



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE EXEMPT, INTERPRETIVE OR PROCEDURAL
RULE**

AGENCY: Risk And Insurance Management TITLE-SERIES: 115-03

RULE TYPE: Procedural Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: Administrative Rules of State Board of Risk and
Insurance Management

CITE STATUTORY AUTHORITY: 29-12-5

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

September 18, 2020

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Misty Peal -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 115
PROCEDURAL RULE
STATE BOARD OF RISK AND INSURANCE MANAGEMENT

SERIES 3
ADMINISTRATIVE RULES OF STATE BOARD OF
RISK AND INSURANCE MANAGEMENT

§115-3-1. General.

- 1.1. Scope. -- These rules establish procedures for the general administration of the state board of risk and insurance management and to assist interested persons dealing with the agency.
- 1.2. Authority. -- W.Va. Code § 29-12-5.
- 1.3. Filing Date. – August 18, 2020.
- 1.4. Effective Date. – September 18, 2020.

§115-3-2. Definitions.

- 2.1. “Chairperson” means the member elected to be the presiding officer at Board meetings and to control discussion on each item of the agenda.
- 2.2 “Agency” means the state agency known as the West Virginia Board of Risk and Insurance Management created pursuant to W. Va. Code § 20-12-1, *et. seq.*
- 2.3. “The Board” means those individuals appointed by the Governor pursuant to W. Va. Code § 29-12-1.
- 2.4 “Meeting” means the convening of the Board for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter. Any subcommittee meeting shall meet the definition of “meeting” for those members required to attend the subcommittee meeting.
- 2.5. “Quorum” means the presence of three voting members of the Board.
- 2.6. “Hearing Examiner” means the person engaged by the Director to conduct a hearing.
- 2.7. “Hearing” means any proceeding under authority granted to the agency by law and held in accordance with these rules, in the absence of any other applicable rules relating a specific type of hearing or proceeding before the agency.
- 2.8. “Director” means the executive director of the West Virginia Board of Risk and Insurance Management.
- 2.9. “Person” means any individual or business organization.

§ 115-3-3. Administration.

3.1. The Board may utilize any management and staff of the agency as needed to accomplish its duties under this rule, which may include at a minimum preparation of agendas, public filing requirements, and any responsibilities relating to administrative hearings.

§115-3-4. Board Meetings.

4.1. Any matter, procedure, or order not covered by these rules shall be referred to the presiding officer who shall decide the matter in conformity with the purpose of these rules in a fair and expeditious manner. Meetings of the Board shall be conducted in accordance with the Robert's Rules of Order.

4.2. The members of the Board shall select from one of their number a member to serve as chairperson. The term of the chairperson shall be for two years; however, the incumbent shall continue to serve until replaced. In the event there is a vacancy in the office of chairperson, any Board member may call a meeting for the purpose of electing a successor. A vacancy may be filled by electing a new chairperson, and a member may be reelected as chairperson.

4.3. The Board shall meet quarterly on the third Tuesday of March, June, September, and December, or on such other date as determined by the Chairperson.

4.4. Additional meetings may be called by the Chairperson, and the Chairperson shall call a meeting upon the request of at least two Board members. All meetings shall be held at the offices of the agency or such other location as necessary to accommodate agency staff and a reasonable number of public observers and participants.

4.5. In the event of an emergency requiring immediate official action of the Board, the provisions of W. Va. Code § 6-9A-3 shall be followed.

4.6. Board members may participate using the telephone or other electronic means. The agency shall provide an adequate sound system and equipment to accommodate electronic participation and to ensure that those in attendance can reasonably hear the member(s) participating electronically.

4.7. The Board shall consider any matter brought before it by the chairperson or any member or agency management and may consider, at its discretion, any matter referred to it by a person not a member of the Board. Prior to each meeting, the agency shall publish an agenda that contains all items the Board anticipates hearing or acting upon at the meeting. Preparation of the agenda shall be in compliance with guidance of the West Virginia Ethics Commission. Notice of each meeting shall be filed in the state register in compliance with the open meetings laws found at W. Va. Code § 6-9A-1, *et seq.*

4.8. All action requiring a vote shall be moved by a member and seconded by a different member of the Board. The names of moving and seconding members will be recorded in the minutes.

4.9. The chairperson may direct that any member of the public exit the meeting if that person is disrupting the meeting to the extent that orderly conduct of the meeting is compromised.

4.10. The Board may hold an executive session to consider those matters set forth in W. Va. Code § 6-9A-4. Any discussion or consideration of the financial or personal information of an insured and any discussion regarding pending claims may be held by the board in executive session closed to the public. No decision of the Board may be made in executive session. Minutes of executive sessions may be taken and, if taken, shall be limited to material the disclosure of which is not inconsistent with the provisions of W. Va. Code § 6-9A-3.

4.11. The Board may establish subcommittees as needed. The chairperson shall designate the subject matter to be considered by the subcommittee as well as its membership and chairperson.

4.12. The Board shall provide for the preparation of written minutes of each meeting. All minutes shall be available to the public within a reasonable time after the meeting and shall include the following information:

4.12.1. The date, time and place of the meeting;

4.12.2. The name of each member present or absent;

4.12.3. All motions, proposals, resolutions, and measures proposed, the member proposing the same, and their disposition; and

4.12.4. The results of all votes.

§ 115-3-5. Settlement of Claims.

5.1. The Board is hereby authorized and empowered to negotiate and effect settlement of any and all insurance claims arising on or incident to losses of and damages to state properties, activities and responsibilities.

§ 115-3-6. Administrative Hearings.

6.1. In the absence of any other applicable rules relating to a specific type of hearing or proceeding before the agency or its duly appointed representative, these procedural rules shall apply. These rules are intended to meet the requirements of W. Va. Code § 29A-5-1, *et seq.* and shall be interpreted under that guidance.

6.2. The agency shall hold a hearing when a statute or rule authorizes a hearing request by a person claiming to be aggrieved by an act of the agency. A request for hearing shall be in writing and shall specify the act of the agency giving rise to the request and the legal grounds to be relied upon as a basis for the relief to be requested at the hearing. Should the hearing request fail to provide its basis or legal grounds relied upon, the agency may request this information.

6.3. The agency shall conduct the hearing within thirty days of receipt of a written request for hearing unless postponed to a later date by mutual agreement. Should the Director determine that the hearing requested would involve an exercise of authority in excess of that available under the law, the Director shall issue a decision declining to hold the hearing and setting forth the basis for the decision.

6.4. The agency shall issue a notice of hearing at least ten calendar days in advance of the hearing by depositing the notice in the United States mail, postage prepaid, in an envelope addressed to the person requesting the hearing at the last known residence or business address. The notice shall state the purpose of the hearing; the date, time, and location of the hearing; and any other matter necessary to the proper and efficient conduct of the hearing.

6.5. Hearings shall be conducted by a person designated by the Director to be the hearing examiner. The hearing examiner has the power to administer oaths and affirmation; rule upon motions, offers of proof and receive relevant evidence; question witnesses; regulate the course of hearings, hold conferences for resolution or simplification of issues; dispose of procedural requests or similar matters; and exclude any person from a hearing who engages in conduct intended to disrupt the hearing or who is not a party, a

party's attorney, or a testifying witness.

6.6. An opportunity shall be afforded the parties to present evidence and argument at the hearing with respect to the matters involved. All hearings shall be conducted in an impartial manner. Parties shall have the right of cross-examination of witnesses who testify and have the right to submit rebuttal evidence. Persons directly affected by the hearing may appear in person or by counsel.

6.7. Within thirty calendar days following the conclusion of the hearing, the hearing officer shall provide a recommended decision of findings of fact and conclusions of law to the Director. The Director shall review the record of the hearing and the recommended decision. The Director may adopt, modify, or reject the recommended decision, or may remand the recommended decision for further action. The Director shall issue a final order setting forth findings of fact and conclusions of law in support of the decision within 10 business days of receipt of the recommended decision. The Director's order shall be mailed to the aggrieved person by certified mail, return receipt requested.

6.8. A decision by the Director to decline a hearing request under subsection 6.3 of this rule or an order of the Director issued under subsection 6.7 may be appealed within thirty calendar days of receipt of the decision or order in accordance with the provisions of W. Va. Code § 29A-5-4. If the aggrieved person does not appeal the Director's decision or order within thirty calendar days of receipt, the decision or order is final.