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August 23, 2016

**NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE**

**AGENCY:** Insurance Commission

**RULE:** New Rule, 114CSR98, Adoption of Valuation Manual

**DATE FILED AS AN EMERGENCY RULE:** August 22, 2016

**DECISION NO. 11-16**

Following review under W. Va. Code §29A-3-15a, it is the decision of the Secretary of State that the above emergency rule is **approved**. A copy of the complete decision with required findings is available from this office.

**NATALIE E. TENNANT**  
Secretary of State

EMERGENCY RULE DECISION  
(ERD 11-16)

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RULE: New Rule, 114CSR98, Adoption of Valuation Manual  
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- par. 1 The Insurance Commission has filed the above new rule as an emergency rule.
- par. 2 W. Va. Code §29A-3-15a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [§29A-3-15a].
- par. 4 (A) Procedural Compliance: W. Va. Code §29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The Commission filed this emergency rule with supporting documents with the Secretary of State August 22, 2016 and with the LRMRC August 22, 2016.
- par. 7 It is the determination of the Secretary of State that the Commission has complied with the procedural requirements of W. Va. Code §29A-3-15 for adoption of an emergency rule.
- par. 8 (B) Statutory Authority -- W. Va. Code §33-7-9 reads in part:

*(n) Valuation Manual for Policies Issued On or After the Operative Date of the Valuation Manual. --*

*(1) The commissioner shall promulgate emergency rules adopting a valuation manual that is substantially similar to the valuation manual approved by the National Association of Insurance Commissioners and any amendments to such manual as may be subsequently approved by the National Association of Insurance Commissioners, and such rules shall*

*be effective in accordance with subdivisions (2) and (3) of this subsection.*

*(2) The operative date of the valuation manual is January 1 of the first calendar year following the first July 1 as of which all of the following have occurred:*

*(A) The valuation manual has been adopted by the National Association of Insurance Commissioners by an affirmative vote of at least forty-two members, or three fourths of the members voting, whichever is greater;*

*(B) The Standard Valuation Law, as amended by the National Association of Insurance Commissioners in 2009, or legislation including substantially similar terms and provisions, has been enacted by states representing greater than seventy-five percent of the direct premiums written as reported in the following annual statements submitted for 2008: Life, accident and health annual statements; health annual statements; and fraternal annual statements; and*

par. 9 It is the determination of the Secretary of State that the Commission has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency -- W. Va. Code §29A-3-15(f) defines "emergency" as follows:

*(f) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.*

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the Commission are as follows:

The West Virginia Standard Valuation Law establishes a principle-based valuation methodology that is applicable, subject to specified exceptions to life, health and annuity business written after the operative date of the uniform valuation manual adopted by the National Association of Insurance Commissioners (NAIC). To enable uniform and simultaneous implementation by participating states, the Standard Valuation Law provides that the valuation manual will only become operative when a sufficient number of states have adopted substantially similar laws before July 1 of the preceding year. Specifically, the operative date is established as the first day of January of the first calendar year beginning at least 6 months after all of the

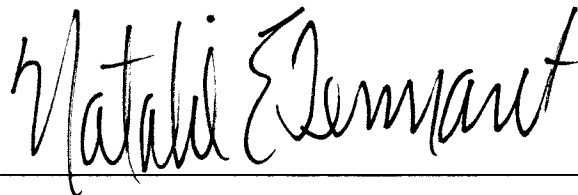
following events have occurred:

1. The valuation manual has been adopted by the NAIC by and affirmative vote of at least 42 members or of the members voting, whichever is greater;
2. The NAICs model standard valuation law, as amended by the NAIC in 2009, or legislative including substantially similar terms and provisions has been enacted by states representing greater than 75% of the direct premiums written as reported in the following annual statements submitted for 2008: life, accident and health annual statements; health annual statements; or fraternal annual statements; and
3. The NAICs model standard law, as amended by the NAIC in 2009, or legislation including substantially similar terms and provisions has been enacted by at least 42 of the following 55 jurisdictions: the 50 states of the United States, American Samoa, the District of Columbia, Guam, the Commonwealth of Puerto Rico and the United States Virgin Islands.

The valuation manual was adopted by the NAIC on December 2, 2012. This year, the number of states adopting principle-based valuation at the state level reached the specified supermajority. As of June 10, 2016, forty-five states have enacted laws substantially similar to the model Standard Valuation Law. The triggers set forth in W. Va. Code §33-7-9(n) have been met therefore a rule adopting the valuation manual is needed. The operative date of the Uniform Valuation Manual is January 1, 2017.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(f). . . to prevent substantial to the public interest.

par. 14 This decision shall be cited as Emergency Rule Decision 11-16 or ERD 11-16 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Insurance Commission.



NATALIE E. TENNANT

Secretary of State

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