

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
PROPERTY AND CASUALTY DIVISION

Reporting Financial Disclosure and Excess Profits

Adopted Amendments: N.J.A.C. 11:3-20.3, 20.4, 20.5, 20.8, 20.9 and 11:3-20 Appendix

Proposed: October 1, 2007 at 39 N.J.R. 4057(a)

Adopted: March 7, 2008 by Steven M. Goldman, Commissioner, Department of
Banking and Insurance

Filed: March 7, 2008 as R 2008, d.86, **without change**.

Authority: N.J.S.A. 17:1-8.1, 17:1-15e and 17:29A-5.6 through 5.14.

Effective Date: April 7, 2008.

Expiration Date: June 7, 2011

Summary of Public Comments and Agency Responses:

The Department of Banking and Insurance (Department) received timely written comments from the following: American International Insurance Company and State Farm Insurance Companies.

COMMENT: One commenter stated that the Department's proposed definition of "Reinvestment into New Jersey" in N.J.A.C. 11:3-20.3 and 20.9(c) requires that the reinvestment plan be filed with the New Jersey Department of Banking and Insurance. The commenter stated that the Department's proposed amendments do not state how "Reinvestments into New Jersey" that occurred prior to the adoption of the Department's rules are to be handled, and also how "Reinvestments into New Jersey" that are planned and/or occur prior to there being an excess profit are to be handled.

The commenter noted that the Department's current rules do recognize "Reinvestments into New Jersey," in N.J.A.C. 11:3-20.6(d). The commenter stated that a requirement that an

insurer file information regarding the “Reinvestments in New Jersey,” be it a past reinvestment, an ongoing reinvestment or a proposed reinvestment, is reasonable. The commenter contends, however, that reinvestment plans are not spur-of-the-moment ideas that can be put together in the few months preceding the filing of an excess profits report that would otherwise show an excess profit. The commenter stated that to build a new operations center in New Jersey to allow for the expansion of New Jersey auto operations involves more than one year of planning before the ground is even broken on a new building. The commenter further contends that an insurer cannot wait until an excess profits report shows an excess profit to begin this planning process. Additionally, refusing to recognize past reinvestments because they predate the adoption of these amendments, even though current regulations recognize them, makes no sense. The commenter believes that any such plan must be confidential because it reveals future business plans of a competitor.

The commenter stated that the proposed definition of “Reinvestment into New Jersey” in N.J.A.C. 11:3-20.3 should be amended to read (additions to proposal indicated in boldface **thus**):

“Reinvestment into New Jersey” means money spent or committed to be spent by the company that relates to its private passenger automobile insurance business in New Jersey, in accordance with a plan filed with the Department in order to offset a positive excess profit. Such a plan may be filed with the Department at any time, including with the report required by this subchapter. For reinvestments that occurred prior to the effective date of these amendments, insurers may file a plan within one year of the effective date of these amendments. All plan filings shall be confidential and will not be disclosed by the Department to any person other than its employees and representatives.”

RESPONSE: The Department does not believe that the commenter's suggested amendment is necessary. The Department does not refuse to recognize past reinvestments that predate the adoption of these amendments, so long as they can be related to private passenger automobile insurance. As noted by the commenter "Reinvestment into New Jersey" includes past reinvestment plans; ongoing plans; as well as future plans. The definition in the rule refers to "money spent or committed to be spent by the company that relates to its private passenger automobile business in New Jersey ..." The reference to money "committed to be spent" provides for the long timeline for reinvestment decisions mentioned by the commenter. The Department also disagrees with the suggested additional second sentence because it does not wish to restrict a company's flexibility by limiting its filings to within one year of the effective date of these amendments. Additionally, if a company seeks to have its reinvestment plans be considered confidential, it needs to indicate that the plan is confidential when it files the plan with the Department. If such an assertion were challenged, it would ultimately be a court or the Open Public Records Council established pursuant to N.J.S.A. 47:1A-1 et seq. that would determine the validity of such a claim.

COMMENT: One commenter stated that:

Exhibit 5, Part 2B, Item 5, Average Invested Assets [Item 4/2]

The formula calculates "Average Invested Assets" by dividing "Ending Investment Assets" (Item 4) by 2. "Average Invested Assets" are the base (Part 2C, Item 7) for the "Pre-Tax Rate of Return" calculation (Item 8).

The commenter then inquired why only half of the "Ending Investment Assets" are included in the calculation? This appears to double the true "Pre-Tax Rate of Return."

A more appropriate calculation for Item 5 is:

The average of the beginning investment assets and the ending investment assets, (Item 4 +Item 'X')/2]. wherein Item 'X' is the beginning investment assets.

RESPONSE: The Department agrees with the commenter that Exhibit 5, Part 2B, Item 5, Average Invested Assets [4/2] is incorrect. The Department notes that the comment and suggested amendment are beyond the scope of this proposal. The Department will be proposing an amendment to revise this provision in the near future. The Department notes that the suggested amendment is correct and companies have previously filed and the Department has accepted filings using the suggested calculation.

COMMENT: One commenter stated that if the change discussed in the preceding Comment is implemented, would insurers be able to resubmit reports for report year 2007 and earlier?

RESPONSE: The Department does not believe that it is necessary for an insurer to resubmit Excess Profit Reports filed because no private passenger automobile insurer has had an excess profit in recent years.

Federal Standards Statement

A Federal standards analysis is not required because these amendments regulate the business of automobile insurance and are not subject to any Federal requirement or standards.

Full text of the adoption follows:

DHT07-11/INOREGS