

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #3

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2005 JUL 29 P 1:48

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Insurance Commissioner TITLE NUMBER: 114

CITE AUTHORITY: W. Va. Code §§33-2-10 and 33-20-4a

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: 75

TITLE OF RULE BEING PROPOSED: Private Passenger Automobile and Property Insurance -
Biannual Rate Filing Requirements

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


Authorized Signature

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period, Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 29, 2005

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: OFFICE OF THE INSURANCE COMMISSIONER
ATTN: Legal Division
1124 Smith Street
Post Office Box 50540
Charleston, West Virginia 25305-0540

LEGISLATIVE RULE TITLE: PRIVATE PASSENGER AUTOMOBILE AND PROPERTY INSURANCE - BIENNIAL RATE FILING REQUIREMENTS - (TITLE 114, SERIES 75)

1. Authorizing statute(s) citation:

W. Va. Code §§33-2-10 and 33-20-4a.

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

June 22, 2005 - Comment Period.

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

None

c. Date of Public Hearing(s) or Public Comment Period ended:

Comment period ended July 22, 2005.

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

Attached X No comments received

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

July 29, 2005

Insurance Commissioner
Title 114, Series 75

- f. **Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule: (Please type)**

Timothy Murphy, Associate Counsel
West Virginia Insurance Commission
Legal Division
P.O. Box 50540
Charleston, WV 25305-0540
Phone: (304) 558-0401
Fax: (304) 558-1362
E-mail: Timothy.Murphy@wvinsurance.gov

- g. **IF DIFFERENT FROM ITEM 'f', please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)**

Same

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 or comment period:**

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:**

Not applicable

Insurance Commissioner
Title 114, Series 75

ATTACHMENT TO QUESTION 2 (d):

One comment, submitted on behalf of Westfield Insurance by letter dated July 21, 2005 from Frank J. Sandor, Legal Counsel, was received during the comment period in response to the proposed legislative rule entitled "Private Passenger Automobile and Property Insurance -- Biannual Rate Filing Requirements" (114 CSR 75). Mr. Sandor commented that the definitions of both "private passenger automobiles" and "property used for personal or family needs" were unclear in that each could include policies to which the legislation was not intended to cover. He suggests that the lack of clarity makes it difficult for insurers to determine which lines are subject to the new statutory requirement that the largest insurers file their rates biannually. *See* W.Va. Code 33-20-4a (2005).

The Commissioner believes that the concerns expressed by Mr. Sandor are unfounded. The proposed rule is intended to inform companies regarding the manner in which the Insurance Commissioner will make her determination with respect to which companies are subject to the new filing requirement. Once that determination is made, the insurers affected will be notified by the Commissioner; no independent analysis by the insurers is necessary.

RECEIVED
JUL 22 2005
WVIC LEGAL DIVISION



July 21, 2005

Honorable Jane L. Cline
Insurance Commissioner
West Virginia Insurance Department
- Greenbrooke Building
- 1124 Smith Street
Charleston, West Virginia 25305

ATTENTION: Attorney Mary Jane Pickens
General Counsel, Legal Division

RE: Proposed Series 75, Rule 114-75 Biannual Rate Filing Requirements

Dear Attorney Pickens:

On behalf of Westfield Insurance, please accept the following comments on Proposed Series 75, Rule 114-55 "Biannual Rate Filing Requirements." These comments are submitted to request clarification and to avoid any confusion on behalf of the citizens of West Virginia and insurance carriers of your state.

Specifically, there are some questions as to the definitions provided in Section 2.1 referring to "private passenger automobiles" and "property used for personal or family needs."

In Section 2.1.a, the definition provided for "Insurance on private passenger automobiles" could include commercial auto policies insuring private passenger automobiles, umbrella policies, garage liability policies, and other similar policies. Perhaps, language that states "Insurance on private passenger automobiles means only privately owned automobile policies of insurance and not commercial policies providing insurance on pleasure use private passenger automobiles" could be considered.

Additionally, Section 2.1b refers to "Property used for personal or family needs." However, this would include more than just homeowners policies. It would also include owner occupied dwelling fire policies, farmowners policies, and marine floater policies. It is our belief that the intent of the legislature was to solely consider homeowner policies of insurance.

Without clear guidelines and/or specific definitions of "private passenger automobiles" and "property used for personal or family needs," it is difficult for insurers to determine which lines are subject to the five percent (5%) biannual rate filing requirements. As such it is requested that the definitions be revised, to add clarification, as to which types of policies are subject of this rule.

Thank you for your consideration. If have any questions, feel free to contact me personally at 1.800.243.0210 ext: 2387.

Sincerely,



Frank J. Sandor
Legal Counsel,
Product Management
franksandor@westfieldgrp.com

cc: Charles Neeson

Insurance Commissioner
Legislative Rule
Title 114, Series 75

**PRIVATE PASSENGER AUTOMOBILE AND PROPERTY
INSURANCE - BIANNUAL RATE FILINGS**

TITLE 114, SERIES 75

BRIEF SUMMARY OF RULE

- The proposed rule will establish procedures by which certain insurers providing non-commercial automobile and property insurance are required to make biannual rate filings. See W. Va. Code §33-20-4a. Under present law, these insurers only make rate filings when an initial or new rate is being proposed. This rule will set forth which insurers must make the filings, when the filings must be made and what the filings must include.

Insurance Commissioner
Legislative Rule
Title 114, Series 75

**PRIVATE PASSENGER AUTOMOBILE AND PROPERTY
INSURANCE - BIENNIAL RATE FILINGS**

TITLE 114, SERIES 75

STATEMENT OF CIRCUMSTANCES

The proposed rule will implement Senate Bill 418 (RS 2005), which provides that "the [Insurance] Commissioner shall promulgate legislative rules" on or before July 1, 2005, to establish procedures by which certain insurers providing non-commercial automobile and property insurance are required to make biennial rate filings. See W. Va. Code §33-20-4a (2005).

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Private Passenger Automobile and Property Insurance - Biannual Rate Filings
(Title 114, Series 75)

Type of Rule: X Legislative Interpretive Procedural

Agency: Insurance Commissioner

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

Phone Number: (304) 558-0401 Email: Timothy.Murphy@wvinsurance.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

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

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	2006 Increase/Decrease (use "-")	2007 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	None	None	None
Personal Services	None	None	None
Current Expenses	None	None	None
Repairs & Alterations	None	None	None
Assets	None	None	None
Equipment	None	None	None
Other	None	None	None
2. Estimated Total Revenues	None	None	None

Rule Title: Biannual Rate Filings for Non-Commercial Automobile and Property Insurers
(Title 114, Series 75)

3. Explanation of above estimates (including long-range effect):
Please include any increase or decrease in fees in your estimated total revenues.

N/A

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date: July 29, 2005

Signature of Agency Head or Authorized Representative



Jane L. Cline, Insurance Commissioner

114CSR75

**LEGISLATIVE RULE
INSURANCE COMMISSIONER**

**SERIES 75
PRIVATE PASSENGER AUTOMOBILE AND PROPERTY INSURANCE -
BIANNUAL RATE FILING REQUIREMENTS**

Section

- 114-75-1. General.
- 114-75-2. Applicability.
- 114-75-3. Biannual Rate Filing Periods; Information Required To Be Reported.
- 114-75-4. Penalties.
- 114-75-5. Severability.

114CSR75

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LEGISLATIVE RULE
INSURANCE COMMISSIONER

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

SERIES 75
PRIVATE PASSENGER AUTOMOBILE AND PROPERTY INSURANCE -
BIANNUAL RATE FILING REQUIREMENTS

§114-75-1. General.

1.1. Scope -- This rule establishes guidelines and procedures under which every insurer providing five percent (5%) or more of the insurance in West Virginia for private passenger automobiles or property used for personal or family needs shall submit rate filings on a biannual basis.

1.2. Authority -- W. Va. Code §§33-2-10 and 33-20-4a (2005).

1.3. Filing Date --

1.4. Effective Date --

§114-75-2. Applicability.

2.1. Insurers subject to biannual rate filing requirements. This rule applies to each insurer that provided five percent (5%) or more of the total insurance in West Virginia on either private passenger automobiles or on property used for personal or family needs.

a. "Insurance on private passenger automobiles" means a policy providing automobile liability insurance for a private passenger automobile.

b. "Property used for personal or family needs" means a policy providing property insurance which insures against loss of or damage to real property which is used predominantly for the residential purposes of the named insured, loss of or damage to personal property in which the named insured has an insurable interest where the personal property is used for personal, family or household purposes, and the personal property which is within a residential dwelling.

2.2. Notification by the commissioner. The commissioner shall, on or before August 1, 2005, and annually thereafter, notify in writing those insurers that he or she has determined are subject to biannual rate filing requirements under subsection 2.1 of this section of their obligation to make a rate filing in accordance with section 3 of this rule.

**Insurance Commissioner
Legislative Rule
Title 114, Series 75**

2.3. Method of determination. The commissioner shall determine which insurers are subject to the filing requirement by comparing every insurer's gross direct written premiums in West Virginia during the preceding calendar year for each of the two types of insurance described in subdivisions a and b, subsection 2.1 of this section with the total of all such premiums for that year reported by all companies for that type in West Virginia. Each insurer that is determined to have provided five percent (5%) or more of the total insurance for either type of insurance will be subject to the filing requirements of subsections 3.1 and 3.2 of this rule.

§114-75-3. Biannual Rate Filing Periods; Information Required To Be Reported.

– 3.1. Rate filing deadlines. Each insurer subject to the filing requirement shall submit a rate filing to the commissioner both on or before September 30 and on or before March 31 in the year subsequent to receipt of the notice issued in accordance to subsection 2.2 of this rule.

3.2. Rate filing requirements. Insurers shall submit rate filings in accordance with the provisions of W. Va. Code §33-20-4 and WV 114CSR67 and shall include any other relevant information required by the commissioner.

§114-75-4. Penalties.

4.1. Failure to submit rate filing. Any insurer that fails to timely submit the rate filing specified in subsection 3.2 of this rule shall be fined one hundred dollars (\$100.00) for each day the rate filing is late. The commissioner may waive or reduce this penalty if he or she determines that the failure to timely file was caused by excusable neglect; however, the assessment of a penalty under this section is automatic unless a waiver or reduction of the penalty is agreed to by the commissioner in writing.

§114-75-5. Severability.

5.1. If any provision of this rule is held invalid, the remainder of the rule shall not be affected thereby.