

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF PROPERTY CASUALTY

Personal Lines: Rate Filing Review Procedures

Proposed New Rules: N.J.A.C. 11:1-2A

Authorized By: Steven M. Goldman, Commissioner, Department of Banking and Insurance

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, 17:29A-1 et seq. and 52:27EE-46 et seq.

Calendar Reference: See Summary below for explanation of exception to the rulemaking calendar requirement.

Proposal Number: PRN 2007-35

Submit written comments by April 6, 2007 to:

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The agency proposal follows:

Summary

The Department of Banking and Insurance (Department) is proposing new rules at N.J.A.C. 11:1-2A for its Personal Lines: Rate Filing Review Procedures, in order to implement the requirements of the Public Advocate Restoration Act of 2005, P.L. 2005, c. 155 (N.J.S.A. 52:27EE-1 et seq.), effective January 17, 2006, as it relates to the establishment of the Division of Rate Counsel in the Department of the Public Advocate, and personal lines rate filings. The Department will address private passenger automobile and Medicare supplement coverages in separate proposals.

N.J.S.A. 52:27EE-1 et seq. restored the Department of the Public Advocate as a principal department in the Executive Branch of State Government, and provides for the Division of Rate Counsel in that Department. See N.J.S.A. 52:27EE-46. Pursuant to N.J.S.A. 52:27EE-48b, the Division of Rate Counsel may represent and protect the public interest in significant proceedings that pertain solely to prior approval rate increases for personal lines property casualty coverage or Medicare supplement coverages. Pursuant to N.J.S.A. 52:27EE-48b, the Director of the Division of Rate Counsel shall consider the following facts in determining whether a proceeding is significant: (1) the overall dollar impact of the requested increase, considering the filer's market share and the magnitude of the requested rate change; (2) whether the increase, if granted, will increase the filer's rates significantly above market norms; (3) whether the filer is advancing a significantly different alternate ratemaking methodology to the standard methodology; and (4) whether the insurer is experiencing financial difficulties at its present rate level, as evidenced by the filing of rehabilitation proceedings, recent downgrading by insurance rating services, or significant losses reported on the filer's public financial statement.

N.J.S.A. 52:27EE-48 limits the Division of Rate Counsel's jurisdiction or authority with respect to insurance. The Division of Rate Counsel has no jurisdiction or authority to participate or intervene in: 1) expedited prior approval rate filings made by an insurer or affiliated group of insurers; 2) prior approval rate filings of seven percent or less; or 3) rule or form filings for any other form of insurance.

Proposed N.J.A.C. 11:1-2A.1 sets forth the purpose and scope of the proposed new rules.

Proposed N.J.A.C. 11:1-2A.2 sets forth the definitions of terms used in this subchapter. The Department is providing definitions for the terms "Commissioner," "contested case," "Department," "filer," "parties," "personal lines rate filings," "Public Advocate" and "rating

organization.” With the exception of “personal lines rate filings,” these definitions track the definitions of these terms found in the Department’s private passenger automobile rate filing procedures rule (see N.J.A.C. 11:3-18.2).

Proposed N.J.A.C. 11:1-2A.3 sets forth the general personal lines rate filing provision. This section establishes which insurers or licensed rating organizations can submit filings. Additionally, this section prescribes the computation of time periods and the addresses where filings should be sent to the Department, as well as to the Public Advocate.

Proposed N.J.A.C. 11:1-2A.4 establishes the procedures for review of personal lines rate filings seeking a rate increase of more than seven percent. N.J.A.C. 11:1-2A.4(a) provides the time period for the Department’s review of a filing and that the filer shall concurrently provide a copy of the filing to the Public Advocate. N.J.A.C. 11:1-2A.4(b) requires the Public Advocate to notify the Department of its intent to intervene no later than 10 days after its receipt of the filing. N.J.A.C. 11:1-2A.4(c) provides that if the Department requests further information from the filer, the filer shall submit that information to the Department and simultaneously to the Public Advocate. N.J.A.C. 11:1-2A.4(d) permits the Public Advocate to request additional information no later than 20 days after receipt of a filing and requires the filer to respond within 10 days. N.J.A.C. 11:1-2A.4(e) and (f) specify time frames for the requesting and providing of additional information and the submission of the Public Advocate’s report and recommendations. N.J.A.C. 11:1-2A.4(g) requires the Commissioner to render a decision on the filing within 30 days after receipt of the Public Advocate’s report. N.J.A.C. 11:1-2A.4(h) addresses requests for a hearing. N.J.A.C. 11:1-2A.4(i) provides the timeframe by which a determination shall be made by the Commissioner on whether the matter is a contested case. Additionally, this provision provides that if no hearing is requested or the Commissioner determines that a contested case does not

exist, a final order shall be issued no later than 90 days from receipt of the filings, except for good cause.

The Department's rule proposal provides for a comment period of 60 days, and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendar.

Social Impact

The Department's proposed new rules codify its existing procedures for its review of personal lines rate filings (not including private passenger automobile insurance). These rules also provide for the intervention of the Public Advocate in the review of personal lines rate filings, as authorized by N.J.S.A. 52:27EE-1 et seq. The Department believes that the proposed new rules will have a positive impact on all parties in that they provide for an orderly, formalized process for the review of these matters by the Department and the manner in which parties may participate in the process. The new rules also provide reasonable notice requirements and timeframes for the taking of specific actions. The Public Advocate's inclusion in this process will provide an additional layer of scrutiny on certain personal lines rate filing requests, which will afford greater protection to the public from unwarranted rate increases.

Economic Impact

The proposed new rules codify existing Department procedures and reflect the requirements of N.J.S.A. 52:27EE-1 et seq., which established the Division of Rate Counsel in the Department of the Public Advocate. The proposed new rules are procedural in nature and will not have a significant economic impact. Additionally, these rules codify timeframes and

procedures for the Department's review of personal lines rate filings, as well as the Public Advocate's role in the process. The Department does not anticipate any economic impact on the Department of the Public Advocate as a result of the proposed new rules. Insurers and rating organizations may incur minimal costs as a result of providing a copy of a filing to the Public Advocate.

Federal Standards Statement

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

Jobs Impact

The Department does not believe that these proposed amendments will cause any jobs to be generated or lost.

Agriculture Industry Impact

The Department does not expect any impact on the agriculture industry as a result of the proposed new rules.

Regulatory Flexibility Analysis

The proposed new rules apply to "small businesses" as that term is defined on the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These "small businesses" would include insurance companies authorized to write personal lines insurance (other than private passenger automobile insurance) which file requests for certain rate increases.

The proposed new rules implement the requirements imposed pursuant to N.J.S.A. 52:27EE-46 et seq., which established the Division of Rate Counsel in the Department of the Public Advocate and outlined its authority and jurisdiction for intervening in personal lines rate filings. The proposed new rules codify the Department's existing review procedure for personal lines rate filings. The Department does not believe that these new rules will impose any undue burden on small business because they implement the notification requirements imposed by N.J.S.A. 52:27EE-46 et seq., and establish reasonable timeframes for complying with those requirements. These proposed new rules will not require small business to use any professional services beyond those currently utilized in order to comply with the Department's current internal review process. The proposed new rules do not provide for a differentiation in compliance requirements based on an insurer's size because the required notifications and specified timeframes are designed to ensure a decision by the Department in accordance with the requirements of N.J.S.A. 17:29A-14.

Smart Growth Impact

The proposed new rules will not have an impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Full text of the proposed new rules follows:

SUBCHAPTER 2A PERSONAL LINES FILINGS: RATE FILING REVIEW PROCEDURES

11:1-2A.1 Purpose and scope

(a) This subchapter sets forth the timeframes and procedures used by the Department to review, and allow for the Public Advocate's intervention on, significant personal lines rate filings as defined in this subchapter and to implement the applicable provisions of N.J.S.A. 17:29A-1 et seq. and 52:27EE-46 et seq.

(b) This subchapter applies to all personal lines rate filings that have an overall rate impact in excess of +7.0 percent.

(c) This subchapter does not apply to private passenger automobile insurance prior approval rate filings, on which procedures have been established pursuant to N.J.A.C. 11:3-18, Private Passenger Automobile Insurance: Rate Filing Review Procedures.

(d) This subchapter shall be construed so as to be compatible with the rules that set forth requirements for rate filings, N.J.A.C. 11:3-16; the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.; and the administrative procedure rules codified at N.J.A.C. 1:1 and 1:11, Uniform Administrative Procedure Rules and Insurance Filing Hearings, respectively, concerning the disposition of matters after they have been determined to be a contested case.

11:1-2A.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Commissioner" means the Commissioner of the New Jersey Department of Banking and Insurance.

“Contested case” means any proceeding so defined in N.J.S.A. 52:14B-2(b), specifically including a personal lines prior approval rate filing when a request for a hearing has been made by any party or when the Commissioner determines that a hearing on the filing is necessary.

“Department” means the New Jersey Department of Banking and Insurance.

“Filer” means a rating organization or any insurer making its own rates or a portion thereof, establishing or proposing to establish a new rate or rate change.

“Parties” means the filer and any other person with a legal right to participate in the proceedings, who has served notice on the Commissioner of an intention to participate therein.

“Personal lines rate filing” means a filing by a rating organization or an insurer for insurance issued for personal, family or household purposes, as set forth at N.J.A.C. 11:13-1.2(a)2. For the purposes of this subchapter, a “personal lines rate filing” does not include private passenger automobile insurance.

“Public Advocate” means the Division of Rate Counsel in the Department of the Public Advocate of New Jersey.

“Rating organization” means every person or persons, corporation, partnership, company, society, or association engaged in the business of making rates or a portion thereof for two or more insurers and licensed in accordance with N.J.S.A. 17:29A-2.

11:1-2A.3 General filing provisions

(a) Personal lines rate filings may be submitted by insurers or licensed rating organizations which are authorized to file rates for insurers that are members or subscribers of the rating organization.

1. Insurers that make their own rates shall submit filings themselves.

2. Filings submitted by rating organizations shall be submitted only for and on behalf of their member companies.

(b) In computing any period of time fixed by this subchapter, the day of the act or event from which the designated period begins to run is not to be included. The last day of the period so computed is to be included, unless it is on a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor legal holiday.

(c) All documents filed with the Commissioner, except initial filings, shall contain a statement certifying that the item is being submitted within the time provided by this subchapter.

(d) Provisions of this subchapter that establish time limits may be relaxed or modified by the Commissioner for good cause shown.

(e) All filings and other items submitted to the Commissioner shall be sent to the Department at the following address:

New Jersey Department of Banking and Insurance
Property/Casualty Division
20 West State Street
PO Box 325
Trenton, NJ 08625-0325

(f) Any filing or other item submitted to the Public Advocate shall be sent to the Public Advocate at the following address:

Division of Rate Counsel
Department of the Public Advocate
31 Clinton Street, 11th Floor
PO Box 46005
Newark, NJ 07101

11:1-2A.4 Procedures for review of personal lines rate filings

(a) The time period for the Department's review of a personal lines rate filing shall commence on the day the filing is received by the Department. The filer shall concurrently provide a copy of the filing to the Public Advocate.

(b) No later than 10 days after its receipt of the filing, the Public Advocate shall notify the Department and the filer if it intends to intervene.

(c) If the Department requests further information from the filer, the filer shall submit that information to the Department and simultaneously to the Public Advocate within 10 days of its receipt of the request.

(d) No later than 20 days after its receipt of a filing, the Public Advocate may request in writing that the filer provide additional information to complete their review or to explain or clarify information contained in the filing. A copy of any such request shall be simultaneously provided to the Department. Not later than 10 days after its receipt of any such request, the filer shall provide the clarifying or explanatory information to the Public Advocate and simultaneously to the Department.

(e) The Public Advocate may, within five days of its receipt of the filer's response providing clarifying or explanatory information pursuant to (d) above, request in writing that the filer provide any additional or follow up information to complete their review. A copy of any such request shall be simultaneously provided to the Department. The filer shall provide the additional or follow-up information to the Public Advocate and simultaneously to the Department within 10 days of its receipt of such a request.

(f) No later than 20 days after its receipt of the final company response, the Public Advocate shall file with the Department its report and recommendations, and simultaneously submit a copy to the filer.

(g) The Commissioner shall render a decision on the filing within 30 days after receipt of the Public Advocate's report, unless the filer or the Public Advocate has submitted a request for a hearing.

(h) Simultaneously with the filing of its report with the Department, the Public Advocate may request in writing a hearing on the filing. A request for hearing shall include a statement of the facts and issues in sufficient detail so as to notify the Department and any other party of the matters in dispute.

(i) Upon receipt of a request for a hearing by the filer or by the Public Advocate, or not later than 75 days after receipt of a filing by the Department, the Commissioner shall determine whether the matter is a contested case and notify all parties in writing.

1. If no hearing is requested by the filer or by the Public Advocate, the Commissioner shall issue an appropriate final order disposing of all issues raised by the filing. The final order shall be issued no later than 90 days from the receipt of the filing by the Department except, for good cause, the Commissioner may extend the time to issue a final order by not more than 30 days.

2. If a hearing is requested by the filer or by the Public Advocate, the Commissioner may:

i. Hear the matter;

ii. Direct that the matter be transmitted to the Office of

Administrative Law; or

iii. Appoint a salaried employee of the Department to hear the matter pursuant to N.J.S.A. 17:29A-14c.

3. The hearing shall be conducted pursuant to the provisions of N.J.S.A. 17:29A-14c and the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and applicable administrative procedure rules, N.J.A.C. 1:1 and 1:11.

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