

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
PROPERTY AND CASUALTY DIVISION

Rate Filing Requirements: Voluntary Market Private Passenger Automobile Insurance

Adopted Repeals: N.J.A.C. 11:3-16.11, 16.14, and 11:3-16 Appendix Exhibits B, F, G, I, J and K

Adopted Repeals and New Rules: N.J.A.C. 11:3-16.8, 16.9, 16.10, and 11:3-16 Appendix Exhibit A

Adopted Amendments: N.J.A.C. 11:3-16.1, 16.2, 16.3, 16.6, and 11:3-16 Appendix Exhibits C and D

Adopted Recodification with Amendment: N.J.A.C. 11:3-16 Appendix Exhibit E as Exhibit B

Proposed: December 20, 2004 at 36 N.J.R. 5640(a)

Adopted: May 7, 2005 by Donald Bryan, Acting Commissioner, Department of Banking and Insurance

Filed: May 9, 2005 as R. 2005 d. 176, with substantive changes not requiring additional public notice and opportunity for comment (see N.J.A.C. 1:30-6.3)

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

Effective Date: June 6, 2005

Expiration Date: January 4, 2006

Summary of Public Comments and Agency Responses:

The Department of Banking and Insurance received timely written comments from: Allstate New Jersey Insurance Company; American International Companies; New Jersey Manufacturers Insurance Group; Progressive Insurance Company; State Farm Insurance Companies; the Insurance Council of New Jersey and the New Jersey Risk Exchange.

COMMENT: Two commenters expressed concern with the Department’s proposed definition of “expenses” found in N.J.A.C. 11:13-6.2. One commenter stated that there appears to be an error in this definition. The commenter believes that the Department intended for the definition of “expenses” to be consistent with proposed N.J.A.C. 11:3-16.9(f), which sets forth the data requirements for expense provisions and specifically states that: “All data shall be on a direct basis, including AIRE assessments, AIRE allocations, AIRE investment income, and LAD fees, if applicable.”

The commenter suggested that the Department amend the definition of expense in N.J.A.C. 11:3-16.2 to read:

“Expenses’ means that portion of a rate that is attributable to commissions and brokerage, other acquisition expenses, general expenses and taxes, licenses and fees in addition to assessments for losses and costs relating to uninsured motorist coverage and pedestrian personal injury protection. Expenses include the Automobile Insurance Risk Exchange (AIRE) **assessments, AIRE allocations, AIRE investment income** and Limited Assignment Distribution (LAD) carrier fees, if applicable (additions to proposal shown in boldface)

A second commenter suggested amending the definition to read:

“... Expenses include the Automobile Insurance Risk Exchange (AIRE), and Limited Assignment Distribution (LAD) carrier fees **or the expected deficits resulting from assigned risk business.**” (additions to proposal shown in boldface.)

RESPONSE: The Department agrees with both commenters. First, the definition of “expenses” found in N.J.A.C. 11:3-16.2 was intended to be consistent with proposed N.J.A.C. 11:3-16.9(f), the data requirement for expense provisions. The Department is amending the definition of “expense” on adoption in order to make these two provisions consistent.

Additionally, the Department intended to allow filers to incorporate within “expenses” involuntary experience, as evidenced by the proposed deletion of current N.J.A.C. 11:3-16.3(j) and the allowance of LAD fees. The Department is further clarifying the definition of “expenses” and the data requirements for expense provisions found in new N.J.A.C. 11:3-16.9(f) by adding the phrase “or expected gain (deficit) resulting from assigned risk business” to the definition and to N.J.A.C. 11:3-16.9(f). N.J.A.C. 11:3-16.3(j) prevented the inclusion of risks insured through the assigned risk plan. In proposing the deletion of that provision, the Department believed that insurers would recognize that they could now include this data within “expenses” as used in Subchapter 16. Permitting an expense load for filers that write their own assigned risk business is analogous to allowing LAD fees for filers that choose to use LAD carriers. By adding the assigned risk language, the Department is simply clarifying its intent and explicitly providing for consistent treatment under the rules for carriers that write their own assigned risk business and those that utilize LAD carriers.

COMMENT: One commenter expressed concern with subsection (a) in N.J.A.C. 11:3-16.8, Premiums, loss costs, loss and loss adjustment expense data. The commenter stated that the Department’s proposed rules require that data is to be provided for the “latest three calendar-accident years” or the period from January 1 to December 31. The commenter stated that this is a change from the Department’s current rules, which permit filers to use the “latest three years” of data. The commenter argued that the proposed language would restrict companies from using current year data in their filing. The commenter suggested the following amendment:

“Data shall be by coverage for the latest three [**calendar-**] accident years at either total limits and/or basic limits, where applicable. **An accident year need not necessarily**

coincide with calendar year.” (addition to proposal shown in boldface; deletions shown in brackets.)

RESPONSE: The Department agrees with the commenter. The accident year does not have to coincide with a calendar year. The Department’s intent is to continue to permit the filing of accident-year data, even if it does not coincide with calendar-year periods. The Department is clarifying this provision on adoption to read: “Data shall be by coverage for the latest three **calendar-accident years, or fiscal**-accident years at either total limits or basic limits, where applicable.” (addition to proposal shown in boldface.) The Department is also making an editorial change upon adoption by deleting “and/” from this sentence because it is redundant.

COMMENT: One commenter stated that in N.J.A.C. 11:3-16.6(a)5, there appear to be a couple of typos. The commenter stated that it appears that proposed N.J.A.C. 11:3-16.6(a)5 should read, “5. [Data concerning the premiums]–or loss costs,] **Premiums,** losses and loss adjustment expenses **data** as **set forth** in N.J.A.C. 11:3-16.8” (items to be deleted from the proposal are struck through).

RESPONSE: The official version of this rule proposal, published in the December 20, 2004 New Jersey Register (36 N.J.R. 5640(a)) does not contain the typos referred to by the commenter. The Department notes that the typos did appear in the Department’s website publication of these rules and regrets any confusion that may have resulted.

COMMENT: One commenter stated that proposed N.J.A.C. 11:3-16.9(a)2 references acquisition and general expense “from Part 3 of the Insurance Expense Exhibit.” The commenter suggested that this reference to the IEE should be removed. The commenter

contends that the IEE reflects countrywide data, which may or may not be relevant to the filer's New Jersey business.

RESPONSE: The Department is not requiring insurers to use the countrywide data, but to provide it to the Department as a benchmark.

COMMENT: One commenter stated that N.J.A.C. 11:3-16.9(a)4 requires "a description of all products, services supplied or received in transactions between the filer and a parent company, a wholly-owned subsidiary or an affiliated company." The commenter stated that it is not clear what information is required. The commenter stated that an insurer receiving the services is required to reimburse the incurred expenses of the servicing insurer computed according to statutory accounting principles. The servicing agreement is flexible to allow the services provided by each insurer to change as circumstances change. The commenter stated that at some point its employees had to provide services, and at other times it did not and that the affiliated company provided all of the employees. The commenter questioned whether providing a copy of the servicing agreement which includes the method of computing the charges for services as being statutory accounting principles would be sufficient under the Department's proposed rules. The commenter stated that given that the goal of these rules is to enable the Department to review the reasonableness of the expense factor, this should be sufficient. The commenter questioned whether proposed N.J.A.C. 11:3-16.9(a)4 should be amended to add a new sentence at the end which states that: "The filer can fulfill this requirement by filing a copy of the servicing agreement between the filer and the servicing affiliate(s) which includes the basis for the charges to the filer for receiving the services."

RESPONSE: The Department disagrees with the commenter. The Department's proposed requirement is not new; rather it is a recodification of the current provision found in 11:3-16.9(f)2. Consistent with past practice, the inclusion of a copy of a servicing agreement would fulfill the requirement of this provision regarding the completeness of the filing.

COMMENT: One commenter stated that proposed N.J.A.C. 11:3-16.9(a)4 indicates that expenses "shall be limited as set forth in Exhibit H." The commenter stated that Exhibit H specifies a weighted expense average of those companies in the 20 largest auto insurance companies in the State that use the same marketing method. The commenter argued that such a limitation is unreasonable and unfair, and requested that the expense limitation be removed.

RESPONSE: The Department notes that the commenter incorrectly referenced Exhibit H, which has been recodified as Exhibit E. In addition, the reference to N.J.A.C. 11:3-16.9(a)4 should refer to N.J.A.C. 11:3-16.10(b)6, which is being proposed for deletion. The Department is currently reviewing Exhibit E, and anticipates proposing amendments in the near future.

COMMENT: One commenter stated that proposed N.J.A.C. 11:3-16.9(c) continues the expense cap based on the marketing system of the insurer (independent agent, captive agent or direct writer). Expense caps do not take into account differences in levels of service that consumers may demand and insurers wish to supply. The commenter stated that these differences are more than the type of marketing system, they also deal with claims and in-house underwriting. The commenter contends that more insurer spending on claims investigations and defense may lower the insurer's loss costs. An insurer that spends more on claims service centers and personnel may provide a better claims experience for the insured. More insurer spending on in-house

underwriting may mean that more rate evasion is prevented and the more ineligible risks are discovered (who can be denied coverage or appropriately surcharged). The commenter argued that an artificial cap may discourage insurer expenditures to reduce loss costs, improve claim service and improve in-house underwriting even though overall premiums may be reduced or the consumer is willing to pay more for better service. The commenter believes that the marketplace should decide this issue.

The commenter also suggested that proposed N.J.A.C. 11:3-16.9(c) and Exhibit E should be deleted entirely.

RESPONSE: The Department agrees that a competitive marketplace may alleviate or eliminate the need for expense caps. Until such time as a more competitive marketplace exists, the Department will continue to review the appropriateness of the capping methodology, and will make a determination in the future on whether they need to be eliminated.

COMMENT: One commenter stated that they appreciated the Department's efforts to provide flexibility to foster a competitive private passenger automobile marketplace. The commenter, however, expressed a concern that, in deleting N.J.A.C. 11:3-16.10, Rate calculation using standard ratemaking methodology, the proposal is eliminating a methodology that has been deemed acceptable by the Department. The commenter recommended that the Department amend its proposal to allow carriers the option of continuing to use the existing methodology without having to provide "all information related to the derivation of the profit and contingency loading contained in the filing by group of coverages" and "specifically include all data used and judgments made, as well as a description of the method used to arrive at the selected loading" as proposed in N.J.A.C. 11:3-16.10. The commenter believes that providing carriers with the

ability to utilize a proven methodology would lessen the burden on the Department and carriers, and facilitate the efficient filing and approval of rate changes.

The commenter stated that the proposed elimination of the methodology set forth in existing N.J.A.C. 11:3-16.10 would also have an impact on the Limited Rate Filing regulations (N.J.A.C. 11:3-16B) which incorporate by reference N.J.A.C. 11:3-16.10(a). The commenter assumed that the Department wishes to maintain a standard profit and contingency provision for the limited rate filings. If the Department is not receptive to maintaining the option for companies to file using the existing methodology for prior approval rates, the commenter suggested that the language from existing N.J.A.C. 11:3-16.10(a) be included in N.J.A.C. 11:3-16B.4(d)5 so that it can be used in the limited rate filings. The commenter expressed concern with the repeal of the standard guidelines, which requires carriers making limited rate filings to justify the profit and contingency load contained in the filing. The commenter stated that this will delay filings that are supposed to be routine and cause more uncertainty in what should be a certain process for limited rate filings.

The commenter continued that, should the Department choose not to provide for the option of using a uniform standard methodology, the Department should include a provision in its rules that would allow carriers to file rates under the old regulations for 60 to 90 days post adoption. In the past, the Department has adopted amendments to rate regulations effective on the date they were published in the New Jersey Register with no prior notice to the industry regarding the effective date. As a result, companies that were in the process of preparing rate requests under the prior regulations were forced to expend additional time and resources revising their submissions to comply with the new regulations and were therefore forced to delay the filing and implementation dates of their rate changes. Inclusion of this provision would permit

companies that have begun to prepare rate filings under the existing regulations to proceed in a timely manner.

RESPONSE: The Department disagrees that any change to the proposed rule is required to permit filers to continue to use their currently approved profit and contingency provision. Proposed N.J.A.C. 11:3-16.10(b) states that a filer's selected profit and contingency loading shall remain in effect for all future rate filings until such time as a different profit and contingency loading is approved. The Department recognizes that this proposal may impact other rules. Once these amendments, new rules and repeals are adopted, the Department intends to propose the appropriate amendments to those rules in the near future.

COMMENT: One commenter requested that the Department confirm that companies still have the option to report items listed in proposed N.J.A.C. 11:3-16.8(a)5 and 6 separately for defense and cost containment expenses and adjusting expenses that can be attributed to a specific claim, and those that cannot.

RESPONSE: Filers shall provide Defense and Cost Containment (DCC) expenses separately from Adjusting & Other (AO) expenses because such separate treatment is not optional. Filers may also provide a breakdown of how the DCC and AO expenses can be attributed to specific claims or not so attributed. The methods used to provide each item should reflect generally accepted actuarial principles as appropriate for the filer.

COMMENT: One commenter recommended that the language contained in existing N.J.A.C. 11:3-16.8(i) - "Filers shall show the overall Statewide rate change indicated by coverage" - be reinserted into the Department's proposed rules. The commenter stated that this should provide

a useful summary of the required data to compare to the requested rate effects in the rate filing proposal.

RESPONSE: The Department disagrees with the commenter. Rate indications are readily found in most filings, therefore there is no need to amend the proposal in order to require filers to show the overall statewide rate change.

Summary of Agency-Initiated Changes:

The Department initiated the following editorial changes to these rules. The Department is amending the definition of “coverages” in N.J.A.C. 11:3-16.2, paragraph 3, to delete “/or.” CSL (combined single limit) is BI (bodily injury) and PD (physical damage), otherwise there is nothing to be “combined” as referenced in the definition.

The Department is amending N.J.A.C. 11:3-16.8(a)5, to delete the term “loss,” as the development factors here technically apply to LAE (loss adjustment expenses). The Department is amending N.J.A.C. 11:3-16.8(a)10, by replacing the term “methodology” with “method.”

The Department is amending N.J.A.C. 11:3-16.9(e), by replacing the phrase “\$0 and verbal threshold” with “Limitation on Lawsuit and No Limitation on Lawsuit options.”

Federal Standards Statement

A Federal standards analysis is not required because the adopted new rules, repeals and amendments regulate the business of insurance and are not subject to any Federal requirements or standards.

Full text of the adopted amendments and new rules follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***):

11:3-16.2 Definitions

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

. . .

“Coverages” means

1. - 2. (No change from proposal.)
3. Combined single limit BI and ~~[/or]~~ PD (CSL);
4. - 8. (No change from proposal.)

. . .

“Expenses” means that portion of a rate that is attributable to commissions and brokerage, other acquisition expenses, general expenses, and taxes, licenses and fees in addition to assessments for losses and costs relating to uninsured motorist coverage and pedestrian personal injury protection. Expenses include the Automobile Insurance Risk Exchange (AIRE) ***assessments, AIRE allocations, AIRE investment income*** and Limited Assignment Distribution (LAD) carrier fees, if applicable*, **, or the expected gain (deficit) resulting from assigned risk business***.

11:3-16.8 Premiums, loss costs, loss and loss adjustment expense data

(a) Filers shall provide the following data regarding New Jersey premium, loss costs, loss and loss adjustment expenses. Data shall be by coverage for the latest three calendar-accident years*, **or fiscal- accident years***, at either total limits *[and/]* or basic limits, where applicable. Filers shall provide all underlying calculations and justifications for any factors used:

1. - 4. (No change from proposal.)

5. Direct paid and/or incurred defense and cost containment expense with applicable *[loss]* development factors and formulas used;

6. - 9. (No change from proposal.);

10. Loss trend factors, including all data and judgments made, and a description of the *[methodology]* **method*** used to select the factors; and

11. (No change from proposal.).

(b) - (i) (No change from proposal.)

11:3-16.9 Data requirements for expense provisions

(a) - (d) (No change from proposal.)

(e) Commissions for bodily injury liability coverage for the *[\$0 and verbal threshold]* **Limitation on Lawsuit and No Limitation on Lawsuit options*** shall be equalized in accordance with Exhibit C in the Appendix, incorporated herein by reference.

(f) All data shall be on a direct basis, including AIRE assessments, AIRE allocations, AIRE investment income, and LAD fees, if applicable* **or the expected gain (deficit) resulting from assigned risk business***.

(g) (No change from proposal.)

11:3-16.12 Voluntary written exposure and primary classification date.

(a) – *[f]* ***d*** (No change.)

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