

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

Form #5

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**FILED**  
2004 AUG 26 P 2:35  
OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE  
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: Insurance Commissioner TITLE NUMBER: 114

CITE AUTHORITY: WV Code §§33-2-10 and 33-2-20

RULE TYPE: PROCEDURAL  INTERPRETIVE

EXEMPT LEGISLATIVE RULE

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

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

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE  
EFFECTIVE DATE OF THIS RULE IS September 25, 2004

  
Authorized Signature

## RESPONSE TO COMMENTS

Two sets of comments were received during the comment period in response to the proposed legislative rule entitled "Personal Private Passenger Automobile Liability Insurance and Property Insurance Withdrawal Plan Procedures": one sent on behalf of The West Virginia Insurance Federation ("WVIF"), and one on behalf of the American Insurance Association ("AIA").

### A. West Virginia Insurance Federation – Letter dated July 30, 2004

The WVIF offered comments on proposed Series 72 by letter dated July 30, 2004. The WVIF's first comment is that the rule appears to encompass partial withdrawals, and that there should be some clarification of this issue. It is the intent of the rule that it only apply to the complete withdrawal from a line of business or from doing business in the state entirely. W. Va. Code Section 33-2-20 states that the Commissioner may authorize an insurer to withdraw from the line of automobile liability insurance for personal, private passenger automobiles covered by Article 6A if a withdrawal plan is approved and if the insurer demonstrates that the withdrawal is in the best interests of the insurer, its policyholders and the citizens of the state. W. Va. Code Section 33-6A-4 provides that one of the allowable reasons for nonrenewal is if the insurer ceases writing automobile liability or physical damage insurance policies throughout the state after submission to and approval by the commissioner of a withdrawal plan or discontinues operations within the state pursuant to an approved plan. These sections clearly contemplate a complete withdrawal from the line or from doing business in the state. The Commissioner notes that the definition of withdrawal should also be clarified to include the cessation of business entirely in the state, consistent with the above Code sections. Therefore, the following changes will be made.

Subsection 2.3 will be changed to read as follows (in response to another WVIF comment which will be addressed below, subsection 2.3 will also include clarification that withdrawal includes transfers of the line between affiliated insurers):

*2.3. "Withdrawal" means the termination, cancellation, or nonrenewal of the line of personal private passenger automobile liability or physical damage insurance subject to article six-a, chapter thirty-three of the West Virginia Code; or the termination, cancellation, or nonrenewal of the line of property insurance, other than policies of inland marine insurance, subject to article seventeen-a, chapter thirty-three of the West Virginia Code; or the transfer from one affiliated insurer within a holding company system to another insurer within that same holding company system of the line of personal private passenger automobile liability or physical damage insurance or property insurance; or the cessation of business entirely in this state.*

Subsection 2.4 will be changed to read as follows:

*2.4. "Withdrawal plan" means a written document which contains the required elements*

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*listed in section 4 of this rule and is filed with the commissioner for purposes of withdrawal from the line of personal private passenger automobile liability or physical damage insurance subject to article six-a, chapter thirty-three of the West Virginia Code; or for withdrawal from the line of policies of property insurance, other than policies of inland marine insurance, subject to article seventeen-a, chapter thirty-three of the West Virginia Code; or for withdrawal from doing business in this state.*

Subsection 3.2 will be changed to read as follows:

*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 the line of personal private passenger automobile liability or physical damage insurance subject to article six-a, chapter thirty-three of the West Virginia Code; or ceasing to write the line of policies of property insurance, other than policies of inland marine insurance, subject to article seventeen-a, chapter thirty-three of the West Virginia Code; or ceasing to operate in the state.*

Subsection 3.4 will be changed to read as follows:

*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 the line of 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 the line 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.*

WVIF further comments that series 72 prevents the filing of a consolidated withdrawal plan by a group of insurers within a holding company system, and that this is inefficient. The Commissioner declines to make any changes to this requirement. Even if a consolidated plan were allowed, the information would need to be gathered for all affiliated companies. A major concern addressed by this rule is the ability to understand the effect of a withdrawal on a company's policyholders and the marketplace, with a clear understanding of the resulting market shares. This can best be accomplished by receiving separate plans.

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The final comment offered by WVIF on series 72 is that subdivision (a) of subsection 5.4 implies that the transfer of a line of business from one affiliated insurer to another with a holding company system requires the filing of a withdrawal plan. For the reasons set forth in the paragraph above, the Commissioner does consider a transfer of the lines of auto or homeowners from one affiliated company to another to be a withdrawal from the line. The Commissioner however agrees that clarification of the definition of "withdrawal" is appropriate to address this issue, and this change will be made as shown in the italicized definition of subsection 2.3 above.

**B. American Insurance Association – Letter dated July 30, 2004.**

AIA offered comments on series 72 by letter dated July 30, 2004. AIA's first concern is that the rule may contain broader authority than contemplated in the statute. Specifically, the definition of "withdrawal" as proposed does not limit the standard of withdrawal to being a withdrawal from "the line." The Commissioner agrees with this comment and has made changes shown above relating to WVIF comments to address this.

AIA's next comment is that Article 6A of Chapter 33 should only apply to private passenger automobile insurance and not commercial policies, and that the rule should be clarified to apply only to personal and not commercial lines. The Commissioner notes that there are instances where a fleet policy will provide coverage for a private vehicle. In those instances, it has historically been the Commissioner's position that the coverage provided for the private passenger automobile must be afforded the protections of Article 6A. This interpretation is based upon W. Va. Code Section 33-6A-1, which begins by stating that "no insurer once having issued or delivered a policy providing automobile liability insurance for a private passenger automobile may..." The Commissioner has interpreted this section, and logically Article 6A, to relate to coverage for private passenger automobiles even if the coverage is afforded under a commercial policy. However, the H.B. 4004 amendments relating to withdrawal from the automobile line address only personal lines auto rather than commercial lines. The Commissioner agrees that Series 72 relates to the withdrawal from personal, not commercial, lines but further believes that no additional clarification is needed on this point.

AIA comments that subsection 3.3 should include court orders as an instance when an insurer has not "acted on its own initiative." The Commissioner agrees with this comment and subsection 3.3 will be changed to read as follows:

*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, when it acts pursuant to a court order, 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.*

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AIA further comments that the breadth of “services” in subdivision (g) of subsection 4.1 is ambiguous and could result in substantial service obligations. The intent of this provision, however, was not to broaden the services beyond what was originally set forth in the contract. Rather, the requirement exists so that the Commissioner will know whether the insurer has made appropriate arrangements to continue to service the contracts until the withdrawal is complete. The Commissioner agrees to change subdivision (g) of subsection 4.1 to read as follows:

*4.1. An insurers’ withdrawal plan must contain the following:*

*g. Provisions for providing the same level of services to the insurer's West Virginia policyholders and claimants as set forth in the insurer’s contracts;*

AIA comments that subdivision (n) of subsection 4.1 is inconsistent with the statute’s focus on “automobile liability insurance for personal, private passenger automobiles.” Subdivision (n) requires the plan to include a list of any other programs or products the insurer will continue to offer in West Virginia. The Commissioner disagrees with this comment and declines to make any changes to subdivision (n). The intent is to weigh whether the withdrawal will be in the best interest of the insurer, its policyholders, and the citizens of the state. This broad base of interests that are to be considered makes it clear that the intent is for the Commissioner to be apprised of the effect of the withdrawal on the marketplace so that she can continue to effectively regulate it for all West Virginians. Knowing the other programs or products that will continue to be offered here by the insurer is an essential part of that.

AIA’s next comment is that subdivision (o) of subsection 4.1 includes a requirement that goes beyond the authority of the statute. Specifically, subdivision (o) requires that a plan include an affirmation that no new business will be solicited by the insurer in this state during or within three years after the withdrawal plan is filed unless this is waived by the Commissioner. The Commissioner again states that the intent is to protect the interests of the insurer, its policyholders, and the citizens of the state. An important consideration is the stability of the marketplace. Now that it is clear that auto policies can be nonrenewed as part of an approved withdrawal plan, it is essential that any potential for abuse is addressed. It would be disruptive to the market and an abuse of the intended process for an insurer to withdraw to cleanse its book and then quickly reenter the market. Because of the express standards for review of a withdrawal plan set forth in W. Va. Code Section 33-2-20, the Commissioner believes that there is authority for this provision in the rule. In addition, as a safety measure to further protect the citizens, the Commissioner can waive this requirement. The Commissioner agrees, however, that the provision should be clarified that the new business is the same business from which the insurer has withdrawn. Therefore, subdivision (o) of subsection 4.1 will be changed to read as follows:

*4.1. An insurers’ withdrawal plan must contain the following:*

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*o. An affirmation that no new business in the same line as that from which the insurer has withdrawn 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.*

The final comment offered by AIA relates to the requirement that an insurer that has withdrawn from the state cannot resume writing that line of insurance unless it receives the written approval of the Commissioner. The concern of AIA is that this places a different standard on an insurer than otherwise exists when an insurer wishes to reenter the market. AIA states that this is not authorized by the statute but, if included, should contain the criteria upon which the Commissioner would base her approval for reentry into the market. The Commissioner agrees with this comment and section 7 will be changed to read as follows:

***§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 state without complying with all applicable statutory and regulatory provisions governing authorization to write such line of insurance in this state.*



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July 30, 2004

**BY HAND-DELIVERY**

Ms. Jane Cline, Commissioner  
West Virginia Division of Insurance  
1124 Smith Street  
Charleston, West Virginia 25301

**RECEIVED**

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**LEGAL DIV.  
WV INS. DEPT.**

**RE: Comments – Proposed Administrative Rules  
Title 114, Series 3, 67, and 72**

Dear Commissioner Cline:

These comments to the proposed amendments to CSR 114, Series 3, 67, and 72, are submitted on behalf of the West Virginia Insurance Federation (“WVIF”), the state trade association for property and casualty insurance companies doing business in West Virginia.

**1. Title 114, Series 3 – Cancellation and nonrenewal of automobile liability insurance policies.**

This proposed rule was ostensibly promulgated pursuant to the authority set forth in W. Va. Code § 33-6A-4a(f) (2004). Because this statute clearly applies to “nonrenewals”, rather than new business or cancellations, for example, it would be helpful if the text of the rule itself clarified that it does not apply to other guidelines.

Another general concern is that the terminology used in the rule and the statute; namely, the proposed rule’s interchangeable use of the phrases “underwriting standards,” “underwriting guidelines,” and “underwriting principles,” allows differing interpretations of the rule and its application.

West Virginia Code § 33-6A-4a(f) requires the filing of “underwriting standards” and requires the Commissioner to review such standards to ensure their consistency with “generally accepted underwriting principles.” The proposed rule, however, requires the filing of “underwriting guidelines,” which must comply with “generally accepted underwriting standards.” Thus, the term “standards” is used differently in the statute and the rule. The statute refers to the documentation that an insurer must file, while the proposed rule refers to generally accepted practices in the industry, against which an insurer’s filing will be measured.

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Additionally, Section 33-6A-4a(f) requires only that an insurer's underwriting be consistent with generally accepted underwriting principles. It appears that the Commissioner lacks the statutory authority to regulate insurers' practices to any further degree through the use of more constrictive terminology. To the extent that there is concern that similarly-situated policyholders could be treated differently, the Commissioner already has the authority to conduct market conduct exams designed to ensure that similarly-situated policyholders are treated fairly and consistently through the application of appropriate underwriting guidelines. Further language governing this issue in the context of this proposed rule is unnecessary.

Succinctly, the proposed rule is not clear as to how these phrases will be interpreted and applied. It appears that the first term is intended to refer to general underwriting practices utilized by an individual insurer, and the second term is intended to refer to industry-wide practices. The term "guideline," however, connotes some measure of flexibility and the term "standard" suggests rules to which there are no exceptions. The WVIF is concerned that the potential for varying interpretations of these phrases will result in insurers' being forced to use specifically-defined rules-based standards, as opposed to more flexible underwriting guidelines.

The WVIF also is concerned that the proposed rule appears to create a new requirement on companies not opting into the newly-adopted one percent nonrenewal system. Article 4a, captioned "Alternative method for nonrenewal for automobile liability and physical damages insurance", establishes the alternative one percent method for nonrenewal of automobile liability and physical damage insurance. Subsections (a) through (g) of W. Va. Code § 33-6A-4a outline the process for insurers' implementation of the one percent nonrenewal alternative. Subsection 4a(a) provides that an insurer may nonrenew for any reason consistent with its underwriting standards, and Subsection 4a(f) requires the filing of such underwriting guidelines for the Commissioner's review.

The filing of underwriting guidelines was not required prior to the enactment of the alternative one percent nonrenewal method. Indeed, this is a new requirement, solely designed to provide the Commissioner with the ability to review guidelines for compliance with the alternative one percent nonrenewal requirements and the prohibitions established by W. Va. Code § 33-6A-4a.

As stated in the last sentence of subsection 4a(f), the Commissioner is required to promulgate legislative rules "to implement the provisions of this section." As used in that sentence, the phrase "[t]his section" refers to Chapter 33, Article 6A, *Section 4a*. Section 4a applies exclusively to the one percent nonrenewal alternative, and presumably is *not* intended to apply to insurers that have *not* selected the one percent alternative nonrenewal method.

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A legislative rule requiring filing of underwriting guidelines by all insurers, regardless of the method of nonrenewal an insurer has selected, appears to exceed the intended scope of the statute. Accordingly, insurers not selecting the alternative one percent nonrenewal alternative and continuing to use the traditional nonrenewal method should not be subject to the new filing requirements of W. Va. Code § 33-6A-4a.

Section 114-3-4.4 provides that a hearing may be called if the nonrenewal notice was issued for a discriminatory reason. The WVIF believes the rule could be made more clear by citing to specific sections of the Code that already identify prohibited types of discrimination.

Finally, Section 114-3-5 of the proposed rule, captioned "Filing of Underwriting Guidelines", appears to exceed what was intended by the Legislature's enactment of W. Va. Code § 33-6A-4a. Specifically, it states "[a]ll underwriting standards and modifications thereto must be specific and clear, must promote the similar treatment of risks, and must be applied consistently and uniformly."

Companies review each potential nonrenewal on an individual, case-by-case basis, using underwriting judgment, to make a risk retention or termination decision. This proposed rule appears to suggest that companies adopt precise underwriting rules for nonrenewing risks. For example, a company may terminate a risk it has insured for only two years with two recent chargeable accidents, but it likely would not terminate a risk it has insured for thirty years with the same record, naturally assuming the prior history was favorable. This proposed rule appears to negate companies' ability to use any sort of judgment in making these underwriting decisions.

**2. Title 114, Series 67 – Rate and Form Filing Abstracts.**

Proposed revisions to two forms appear to require additional, and, at times, duplicative information from insurers:

**a. PCA-R-2004 P&C Insurance Rate Filing Abstract.**

In 6(a), the premium effect information (annual written premium, percent change requested, and additional annual premium) is now required to be submitted by coverage along the lines of 6(b).

The certification has been reworded, now requiring insurers' name, address and telephone number for the individual signing the statement.

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b. PCA-F-2004 P&C Insurance Form Filing Abstract.

The certification has been reworded, now requiring the name, address and telephone number of the individual signing the statement.

An additional requirement has been added to the forms list for any change that broadens or restricts coverage, indicating the filing should provide further description of the impact. This would typically be part of insurers' basic filing package.

Although the WVIF does not believe these revisions are particularly problematic for insurers, there is some concern with the general direction advanced by these proposed revisions. Specifically, the NAIC has been advocating -- and more and more states are adopting -- the uniform transmittal forms, rather than each state's adopting its own version of forms required with filings. The NAIC versions include a general transmittal submitted with all filings as well as specific ones for form and for rate/rule filings.

For form filings, the information requested by the PCA-F-2004 closely tracks the NAIC form filing schedule. For rate filings, the West Virginia abstract requires additional detail; however, much of this likely represents a duplication of effort. Since most of this information is included in our basic filing package, the WVIF assumes that companies will be required to duplicate some of this same information in order that it is also included in the Rate Filing Abstract format. Given that the rate filing abstract already requires companies to include "procedural information" in the filing package, it likely would be more efficient to simplify the abstract by permitting companies to add more specific items or by adopting the NAIC version. This would provide companies with more flexibility in submitting the requisite information.

3. **Title 114, Series 72 --Withdrawal plan procedures for personal private passenger automobile insurance companies.**

Section 114-72-3.2 defines what constitutes a withdrawal and appears to imply that the rule covers a total withdrawal from the private passenger auto or residential property lines of business. In Section 114-72-4.1h.3., and 3.B. in particular, however, it appears that even a partial withdrawal may be considered a withdrawal. This is especially the case in 3.B. The WVIF believes there should be some clarification of this issue.

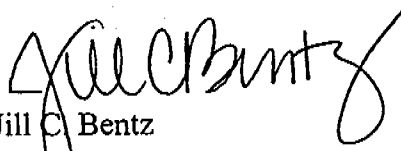
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Section 114-72-4.2 prohibits the filing of a consolidated withdrawal plan by a group of insurers within a holding company system. This seems inefficient. It would seem that much of the information in the withdrawal plan would be duplicative among insurers in the same holding company system, such that having to file separate plans would be redundant.

Finally, Section 114-72-5.4a appears to imply that the transfer of a line of business from one affiliated insurer within a holding company system to another insurer within the same holding company system requires the filing of a withdrawal plan. Companies prefer not to fill a plan in these situations. Accordingly, the WVIF respectfully requests that the definition of what constitutes a withdrawal be clarified.

Thank you for the opportunity to provide these comments. Naturally, please do not hesitate to contact me if you have any questions.

Very truly yours,

  
Jill C. Bentz



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July 30, 2004

**HAND-DELIVERY**

Mary Jane Pickens, Counsel  
West Virginia Insurance Commission  
1124 Smith Street  
P. O. Box 50540  
Charleston, West Virginia 25305-0540

**Re: Comments to Series 3, Series 71, Series 72**

Dear Ms. Pickens:

These comments are submitted on behalf of American Insurance Association ("AIA") to Series 3, 71 and 72. AIA is the country's leading property and casualty insurance trade organization, representing more than 450 insurers that write more than \$115 billion in premiums each year and who annually insure a substantial amount of automobile liability insurance in West Virginia.

**SERIES 3**

With regard to the proposed rules on cancellation and nonrenewal of automobile liability policies, Title 114, Series 3, AIA's members ask for certain points of clarification.

First, section 114-3-2, "Notice of Cancellation or Nonrenewal," provides that insurers "shall describe in detail the reason or reasons for issuance of the notice . . ." This is seemingly inconsistent with 33-6A-4(d) and 33-6A-4a(e) which state that the notice "shall state the specific reason or reasons . . ." So, while the statute requires a precise definition, the proposed regulation seemingly requires a broad "detail." Thus, AIA's members believe this aspect of the regulation may be at odds with the statute. Perhaps something specific, yet non-exclusive about what would be sufficient as "detail" may avoid future problems, though we would have to await review of any proposed language to make a final determination.

Second, AIA believes that Section 114-3-2 should end with language such as "Nothing in this regulation prevents the insurer from providing more information than what is required herein." Here, we have in mind that insurers may want flexibility to provide more information.

Mary Jane Pickens, Counsel  
West Virginia Insurance Commission  
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Third, the Series 3 proposed regulations deal with the "Cancellation and Nonrenewal of Automobile Liability Policies." 114-3-2 provides that an insurer shall include the reason or reasons for the issuance of nonrenewal notice to an insured. Under existing law, a policy of insurance which has been in effect for less than two consecutive years is not subject to nonrenewal criteria and may be nonrenewed by an insurer for any reason. It is only after a policy has been in existence for two consecutive years or longer that an insurer is required to state a specific reason for nonrenewal. See, W. Va. Code § 33-6A-4(b). The proposed regulations do not appear to address the nonrenewal of a policy that has been in effect for less than one year and is non-renewed by the insurer who has not elected the alternative method of nonrenewal contained in Section 4(a).

Finally, these regulations should make clear that they only apply to private passenger automobile liability insurance policies and not commercial policies.

#### SERIES 71

Proposed Series 71 are entitled "Insurance Fraud Prevention." The proposed regulations reference the NAIC model Fraud Reporting Form (114-71-3.5). The current form is not attached to the regulations. For purposes of convenience, it might be helpful if the current form is attached to this regulation and/or information where the current forms may be found, i.e., website, are included in this regulation.

#### SERIES 72

The proposed rule, Title 114, Series 72, provides very broad authority to the regulator to establish rules on withdrawal and AIA has concerns this may be more than that contemplated in the statute. The statute provides, at 33-2-20(a), that the commissioner may authorize "an insurer to withdraw from the line of automobile liability insurance for personal, private passenger automobiles." Nonetheless, the definition of the "withdrawal" under the proposed rule appears to limit the standard of "withdrawal from the line." Under the proposal, "Withdrawal" means "the termination, cancellation, or nonrenewal of personal private passenger automobile liability or physical damage insurance. . . or policies of property insurance." See 114-72-2-2.3. In the absence of "line of" language, this regulation could arguably apply to each instance of termination, cancellation or nonrenewal.

The amendments to Article 6A in the 2004 legislation made reference to automobile liability or physical damages insurance. Article 6A only applies to private passenger automobile insurance and not commercial insurance policies. As a matter of clarification, these regulations

Mary Jane Pickens, Counsel  
West Virginia Insurance Commission  
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only apply to personal and not commercial lines, private passenger automobile insurance, and the regulations should so provide.

AIA believes that court orders should also be included as instances when an insurer has not "acted on its own initiative" under 114-72-3-3.3. This is important because withdrawal plans are required when an insurer undertakes to withdraw. Since administrative orders are included in situations that are not considered acts of an insurer's own initiative, this is a straightforward and appropriate addition when one considers that court orders could result in non-voluntary acts.

AIA is concerned about the breadth of "services" insurers must reveal they will provide in the required "withdrawal plan" under 114-72-4-4.1.g. This is ambiguous and could result in substantial, even unreasonable service obligations. Without some reasonable limitation, AIA expects that this could result in unnecessary conflicts. It may be best to specifically state the services that are anticipated, so insurers may determine whether they are appropriate under the statute and proposed rule. In addition, under subsection n of the same provision, we are not sure that listing "the other programs and products the insurer will continue to "offer" is consistent with the statute's focus on "automobile liability insurance for personal, private passenger automobiles." If, as we imagine, the intent is to weigh whether withdrawal will be in the best interest of the insurer, and WV insureds, AIA is not sure how that will be accomplished given that these are different lines of insurance.

The regulations propose standards for insurers that withdraw a particular line in West Virginia. 114-72-4.1(o) provides that: "An affirmation that no new business will be solicited by the insurer in this state during or within three years subsequent to the filing of the withdrawal plan unless the commission waives this requirement." This three year requirement does not make clear that the new business is the same business which the insurer elects to nonrenew and withdraw. Second, there does not appear to be any statutory authority in either Article 17A or Article 6A to support this three year restriction, and therefore, it should be deleted.

Finally, the regulations establish other restrictions to re-entering into the market after an insurer has withdrawn. 114-72-7 provides, in pertinent part, that an insurer that has withdrawn from the state cannot resume writing that line of insurance unless it receives the "written approval of the Commissioner." The implication is that an insurer must comply with some requirement different than any other insurer if it wants to rewrite business. The standards for this "approval" are not set out in this rule, nor is this requirement established by either Article 6A or 17A. Absent the necessary statutory authority to require an insurer to meet "any different requirement" than any other insurer, this paragraph should be dropped. If it is included, the criteria or conditions for obtaining this approval should be included.

 SPILMAN THOMAS & BATTLE, PLLC  
ATTORNEYS AT LAW

Mary Jane Pickens, Counsel  
West Virginia Insurance Commission  
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AIA greatly appreciates the consideration of these comments. We look forward to further dialogue as these proposals progress. In the interim, please do not hesitate to contact me us with any questions or concerns.

Sincerely yours,



T. Randolph Cox  
Counsel, American Insurance Association

TRC/lb;317552

cc: R. Taylor Cosby  
James J. Whittle

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

**PROCEDURAL RULE  
INSURANCE COMMISSIONER**

**SERIES 72**

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

**FILED**

2004 AUG 26 P 2:35

OFFICE WEST VIRGINIA  
SECRETARY 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. -- August 26, 2004.

1.4. Effective Date. -- September 25, 2004.

**§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 the line of personal private passenger automobile liability or physical damage insurance subject to article six-a, chapter thirty-three of the West Virginia Code; or the termination, cancellation, or nonrenewal of the line of property insurance, other than policies of inland marine insurance, subject to article seventeen-a, chapter thirty-three of the West Virginia Code; or the transfer from one affiliated insurer within a holding company system to another insurer within that same

holding company system of the line of personal private passenger automobile liability or physical damage insurance or property insurance; or the cessation of business entirely in this state.

2.4. "Withdrawal plan" means a written document which contains the required elements listed in section 4 of this rule and is filed with the commissioner for purposes of withdrawal from the line of personal private passenger automobile liability or physical damage insurance subject to article six-a, chapter thirty-three of the West Virginia Code; or for withdrawal from the line of policies of property insurance, other than policies of inland marine insurance, subject to article seventeen-a, chapter thirty-three of the West Virginia Code; or for withdrawal from doing business in this state.

### **§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 the line of personal private passenger automobile liability or physical damage insurance subject to article six-a, chapter thirty-three of the West Virginia Code; or ceasing to write the line of policies of property insurance, other than policies of inland marine insurance, subject to article seventeen-a, chapter thirty-three of the West Virginia Code; or ceasing to operate in the state.

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, when it acts pursuant to a court order, 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 the line of 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 the line 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.**

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 the same level of services to the insurer's West Virginia policyholders and claimants as set forth in the insurer's contracts;
- 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;

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;

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 in the same line as that from which the insurer has withdrawn 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.

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 state without complying with all applicable statutory and regulatory provisions governing authorization to write such line of insurance in this state.