

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

Form #2

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2004 JUN 30 A 11:08

WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Insurance Commissioner TITLE NUMBER: 114

RULE TYPE: Procedural CITE AUTHORITY: WV Code §§33-2-10 & 33-2-20

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 72

TITLE OF RULE BEING PROPOSED: Personal Private Passenger Automobile Liability Insurance
and Property Insurance Withdrawal Plan Procedures

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 30, 2004 AT 4:30 PM ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

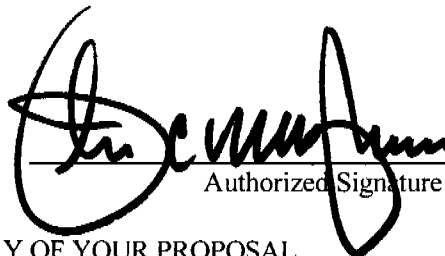
Mary Jane Pickens, General Counsel

West Virginia Insurance Commission

P.O. Box 50540

Charleston, WV 25305-0540

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL



STATE OF WEST VIRGINIA

Offices of the Insurance Commissioner

Legal Division

BOB WISE
Governor

June 30, 2004

JANE L. CLINE
Insurance Commissioner

HAND DELIVERED

Ms. Judy Cooper, Director
Administrative Law Division
Office of Secretary of State
State Capitol
Charleston, West Virginia 25305

- RE: SERIES 3 - CANCELLATION AND NONRENEWAL OF AUTOMOBILE LIABILITY POLICIES
SERIES 15 - EXAMINERS AND EXAMINATIONS
SERIES 20 - SURPLUS LINES INSURANCE
SERIES 42 - CONTINUING EDUCATION FOR INDIVIDUAL INSURANCE PRODUCERS
SERIES 67 - RATE AND FORM FILING ABSTRACTS (PROCEDURAL RULE)
SERIES 68 - VALUATION OF LIFE INSURANCE POLICES
SERIES 69 - RECOGNITION OF THE 2001 CSO MORTALITY TABLE FOR USE IN DETERMINING MINIMUM RESERVE LIABILITIES AND NONFORFEITURE BENEFITS
SERIES 70 - REBATES AND REFERRALS (INTERPRETIVE RULE)
SERIES 71 - INSURANCE FRAUD PREVENTION
SERIES 72 - PERSONAL PRIVATE PASSENGER AUTOMOBILE LIABILITY INSURANCE AND PROPERTY INSURANCE WITHDRAWAL PLAN PROCEDURES (PROCEDURAL RULE)

Dear Judy:

Please find herewith one (1) copy of the following for each of the above subject rules:

- 1) Notice Of A Comment Period On A Proposed Rule and consent of Tax and Revenue Cabinet Secretary;
- 2) Brief Summary of the Rule;
- 3) Statement of Circumstances;
- 4) Fiscal Note; and
- 5) The proposed rule.

Please contact our office if you have any questions regarding the above or if further information is required.

Sincerely,


Jane L. Cline
Insurance Commissioner

JLC/jz
Enclosures

Insurance Commissioner
Procedural Rule
Title 114, Series 72

**PERSONAL PRIVATE PASSENGER AUTOMOBILE
LIABILITY INSURANCE AND PROPERTY INSURANCE
WITHDRAWAL PLAN PROCEDURES**

TITLE 114, SERIES 72

BRIEF SUMMARY OF RULE

This procedural rule is being proposed to address amendments in H.B. 4004 passed by the WV Legislature in 2004. In addition to allowing insurers to choose to issue all nonrenewals pursuant to a percentage limitation on in-force policies, the H.B. 4004 amendments also allow the insurer to choose to issue all nonrenewals pursuant to a list of reasons that has been expanded to include nonrenewals issued as part of a plan filed by the insurer to withdraw from the personal automobile insurance line or from doing all insurance business in this State. The rule sets forth when a withdrawal plan is required and establishes the factors that must be addressed by all withdrawal plans. The rule also sets forth the time frame for filing the withdrawal plan and for approval of the plan by the Commissioner if it relates to personal automobile policies. The rule disallows insurers that withdraw from either homeowners or automobile lines from resuming writing the withdrawn line without complying with all applicable provisions governing authorization to write the line and receiving the written approval of the Commissioner to resume such writing.

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**PERSONAL PRIVATE PASSENGER AUTOMOBILE
LIABILITY INSURANCE AND PROPERTY INSURANCE
WITHDRAWAL PLAN PROCEDURES**

TITLE 114, SERIES 72

STATEMENT OF CIRCUMSTANCES

During the regular session of 2004 the Legislature passed H.B. 4004, which added a new section to the insurance code designated §33-2-20, requiring the Insurance Commissioner to promulgate rules relating to withdrawal plans to be filed by insurers writing personal automobile and homeowners policies in the State. H.B. 4004 also amended W. Va. Code §33-6A-4 and added two new sections designated §33-6A-4a and §33-6A-4b. These Code sections relate to nonrenewal of automobile liability and physical damage policies. Pursuant to the amendments, insurers may choose to issue nonrenewal notices pursuant to a percentage limitation on in-force policies, or choose to issue nonrenewal notices pursuant to a list of allowed reasons. The amendments expanded the list of allowed reasons to include nonrenewals that are being effected as a result of the insurer's withdrawal from writing personal automobile policies in this state or if the insurer is withdrawing from doing all business in the state. The proposed procedural rule will establish when a withdrawal plan is required and establishes the factors that must be addressed by all withdrawal plans. The rule also sets forth the time frame for filing the withdrawal plan and for approval of the plan by the Commissioner if it relates to personal automobile policies. In addition to auto policies, withdrawal plans are required if an insurer ceases writing homeowners insurance in this state. However, the Commissioner's approval of the withdrawal plan is not necessary prior to the insurer taking steps to effect the withdrawal. This reflects pre-H.B. 4004 law.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: PERSONAL PRIVATE PASSENGER AUTOMOBILE
 LIABILITY INSURANCE AND PROPERTY INSURANCE
 WITHDRAWAL PLAN PROCEDURES
 Title 114, Series 72

Type of Rule: ___ Legislative ___ Interpretive X Procedural

Agency: Insurance Commissioner

Address: Post Office Box 50540
 1124 Smith Street, Greenbrooke Building
 Charleston, West Virginia 25305-0540

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 ALTERNATIONS	None	None	None	None	None
EQUIPMENT	None	None	None	None	None
OTHER	None	None	None	None	None

2. Explanation of above estimates:

The rule will have no additional fiscal impact upon state government.

Rule Title: PERSONAL PRIVATE PASSENGER AUTOMOBILE
LIABILITY INSURANCE AND PROPERTY INSURANCE
WITHDRAWAL PLAN PROCEDURES
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3. Objectives of these rules:

The purpose of this procedural rule is to comply with the Legislature's directive that the Insurance Commissioner promulgate rules relating to the withdrawal of an insurance company from either the line of personal private passenger automobile liability insurance or property insurance, or the withdrawal of the insurer from doing business in the State. H.B. 4004 allows an insurer to nonrenew automobile policies if the nonrenewals are done in connection with an approved withdrawal plan. Before an insurer may issue nonrenewal notices relating to automobile policies pursuant to the insurer's withdrawal, the insurer must file with the Commissioner a withdrawal plan that shows that the withdrawal from the line or from doing business in the state is in the best interests of the insurer, its policyholders, and the people of West Virginia. The Commissioner must approve the withdrawal plan before the insurer takes steps to effect the withdrawal. If the withdrawal plan relates to property insurance (homeowners insurance) however, the plan must be filed for review purposes with the Commissioner. The plan is not required to be approved by the Commissioner prior to issuance of nonrenewal notices on property insurance, which reflects pre-H.B. 4004 law.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None anticipated. The Insurance Commissioner's staff will be able to review and act upon any withdrawal plans that are filed in the normal course of their duties.

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

The amendments to this rule are not expected to have an economic impact on political subdivisions or specific groups of citizens. The only potential economic impact on a specific industry could be the costs for insurance companies associated with filing a withdrawal plan with the Commissioner if they are ceasing business or ceasing to write either auto or homeowners insurance. It is not anticipated that this will create a costly burden for industry. The withdrawal plan requirement was discussed during the negotiations relating to H.B. 4004 prior to its passage, and no issue relating to compliance cost was raised.

Rule Title: PERSONAL PRIVATE PASSENGER AUTOMOBILE
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C. Economic Impact on Citizens/Public at Large.

There should be no economic impact on the public.

Date: June 30, 2004

Signature of Agency Head or Authorized Representative



JANE L. CLINE, INSURANCE COMMISSIONER

114CSR72

**PROCEDURAL RULE
INSURANCE COMMISSIONER**

SERIES 72

**PERSONAL PRIVATE PASSENGER AUTOMOBILE LIABILITY INSURANCE AND
PROPERTY INSURANCE WITHDRAWAL PLAN PROCEDURES**

Section

- 114-72-1. General.
- 114-72-2. Definitions.
- 114-72-3. When a Withdrawal Plan is Required.
- 114-72-4. Contents of a Withdrawal Plan.
- 114-72-5. Withdrawal Plan Submission and Approval Procedures.
- 114-72-6. Filing of Annual Financial Statement and Other Required Data and Information.
- 114-72-7. Requirements to Resume Writing Insurance.

114CSR72

FILED

PROCEDURAL RULE
INSURANCE COMMISSIONER

2004 JUN 30 A 11:08

SERIES 72

PERSONAL PRIVATE PASSENGER AUTOMOBILE LIABILITY INSURANCE AND
PROPERTY INSURANCE WITHDRAWAL PLAN PROCEDURES

WEST VIRGINIA
UNIVERSITY OF STATE

§114-72-1. General.

1.1. Scope. -- The purpose of this rule is to provide orderly and uniform procedures, as required by law and dictated by sound public policy, for any authorized insurer filing a plan of withdrawal with the insurance commissioner pursuant to section twenty, article two, chapter thirty-three of West Virginia Code. This rule establishes the general procedure to be followed by insurers that intend to withdraw from the line of automobile liability for personal private passenger automobiles covered by article six-a, chapter thirty-three of the West Virginia Code and policies of property insurance, other than inland marine policies, covered by article seventeen-a, chapter thirty-three of the West Virginia Code.

1.2. Authority. -- W. Va. Code §§33-2-10 and 33-2-20.

1.3. Filing Date. --

1.4. Effective Date. --

§114-72-2. Definitions.

Definition of certain terms. The following words and terms, when used in this rule shall have the following meanings, unless the context clearly indicates otherwise:

2.1. "Annual statement" means the annual statement most recently filed by the insurer with the Insurance Commissioner.

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

2.3. "Withdrawal" means the termination, cancellation, or nonrenewal of personal private passenger automobile liability or physical damage insurance subject to article six-a, chapter thirty-three of the West Virginia Code; or policies of property insurance, other than policies of inland marine insurance, subject to article seventeen-a, chapter thirty-three of the West Virginia Code.

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2.4. "Withdrawal plan" means a written document which contains the required elements listed in section four of this rule and is filed with the commissioner for purposes of withdrawal from personal private passenger automobile liability or physical damage insurance subject to article six-a, chapter thirty-three of the West Virginia Code, or policies of property insurance, other than policies of inland marine insurance, subject to article seventeen-a, chapter thirty-three of the West Virginia Code.

§114-72-3. When a Withdrawal Plan is Required.

3.1. Any licensed insurer must file with the commissioner a withdrawal plan before the insurer undertakes a withdrawal.

3.2. An insurer undertakes a withdrawal when it takes any action on its own initiative that will result in the insurer's ceasing to write personal private passenger automobile liability or physical damage insurance subject to article six-a, chapter thirty-three of the West Virginia Code, or policies of property insurance, other than policies of inland marine insurance, subject to article seventeen-a, chapter thirty-three of the West Virginia Code.

3.3. An insurer will not be considered to have acted on its own initiative in effecting a withdrawal when it acts pursuant to a disciplinary or administrative directive or order of the commissioner or insurance department of another state, or when the insurer acts pursuant to a directive of a supervisor, conservator, or receiver. If any out-of-state directive or order is not provided to the commissioner within thirty (30) days of the issuance of any such directive or order, the insurer will be considered to have acted on its own initiative.

3.4. Nothing in this rule authorizes or allows an insurer to withdraw from any coverage if such withdrawal would violate any federal or state law or any provisions contained in a contract or evidence of coverage or a policy or certificate of insurance itself. This rule does not modify or supercede any requirement under chapter thirty-three of the West Virginia Code or any other state or federal law to notify policyholders that an insurer will not renew any coverage. If a withdrawal plan is required by this section because an insurer is ceasing to write personal private passenger automobile liability or physical damage insurance in this state, before any such notice is given a withdrawal plan must be filed with and approved by the commissioner pursuant to section 5 of this rule. If the insurer's withdrawal relates to policies of property insurance, other than policies of inland marine insurance, then the commissioner's approval of the withdrawal plan is not required prior to the insurer issuing notice of nonrenewal or cancellation: Provided, that the withdrawal plan must be filed with the commissioner at least forty-five (45) days before the insurer initiates any kind of withdrawal activity.

§114-72-4. Contents of a Withdrawal Plan.

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- 4.1. An insurers' withdrawal plan must contain the following:
- a. Identification of the line or lines of insurance being withdrawn;
 - b. Identification of the policy forms by number and type affected by the withdrawal;
 - c. The dates the insurer intends to begin and complete its withdrawal;
 - d. An explanation of the reasons for the withdrawal;
 - e. Provisions for notifying all of the affected policyholders and certificateholders of the dates of the beginning and completion of the withdrawal and how the withdrawal will affect them, including, but not limited to:
 - 1. A copy of the notice and an explanation of the manner in which the notice will be provided to policyholders and certificateholders; and
 - 2. Either affirmation that such notice will be provided within thirty (30) days of the approval of the withdrawal plan if approval is required, or a request that the commissioner allow the notice to be provided at some other specified date or time;
 - f. Provisions for meeting all of the insurer's contractual obligations, including, but not limited to:
 - 1. Notification of all affected agents of the insurer of the date the insurer intends to begin and complete the withdrawal; and
 - 2. If applicable, a statement affirming the insurer's compliance with the provisions of article six-a, chapter thirty-three of the West Virginia Code relating to cancellation and nonrenewal of automobile liability or physical damage insurance coverage;
 - g. Provisions for providing service to the insurer's West Virginia policyholders and claimants;
 - h. Information on the insurer's West Virginia business, including:
 - 1. The total annual premium volume and the number of policies and certificates and covered persons in West Virginia for each line of business to be withdrawn;

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2. An estimate of what percentage of the West Virginia market the withdrawal constitutes; and

3. Any information necessary to assist the commissioner in determining whether a market availability problem will be created by the withdrawal, the extent of the problem, and what market assistance may be needed to alleviate the problem, including, but not limited to, the following:

A. Type of location and geographic area subject to the withdrawal (identify type of area such as suburban, urban, rural, or list specific rating territories) and zip codes; and

B. If applicable, types of risks no longer being covered, for example, if insurer is no longer writing private passenger auto insurance coverage for single-car families or for persons without supporting business;

i. If an insurer is unable to provide the exact number of policies and certificates and covered persons, the insurer must provide estimates of these numbers and explain how the estimates were determined;

j. The number of and estimated amount of all losses outstanding in West Virginia, including claims incurred but not reported;

k. A plan to handle the losses specified in subdivision j of this subsection, including, but not limited to:

1. Identification of what assets will be available for paying outstanding incurred but not reported claims, claims in the course of settlement, and associated loss adjustment expenses;

2. Identification of who specifically will administer the run-off of the business; and

3. An actuarial opinion certifying that adequate reserves are available to pay outstanding claims;

l. If West Virginia policyholders or certificateholders are to be reinsured, then the filing of a reinsurance agreement meeting all statutory and regulatory requirements and, when applicable, the filing of an assumption certificate;

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m. Provisions for meeting any applicable statutory obligations, including, but not limited to:

1. Payment of any guaranty fund assessments;
2. Participation in any assigned risk plan, pool, fund, facility, or joint underwriting arrangement; and
3. Payment of any taxes;

n. A list of any other programs or products the insurer will continue to offer in West Virginia; and

o. An affirmation that no new business will be solicited by the insurer in this state during or within the three years subsequent to the filing of the withdrawal plan unless the commissioner waives this requirement.

4.2. The filing of a single consolidated withdrawal plan for all withdrawing insurance companies in the same holding company system does not meet the requirements of this section. A separate withdrawal plan must be filed for each insurance company intending to withdraw.

4.3. The withdrawal plan must be signed by at least one officer of the insurer.

§114-72-5. Withdrawal Plan Submission and Approval Procedures.

5.1. An insurer must submit its withdrawal plan to the commissioner at least forty-five (45) days prior to the date the insurer anticipates initiating any type of withdrawal activity.

5.2. If the withdrawal plan relates to personal private passenger automobile policies, the withdrawal plan shall be deemed approved if the commissioner has not held a hearing within forty-five (45) days after a complete withdrawal plan is filed, or if approval has not been denied within forty-five (45) days after the hearing. If the withdrawal plan relates to policies of property insurance, other than policies of inland marine insurance, the commissioner's approval of the plan is not required in order for the insurer to effect its withdrawal, however the plan must be on file with the commissioner for at least forty-five (45) days before the insurer may initiate withdrawal activities.

5.3. No plan shall be considered "filed" until such date as the withdrawing insurer has provided to the commissioner all information and material necessary to constitute a complete withdrawal plan, as required under this rule.

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5.4. A withdrawal plan relating to personal private passenger automobile liability or physical damage insurance will not be approved unless the insurer establishes to the satisfaction of the commissioner that allowing it to withdraw would be in the best interest of the insurer, its policyholders and the citizens of this state. To assist in making this determination, the commissioner may consider any or all of the following:

a. Whether the insurer has an agreement with an affiliated or nonaffiliated insurer to transition the affected policies or certificates, the terms and conditions of which provide the policyholders with the same rights that existed under the withdrawing insurer's policies or certificates;

b. The insurer's financial condition;

c. The insurer's A.M. Best rating;

d. Any disciplinary, regulatory, or administrative action taken by another state;

e. The timing of the withdrawal;

f. The effect the withdrawal will have on the insurer's other products, programs, or lines of business in this state;

g. The effect the withdrawal will have on the insurance market in this state; and

h. Any other criteria considered relevant by the commissioner.

§114-72-6. Filing of Annual Financial Statement and Other Required Data and Information.

Any insurer filing a withdrawal plan shall continue to file all annual financial statement data, other required statistical and data filings, other required reporting, and any other information requested by the commissioner applicable to any withdrawn line until all policyholder obligations for the line in this state are fulfilled. This section does not exempt an insurer from any filings or information requests required by the commissioner.

§114-72-7. Requirements to Resume Writing Insurance.

Any insurer withdrawing from writing any line of insurance in this state and required to file a withdrawal plan pursuant to this rule may not resume writing the withdrawn line in this

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state without complying with all applicable statutory and regulatory provisions governing authorization to write such line of insurance in this state and receiving the written approval of the commissioner to resume such writing.