

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF PROPERTY CASUALTY

Private Passenger Automobile Insurance: Rate Filing Review Procedures

Adopted Amendments: N.J.A.C. 11:3-18

Proposed: February 5, 2007 at 39 N.J.R. 344(a).

Adopted: November 5, 2007 by Steven M. Goldman, Commissioner, Department of Banking and Insurance

Filed: November 5, 2007 as R.2007 d.371, **without change**.

Authority: N.J.S.A. 17:1-8, 17:1-15e, 17:29A-1 et seq. and 52:27EE-46 et seq.

Effective Date: December 3, 2007.

Expiration Date: June 7, 2011

Summary of the Public Comments and Agency Responses:

The Department of Banking and Insurance (Department) received two written comments from the following: New Jersey Manufacturers Insurance Group and State Farm Insurance Companies.

COMMENT: One commenter expressed concern with the proposed amendments to N.J.A.C. 11:3-18.4(d) and (e)1. The commenter stated that insurers currently have 15 days to respond to requests from the Department for more information. The commenter objected to these amendments because they would reduce its response time on requests for additional information from the Department or the Public Advocate from 15 days to 10 days. The commenter contends

that to respond to either the Department or the Public Advocate involves formulating a position, but also gathering and putting together any requested data, along with any requested computations. The commenter believes that for complex requests, 15 days are still needed. Therefore, the commenter suggested that N.J.A.C. 11:3-18.4(d) and (e)1 retain the 15 day deadline for insurers to respond.

RESPONSE: The Department believes that the company should be able to provide responses to requests within 10 days since the questions usually surround documentation/support of calculations used in the submitted rate filing.

COMMENT: One commenter expressed concern with N.J.A.C. 11:3-18.4(f). The commenter stated that N.J.A.C. 11:3-18.4(f) allows the Public Advocate 60 days from the time of filing by the insurer to make a recommendation to the Department (with a copy sent to the filer). The commenter noted that the Department's proposed new rules N.J.A.C. 11:1-2A.4 (Personal Lines: Rate Filing Review Procedures) applicable to filings other than auto, use a different deadline, which is 20 days after the receipt of the filing or receipt of an insurer's response to a request for information by the Public Advocate.

The commenter contends that the same deadline used for personal lines rate filings should also be used for private passenger automobile filings. The commenter does not believe it is necessary to allow a full 60 days in the case of a filing where the Public Advocate requires no further information when 20 days is sufficient. The commenter stated that, unlike the

Department, which must review and act on all prior approval filings, the Public Advocate is allowed to pick and choose which filings it wants to review and make recommendations about.

The commenter stated that proposed N.J.A.C. 11:3-18.4(f) should be amended to read (additions in boldface; deletions in brackets):

“(f) No later than [60] **20** days after **the later of** receipt of a filing **or its receipt of the company response under subsection (e) above**, the Public Advocate shall file with the Department its report and recommendations, and simultaneously submit a copy to the filer.”

RESPONSE: The Department disagrees with the commenter. The Department notes that these rules are patterned upon similar rules that were in effect years ago, for example N.J.A.C. 11:3-17, Rate Intervener rules and the previous provisions of N.J.A.C. 11:3-18, which in 1990 included the Public Advocate’s intervention in rate filings. The Rate Intervener rules provided for a final report within 75 days after the Department’s receipt of the rate filing or 14 days prior to the hearing. The provisions of N.J.A.C. 11:3-18 formerly provided the Public Advocate with 60 days to file its report with the Department after its receipt of a filing. Based on the Department’s previous experience with rate filing procedures, it believes that it is appropriate to maintain the 60-day timeframe for the submission of the Public Advocate’s report.

COMMENT: One commenter objected to the Department’s amendments to N.J.A.C. 11:3-18.4(g). Proposed N.J.A.C. 11:3-18.4(g) provides that either the filer or the Public Advocate

may request a hearing on the filing no later than 60 days after receipt of a filing and requires the filing of a statement of facts and issues in sufficient detail to notify the Department and the other party of the matters in dispute.

The commenter contends that this provision is problematic. The commenter stated that the proposed amendments do not require the Department to advise the filer of its position on a rate filing prior to the time when a request for a hearing must be made. The commenter stated that if the Department does not have an issue with the filing, then it may not be necessary for the filer to request a hearing. The commenter argued that if the Department does have concerns about the filing, only if those concerns are articulated can the filer make a determination whether it should request a hearing and include a statement of the facts and issues in dispute. Additionally, the commenter stated that if the Public Advocate does not know the Department's position prior to its submission of a hearing request, it will likely request a hearing in each and every case, even in situations when it might defer to the Department, for example where the Department has indicated its intent to allow less than the requested rate relief.

The commenter further stated that it is likely that the first notice the filer has of the Public Advocate's position may be when it files its report and recommendations, which are also due no later than 60 days after the Department receives the filing. The commenter believes that until the filer has an opportunity to review the report and recommendations of the Public Advocate, the filer is not in a position to know whether a hearing would be appropriate and what the issues are. The commenter recommended that the Department amend these rules to allow at least 10 days

from the date the Public Advocate's report and recommendation is filed to make a written request for a hearing.

RESPONSE: The Department disagrees with the commenter. The Department believes that the adopted amendments comply with the requirements of due process, as well as the technical provisions of the Administrative Procedure Act and N.J.S.A. 17:29A-14 regarding hearings on private passenger automobile insurance rate matters. The adopted rule provides an adequate time limit after receipt of a filing by the Department within which either the Public Advocate or the filer may request a hearing, which is their right under N.J.S.A. 17:29A-14. The filer's substantive right to a hearing prior to disapproval of a rate filing is not affected by this rule, which addresses the chronology of proceedings.

The Department believes that the adopted rules provide the filer, the Public Advocate and the Department adequate time to review and resolve by consent many prior approval rate filings initially questioned by the Public Advocate, without undertaking the formal hearing processes required after a determination is made that the matter constitutes a "contested case." This provision is similar to the requirements that were previously in effect and codified at N.J.A.C. 11:3-18, prior to its repeal and the subsequent reenactment of the Public Advocate enabling legislation.

Based on the Department's experience with rate filing procedures, it believes that it is appropriate to maintain the requirement that the filer may request a hearing not later than 60 days after receipt of a filing by the Department. The Department notes that it will monitor the rate

filing procedure and may propose amendments to this provision in the future if there are indications that such amendments are necessary.

Federal Standards Statement

A Federal standards analysis is not required because the adopted amendments relate to the business of insurance and are not subject to any Federal requirements or standards.

Full text of the adoption follows:

DHT07-04/INOREGS