

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

Form #6

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2012 APR 20 AM 11:00

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE
AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: Insurance Commissioner TITLE NUMBER: 114

AMENDMENT TO AN EXISTING RULE: YES _____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 94

TITLE OF RULE BEING PROPOSED: Workers' Compensation Insurance for State Agencies

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) Senate Bill No. 287

SECTION 64-7-2(f), PASSED ON March 10, 2012

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: April 20, 2012



Charles O. Lorensen
Cabinet Secretary
West Virginia Department of Revenue

**TITLE 114
LEGISLATIVE RULE
INSURANCE COMMISSIONER**

**SERIES 94
WORKERS' COMPENSATION INSURANCE
FOR STATE AGENCIES**

Sections

- 114-94-1. General.
- 114-94-2. Definitions.
- 114-94-3. Participation in SAWC; Agreement; Involuntary Removal.
- 114-94-4. Dispute Resolution Process.

**TITLE 114
LEGISLATIVE RULE
INSURANCE COMMISSIONER**

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**SERIES 94
WORKERS' COMPENSATION INSURANCE
FOR STATE AGENCIES**

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§114-94-1. General.

1.1. Scope. -- The purpose of this rule is to establish the procedure by which the Insurance Commissioner will procure workers' compensation coverage for various state agencies and boards.

1.2. Authority. -- W. Va. Code §§33-2-10 and 33-2-21a(f).

1.3. Filing Date. -- April 20, 2012.

1.4. Effective Date. -- April 20, 2012.

§114-94-2. Definitions.

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

2.2. "Discretionary participant" means any discretionary participant as defined in W.Va. Code §33-2-21a(a)(1).

2.3. "Executive state entity" means the Governor's Office, including the Governor's Mansion, Office of Economic Opportunity, Commission for National and Community Service, Equal Employment Opportunity Office and the Governor's Office of Health Enhancement and Lifestyle Planning; the Bureau of Senior Services; and any other entity transferred to and incorporated in one of the executive departments created in W. Va. Code §5F-1-2 and which is required to provide a detailed expenditure schedule to the Secretary of Revenue pursuant to W. Va. Code §11B-2-12.

2.4. "Experience rating" means a statistical procedure utilizing past risk experience to produce a prospective premium credit, debit or unity modification.

2.5. "Loss costs" are incurred losses on an accrual basis per \$100 of payroll for the period under measurement.

2.6. "NCCI" means the National Council of Compensation Insurers, which was designated by the Commissioner as the state's rating organization in 2007 pursuant to W. Va.

Code §23-2C-18a; the term also includes any successor rating organization designated by the Commissioner.

2.7. “Participation agreement” or “Agreement” means the document published on the Commissioner’s website that contains the requirements to which all participants must adhere and which must be executed by the person who has the authority to legally bind that participant.

2.8. “State Agency Workers’ Compensation” or “SAWC” means the procedure established by the Commissioner pursuant to W. Va. Code §33-2-21a and this rule to provide for the mandatory coverage of workers’ compensation risks for, all executive state entities and for those discretionary participants that participate in SAWC.

§114-94-3. Participation in SAWC; Agreement; Involuntary Removal.

3.1. The Commissioner shall determine which entities meet the definition of executive state entity or discretionary participant.

3.1.a. The Commissioner shall inform: (i) Executive state entities that they will be required to meet their mandatory workers’ compensation coverage responsibilities through SAWC as of the date set by the Commissioner; and (ii) Discretionary participants that they may apply for participation in SAWC during such periods and in such manner established by the Commissioner.

3.1.b. Any entity that believes it should have been classified differently, or any entity that did not receive a notice of eligibility, but believes it should have, may request the Commissioner to reconsider the classification decision. Pending a determination in response to such a request, the Commissioner may take such temporary measures he or she deems necessary to meet the exigencies presented by the need to prevent a lapse of that entity’s workers’ compensation coverage.

3.2. The Commissioner may make participation in SAWC by a discretionary participant contingent on the execution of the Agreement.

3.3. The Commissioner shall, at such times and in such manner as he or she deems necessary but no less often than once every calendar year, conduct an open enrollment period during which discretionary participants that have never before participated in SAWC or that have voluntarily withdrawn may apply for acceptance or reacceptance into SAWC.

3.3.a. A discretionary participant may be removed from SAWC for failure to adhere to the Agreement or other noncompliance with program requirements after notice of violation and reasonable opportunity to cure. Grounds for removal include, but are not limited to, actions that constitute an unacceptable risk to the other participants in SAWC.

3.3.b. Removal from SAWC shall be upon at least 30 days’ written notice to the participant.

3.3.c. A participant removed from SAWC pursuant to subdivision a of this subsection may be excluded from participation for a period of not more than one year to be determined by the commissioner based on the seriousness of the non-compliance and the efforts of the participant to come into compliance.

3.3.d. After an involuntary removal from SAWC, a former participant that owes no prior assessments arising out of its prior participation shall be readmitted upon written request and expiration of the exclusion period determined in accordance with subdivision 3.3.c. of this subsection.

3.3.e. A discretionary participant may withdraw from SAWC upon at least 30 days' written notice to the Commissioner. Any unpaid fees shall constitute a debt of the former participant and shall constitute a bar to reacceptance.

3.4. The Commissioner shall develop rates utilizing NCCI loss costs to be applied to each participant's exposure units so as to produce the funding level required. The Commissioner will utilize a rating plan for experience rating participants based on actual historical losses. Participants agree to make payments computed in accordance with the rating plan.

3.4.a. Any participant may contest the amount of any assessment imposed by the Commissioner by filing a "notice of disputed charge" in the form and manner set forth on the Commissioner's website, but the filing of such notice does not stay the participant's duty to remit the assessment pending a final decision on the dispute unless the Commissioner expressly determines otherwise. Failure to timely remit the full amount of such assessment constitutes sufficient cause for removal from SAWC regardless of the pendency of a dispute regarding such amount and regardless of the ultimate resolution of such dispute.

3.4.b. Upon the removal or voluntary withdrawal of a discretionary participant from SAWC, the Commissioner will determine what portion of the assessment paid, if any, should be returned and remit that amount to the former participant.

§114-94-4. Dispute Resolution Process.

4.1. Any participant may dispute any decision by the Commissioner regarding its application to, participation in, or removal from SAWC in the manner set forth in W. Va. Code §33-2-13.

4.2. The Commissioner may designate another person to consider the matter under dispute, including conducting any hearing deemed necessary, and to make recommendations for resolution.