

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #3

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WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: Division of Motor Vehicles TITLE NUMBER: 91

CITE AUTHORITY: WV Code §§17A-2-9, 17D-2A-8

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 13

TITLE OF RULE BEING AMENDED: Compulsory Motor Vehicle Liability Insurance

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

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



WEST VIRGINIA
DEPARTMENT OF TRANSPORTATION
1900 Kanawha Boulevard East • Building Five • Room 109
Charleston, West Virginia 25305-0440 • 304/558-0444

July 29, 2011

The Honorable Natalie E. Tennant
Secretary of State
Building 1, Suite 157-K
1900 Kanawha Boulevard, East
Charleston, WV 25305

Dear Madam Secretary:

The Commissioner of Motor Vehicles is hereby authorized to file agency approved changes to 91 CSR 13 Compulsory Motor Vehicle Liability Insurance. These changes constitute a complete re-write of the rule consequently strike-thru and underscoring punctuation is not used. Several minor changes were made as a result of public comment.

Comments and concerns about the contents of this rule should be directed to the Commissioner of Motor Vehicles. Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink that reads "Paul A. Mattox, Jr." in a cursive style.

Paul A. Mattox, Jr., P.E.
Secretary of Transportation\
Commissioner of Highways

/em
Enclosure



WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Division of Motor Vehicles

5707 MacCorkle Avenue, Southeast
Post Office Box 17300
Charleston, West Virginia 25317-0010 • (304) 558-3900
TDD (800) 742-6991 • (800) 642-9066

91 CSR 13

Compulsory Motor Vehicle Liability Insurance

Summary of Content

The following changes to the compulsory insurance enforcement are proposed:

1. Enforcement of the requirement of motor vehicle liability insurance will be verified with the indicated insurance company electronically with 3 tracks of enforcement:
 - a. at the time of a vehicle transaction including but not limited to initial registration, renewal of registration or transfer of registration,
 - b. scheduled complete verification of entire active vehicle registration data base to identify vehicles that are no longer covered by an insurance policy, and
 - c. by law enforcement at the time of a traffic stop or crash investigation.
2. Less detailed specifications for the display of data on the insurance certificate and notice of cancellation to provide insurance companies greater flexibility in determining the style and format these forms.
3. Addition of the NAIC number (National Association of Insurance Commissioners) assigned code as an identifier for the insurance company on DMV forms and on the Certificate of Insurance and Notice of Cancellation.
4. Allow Insurance companies the option of providing cancellation notices either by paper or electronically.
5. Reference to the IICMVA (Insurance Industry Committee on Motor Vehicle Administration) model standards and practices for electronic insurance verification.
6. Updating of provisions relating to administrative appeals of driver's license suspensions and motor vehicle registration revocations to reflect the establishment of the Office of Administrative Hearings.

A handwritten signature in black ink, appearing to read "Joe E. Miller".

Joe E. Miller
Commissioner



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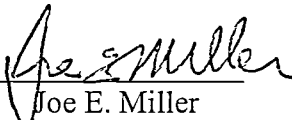
91 CSR 13

Compulsory Motor Vehicle Liability Insurance

Statement of Circumstances Requiring Filing

Senate Bill 394 [2010 Regular Session] authorizes the Division of Motor Vehicles to establish an electronic insurance verification program to identify motorists who are operating motor vehicles without insurance.

As a result of the changes in the process to monitor uninsured motorists contemplated by SB 394, the agency has revised the legislative rule that governs enforcement of compulsory insurance. The rule was last changed in 1997.


Joe E. Miller
Commissioner

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

91 CSR 13 Compulsory Motor Vehicle Insurance

Rule Title: _____

Type of Rule: Legislative Interpretive Procedural

Agency: Division of Motor Vehicles

Address: 5707 MacCorkle Ave South East
P.O. Box 17300
Charleston, WV 25317

Phone Number: 304 926-3871 Email: steven.o.dale@wv.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 Electronic Insurance Verification program is designed to be self supporting. First time offenders will be given the opportunity to pay a \$200 penalty in lieu of a 30 day driver's license suspension.

The Program will be operated by a third party vendor awarded a contract under competitive bid. The cost of the vendor will be paid out of the Road Fund, and the penalty fees will be deposited into the Road Fund.

It is anticipated that the Program will cost \$2,014,617 annually to operate, while estimated revenue from collection of the penalty fees will be \$4,625,000.

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	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	2,138,097.00	2,138,097.00	2,138,097.00
Personal Services	110,280.00	110,280.00	110,280.00
Current Expenses	2,014,617.00	2,014,617.00	2,014,617.00
Repairs & Alterations			
Assets	900.00	13,200.00	900.00
Other			
2. Estimated Total Revenues	4,625,000.00	4,625,000.00	4,625,000.00

91 CSR 13 Compulsory Motor Vehicle Insurance

Rule Title: _____

Rule Title: _____

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

not applicable

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.

Program costs are primarily the cost of paying a third party vendor to administer the program. This cost will be impacted by the competitive bidding of the contract to a third party vendor. Vendors are already operating similiar programs in other states and have established electronic links with most of the same insurance companies that do business in West Virginia. It is anticipated since there are at least three vendors on the national level interested in gaining contracts in all states, that competion will provide West Virginia with the lowest possible cost to run the program.

Date: June 9, 2011

Signature of Agency Head or Authorized Representative

R. Miller, COMMISSIONER

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 28, 2011

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* Division of Motor Vehicles
5707 MacCorkle Ave SE
P.O. Box 17300
Charleston, WV 25317

LEGISLATIVE RULE TITLE: Compulsory Motor Vehicle Liability Insurance

1. Authorizing statute(s) citation WV Code §17A-2-9 and WV Code §17D-2A-8

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 14, 2011

b. What other notice, including advertising, did you give of the hearing?
Mailed notice to insurance industry representatives, Insurance Commissioner, State Police

c. Date of Public Hearing(s) *or* Public Comment Period ended:
July 19, 2011

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, 2011

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

Steven O. Dale, Deputy Commissioner

WV Division of Motor Vehicles

5707 MacCorkle Ave SE

PO Box 17300

Charleston, WV 25317

304 926-3871

fax 304 926-3884

steven.o.dale@wv.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)

David Bolyard, Director of Driver Services- 304 926-0728

Debbie Fields, Manager of Driver Improvement Programs 304 926-3844

WV Division of Motor Vehicles

5707 MacCorkle Ave SE

PO Box 17300

Charleston, WV 25317

debbie.l.fields@wv.gov

david.h.bolyard@wv.gov

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.

b. Date of hearing or comment period:

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

d. Attach findings and determinations and reasons:

Attached



WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Division of Motor Vehicles

5707 MacCorkle Avenue, Southeast
PO Box 17020
Charleston, West Virginia 25317-0010 • (304) 558-3900
TDD (800) 742-6991 • (800) 642-9066

91 CSR 13

Compulsory Motor Vehicle Liability Insurance

Summary of Comments Received

A The Division of Motor Vehicles received three comments from interested parties concerning the contents of 91 CSR 13 Compulsory Motor Vehicle Liability Insurance. Those comments are attached.

1. Jill Bentz representing the West Virginia Insurance Federation
2. Heather E. Ewashinka representing Progressive Classic Insurance Company
3. James J. Whittle representing the American Insurance Association

B. In summary, these comments represent three main areas of concern:

1. Requiring the NAIC number be placed on the insurance certificate will be a burdensome and expensive requirement.

a. Many insurance companies are now providing the NAIC number to their customers so its use is not a new development.

b. DMV will only require the NAIC number on the insurance certificate itself, not on any other document issued by insurance companies. DMV realizes that insurance companies issue a multitude of documents with insurance policy information. The use of the NAIC number will streamline the electronic verification process for most transactions. DMV is prepared to handle other verifications in other ways without a NAIC number, but its use on the insurance certificate will allow DMV to operate the most efficient and cost effective program possible.

2. Terms in the rule implied that Insurance companies were required to include commercial vehicles in the electronic insurance verification process.

The agency understands the concern about electronic insurance verification for commercial vehicles and wherever possible had corrected the rule to clarify the intent that commercial vehicles covered under commercial policies are not required to be part of the electronic

program. DMV wants to concentrate its resources on individual policies, not commercial policies covering vehicles.

3. The use of the word “fleet” in the rule raised many of the same concerns that the commercial vehicle provisions raised. The use of the word “fleet” has a different meaning to DMV [pertaining to other requirements for qualifying as a “self insurer”] and its use in this particular rule as it relates to electronic insurance verification was misleading and was removed where necessary.

C. Specific Responses to Each Comment

1. WV Insurance Federation

a. The Federation was concerned about the NAIC number in general and the requirement that it was to be used on all documents, and that insurance companies needed more time to implement this provision.

*Insurance companies are now using the NAIC number so its use is not a new development.

*DMV is requiring the NAIC number on only the Certificate of Insurance and no other document,

*At the present time, it appears that the first pilot testing for verification links will be completed November 1, 2011. The law provides that the deadline for insurance companies to be on-line with the new system no later than 18 months after the pilot testing is completed. This translates to a deadline of June 1, 2013, which gives more than the one year “grace period” requested by the commenter.

b. Comments on the issue of commercial vehicles and commercial policies.

DMV has excluded commercial vehicles and commercial policies from the program, and has made changes to the rule to clarify this intent and position. This agency understands that commercial vehicles and commercial policies are handled differently in terms of what information is stored electronically and will do its very best to accommodate the industry and following the statutory language that excludes commercial vehicles from electronic verification.

2. American Insurance Association

a. Use of the word fleet implies commercial vehicle involvement in the electronic insurance verification process.

References to fleet have been removed from the rule because it is unnecessary in this rule, and it means something different to industry than it does to DMV.

b. The commenter raises concerns that the rule widens DMV’s ability to verify insurance by any means beyond what is included in the IICMVA model.

The reference to any means possible, was not meant to expand the methods of verifying insurance but meant to provide authority to continue present methods of verification until such time as all companies are participating. There will be a window of time that current methods will be used in instances involving companies that are not on-line. It will be DMV operating a dual system, not insurance companies. As a company transitions to electronic verification, the other methods now used are phased out.

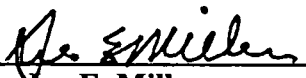
3. Progressive Insurance Group

a. Raises concerns similar to the previous comments concerning commercial vehicle reporting and participation requirements.

Several changes to the rule were made to address this issue and to reaffirm that the intent of the WV Electronic Insurance Verification Program is to exclude commercial vehicles and commercial policies for the reasons set forth and in adherence to the IICMVA model.

D. Summary of Changes by Rule Designation

1. 91 CSR 13.2.3 – Clarified definition of commercial auto coverage
2. 91 CSR 13.2.8 – Definition of Fleet owner struck because this definition conflicted with the industry use and understanding of term and its use does not pertain to electronic insurance verification since it relates to requirements of other sections of law pertaining to “self insurers”
3. 91 CSR 13.2.22 - Clarified that DMV only uses and will only use verification methods authorized by statute.
4. 91 CSR 13.8 – Change several references to commercial and fleet to remove perceived references to verifying commercial vehicle insurance coverage electronically for reasons stated previously.



Joe E. Miller
Commissioner



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July 19, 2011

VIA HAND-DELIVERY

Steven O. Dale
Deputy Commissioner
Division of Motor Vehicles
Office of the Commissioner
5707 MacCorkle Ave., SE
P.O. Box 17300
Charleston, WV 25317

**Re Comments to Proposed Rule 91 CSR 13
 Rule Relating to Compulsory Motor Vehicle Liability Insurance**

Dear Steve:

I write on behalf of the West Virginia Insurance Federation (the "Federation") to provide comments on Proposed Rule 91 CSR 19 relating to Compulsory Motor Vehicle Liability Insurance. The Federation is the state trade association for property and casualty insurance companies doing business in West Virginia, and its members insure approximately eight of every ten automobiles insured in West Virginia.

The Federation offers the following comments with respect to this rule:

1. The Federation has a question pertaining to the proposed revision to § 91-13-8(1) "Certificate of Insurance." The proposed language currently provides: "[t]he certification shall be accepted by the Commissioner and all law enforcement agencies as proof of insurance however, all forms of insurance information are subject to the electronic insurance verification program." (Underlining added.)

The Federation seeks clarification as to the intended impact of this proposed new language. While the typical form that an insured will have on hand to conduct a DMV transaction is the certificate of insurance (referred to by many as the "ID card"), it is possible that an insured may present a policy declaration page, a renewal notice, or even a binder as evidence of insurance coverage. The Federation's members do not read this proposed language as requiring that a NAIC number be displayed on each of these documents – and, importantly, do not believe the DMV intends to require insurers to incur the expense of amending all of these additional forms – but again, seek clarification as to the intended impact of the proposed language underlined above.

The Federation also has a concern with any requirement that insurance companies' NAIC numbers be added to the ID card because it adds a tremendous cost and expense to insurance companies. More specifically, we respectfully suggest that the addition of the NAIC number to the certificate of insurance, or "ID card", is unnecessary to identify the insurance company, so long as other, readily available identifiers are used. For example, many states have successfully implemented electronic

verification procedures that use only the policy number, policy effective date, and VIN number to match the vehicle with its electronic registration and insurance information. Those basic identifiers are now almost universally included by insurers on their certificates of insurance. Programming ID cards with the NAIC number would also be costly for many insurers, as they would be required to adapt a countrywide template to a single state. Most insurance cards are small and wallet-size, and adding the NAIC number would require insurers to redesign their cards to make room for the new information. The ID cards already include extensive and sufficient information to identify the insurance status of the vehicle. If the NAIC number requirement cannot be eliminated entirely, we recommend that the information be made optional, or that insurers be allowed an additional 12 months to implement the new requirement.

2. The Federation is also very concerned about the effect the proposed rule will have on commercial auto coverage and commercial fleets. Specifically, the Federation believes the proposed rule improperly narrows the statutory exemption for vehicles insured under commercial auto coverage and limits the exemption only to commercial fleets. This regulatory provision should be amended to follow the statutory exemption for “vehicles insured under commercial auto coverage.”

As you likely know, the enabling legislation for electronic verification amends Chapter 17D of the West Virginia Code, the Motor Vehicle Safety Responsibility Law. The amended statute outlines the scope of the new law, and W. Va. Code § 17D-2A-2 provides: “...This article shall not apply to vehicles insured under commercial auto coverage; however, insurers of such vehicles may participate on a voluntary basis.”

The proposed rule, however, provides as follows: “Pursuant to W. Va. Code § 17D-2A-2, motor vehicles covered under a commercial fleet policy are excluded from the electronic verification program.” (See Proposed § 91CSR 13-3.)

Not all vehicles insured under commercial auto coverage are insured as part of fleet coverage. As a result, the proposed rule is inconsistent with the statute and sweeps into its scope commercial vehicles that are not insured as part of a fleet. Not only does this inconsistency lead to confusion in the industry, but, the Federation, respectfully, does not believe the DMV has the authority to narrow the commercial exemption in this manner.

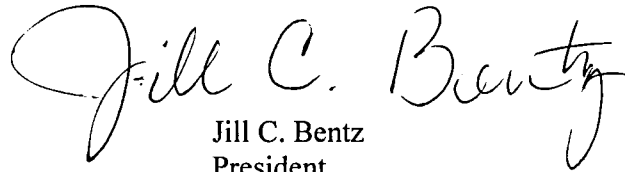
3. The proposed rule also indicates the DMV’s intention to follow the model established by the Insurance Industry Committee on Motor Vehicle Administration (“IICMVA”) for the implementation of electronic insurance verification. The IICMVA, however, has made the case that commercial vehicles should be totally exempt from reporting programs like electronic verification because commercial vehicles are registered and insured differently from personal vehicles. Commercial insureds do not register all vehicles the same way and often do not use personal identifiers such as name, address, and VIN. The Federation fears this could lead to insurance verification errors because of the inability to match a commercial vehicle to the DMV registration databases. See “Making the Case for Using Web Services to Verify Evidence of Auto Liability Insurance” available at the following link: <http://www.iicmva.com/White%20Paper%202.0.pdf>.

Commercial businesses typically own large capital assets and willingly buy high limits of insurance to protect them. Commercial insureds are less likely to allow their employees to drive uninsured. Accordingly, there is less of a need for state intervention to verify compulsory insurance.

Steven O. Dale
July 19, 2011
Page 3 of 3

Thank you for your consideration of these comments. Naturally, do not hesitate to contact me if you have any questions.

Very truly yours,

A handwritten signature in black ink that reads "Jill C. Bentz". The signature is written in a cursive style with a large initial "J" and a long, sweeping tail on the "z".

Jill C. Bentz
President

JCB/sll

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PROGRESSIVE®

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Telephone: 440-395-3680
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www.progressive.com*

July 18, 2011

Division of Motor Vehicles
Office of the Commissioner
Attention: Steven O. Dale
5707 MacCorkie Ave. SE
Post Office Box 17300
Charleston West Virginia 25317

RE: 2011 91 CSR 13

Dear Mr. Dale,

Progressive Classic Insurance Company appreciates the opportunity to submit these comments on the proposed amendments to 91 CSR 13. The proposed amendments are responsive to the passage of Senate Bill No. 394 relative to implementation of electronic insurance verification.

The Commercial Auto Exemption

I. Summary: The proposed regulation improperly narrows the statutory exemption for vehicles insured under commercial auto coverage and limits the exemption only to commercial fleets. This regulatory provision should be amended to follow the statutory exemption for "vehicles insured under commercial auto coverage."

II. Discussion: The enabling legislation for electronic verification amends Chapter 17D of the West Virginia Code, the Motor Vehicle Safety Responsibility Law. The amended statute outlines to scope of the new law. Section 17D-2A-2 provides:

"...This article shall not apply to vehicles insured under commercial auto coverage; however, insurers of such vehicles may participate on a voluntary basis."

The proposed regulation, however, provides as follows:

“...Pursuant to W. Va. Code §17D-2A-2, motor vehicles covered under a commercial fleet policy are excluded from the electronic verification program.” (See Proposed 91CSR 13-3, emphasis added).

Not all vehicles insured under commercial auto coverage are insured as part of fleet coverage. Therefore, the proposed regulation is inconsistent with the statute and sweeps into its scope commercial vehicles that are individually registered and not insured as part of a fleet. The Division does not have the authority to narrow the commercial exemption in this manner. Further, this inconsistency will create confusion in the industry.

In addition, the proposed rule indicates its intent to follow the model established by the Insurance Industry Committee on Motor Vehicle Administration (IICMVA) for the implementation of electronic insurance verification. However, the IICVMA has made the case that commercial vehicles should be totally exempt from reporting programs like electronic verification because commercial vehicles are registered and insured differently from personal vehicles. Commercial insureds do not register all vehicles the same way and often do not use personal identifiers such as name, address, and VIN. This can cause insurance verification errors because of the inability to match a commercial vehicle to the DMV registration databases. See "Making the Case for Using Web Services to Verify Evidence of Auto Liability Insurance", <http://www.iicmva.com/White%20Paper%202.0.pdf>.

Commercial businesses typically own large capital assets and willingly buy high limits of insurance to protect them. Commercial insureds are less likely to allow their employees to drive uninsured. Accordingly, there is less of a need for state intervention to verify compulsory insurance.

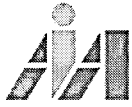
III. Conclusion: Progressive recommends that the proposed regulation follow the statutory exemption for vehicles insured under commercial auto coverage rather than limiting the commercial exemption only to commercial fleets.

We respectfully request your consideration of these comments.

Sincerely,

Heather E. Ewashinka
Assistant General Counsel
Corporate Law Department
The Progressive Group of Insurance Companies
6300 Wilson Mills Road N72B
Mayfield Village, Ohio 44143

Direct Dial Phone: (440) 395-3682
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Email: heather_ewashinka@progressive.com



American Insurance Association

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D.M.V. COMMISSIONER

2011 JUL 19 AM 11:56

2101 L Street NW

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Fax 202-293-1219

www.aiadc.org

July 19, 2011

Via E-mail (steven.o.dale@wv.gov) & Regular Mail

Division of Motor Vehicles
Office of the Commissioner
Attention—Steven O. Dale
5707 MacCorkle Ave., SE
Post Office Box 17300
Charleston, WV 25317-0010

Re: 2011 91 CSR 13

Dear Mr. Dale:

The American Insurance Association and its members submit these comments for the Division of Motor Vehicle's (DMV) consideration. AIA greatly appreciates the DMV's efforts to work with the insurance industry in developing its verification program. AIA has worked on the issue of auto insurance verification for years and is quite familiar with what has worked and not worked elsewhere. Moreover, AIA worked extensively on the passage of SB 394. Consequently, we believe we can offer substantive perspective on the proposed rules.

While we offer more detailed comments below, three particular points warrant immediate attention. First, unlike the statute, the proposed rules do not appear to limit the verification program to vehicles covered under a personal lines policy. In other words, despite their exclusion in the statute, the rules propose to cover some commercially insured vehicles, namely non-fleet vehicles. Second, the rules suggest that DMV may use any means available to verify insurance coverage whereas the statute seems to permit only several enumerated means. Third, the rules do not appear to contain the alternative methods of reporting set out in the statute.

It seems that DMV's intent may be that the actual procedures and protocols established for the verification program will address these and the following issues, rather than the rules. Nonetheless, we believe these rules and regulations should incorporate the statutory provisions rather than awaiting the actual model for verification produced by the department. On these bases, we ask that the draft rules be reconciled more closely with the statute.

Commercial Auto & Fleet

Pursuant to 2.3, 2.8 and 3.1, the Rules suggest that the electronic verification program will not apply to "motor vehicles covered under a commercial fleet policy." While there is no

definition of “commercial fleet policy,” it appears from the referenced rules that this intends to only exclude reporting for commercial policies or insureds “with more than twenty-five vehicles registered in this state.” It is worth noting that many if not most “fleet” definitions are “5 or more vehicles.” Consequently, this would upset existing business practices within West Virginia.

Nonetheless, excluding only fleet vehicles appears inconsistent with SB 394, which provides *complete* exemption for commercially insured vehicles. §17D-2A-2 states:

“For the purposes of this article, *commercial auto coverage is defined as any coverage provided to an insured, regardless of number of vehicles or entity covered, under a commercial coverage form and rated from a commercial manual approved by the Department of Insurance.* This article *shall not apply* to vehicles insured under commercial auto coverage; however, insurers of such vehicles may participate on a voluntary basis.”

(emphasis added). As the language suggests, commercially insured vehicles are not subject to the verification program though they may participate voluntarily.

Moreover, because of the way commercial auto insurance is often conducted, applying the verification program to it all may harm West Virginia businesses. Because of the “real time” nature of the transportation economy it is often the case that vehicles can be insured on a given policy for as little as one short haul. As a result of this “just in time” economy, to ensure vehicles are properly covered, binding authority can often be given to agents, brokers or, even in some cases, to insured risk managers in order to permit commerce to move quickly. Thus, insurers are not always immediately aware of the commercial vehicles insured because of the demands of the just in time economy and the need of insureds (and the driving public at large for that matter) that coverage be bound quickly on vehicles. Applying the verification program to commercial vehicles may likely result in “false negatives” that such vehicles are uninsured, and result in them being put out of service erroneously. That would hurt commerce in West Virginia. It is for these reasons that AIA pushed hard for the commercially insured exemption found the statute. That exemption applies today and the rules should to be modified to conform to it.

Apparent Deviations from the IICMVA Model & Standards

SB 394 is replete with how the verification program should track the model and standards established by the Insurance Industry Committee on Motor Vehicle Administration (IICMVA). See §17D-2A-6a (b) (“The commissioner is authorized to develop and implement an electronic insurance verification program *based upon a model established by the Insurance Industry Committee on Motor Vehicle Administration* to electronically verify evidence of insurance coverage with insurance companies.”); §17D-2A-6a (d) (1) (“Be able to verify, on an on-demand basis ... the liability insurance status ... *consistent with insurance industry and Insurance Industry Committee on Motor Vehicle Administration (IICMVA) recommendations and the specifications and standards of the IICMVA model.*”); §17D-2A-6a (f) (1) (“the Division of Motor Vehicles or its agent as applicable shall ... *[c]onsult and cooperate* with insurers in establishing and operating the on-line insurance verification system.”); § 17D-2A-8. (“*Any rules or procedures which pertain to an electronic insurance verification program shall be*

consistent with the provisions and intent of the standards and specifications of the Insurance Industry Committee for Motor Vehicle Administration Model.”).

Notwithstanding these statutory provisions, the rules appear to deviate in several respects from IICMVA standards. For example, the IICMVA model and standards provide for on line or web-based insurance verification alone, whereas the rules suggest other means such as new cancellation reporting obligations. As already discussed, the rules require at least partial commercial reporting that is inconsistent with the IICMVA standards. Finally, there are no alternative reporting options for insurers that need them. We ask that the rules be conformed to SB 394 in terms of the IICMVA model and standards.

Statute Circumscribes How The DMV May Verify Insurance

In 3.2, the rules state that “The Division will verify insurance coverage by any means available including electronic access.” Based upon the statute, however, it does not appear that the DMV has unlimited means to verify insurance coverage. Rather, from our review it appears that only four statutory provisions provide bases for DMV to verify insurance: (1) §17A-3-3(e) (Statement under penalty of false swearing); (2) §17D-2A-6(a) (Law enforcement inquire at motor vehicle offense or crash); (3) §17D-2A-6(c) (Court Determination); and (4) §17D-2A-6a (On-line electronic insurance verification program). We believe the rules should conform to these statutory provisions.

Alternative Methods of Reporting

Notwithstanding the requirement in §17D-2A-6a (f)(7), no alternative methods of reporting have been identified. The rules should be conformed to this statute requirement.

Conclusion

It seems that the DMV’s intent may be that the actual procedures and protocols established for the verification program will address the issues we have highlighted. Nonetheless, AIA believes these rules and regulations should incorporate the statutory provisions expressly. On these bases, we ask that the draft rules be reconciled more closely with the statute. AIA stands ready to assist the DMV with its continued implementation of the new verification system and we look forward to working with the DMV in the future.

Very truly yours,



James J. Whittle, Esq.
Assistant General Counsel &
Chief Claims Counsel

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AIA Comments
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cc. Eric Goldberg, Esq.
AIA Regional Vice President

FILED

2011 JUL 29 PM 12: 25

OFFICE OF THE CLERK
SECRETARY OF STATE

**TITLE 91
LEGISLATIVE RULE
DIVISION OF MOTOR VEHICLE**

PROPOSED

**SERIES 13
COMPULSORY MOTOR VEHICLE LIABILITY INSURANCE**

§91-13-1. General.

1.1. Scope. -- This rule establishes guidelines and forms for insurers and insureds with respect to motor vehicle liability insurance required under the provisions of W. Va. Code §17A-3-3 and §17D-1 et seq.

1.2. Authority. -- W. Va. Code §17A-2-9 and §17D-2A-8.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Repeal of Former Rule. -- This legislative rule repeals and replaces Compulsory Motor Vehicle Liability Insurance 91CSR13 filed May 12, 1997 and effective May 13, 1997.

1.6. Application and Enforcement- This legislative rule applies to all owners and operators of motor vehicles subject to registration and subject to the mandatory security upon motor vehicles provisions of W. Va. Code 17D-1et seq. This legislative rule also applies to insurance companies and their agents authorized to issue motor vehicle liability insurance in this state. Enforcement of this rule is vested with the Commissioner of Motor Vehicles and the Insurance Commissioner or their lawful designees.

§91-13-2. Definitions.

2.1. Abstract of Conviction- Means the report of conviction or findings required to be submitted to the Division pursuant to the provisions of W. Va. Code §17B-3-4 and §17D-2A-6.

2.2. Certificate of Insurance - Means a form issued in duplicate by an insurer to an insured which meets the requirements of W.Va. Code §17D-2A-4 and as specified in Appendix A, which has been approved by the Commissioner.

2.3. Commercial Auto Coverage – Means motor vehicle liability coverage extended to a vehicle owner under a commercial coverage form and rated from a commercial manual approved by the Insurance Commissioner.

2.4. Commissioner- Means the chief executive officer of the Division of Motor Vehicles appointed in accordance with the provisions of W. Va. Code §17A-2-2.

2.5. Crash Report- Means the crash report completed by the investigating officer in accordance with W.Va. Code §17C-4-7.

2.6. Division- Means the Division of Motor Vehicles.

2.7. Firmed Up - Means when the thirty day notice required by W. Va. Code §33-6A-1 and any additional notice period provided by the insurer to the insured has expired and the policy will not be continued or reinstated to maintain coverage continuously in force.

2.8. Hearing - Means the administrative procedures conducted by the Office of Administrative hearings pursuant to W. Va. Code §17C-5C-1 et seq. and this rule arising out of the enforcement of administrative driver's license suspensions and motor vehicles registration revocations provided for in W. Va. Code §17A- 3-3 and §17D-1 et seq.

2.9. Insurance Company Notice of Cancellation – Means the notice submitted to the Division either on paper or electronically when an insurance company issues a cancellation of coverage pursuant to the requirements of W. Va. Code §17D-2A-5 and W. Va. Code §33-6A-1 as specified in

Appendix B which has been approved by the Commissioner.

2.10. Liability Insurance- Means an insurance policy or contract as provided in W. Va. Code §17D-2A-3 and W. Va. Code §33-1 et seq. providing liability coverage for a motor vehicle.

2.11. NAIC Number – Means the number issued by the National Association of Insurance Commissioners to identify insurance companies.

2.12. OAH – Means the Office of Administrative Hearings a separate agency within the Department of Transportation responsible for hearing and determining statutorily authorized appeals from decisions or orders issued by the Commissioner of the Division of Motor Vehicles.

2.13. On-line Insurance Verification Program or Electronic Insurance Verification Program – Means the electronic insurance verification of continuous insurance coverage while a vehicle has an a valid registration. This program may be used by law enforcement at the time of a traffic stop or crash investigation, by the Division for registration events and continued coverage and by the judicial system.

2.14. Owner - Means the person or persons who hold the legal title of a motor vehicle as reflected in the records of the division.

2.15. Owner's Notice of Insurance Cancellation - Means the form, designated as WV-4C, used by the vehicle owner to provide notice to the Division that the required liability insurance upon a registered vehicle as required by W. Va. Code §17D-2A-1 et.seq., has been dropped and that the vehicle will not be operated upon the roads and highways of West Virginia until liability insurance has been obtained. The owner's notice of insurance cancellation must include the surrender of the registration plate.

2.16. Owner's Notice of Non-Plate Surrender – means the form, designated as WV-4S, used by the vehicle owner or owners to provide notice to the Division that a registration plate has been lost or

destroyed and therefore could not be surrendered as required by W. Va. Code §17D-2A-1 et.seq.

2.17. Owner's Statement of Insurance - Means the form prescribed by the Commissioner pursuant to W. Va. Code §17A-3-3 which includes the insurance company name, insurance agent, the NAIC number, policy number and the policy effective date.

2.18. Owner's Statement of Seasonal Insurance - Means the form, designated as WV-4B, used to provide notice to the Division that the vehicle is used seasonally as required by W. Va. §17D-2A-1 et seq. In addition, the owner or owner shall certify that the liability insurance is in effect during the portion of the year in which the vehicle is in actual use on the road. An owner is not required to surrender the registration plate under seasonal or periodic use circumstances.

2.19. Proof of Insurance- Means a certificate of insurance, an insurance policy or a certificate of self insurance.

2.20. Self-Insurer - Means a motor vehicle owner meeting the requirements of W. Va. Code §17D-6-2.

2.21. Verification of Insurance- Means the process by which the Division or an agent of the Division verifies insurance information on-line electronically or by any other means available as authorized by statute, with an insurance company to determine whether or not the vehicle is or was covered by a policy at a certain time.

§91-13-3. Verification of Insurance.

3.1. Electronic Insurance Verification Program - In accordance with the provisions of W. Va. Code §17D-2A-6a, the Division will develop and implement an electronic insurance verification program for motor vehicles. Pursuant to W. Va. Code §17D-2A-2, commercial motor vehicles covered under a commercial policy are excluded from the electronic insurance verification program.

3.2. Insurance Verification - The Division will verify insurance coverage by any means available

including electronic access. The electronic verification will be conducted by using various criteria or established key elements that meet the standards and specifications of the Insurance Industry Committee on Motor Vehicle Administration (IICMVA) model.

3.3. Vehicle owner and driver Resolution - The Division or its agent shall provide an opportunity for any motor vehicle registrant or driver to correct any false reports of no insurance.

§91-13-4. Owner Cancellation of Insurance.

4.1. Notice Required - When the owner of a motor vehicle with a valid registration cancels insurance for any reason other than for reasons of seasonal or periodic use, the owner must surrender to the Division the registration plate and registration card assigned to the vehicle. The owner shall also complete the prescribed form, WV-4C, or provide a written statement concerning the cancellation to accompany the surrendered registration plate and registration card. The Owner's notice of cancellation must include a statement that the liability insurance on the motor vehicle in question was canceled and that the motor vehicle will not be operated upon the roads or highways of this state.

4.2. Plate Lost or Destroyed - The notice of owner's cancellation of insurance shall not be considered complete unless the actual registration plate is surrendered. However in the event that the registration plate is lost or destroyed, the owner must complete a WV-4S form and indicate the disposition of the registration plate to accompany the notice of owner's cancellation of insurance. The Division shall only consider the fact that the registration plate was lost or destroyed as valid reasons for failure to surrender the registration plate at the time of the owner's notice of insurance cancellation.

§91-13-5. Traffic Crash Reports.

5.1. Upon receipt of a West Virginia Uniform Traffic Crash Report, the Division shall review the

report to determine if the law enforcement officer investigating the crash was able to determine if the motor vehicle or motor vehicles involved in the traffic crash were covered by an insurance policy.

5.2. If the Commissioner determines there was no insurance at the time of the crash, the Division shall issue notices of suspension by certified mail to the driver and owner or owners of the vehicle in question. The notice shall allow a 30-day notice period before the suspension effective date. Proof of insurance must be provided to the Division and confirmed for the date and time of the crash.

5.3. If insurance coverage cannot be confirmed for the date and time of the crash, the Division shall suspend the driver's license of the driver and the owner or owners of the motor vehicle for a period of thirty (30) days. The Division shall also suspend the registration of the motor vehicle until current proof of insurance is received.

5.4. If the Division determines that the owner or driver of the vehicle has been previously suspended for an offense described in W. Va. Code §17D-2A -1 et seq, the period of the driver's license suspension is ninety (90) days.

5.5. Reinstatements of driver's licenses or driving privileges and vehicle registration are contingent upon payment of all fees assessed by the Division of Motor Vehicles.

5.6. The provisions of section seven of this rule applies to first time offenders.

§91-13-6. Traffic Citations.

6.1. Upon receipt of a citation for no insurance, the Division shall issue notices of suspension by certified mail to the driver and owner or owners of the vehicle in question. The notice shall allow a 30-day notice period before the suspension effective date. Proof of insurance must be provided to the Division and confirmed for the date and time of the citation.

6.2. If the Commissioner determines there was no insurance, the Division shall suspend the

driver's license of the driver and owner or owners of the motor vehicle for a period of thirty (30) days and shall revoke the registration of the motor vehicle until current proof of insurance is received.

6.3. If the Division determines that the owners or driver of the vehicle has been previously suspended for failing to maintain insurance on a motor vehicle or knowingly operating a vehicle without insurance, the period of the driver's license suspension is ninety (90) days.

6.4. Reinstatements of driver's licenses or driving privileges and vehicle registration are contingent upon payment of all fees assessed by the Division of Motor Vehicles.

6.5. The provisions of section seven of this rule applies to first time offenders.

§91-13-7. Driver's License Suspension.

7.1. Pursuant to the provisions of W.Va. Code §17D-2A-7, the driver and owner may choose to pay a penalty fee in lieu of the driver's license suspension requirement for a first (1st) offense of no insurance for an offense committed on or after June 11, 2010. The offender must pay a \$200.00 penalty fee and provide current proof of insurance for any registered vehicles before the suspension effective date. This option applies to any suspension action pursuant to W. Va. Code §17A-3-3- or §17D-2A-1 et seq.

7.2. A second (2nd) offense for no insurance within five (5) years requires a 30 day driver's license suspension if the first (1st) offense waiver was taken.

7.3. A third (3rd) offense for no insurance within (5) years requires a 90 day driver's license suspension if the first (1st) offense waiver was taken. Any subsequent offenses require a 90 day suspension of the driving privileges.

7.4. In the case of multiple owners, the Division shall suspend the driver's license of only one owner unless the offense involves false or fraudulent documents.

§91-13-8. Company Forms and Procedures.

8.1. Certificate of Insurance- The form designated by the Commissioner as WV-1B when printed as specified and completed in full, or such other form approved by the Commissioner, meets the requirements of W. Va. Code §17D-2A-4 for issuance by the insurer to the insured. The certificate shall be accepted by the Commissioner and all law enforcement agencies as proof of insurance however, all forms of insurance information are subject to the electronic insurance verification program. The insurance company shall provide the certificate of insurance to the insured in duplicate for each policy term or upon request by the insured for each motor vehicle covered by a liability insurance policy. In cases of commercial motor vehicles, the word fleet may be used on each certificate in lieu of a motor vehicle description. The insurance company shall list the effective dates of the policy term by including the commencement date and the expiration date of the policy term, the certificate issue date and the NAIC number. In cases where the vehicle owner is different from the policy holder, the company shall list both the policy holder and the vehicle owner. Motor vehicles bearing dealer registration, financial institution registration, or commercial vehicles registered through the Public Service Commission are not required to carry a certificate of insurance.

8.2. Notice of Cancellation- The form designated by the Commissioner as WV-2B when printed as specified and completed in full, meets the requirements of W. Va. Code §17D-2A-5 for issuance by the insurance company to notify the Division of company cancellations which are issued under the provisions of W. Va. Code §33-6A-1(b), (c), (d), or (e) when the cancellation has been firmed up by the insurance company. The insurance company shall list the notice date, cancellation date, company name, the NAIC number, the year, make, model and vehicle identification number of vehicle, type of cancellation and all drivers' license numbers listed on the policy. In cases where the vehicle owner is different from the policy holder, the company shall list both the policy holder and the vehicle owner. An insurance company may submit notification through an electronic format to the division

or its agent.

§91-13-9. Company Cancellation Of Insurance.

9.1. Notice of Cancellation of Policy- An insurance company shall provide the form designated by the Commissioner as WV-2B in accordance with the provisions of W.Va. Code §33-6A-1 (b-e).

9.2 The Division shall notify the owner or owners of the notice of insurance cancellation, by certified mail. The notice shall provide the owner(s) with a 30 day notice period to:

9.2a. Surrender the registration plate or provide current insurance and a copy of registration transfer if applicable.

9.3. Failure to comply will result in the Division suspending the owner(s) driver's license for a thirty (30) day period and the registration plate until current insurance is provided.

9.4. If the Division determines the owner has been previously suspended for no insurance, the period of the driver's license suspension will be ninety (90) days.

9.5. All reinstatements of driving privileges and registration plates are contingent upon payment of all fees assessed by the Division of Motor Vehicles.

§91-13-10. Administrative Due Process.

10.1. Any person adversely affected by an order made and entered by the Commissioner in accordance with the provisions of W.Va. Code §17A-3-3 or W. Va. Code §17D-1 et seq. and this legislative rule, may request a hearing if specifically allowed by W. Va. Code §17D-1 et seq., by filing a written notice with the Office of Administrative Hearings (OAH) in person, or by certified mail, return receipt requested. The person must request a hearing within ten (10) days from the date on which the registered or certified mail receipt for the order of revocation was signed. However, in cases when the registered or certified mail is not signed for, the provisions of W. Va. Code §17A-2-19 apply which provide that the giving of notice is complete upon expiration of four (4) days after

deposit of the notice in the United States mail.

10.2. The notice requesting a hearing shall contain a description of the order upon which a hearing is requested, and the grounds upon which it is asserted that the order should be vacated or modified. The scope of the hearing is limited to whether there was the required liability insurance upon the vehicle on the date in question.

10.3. The motor vehicle owner has the burden of showing that insurance coverage was in effect at the time in question and therefore, shall make the initial presentation of evidence. At the conclusion of the vehicle owner's presentation, the Division shall have an opportunity to present evidence. All parties have the right to cross-examine witnesses.

West Virginia Certificate of Insurance

CERTIFICATE OF INSURANCE - WEST VIRGINIA

Name of Insurance Company

~~Contact Number~~

VEHICLE OWNER ENTER PLATE NO.

NAIC #

An authorized West Virginia Insurer certifies that there is in effect a motor vehicle liability policy upon the described vehicle in accordance with the provisions of the West Virginia Motor Vehicle Code.

Name and Address of Insured

Name and Address of Owner

Policy Number

Date Certificate Issued

Effective Dates of Policy Term From: To:

Year Make VIN

THIS CERTIFICATE MUST BE CARRIED IN THE VEHICLE DESCRIBED ABOVE FOR USE AS PROOF OF INSURANCE. A COPY OF THIS CERTIFICATE MAY BE REQUESTED BY THE COMMISSIONER OF MOTOR VEHICLES.

Signature
of Owner

Date

WV-1B ~~4/01~~ 6/2011

Specifications

The above specimen form shows the items to be included and the location on the certificate. Print size may vary. If other wording or arrangement of wording is used, prior approval of the Commissioner of Motor Vehicles is required. A certificate printed in accordance with the specimen form, including the addition of the Company logo, if desired, has the prior approval of the Commissioner.

~~1.) One part form on white paper stock. Paper stock is to be no less than 20 lb.~~

~~2.) Size may vary from 3 1/4" x 4" to 3 1/4" x 7".~~

- 1.) On certificates issued on renewal policies, the word "renewal" may be shown along with the policy effective dates to facilitate acceptance of the certificate prior to date shown.
- 2.) Vehicle Description:
 - The year may be shown as 2 digits.
 - The make may be abbreviated.
 - Model may be shown in lieu of make.
 - The full VIN shall be shown.
 - The plate number shall be entered by the owner.
- 3.) Certificates shall be provided in duplicate for each vehicle insured at each policy term or upon request by the insured.
- 4.) When the insurer does not have a description of the vehicle insured under fleet policy, the word "fleet" may be entered in lieu of vehicle description.
- 5.) A facsimile signature of an authorized representative of the insurer may be preprinted on the certificate if the certificate is field issued, the insurer; provided, however, that where a certificate is field issued, the original signature and the agent's license number of a resident agent appointed by the insurer shall appear on the certificate.
- 6.) The name of the vehicle owner shall be included if different from the insured.
- 7.) The date that the certificate was issued shall be indicated on the certificate.
- 8.) The certificate shall indicate the commencement date and the expiration date of the policy term.
- 9.) NAIC Number shall appear on certificate in or near upper right hand corner.**

Notice of Cancellation or Termination of Policy

NOTICE OF CANCELLATION OR TERMINATION OF POLICY
NAIC #

Canceled Under Provisions
Of West Virginia Code 33-6A-1 marked

Name of Company
Policy Number

(b) ___
(c) ___
(d) ___
(e) ___

Date of Notice

Cancellation Date

TO BE FILED WITH:

Name and Address of Insured

Division of Motor Vehicles
PO Box 17020
Charleston, WV 25317

Name and Address of Vehicle Owner if Different

All Driver's License Numbers
Listed on Policy must
Be Listed

Year - Make or Model

Vehicle Identification Number

1.
2.
3.
4.

WV-2B ~~4/84~~ 6/2011

Specifications for West Virginia Notice of Termination (WV-2B 6/2011)

~~ONLY ONE VEHICLE MAY BE REPORTED PER FORM.~~

Descriptive information required on WV-2B

Size

~~7 3/8" wide x 3 1/2" high.~~

Paper

~~Not less than 20 lb. white
sulphite bond or equivalent.~~

Type

~~One Part Form~~

- 1.) Insurance Company Name
- 2.) Policy Number
- 3.) Date of Notice
- 4.) Cancellation Date
- 5.) Name of Insured
- 6.) Name of Vehicle owner, if different from insured.
- 7.) Year, make and complete VIN of vehicle.
- 8.) All driver's license numbers on policy must be listed.
- 9.) Type of cancellation must be indicated. (Only those outlined in West Virginia Code 33-6A-1, subsections (b) through (e) will be accepted.

10.) NAIC Number