

NOTICE OF AGENCY APPROVAL

FILED  
1987 FEB 29  
SECRETARY OF STATE

LEGISLATIVE RULE: West Virginia Essential Property Insurance Association

The attached legislative rule constitutes the official rule approved by the Insurance Commissioner on 20th day of February, 1987 and filed pursuant to law with the West Virginia Secretary of State and the Legislative Rule-Making Review Committee.

*Fred E. Wright / Stanley B. Clark*  
Fred E. Wright  
Insurance Commissioner of  
the State of West Virginia

FISCAL NOTE FOR PROPOSED RULES

Rule Title: West Virginia Essential Property Insurance Association

Type of Rule: \_\_\_\_\_ Legislative \_\_\_\_\_ Interpretive \_\_\_\_\_ Procedural

Agency Insurance Commissioner Address 2100 Washington Street, East,  
Charleston, West Virginia 25305

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
Personal Services	-0-	-0-	-0-	-0-	-0-
Current Expense	-0-	-0-	-0-	-0-	-0-
Repairs & Alterations	-0-	-0-	-0-	-0-	-0-
Equipment	-0-	-0-	-0-	-0-	-0-
Other	-0-	-0-	-0-	-0-	-0-

2. Explanation of above estimates:

This rule will have no fiscal impact on the Insurance Commissioner's Office.

3. Objectives of these rules:

To establish procedures and guidelines for operation of the West Virginia Essential Property Insurance Association (WVEPIA).

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

This rule will have no economic impact on state government.

B. Economic Impact on Political Subdivisions; Specific Industries;  
Specific groups of citizens.

This rule may result in increased costs to the insurance industry. However, §33-20A-5(b)(i) allows insurers to recoup at least part of such costs through tax credits following termination of the WVEPIA.

C. Economic Impact on Citizens/Public at Large.

This rule should have a positive economic impact on the public at large. Inability to secure property insurance has depressed both residential and commercial construction and inhibited the lending activities of financial institutions. Thus, the availability of property insurance should have a ripple effect in regard to the economy in general.

Date:

February 20, 1987

Signature of Agency Head or Authorized Representative

Stanley B. Clark

DATE: February 6, 1987  
TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE  
FROM: FRED E. WRIGHT, INSURANCE COMMISSIONER  
LEGISLATIVE RULE TITLE: WEST VIRGINIA ESSENTIAL PROPERTY  
INSURANCE ASSOCIATION

FILED  
1987 FEB 29 PM 1:35  
STATE OF WEST VIRGINIA  
OFFICE OF THE SECRETARY OF STATE

1. Authorizing statute(s) citation West Virginia Code §§  
33-20A-3(b), 33-2-10

2. a. Date filed in State Register with Notice of Hearing:  
October 16, 1986

b. What other notice, including advertising, did you give  
of the hearing?

NONE

c. Date of hearing(s): December 2, 1986

d. Attach list of persons who appeared at hearing,  
comments received, amendments, reasons for amendments.

Attached X No comments received \_\_\_\_\_  
(See Exhibit A)

e. Date you filed in State Register the agency approved  
proposed Legislative Rule following public hearing:  
(be exact)

f. Name and phone number of agency person to contact for  
additional information:

Cheryl L. Davis

General Counsel

348-0401

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

Not applicable

b. Date of hearing: Not applicable

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

Not applicable

d. Attach findings and determinations and reasons:

Attached Not applicable

WEST VIRGINIA LEGISLATIVE RULE  
INSURANCE COMMISSIONER

CHAPTER 33-20A  
SERIES XXI

WEST VIRGINIA ESSENTIAL PROPERTY  
INSURANCE ASSOCIATION

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

WEST VIRGINIA LEGISLATIVE RULE  
INSURANCE COMMISSIONER

CHAPTER 33-20A  
SERIES XXI

West Virginia Essential Property  
Insurance Association

FILED  
FEB 29 PM 1:35  
WEST VIRGINIA LEGISLATIVE COMMISSION

Section 1. General

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

1.2 Authority - West Virginia Code §§ 33-20A-3(b), 33-2-10.

1.3 Filing Date -

1.4 Effective Date -

Section 2. Definitions - As used in this legislative rule:

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

2.2 Association - Shall mean the West Virginia Essential Property Insurance Association.

2.3 Board - Shall mean the Board of Directors of the Association.

2.4 Commissioner - Shall mean the Insurance Commissioner of the State of West Virginia.

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

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

2.7 Insurer - Shall mean any insurance company authorized to write and engage in writing essential property insurance coverage in West Virginia.

Section 3. Type of Organization

3.1 Nonprofit Unincorporated Organization - The Association shall be a nonprofit unincorporated organization.

Section 4. Administration

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

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

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

Section 5. Management

5.1 Servicing Facilities - The Board may contract with one or more servicing facility(ies) and/or hire its own employee(s) as are necessary to issue and service policies on risks insured by the Association.

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

Section 6. Commencement and Termination of Operation

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

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

(A) Dissolution of the Association is subject to approval of the Commissioner.

Ins. Commissioner  
Leg. Rule 33-20A  
Series XXI, Sec. 6

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

Section 7. Rates

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

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

Section 8. Policy Forms

8.1 Standard Fire Policy - All policies issued by the Association shall conform with the provisions of West Virginia Code §33-17-2.

8.2 Total or Partial Fire Loss - All policies issued by the Association shall conform with the provisions of West Virginia Code §33-17-9.

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

8.4 Policy Form Approval - Policies and endorsements may be issued on forms approved by the Commissioner.

Section 9. Coverage Limits and Types

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

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

Ins. Commissioner  
Leg. Rule 33-20A  
Series XXI, Sec. 10

Section 10. Underwriting

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

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

Section 11. Application for Insurance and Policy Issuance

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

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

Section 12. Agent Commissions

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

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

Section 13 Inspection of Property

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

Ins. Commissioner  
Leg. Rule 33-20A  
Series XXI, Sec. 13

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

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

Section 14 Appeal Procedures

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

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

Section 15. Premium Taxes

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

Section 16. Annual Report

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

Section 17. Severability

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

EXHIBIT A

Written comments concerning the rule were received from the West Virginia Insurance Federation, Inland Mutual Insurance Company and State Farm Insurance Companies. Copies of these comments are attached as well as a copy of the hearing transcript. No comments, either oral or written, were offered at hearing.

The Department's response to the written comments is as follows:

- 1) Objection was made that the coverage limits of §9.1 are excessive. These coverage limits were selected by the Board of Directors of the WVEPIA which consists of representatives of member insurers and agents, rather than by the Insurance Department. The Department, however, believes that these coverage limits are appropriate and are consistent with limits offered by similar plans in other states.
- 2) Objection was made that the cost of property inspections under §13 would be burdensome to the WVEPIA. This objection misreads §13.1 as requiring inspection of all property for which an application for coverage is submitted. Section 13.1 is permissive rather than mandatory and merely allows inspection of property at the discretion of management of the WVEPIA. Although the cost of inspections will be borne by the WVEPIA, the Department believes it is more equitable to have inspection costs borne by the WVEPIA rather than by potential insureds and notes that it is common insurance industry practice for property inspections costs to rest with the insurance company rather than the insurance applicant.
- 3) Objection was made to §7 which requires that the Insurance Commissioner approve premium rates used by the WVEPIA. The Insurance Commissioner presently approves rates charged for other forms of property insurance and believes that it is consistent with legislative intent to require the Commissioner's approval of rates charged by the WVEPIA. The Commissioner also believes that his inability to review rates may be used as a mechanism by certain insurers which object to participation in the WVEPIA to raise rates so high as to effectively destroy the market for the WVEPIA.

- 4) Objection was made that the rule does not address the area of agent licensing. Section 2.1, however, clearly states that agents of the WVEPIA must be licensed by the Insurance Commissioner to sell property and casualty in insurance West Virginia.
- 5) Objection was made to the provision of §15 which subjects the WVEPIA to premium taxes to the same extent and in the same manner as a licensed insurance company. The statute does not address the issue of premium tax liability of the WVEPIA and §15 is therefore the result of an interpretive decision by the Insurance Commissioner. The Board of Directors of the WVEPIA has not objected to the imposition of premium taxes. Further, the Pennsylvania Plan upon which the WVEPIA is modeled is subject to Pennsylvania premium taxes.
- 6) Objection was made to §8.2 which requires the WVEPIA to conform with the requirements of West Virginia Code §33-17-9, commonly known as the Valued Policy Law. The Valued Policy Law requires that in cases of total loss, insurers pay the face amount of the insurance policy with no allowance for depreciation. This valued policy requirement is applicable to the vast majority of insurers writing property insurance in West Virginia. The Department chose to make the Valued Policy Law applicable to the WVEPIA essentially because no statutory authority exists to exempt the WVEPIA from the requirements of §33-17-9. Additionally, independent counsel for the WVEPIA researched the issue of the applicability of valued policy statutes to property insurance plans and determined that no case law authority exists to exempt the WVEPIA from the provisions of the Valued Policy Law. In the absence of specific statutory or case law authority to exempt the WVEPIA from the provisions of §33-17-9, the Department felt that the valued policy requirement applicable.
- 7) Objection was made to the definition of "essential property insurance coverage contained in section 2.6." The Department fails to understand the basis of this objection as the definition used is considered a "text book" definition of property insurance coverage.
- 8) Objection was made that no guidelines for investments by the WVEPIA under West Virginia Code §33-28-5(b)(11) are set out in the rule. The Department plans to

monitor such investments through the annual report by the Board of Directors of the WVEPIA to the Insurance Commissioner and sees no need to set out guidelines in the rule.

- 9) Objection was made that certain provisions of the enabling statute concerning premium tax credits, immunity from liability and the assessment authority of the WVEPIA were not set out in the rule. The Department sees no point to merely reciting the statutory provisions in the rule nor does the Department believe that these statutory provisions need to be elaborated upon by the rule. Therefore, the rule has not been amended to include the statutory provisions.

INSURANCE COMMISSIONER OF THE STATE OF WEST  
VIRGINIA  
PUBLIC HEARING

IN RE: LEGISLATIVE RULE (EMERGENCY)  
"WEST VIRGINIA ESSENTIAL PROPERTY INSURANCE  
ASSOCIATION"

Transcript of a public hearing held in the  
above-styled matter beginning at 9:30 a.m. on the 2nd  
day of December, 1986, in Room 522, Building No. 3,  
Capitol Complex, Charleston, West Virginia, pursuant to  
Notice of Hearing issued by the Commissioner.

BEFORE: CHERYL L. DAVIS, General Counsel, Office of  
the Insurance Commissioner

APPEARANCES: (See attached appearance sheet)

RECEIVED

DEC. - 3 1986

LEGAL DIVISION  
W. VA. INS. DEPT.

GENERAL REPORTERS  
2020 Kanawha Boulevard, East  
Charleston, West Virginia 25311  
311-1862

I N D E X

<u>Exhibits</u>	<u>Marked</u>
Exhibit A, Letter from Mr. Norton	4
Exhibit B, Letter from Mr. Lobert	4

MR. DAVIS: I'd like to call this public hearing to order. My name is Cheryl Davis. I am General Counsel for the Insurance Commissioner and this is a public hearing in regard to an emergency legislative rule filed by the Insurance Commissioner's office. The rule title is, "West Virginia Essential Property Insurance Association."

The notice of hearing was issued on October 16, 1986, and filed with the Secretary of State's Office that same day. The purpose of this hearing is to, as required by the Administrative Procedures Act, receive comment concerning this emergency legislative rule.

At this time, I would like to ask if anyone present would like to make a comment or submit any documents for consideration by the Commissioner's Office. The record should reflect no response.

Pursuant to the Notice of Hearing, we have received two written comments which I'd like to have made a part of the record at this time. The first one is a November 12, 1986, letter from L. F. Norton, President of Inland Mutual Insurance Company, which I'd like to have marked as Exhibit A, and the second is a letter from John C. Lobert on behalf of the West

Virginia Insurance Federation dated November 25, 1986. I will have that marked as Exhibit B and those two exhibits will be attached to the transcript as part of the record in this matter.

(WHEREUPON, the documents referred to were marked as Exhibits A and B and are hereto attached.)

Is there anything further from anybody present? Then this hearing is concluded.

(WHICH WAS ALL THE EVIDENCE OFFERED OR PROCEEDINGS HAD IN THE ABOVE-ENTITLED MATTER.)

REPORTER'S CERTIFICATE

STATE OF WEST VIRGINIA

COUNTY OF KANAWHA, to wit:

I, the Undersigned, Sybil J. Martin, Certified Court Reporter, do hereby certify that the foregoing is, to the best of my skill and ability, a true, accurate and complete transcript of all the proceedings heard as set forth in the caption hereof during said public Hearing.

Given under my hand this 3rd day of

December, 1986.

Sybil J. Martin

Certified Court Reporter

GENERAL REPORTERS  
2020 Kanawha Boulevard, East  
Charleston, West Virginia 25311



RECEIVED

NOV 26 1986

LEGAL DIVISION  
W. VA. INS. DEPT.

John C. Lobert  
Executive Vice President  
405 Capitol Street  
Suite 902  
Charleston, W. Va. 25301  
(304) 343-9441



Com  
EX # B  
DATE 12-2-86  
JCL

November 25, 1986

Cheryl L. Davis, Esq.  
West Virginia Insurance Department  
2100 Washington Street, E.  
Charleston, West Virginia 25305

Re: Chapter 33-20A Series XXI  
Emergency Legislative Rule

Dear Ms. Davis:

I am pleased to enclose for the Department's consideration a statement on the above proposed Rule.

Please accept the same for filing and include it in the record of the upcoming Public Hearing.

Thank you.

Sincerely,

*John C. Lobert*  
JOHN C. LOBERT

JCL/pb  
Encl.

President  
John B. Arbuckle, Jr.  
Farmers Home Fire Ins. Co.  
Lewisburg, W. Va.  
(304) 645-1975

Vice President  
Luther L. Britt  
Quality Ins. Co.  
Fairmont, W. Va.  
(304) 366-6996

Secretary-Treasurer  
Richard E. Windon  
State Farm  
Dunbar, W. Va.  
(304) 766-7062

Immediate Past President  
L. F. Norton, Jr.  
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Huntington, W. Va.  
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Directors  
John L. Cooper  
Motorists Mutual

W. S. Davis  
Erie Ins. Group

C. Ray McNab  
Penn Mutual

Jack L. Miller  
Appalachian Life

L. F. Norton, Jr.  
Inland Mutual

Lorin K. Schoephoerster  
State Auto Mutual

Robert Showen  
W. Va. Fire & Casualty

Donald L. Sperow  
Farmers & Mechanics Mutual

Richard E. Windon  
State Farm

Helping to keep insurance affordable for West Virginians.

WEST VIRGINIA INSURANCE FEDERATION

STATEMENT ON CHAPTER 33-20A SERIES XXI  
EMERGENCY LEGISLATIVE RULE

WEST VIRGINIA ESSENTIAL PROPERTY INSURANCE ASSOCIATION

The West Virginia Insurance Federation is a trade association representing insurers engaged in the business of writing fire and extended coverage insurance in the state. As such, it is an interested party in the Emergency Legislative Rule being proposed by the Insurance Department respecting the West Virginia Essential Property Insurance Association. The West Virginia Insurance Federation recommends the following:

Section 2. Definitions.

The definition of essential property insurance coverage in Section 2.6 may intentionally mislead the reader into thinking that coverage is available for vehicles and aircraft. While the definition set out correctly defines fire and extended coverage, we believe that the statutory terms "fire and extended coverage" should be used with an additional definition of extended coverage. Accordingly, we recommend that Section 2.6 read as follows:

2.6. Essential Property Insurance - shall mean fire and extended coverage insurance on habitational or commercial real property situated in this state. For the purposes of this section, such coverage shall include losses to such real property caused by the perils of fire, lightning, riot, explosion, non-operated and non-owned vehicle, smoke from a faulty heating unit, hail, aircraft and wind.

Section 7. Rates.

Section 7.2 requires that rates established by the Association are subject to the approval of the Commissioner. W. Va. Code §33-20A-5(b)(6) only requires that the rates be filed with the Commissioner. Since that same section requires that rates are to be based upon "the Association's loss and expense experience and investment income from unearned premium and loss reserves," and "be on an actuarially sound basis and shall be calculated to be self-supporting," they may be at no other level. Accordingly, approval by the Commissioner is neither authorized by the statute nor required by its terms.

### Section 8. Policy Forms.

Section 8.2 subjects the policy to West Virginia's Valued Policy Law, W. Va. Code §33-17-9. We believe this is an unnecessary and unwise provision of the regulations for several reasons:

(1) Nothing in the West Virginia Essential Insurance Coverage Act makes reference to the Valued Policy Law or defines the Association as an insurer.

(2) There is legal precedent in the United States for treating residual market plans as a statutory entity exempt from valued policy laws. See, for example, Walls v. Missouri Property Insurance Placement Facility, 653 S.W.2d 207 (Mo. 1983).

(3) By unnecessarily subjecting the Plan to the Valued Policy Law, the Association would lose the benefit of the Valued Policy Law it would gain by using a domestic farmers mutual insurer.

(4) By specifically subjecting policies to the Valued Policy Law, the Association may not employ the use of depreciation, percentage participation clauses or other such underwriting devices.

Accordingly, we recommend that Section 8.2 be eliminated from the regulations altogether or, in the alternative, that the section be amended to provide that the policies of the Association are not subject to the provisions of W. Va. Code §33-17-9.

### Section 9. Coverage Limits and Types.

Section 9.1 specifies limits of coverage of \$100,000 on habitational risks and \$300,000 on commercial risks. We believe those limits to be excessive based upon the experience gained from the public hearings held by the Insurance Commissioner and the voluntary task force of insurers and agents who studied market availability during 1985. Those studies all indicated that coverage limits for habitational structures should be \$50,000 and for commercial structures \$100,000 based upon the need perceived. Unless the Association is able to effect adequate reinsurance, the limits proposed by the regulations may place undue economic stress on the Association and its policyholders.

Our remarks respecting Section 2.6 also apply to Section 9.2. This section should be either eliminated or amended so as to

eliminate any possible confusion on the part of insureds as to coverage of motor vehicles and aircraft.

Section 11. Application For Insurance and Policy Issuance.

Section 11.2 allows the Association to decline to issue policies to an applicant who owes premiums to the Association for previous insurance coverage. We sincerely believe that this should be extended to any unpaid fire insurance premium. It may well be that the only reason an applicant is unable to procure insurance coverage from the voluntary market is a history of premium non-payment. We do not believe it is the legislative intent to extend coverage to those individuals. Accordingly, we suggest that the words "to the Association" appearing near the end of the last sentence in Section 11.2 be stricken.

Section 15. Premium Taxes.

We believe that the provisions specifically subjecting the Association to premium taxes is both unwise and unnecessary for the following reasons:

(1) Neither the West Virginia Essential Insurance Coverage Act nor the article imposing premium taxes upon insurers appears to envision the payment of premium taxes by an entity such as the West Virginia Essential Insurance Association.

(2) The imposition of premium taxes will result in an additional burden to policyholders.

(3) If, in fact, policyholders are unable to obtain fire and extended coverage on the voluntary market, then no premium taxes are presently being paid on that share of the market. Accordingly, the Association is not replacing business presently paying premium taxes, and an exemption from the premium tax would have a revenue neutral effect on both the General Revenue Fund and the Firemen's and Policemen's Pension Fund.

(4) By specifically making the Association subject to premium taxes, the Association gains no advantage by designating a domestic farmers mutual insurance company (which would not be subject to premium taxes) as a servicing facility.

### General Comments

Two features which perhaps should be added to the regulations are (1) a recitation of immunities as contained in the enabling legislation and (2) a limit on the Association's assessment authority. On the latter point, even though the statute authorizes an assessment of up to five percent of net premium, it may be wise to limit that percentage to the customary two percent. This limit could be raised if necessary in the future, but for the present would act as a safeguard to contain the Association's authority.

**inland mutual**  
INSURANCE COMPANY



November 12, 1986

Com
EX # A
DATE 12-2-86
Sm

Insurance Commissioner  
State of West Virginia  
2100 Washington Street, East  
Charleston, West Virginia 25305

Attention: Cheryl L. Davis

RE: FAIR PLAN EMERGENCY REGULATIONS

Dear Cheryl:

The Insurance Federation sent us a copy of the above captioned, and has advised that a hearing is apparently set for December 2, 1986 at 9:30 a.m., relative to such regulations. The Federation indicated that any written comments regarding same should be addressed to your attention.

We notice from the regulations that apparently limits of up to \$100,000 for residential property and \$300,000 for commercial property are being made available. These levels of exposure seem to be quite high for an unknown and untested operation and will be subjecting the operation to not only a per risk shock loss situation, but also will subject the operation to catastrophe loss situations and as far as we know, no one really has a good handle on either the expected exposure count or premium flow which will ultimately be entertained. With reinsurance ability, this large loss problem could be solved but reinsurance is not addressed in the regulations. As the new organization's operational rates must be at least equal to losses on a self-sustaining basis, it would seem to us that the initially available limits should be considerably lower than that indicated in the proposed regulation . . . or alternatively some provisions be made for reinsurance ability and the amount to be retained net. We are not sure if the availability hearings even addressed the magnitude of exposure limits, but our guess is that the availability problem discussed, generally addressed lesser per risk values.

We further notice from the regulations, that each property must be inspected (which appears to be a logical requirement) but the cost of an inspection per the proposed regulations, apparently is to be borne by the entity itself rather than the individual desiring the risk to be insured at some exposure level. We think it would be more appropriate and in keeping with the statute's self-supporting

mandates for applicants to bear the expense of inspections, as undoubtedly the commercial-personal mixture of properties falling into the plan will not be homogeneous, and we certainly think the more time consuming and complex inspections should more fairly be allocated to the particular applicant wanting the exposure insured by the Plan.

Section 2.6, in discussing indemnification, mentions perils including vehicles, aircraft, etc., as does Section 9.2, and while we think we understand the regulation drafters' intent, we believe they need clarification as one could contend that vehicles and aircraft can or could be written under the Plan . . . as opposed to structures only and the perils insured against.

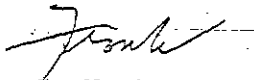
As we read the legislation (not the regulations), rates are to be filed with the Department as may be required, but nothing appears to either require approval or non-approval. Since the rates and operation are to be self-supporting, there thus seems to be no need for proposed 7.1 and 7.2, which seems to conflict with the apparent intent of SB-565. In other words, as any deficits are to be recaptured by price changes, rate approval is unnecessary.

The statute or law gives a premium tax credit which is not addressed in the proposed regulations, which may have been over-looked by the regulations' drafter.

The statute also mentions investments but does not mention our existing statutory code provisions, leading one to believe such existing investment provisions or constraints for insurers, does not apply to investments by the new entity. As this seems the intent of the statute, perhaps investment latitude clarification should be made in the regulations. In a similar vein, agency or producer licensing requirements or lack of same is not addressed.

Lastly, I would suggest the deletion of 3.2 regarding the valued policy law, as the proposed regulation would be confining the plan and it's possible future to an obvious handicap.

Very truly yours,

  
L. E. Norton  
President

LEN/jh

cc: John C. Lobert



# State Farm Insurance Companies

December 2, 1986

One State Farm Plaza  
Bloomington, IL 61710-0001

John R. Groves, CPCU, CLU  
Assistant Counsel  
Phone: (309) 766-3531

Insurance Commissioner  
Insurance Department  
2100 Washington Street, East  
Charleston, WV 25305

Attention: Cheryl L. Davis

Re: Fair Plan Emergency Regulations

Dear Ms. Davis:

Apropos your public hearing concerning the emergency rules governing the West Virginia Essential Property Insurance Association, we want to submit a few brief comments.

We believe that expressly subjecting the new FAIR Plan to the state's valued policy law and premium taxation scheme goes further than the authorizing legislation, Senate Bill 565, actually requires. We discern from the imposition of these burdens a regulatory purpose to treat the FAIR Plan as though it were a regularly admitted property insurer. It is, of course, subject to the limitations set out in the authorizing legislation.

We think that hand in hand with the imposition of burdens the Plan should have the discretion to develop and apply adequate rates as in the case of any insurer. The authorizing legislation, as you are well aware, requires the use of actuarially self-sustaining rates, meaning, in our opinion, the use of rates which avoid the prospect of any operating deficits in the Plan.

We trust that the West Virginia Insurance Department will see to it that the Plan's administration satisfies this requirement.

Sincerely,

A handwritten signature in dark ink, appearing to read "John R. Groves".

John R. Groves

JRG/se

**RECEIVED**

DEC - 9 1986

LEGAL DIVISION  
W. VA. INS. DEPT.

STATE OF WEST VIRGINIA



FRED E. WRIGHT  
INSURANCE COMMISSIONER

OFFICES OF THE  
**INSURANCE COMMISSIONER**  
LEGAL DIVISION

2100 WASHINGTON STREET, EAST  
CHARLESTON, WEST VIRGINIA 25305  
TELEPHONE (304) 348-0401  
February 20, 1987

1987 FEB 23 AM 11:10  
FILED  
ARCH A. MOORE, JR.  
GOVERNOR

Mr. M. E. Mowery, Counsel  
Legislative Rule-Making Review Committee  
Room E-228, State Capitol  
Charleston, WV 25305

Re: West Virginia Essential Property Insurance Association;  
Proposed Legislative Rule of the Insurance Commissioner

Dear Mr. Mowery:

Enclosed for filing please find fifteen (15) copies of each  
of the following:

- 1) proposed legislative rule
- 2) fiscal note
- 3) copy of agency approval and submission to Legislative  
Rule-Making Review Committee
- 4) Legislative Rule-Making Review Committee questionnaire

Please contact me if further information is required.

Sincerely,

A handwritten signature in cursive script, appearing to read "Cheryl L. Davis".

Cheryl L. Davis  
General Counsel

CLD/pss  
Enclosure  
cc: Richard O. Hartman, Director  
Administrative Law Division  
Office of the Secretary of State

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