either by personal delivery or by regular mail addressed to the ~~agent~~ individual insurance producer at the last address appearing for the ~~agent~~ individual insurance producer in the records of the commissioner.

b. ~~Agents~~ Individual insurance producers who sell only preneed burial insurance contracts shall file with the commissioner an affidavit, on a form to be provided by the

commissioner, verifying that the ~~agent~~ individual insurance producer is not engaged in the sale of any other type of insurance product.

c. ~~Agent~~ Individual insurance producers engaged solely in telemarketing insurance products by a scripted presentation which has been filed with and approved by the commissioner shall file an affidavit, on a form to be provided by the commissioner, verifying that the ~~agent~~ individual insurance producer is not engaged in the sale of any other type of insurance product.

8.2. Any ~~agent~~ individual insurance producer who does not anticipate pursuing the required continuing insurance education requirements may elect to cancel his or her license prior to the end of the reporting period by submitting a written request to the commissioner. Cancellation of a license revokes any privilege the ~~agent~~ individual insurance producer may have had to reinstate his or her license without completion of a pre-licensing insurance education course and examination.

a. Each request for cancellation of a license shall include the ~~agent's~~ individual insurance producer's name, address, ~~agent~~ individual insurance producer license number, telephone number and reason for cancellation.

b. Cancellation of a license prohibits an individual from further transacting insurance in West Virginia without successful completion of pre-licensing education and examination.

8.3. Any ~~agent~~ individual insurance producer who has not met the continuing insurance education requirements for any reporting period may agree to a voluntary suspension of his or her license until such time as the continuing insurance education requirements have been met.

a. Each request for a voluntary suspension of a license shall include the ~~agent's~~ individual insurance producer's name, address, ~~agent~~ individual insurance producer license number and telephone number.

b. An ~~agent~~ individual insurance producer may not transact insurance in West Virginia during the suspension period.

c. Any ~~agent~~ individual insurance producer who does not satisfy the mandatory continuing education requirements as of the last day of the ~~biennium~~ reporting period following his or her voluntary suspension shall have his or her license automatically cancelled pursuant to the provisions of ~~W. Va. Code §33-12-2a(h)~~ W. Va. Code §33-12-8(h).

8.4. Any ~~agent~~ individual insurance producer failing to meet continuing insurance education requirements and who has not been granted an extension of time within which to comply, or who has submitted to the commissioner a false or fraudulent certificate of compliance shall have his or

her license automatically suspended until such time as the ~~agent~~ individual insurance producer has demonstrated to the satisfaction of the commissioner that he or she has complied with all the requirements of this rule and all other applicable laws.

a. "Suspension of all licenses issued for any kind or kinds of insurance" shall be interpreted to mean those licenses for which continuing insurance education is required pursuant to this rule and W. Va. Code §§33-12-1 et seq.

b. The burden of proving successful completion of continuing insurance education courses is at all times upon the individual subject to the continuing insurance education requirements.

c. Any person whose license has been suspended for failure to meet the continuing education requirements of ~~W. Va. Code §33-12-2a~~ W. Va. Code §33-12-8(h) and this rule must satisfactorily complete the continuing insurance education requirements of each reporting period in which the suspension was in effect before the suspension can be lifted.

d. Any ~~agent~~ individual insurance producer who does not satisfy the mandatory continuing education requirements as of the last day of the reporting period following his or her suspension shall have his or her license automatically cancelled pursuant to the provisions of ~~W. Va. Code §33-12-2a(h)~~ W. Va. Code §33-12-8(h).

8.5. Upon suspension of an ~~agent's~~ individual insurance producer's license for failure to comply with the mandatory continuing insurance education requirements for the reporting period, the commissioner shall:

a. Give notice of the suspension to the insurer(s) or employing agent with whom the ~~agent~~ individual insurance producer has a contractual relationship; and

b. Cancel all appointments of the ~~agent~~ individual insurance producer subject to disciplinary action.

8.6. An insurer or employing ~~agent~~ individual insurance producer shall not renew or issue new appointments subject to continuing insurance education requirements to an ~~agent~~ individual insurance producer whose license has been suspended for failure to comply with mandatory continuing insurance education requirements until such time as the ~~agent's~~ individual insurance producer's license has been reinstated and an application and appropriate fee have been submitted to and approved by the commissioner.

8.7. Neither cancellation of a license nor any disciplinary action levied as a result of

non-compliance with continuing insurance education requirements shall prohibit an individual from receiving commissions which were vested and earned while that individual maintained an approved license.

§114-42-9. Severability.

9.1. If any provision of this rule or the application of this rule to any person or circumstances is for any reason held to be invalid, the remainder of the rule and the application of the provisions to other persons or circumstances shall not be affected by the holding.