

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
PROPERTY AND CASUALTY DIVISION

Rate Process for Limited Rate Changes: Calculations for Private Passenger Automobile Insurance Rate Changes

Adopted Amendments: N.J.A.C. 11:3-16B

Proposed: October 2, 2006 at 38 N.J.R. 4161(a)

Adopted: May 3, 2007 by Steven M. Goldman, Commissioner, Department of Banking and Insurance

Filed: April 27, 2007 as R. 2007 d. 179, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, 17:29A-46.6 and 17:29A-46.7

Effective Date: June 4, 2007.

Expiration Date: June 7, 2011.

Summary of Public Comments and Agency Responses

The Department of Banking and Insurance received timely written comments from three insurers: New Jersey Manufacturers Insurance Group, State Farm Insurance Companies and Travelers of New Jersey.

COMMENT: One commenter stated that the proposed amendments will have the impact of limiting the content of what can be in an automobile insurance expedited filing to base rates and territorial rate changes for each coverage, as well as the impact of all changes in a year from expedited filings on an individual auto insurance policy to no more than 15 percent. The commenter stated that changes in other rating factors, such as accident-free discounts, flat dollar amounts and changes in other classifications, could no longer be included in an expedited rate filing.

The commenter stated that when an insurer revises its base rates by territory, it is often necessary to revise classification factors by territory at the same time. According to the commenter, this must be done in order to limit territorial rate differences for operators 65 and over, pursuant to N.J.S.A. 17:29A-36(c). The commenter also stated that accident-free discounts are required to be flat dollar amounts in New Jersey. The commenter stated that since the average premium per vehicle changes over time, insurers should be able to update these flat dollar amounts.

Additionally, the commenter contends that the exclusion of all classification relativity changes other than territorial rate changes from an expedited rate filing will create more work for both the insurer, as well as the Department, with no benefit to the consumer because insurers typically change their relativities annually along with their base rates. The commenter believed that the Department recognized this by allowing expedited rate filings to include changes in classification relativities when these regulations were first adopted. The commenter contends that the exclusion of relativity changes from expedited rate filings merely means that insurers will make two filings rather than one: the first filing being the expedited rate filing for base rate and territorial rate changes; and the second being a filing pursuant to N.J.A.C. 11:3-16 for the relativity changes. Therefore, the Department will be reviewing two separate filings rather than one filing. Creating, submitting and reviewing two filings (especially a filing under N.J.A.C. 11:3-16) is much more expensive and time consuming for both the insurer and the Department than creating, submitting and reviewing a single expedited rate filing.

The commenter stated that the proposed 15 percent cap on individual policy rate increases from expedited rate filings in a one-year period will protect the consumer from relativity changes and base rate changes that might cumulate to more than 15 percent. The

commenter argued that the 15 percent cap is probably too low given all of the possible rating changes. The commenter believes that 20 percent or 25 percent would be a better cap, and is in keeping with the caps that insurers and regulators in other jurisdictions put on their individual policy changes around the country. The commenter further contends that there is no consumer benefit to being charged inaccurate rates because an insurer cannot revise classification relativities. The commenter stated that the current rule allows such classification relativity changes in expedited rate filings and no per policy caps, which the commenter contends has contributed to the competitive auto insurance market that now exists in this State from which the consumers are greatly benefiting.

The commenter suggested dropping the proposed amendments to N.J.A.C. 11:3-16B.1(c) that delete “class factors ... increased limit factors and discounts and credits,” as well as the amendments to N.J.A.C. 11:3-16.4(j) that delete “classification factors” and “discounts and credits.” Finally, the commenter suggested that the 15 percent cap in proposed N.J.A.C. 11:3-16B.5(d) should be changed to 25 percent.

A second commenter expressed concern with the Department’s proposed amendments to N.J.A.C. 11:3-16.1(c). The commenter stated that they understand the Department’s position that the shorter timeframes assigned to limited rate changes are only warranted for less complicated filings, and that the enabling statute contains no such restrictions. The commenter contends that in N.J.A.C. 11:3-16B.1(c), the Department seeks to remove class factors as a rating variable that can be adjusted through the limited rate change process, but provides no rationale for this change. The commenter believes that class factors are no different from any of the other variables included in this section, and should not be deleted.

RESPONSE: The Department believes that it is appropriate to revise N.J.A.C. 11:3-16B.1(c) to allow for those classification changes necessary to comply with the requirements of N.J.S.A. 17:29A-36(c). The Department believes that this is necessary in order to limit territorial rate differences for operators 65 and over. Consideration of those classification factors is already required under N.J.S.A. 17:29A-36(c), so their inclusion here merely continues the existing requirement and does not require a reproposal. The Department does not believe that any other changes are necessary. Historically, “classification” factors were a specific set of rating factors based on age, gender, and the marital status of individual drivers on the policy. With the advent of more sophisticated rating methods, the definition of “classification” factors has been broadened to incorporate a wider range of rating variables; filers have submitted changes to rating factors associated with rating rules, tiers, violations/points, discounts, credit scoring, and other characteristics under this format. These various revisions greatly complicate the analysis and review process. As a result, they compromise the time frames allowed for the limited rate change process, and render filings that contain such factors inconsistent with the concept of a limited rate change.

Furthermore, the Department notes that filers that wish to make changes to classification and other rating relativities are not required to make two separate filings. The Department believes that the most efficient course of action is to make a single filing under the provisions of N.J.A.C. 11:3-16, which have recently been revised to be more flexible, reflecting New Jersey’s competitive marketplace. The Department also notes that accident-free discounts are not required to be flat dollar amounts.

Finally, the Department believes that the 15 percent annual cap on individual policy rate increases set forth in N.J.A.C. 11:3-16B.5(d) is appropriate and in keeping with the intent of the

rate process for “limited rate change” filings. The Department’s current rule provided three exceptions regarding rate impacts. First, although overall impacts were capped at seven percent, and individual coverages at 10 percent, individual territorial base rate changes were not subject to that limitation. Second, the inclusion of other rating plan changes, with corresponding base rate offsets, could result in large increases. Finally, the rule allows multiple limited rate change filings to be made in one year, provided that each filing’s overall impact is less than zero percent -- this could also result in some policyholders receiving multiple, unlimited increases within a year. Therefore, the Department believes that a cap on individual increases is appropriate. The Department notes that filers may file for unrestricted changes under the provisions of N.J.A.C. 11:3-16.

COMMENT: One commenter expressed concern with the Department’s amendments to N.J.A.C. 11:3-16B.4(c). The commenter stated that with respect to N.J.A.C. 11:3-16B.4(c), which pertains to defense/cost containment expenses (DCC) and adjusting and other claims related expenses (AO), it is important for the Department to recognize that many insurers are not able to include all costs associated with defense of a claim, such as litigation management costs, as DCC in paragraphs (c)1 and 2 because the data cannot be allocated to a specific claim. The commenter argued that in the past, the Department allowed for a change in the methodology to include such costs in paragraph (c)4 as unallocated loss adjustment expense (ULAE). Similarly, some expenses such as appraisals that can be allocated to a particular claim have been included in paragraphs (c)1 and 2. The commenter stated that it has been the Department’s practice to process filings with this exception to the standard methodology as limited rate filings and the

commenter questioned whether this practice will change if the proposed amendments are adopted.

RESPONSE: The proposed rule allows for “alternate methods” (see amendments to N.J.A.C. 11:3-16B.4) to be used. Once approved, the filer may continue to use the alternate method in filings going forward. As the Department is already familiar with the method the commenter is referring to, it may continue to be used in the future without warranting longer timeframes for analysis and review.

COMMENT: One commenter expressed concern with the Department’s amendment to N.J.A.C. 11:3-16B.4(i). This provision requires supporting information for any territorial rate changes. Such information would include premium and exposure information by territory, and the filed information would be considered public information.

The commenter contends that premium and exposure information by territory is not just actuarial information supporting a rate filing that the Department needs as part of the rate filing, but is also proprietary commercial information that shows where the insurer is marketing and can be used to determine market penetration by territory. This information is much more detailed than the total number of exposures written in all of the auto urban enterprise zones (UEZs) (Urban Enterprise Zones) combined by an insurer that the Department does publish. The commenter argued that the Department can protect this proprietary commercial information by simply stating that it recognizes that premium and exposure information by territory is a trade secret and proprietary commercial information that is not subject to disclosure under the open public records laws.

The commenter suggested that N.J.A.C. 11:3-16B.4(i) should be amended to read:

“3. Premium and exposure information by territory is trade secret and proprietary commercial information that is not subject to disclosure under N.J.S.A. 47:1A-1 et seq.”

RESPONSE: The Department disagrees with the commenter. Filers are permitted to designate portions of any filing as “Confidential,” and the Department will consider such designation in responding to any request for government records under the Open Public Records Act. Indeed, the requested language has not been included in any other filing rules, including N.J.A.C. 11:3-16, and the Department finds no basis to include such special language solely for the rate process for limited rate change filings. Therefore, the Department has determined that no change is necessary.

COMMENT: Several commenters expressed concern with the proposal to set a limit on base rate increases at 15 percent in N.J.A.C. 11:3-16B.5(c). One commenter stated the Department, in the Summary for the proposal, fails to provide any explanation as to why the Department is now imposing such a cap, given that it is not required by N.J.S.A. 17:29A-46.6. The commenter believes that a base rate cap is not necessary considering the other rate change limitations currently in place (specifically the single coverage limit of 10 percent, with a limit on all coverages combined of seven percent, as well as an individual policyholder cap of 15 percent). The commenter stated that a filer’s rate indication may support a base rate increase in excess of 15 percent and, as long as the other caps are not exceeded, a 15 percent base rate cap seems an unnecessary constraint.

A second commenter stated that the only statutory restrictions on limited rate filings are that the overall increase should not exceed seven percent and that an increase in any single coverage is limited to 10 percent. The commenter argued that this new requirement is unduly

restrictive and should not be included in the regulation at all, particularly in view of the statutory restrictions noted above, which are already in place. The commenter urged that if such a limitation is still necessary, that the Department expand this restriction on base rate increases to 20 percent, which will provide some much needed rate filing flexibility.

RESPONSE: The Department believes that the cap on individual policy rate increases is appropriate and in keeping with the intent of a “limited filing.” As was noted in a prior response, the Department’s current rule provided three exceptions regarding rate impacts and, while the overall impacts were capped at seven percent and individual coverages at 10 percent, individual territorial base rate changes were not subject to that limitation. Additionally, the inclusion of other rating plan changes, with corresponding base rate offsets, could result in large increases. Finally, the rule allows multiple limited filings to be made in one year, provided that each filing’s overall impact is less than zero percent - this could also result in some insureds receiving multiple, unlimited increases within a year. The establishment of the 15 percent cap on base rate increases will constrain these undesirable results. Utilizing a 20 percent cap would not do so to the same extent. Therefore, the Department believes that a 15 percent cap is appropriate and reasonable for use in a limited rate change filing. For larger increases, filers should file under the provisions of N.J.A.C. 11:3-16.

COMMENT: One commenter expressed concern with N.J.A.C. 11:3-16B.5(d), in which the Department is proposing to add the following language:

“No individual policy shall experience a rate increase in excess of 15 percent within a 12-month period as a result of any filing made pursuant to the subchapter, inclusive of all filed changes to rates and rating factors.”

The commenter stated the Department, in the Summary for this proposal, stated that this language is being added to prohibit filings that, pursuant to these limited rate change rules, result in individual rate impacts greater than 15 percent. The commenter contends that it appears that the Department intends for the 15 percent cap under N.J.A.C. 11:3-16B.5(d) to apply solely to filings made under the limited rate change regulation within a 12-month period and not a combination of filings that may be made under both the limited rate change process and prior approval process. The commenter believes that the phrase “inclusive of all filed changes to rates and rating factors” could be construed as making the cap applicable to both types of rate filings made within the 12-month period. Accordingly, the commenter recommends that the proposed language be modified to provide more clarity as to the Department’s intention that this provision apply solely to limited rate changes.

Additionally, the commenter stated that the proposed 15 percent individual policyholder cap is new language. The current limited rate change rule does not contain any language related to an individual policyholder cap. The commenter believes that the Department’s internal position is generally to impose a 20 percent cap as a result of a single filing. The commenter contends that a cap of any percentage does not have a bearing on the complexity of a filing so a new (and lower) cap of 15 percent does not appear necessary. Accordingly, if the Department wants to impose a cap, it should impose a 20 percent cap consistent with its current internal standard.

RESPONSE: The Department intends for the limitations imposed by N.J.A.C. 11:3-16B.5(d) to apply solely to filings made in accordance with the rate process for limited rate change filings. The rule as proposed and adopted so states by the phrase “pursuant to this subchapter” (that is, Subchapter 16B.) The Department believes that 15 percent is appropriate and reasonable for use

in a limited rate change filing. Since these rules address the rate process for limited rate changes, the Department believes that if an insurer needs a 20 percent increase on individual policies, they should file a prior approval filing. Since these rules address the rate process for Limited Rate Changes, the Department believes that if an insurer needs a 20 percent increase on individual policies, they may file a prior approval filing. Accordingly, no change is necessary.

COMMENT: One commenter requested that the Department consider applying the 15 percent individual policyholder cap in a way that makes allowance for outliers by permitting a small degree of tolerance for disruption, that is, that applies the cap to 95 percent rather than 100 percent of the individual policyholders. The commenter stated that a cap at the policyholder level applicable to 100 percent of the policyholders can oftentimes lead to the need to manipulate a rate revision in order to address the disruption associated with an exceedingly small segment of the business. The commenter believes that this can dilute the intended impact of the rate revisions, as changes to the rates are restricted solely to accommodate an extremely small number of outlier policyholders who would exceed the cap. The commenter stated that the allowance for five percent tolerance would provide for more efficient and appropriate rate revisions, without compromising the recognized intent of controlling policyholder disruption.

RESPONSE: The limitations in the rules as amended should apply to all insureds affected by a limited rate change filing. Filers who wish to implement changes that would result in larger increases for even a small percentage of their insureds should file such changes under the provisions of N.J.A.C. 11:3-16. Therefore, the Department believes that no changes are necessary.

COMMENT: One commenter expressed concern with N.J.A.C. 11:3-16B.5(c) and (d), which address the 15 percent rate cap. The commenter stated that recodified N.J.A.C. 11:3-16B.5(f) allows the limitations on the maximum rate increase of seven percent overall to be doubled if the filer has not made an expedited rate filing in 12 months (with no more than one such doubled limit filing allowed over any 24-month period). The commenter contends that N.J.A.C. 11:3-16B.5(c) and (d) as proposed do not take this type of filing into account.

The commenter stated that the statute allows insurers to file for an expedited rate increase that doubles both the overall seven percent and the 10 percent by coverage limits. (N.J.S.A. 17:29A-46.6e and g). The commenter contends that the regulations should reflect this. Additionally, the commenter stated that the 15 percent cap on individual policy rate increases will also need to be doubled, otherwise territorial base rate changes or a 20 percent increase in mandatory coverages will not be permitted in such a rate filing, although the statute expressly permits it.

Proposed N.J.A.C. 11:3-16B.5(c), (d) should be amended to read as follows:
(suggested language in boldface)

“(c) Filers shall be permitted to seek base rate increases of up to 15 percent provided:

1. The increases are indicated by territory and coverage;
2. The overall increase for any single coverage does not exceed 10 percent;

and

3. The overall increase for all coverages for all policyholders combined does not exceed seven percent.”

In the event that subsection (f) applies, the percentage limits above of 15 percent and 10 percent shall be doubled.

“(d) No individual policy shall experience a rate increase in excess of 15 percent within a 12-month period as a result of any filings made pursuant to this subchapter, inclusive of all filed changes to rates and rating factors. In the event that subsection (f) applies, the percentage limit of 15 percent shall be doubled.”

RESPONSE: The Department agrees with the commenter and has changed these provisions accordingly in order to render them consistent with N.J.A.C. 11:3-16B.5(f) and N.J.S.A. 17:29A-46.6. These revisions merely codify the existing regulatory and statutory provisions, so reproposal is not necessary. The Department’s changes further clarify that, if N.J.A.C. 11:3-16B.5(f) applies, then all percentage limits in N.J.A.C. 11:3-16B.5(c) or (d), respectively, will be doubled.

Federal Standards Statement

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

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

SUBCHAPTER 16B. RATE PROCESS FOR LIMITED RATE CHANGES, CALCULATIONS
FOR PRIVATE PASSENGER AUTOMOBILE INSURANCE RATE
CHANGES

11:3-16B.1 Purpose and scope

(a) - (b) (No change.)

(c) These rules apply to base rate changes by coverage and territory, including expense fees, as well as to increased limit and deductible relativity factor changes.

Classification factor changes will also be permitted to the extent necessary for filers to maintain compliance with N.J.S.A. 17:29A-36(c).

11:3-16B.5 Limitation on filer's rate request

(a) - (b) (No change.)

(c) Filers shall be permitted to seek base rate increases of up to 15 percent provided:

1. (No change from proposal.)
2. The overall increase for any single coverage does not exceed 10 percent;

[and]

3. The overall increase for all coverages for all policyholders combined does not exceed seven percent; *[*]* **;****and**

4. In the event that subsection (f) below applies, the percentage limits in this section shall be doubled.

(d) No individual policy shall experience a rate increase in excess of 15 percent within a 12-month period as a result of any filings made pursuant to this subchapter, inclusive of all filed changes to rates and rating factors. ***In the event that (f) below applies, the percentage limit of 15 percent shall be doubled.***

(e) - (f)(No change.)