INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE

Reporting Financial Disclosure and Excess Profits

Proposed Amendments: N.J.A.C. 11:3-20.3, 20.5 and 11:3-20 Appendix

Authorized By: Holly C. Bakke, Commissioner, Department of Banking and Insurance

Authority: N.J.S.A. 17:1-8.1, 17:29A-5.6 through 5.16, and sections 67, 68, 69 and 82 of P.L. 2003, c. 89.

Calendar Reference: See Summary below for explanation of exceptions to calendar requirement.

Proposal Number: PRN 2004-87

Submit comments by May 14, 2004 to:

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The agency proposal follows:

## Summary

N.J.S.A.17:29A-5.6 et seq. requires insurers authorized to transact private passenger automobile insurance in this State to file an excess profit report on or before July 1 each year. N.J.A.C. 11:3-20 contains the rules and identifies the exhibits to be used in filing this report with the Department of Banking and Insurance (Department).

The Department proposed amendments to N.J.A.C. 11:3-20 on July 21, 2003 at 35 N.J.R. 3098(a), as the result of the enactment of the Automobile Insurance Competition and Choice Act, P.L. 2003, c. 89. The notice of adoption of these amendments is published elsewhere in this issue of the New Jersey Register. Some suggestions made by commenters on that proposal constituted substantive changes that could not be made on adoption. Therefore, the Department is addressing those concerns in this proposal.

The Department is amending N.J.A.C. 11:3-20.3 by adding definitions for “actual loss,” “PLIGA” and “PLIGA assessments.” The Department is amending the definition of “extraordinary loss” to read: that portion of actual loss above five percent of earned premium, determined for each individual calendar-accident year on all coverage combined basis.

The Department is also amending N.J.A.C. 11:3-20.5 to reflect the additional requirement that New Jersey Property-Liability Insurance Guaranty Association (PLIGA) assessments are shown in the excess profits filing. The Department notes that recent amendments to N.J.S.A. 17:30A-8 and 17:30A-16 did not empower or require insurers to recoup through a surcharge on insureds, the assessments formerly made by the Unsatisfied Claim and Judgement Fund (UCJF), and prospectively to be made by PLIGA, for losses and costs related to uninsured motorists coverage and pedestrian PIP benefit payments. Pursuant to N.J.A.C. 11:3-20.5, insurers may consider those assessments as expenses when calculating rates.

The Department is amending N.J.A.C. 11:3-20 Appendix – Exhibit One to reflect the additional requirement that PLIGA assessments are shown in the excess profits filing. Exhibit Eight is also being amended to clarify that the extraordinary loss in year 1 through 7, should be the values calculated when that year was last used in the excess profits calculation. Additionally, Exhibit Nine is being amended to clarify the items used in the calculations for the seven-year total. The additional amendments reflect changes in the manner of calculation, and in the data used to calculate excess profits and any extraordinary loss.

A 60-day comment period is provided for this notice of proposal and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal is not subject to the provision of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The proposed amendments will benefit the public by enhancing the Department's ability to effectively monitor the financial performance of insurers. The amendments will ensure that insurers submit data in a manner that is consistent with the actual way in which the surcharge imposed by PLIGA for uninsured motorists coverage and pedestrian PIP benefit payments is treated under N.J.S.A. 17:30A-8 and 17:30A-16 as recently amended.

By ensuring the accurate reporting of excess profits data, the amendments will also facilitate the potential reinvestment by insurers in the New Jersey auto insurance market provided for in the amendments adopted simultaneously with this proposal, published elsewhere in this issue of the New Jersey Register. In general, such reinvestment should enhance competition and improve the general conditions in the auto insurance market, which will have a beneficial effect upon New Jersey consumers.

Moreover, the Department believes that the proposed amendments, together with those simultaneously adopted , published elsewhere in this issue of the New Jersey Register, will result in the excess profit report more accurately reflecting the economic status of the filer. Insurers will benefit from these proposed amendments because they will have a clearer understanding of their reporting requirements, which will result in the filing of more accurate and stable excess profit reports from year to year. Because the proposed amendments should result in the submission of more complete and accurate excess profit reports in a standardized format, the Department believes that the amendments will better enable it to fulfill its obligation to evaluate the financial performance of insurers.

## Economic Impact

The Department does not believe that these amendments will cause insurers to incur any additional expense relating to the filing of excess profit reports beyond what they currently incur. The Department notes that these amendments may require insurers' to initially allocate additional time to complete the new exhibits and appendices to be supplied with the reports, but the Department does not believe that it will result in any applicable, additional expenses being incurred by insurers.

The Department does not anticipate any economic impact on the Department or the public as a result of these proposed amendments.

## Federal Standards Statement

A Federal standards analysis is not required because these amendments regulate the business of automobile insurance, which is governed by Tile 17 of the New Jersey Statutes, and are not subject to any Federal requirements or standards.

## Jobs Impact

Although the Department does not anticipate that the amendments alone will result in the generation or loss of jobs, it believes that the package of regulatory amendments adopted and proposed to implement P.L. 2003, c. 89, of which this is a part, when taken as a whole, will contribute to the attractiveness and competitiveness of the New Jersey automobile insurance market, and will help preserve and expand employment in the automobile insurance industry as well as in insurance agencies and brokerage firms. The Department invites interested persons to submit any data or studies about the jobs impact of these proposed amendments with their written comments.

## Agriculture Industry Impact

Pursuant to N.J.S.A. 4:1C-1 et seq., the Right to Farm Act, and N.J.S.A 52:14B-4(a) of the Administrative Procedure Act, the Department does not expect any agriculture industry impact from these proposed amendments.

## Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act, at N.J.S.A. 52:14B-17, a "small business" means any business resident in this State which employs fewer than 100 employees; is independently owned and operated; and is not dominant in its field. Some insurers affected by these amendments meet this definition.

The Department has determined that these proposed amendments are reasonable and necessary for the purposes expressed herein and to further implement the changes to the governing law resulting from the enactment of P.L. 2003, c.89. These rules will apply to all voluntary private passenger automobile insurers, except those that only write the “exempted types" of coverage. These amendments impose a regulatory requirement that is consistently applied without regard to business size. These rules continue to prescribe the regulatory requirements for the reporting of the financial status, including any excess profit, of companies writing mandatory private passenger automobile insurance. Thus, this kind of information must be assembled with uniformity and reported with consistency in order to promote a stable and healthy marketplace. The Department notes that the information required by the amended Exhibits and the proposed amendments do not impose new recordkeeping, reporting or compliance obligations on insurers. For these reasons, the proposed amendments provide no differing reporting, recordkeeping or compliance requirements based on business size.

The Department recognizes that these amendments may initially require insurers to devote additional time for the completion of the amended Exhibits. The Department anticipates that the future annual cost of compliance with these rules should be consistent with the current annual cost. The use of professional services required by the current rules (for example, actuaries, claim professionals, underwriting professionals, etc.) will continue to be necessary. Such costs will vary with the individual professional.

Finally, the Department notes that although no exemptions or different compliance requirements are specifically provided based on business size, the rules continue to reflect the exemption from the filing requirements set forth in N.J.S.A. 17:29A-5.11. That provision exempts insurers with fewer than 150 car years of exposure in New Jersey over the prior three calendar-accident years combined from filing the excess profit reports. Moreover, as noted above, private passenger automobile insurers are required to file excess profit reports pursuant to N.J.S.A. 17:29A-5.6, as recently amended. This statute provides no differentiation in compliance requirements specifically based on insurer size. As a result, these proposed amendments provide no differentiation in compliance requirements, to affected businesses based on insurer size.

Smart Growth Impact

The proposed amendments have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

**Full text** of the proposal follows (additions indicated in boldface **thus**; and deletions indicated in brackets **[**thus**]**):

11:3-20.3 Definitions

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

**"Actual loss" includes all loses and expenses except additional allowable expenses, additional non-excessive profit allowance, and holding company non-excessive subsidization. For the purposes of this calculation, additional development adjustment shall be split equally among all years used in the excess profit calculation.**

. . .

"Extraordinary loss" means that portion of **[**the**]** **actual** loss above five percent of earned premium, determined **[**over three**]** **for each individual** calendar-accident year**[**s**]** on all coverage combined basis.

. . .

**"PLIGA" means the New Jersey Property-Liability Insurance Guaranty Association.**

**<u>"PLIGA assessments" means the amount paid by insurers to the New Jersey Property-Liability Insurance Guaranty Association pursuant to N.J.S.A. 17:30A-8 and 17:16-1b.</u>**

. . .

11:3-20.5 Excess profit report

(a) – (b) (No change.)

(c) In addition to the requirements in (b) above, each insurer shall file in the format of the exhibits appended to this subchapter, the following information of the calendar-accident year ending December 31 immediately preceding the date the excess profit report is due:

1. – 5. (No change.)

6. UCJF **<u>and PLIGA</u>** assessments.

(d) – (e) (No change.)

APPENDIX

EXCESS PROFIT EXHIBITS – INSTRUCTIONS

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INPUT SHEET

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EXHIBIT ONE

Exhibit One removes UCJF **and PLIGA** Assessments, Excess Medical Benefit Reimbursements and other exclusions from Statewide premiums, losses and allocated loss adjustment expenses. Exhibit One consists of 36 sheets, one for each coverage for each of 9 CYs, beginning the year immediately prior to the year of submission and is uniform across all coverages.

For all columns, Item 2 is the sum of Items 2a-2f for premiums and Items 2a-2e for loss and ALAE from the Input Sheet. Item 3 is Item 1 - Item 2.

For Col (3), Item 5A is the sum of the excess profit refund paid, extraordinary loss incurred, and reinvestment into New Jersey listed in the Exhibits Seven and Eight portion of the Input Sheet. Item 5B = Item 3 – Item 5A.

EXHIBITS TWO – SEVEN (No change.)

EXHIBIT EIGHT

Exhibit Eight shows the extraordinary loss incurred and amount reinvested into New Jersey in each of the last 17 CYs and carry forward used in each of the last 19 AYs by coverage along with the total.

- Item 1 is the extraordinary loss incurred by the company as stated in the Input Sheet. **For Year-1 through Year-7, the values shall be those values calculated in the previous year's report. For Year-8 through Year-15, the value shall be that value calculated when that year was last used in the excess profit calculation.**
- Items 2.1 through 2.19 are the extraordinary loss carry forwards used in the applicable AYs as stated in the Input Sheet.
- Item 2 is the total of Items 2.1 through 2.19.
- Item 3 = Item 1 – Item 2.
- Item 4 is the amount reinvested into New Jersey by the company as stated in the Input Sheet.
- Items 5.1 through 5.19 are the reinvestment carry forwards used in the applicable AYs as stated in the Input Sheet.

- Item 5 is the total of Items 5.1 through 5.19.
- Item 6 = Item 4 – Item 5.

EXHIBIT NINE

Exhibit Nine uses the data developed in Exhibits One through Eight to calculate excess profit and any extraordinary loss for AYs Year -3, Year –2 and Year –1, as well as a seven-year total.

The sources of data for Exhibit Nine follow.

- Item 1 = Exhibit 1, Col (1), Item 3.
- Item 2 = Exhibit 1, Col (2), Item 3.
- Item 3 = Exhibit 1, Col (2), Item 4
- Item 4 = Exhibit 1, Col (3), Item 5b.
- Item 5 = Exhibit 6, Part 7, Col (3) for BI and zero for all other coverages.
- Item 6 = Item 2 - Item 3 - Item 4 + Item 5.
- Item 7 = Exhibit 3, Part 3, Col (3).
- Item 8 = Exhibit 2, Part 3, ULAE Factor.
- Item 9 = Item 7 x Item 8.
- Item 10 = Item 9 ÷ Item 6.
- Item 11 = Exhibit 4, Col (3), Item 5.
- Item 12 = Exhibit 4, Col (3), Item 3.
- Item 13 = Exhibit 4, Col (3), Item 4.
- Item 14 = Exhibit 4, Col (3), Item 6
- Item 15 = Exhibit 4, Col (3), Item 7.
- Item 16 = Exhibit 4, Col (3), Item 9.
- Item 17 = Exhibit 4, Col (3), Item 10.
- Item 18 = Sum of Items 11-17.
- Item 19 = Item 6 - Item 9 - Item 18
- Item 20 = Item 2 x Input Sheet, Item 19
- Item **21** = Exhibit 5, Part 1, Item 15
- Item 22 = Item 19 - Item 20 + Item 21
- Item 23 **[-]** **<u>for the seven-year total</u>** is from the Input Sheet. **<u>Item 23 for each individual year is one-seventh of the seven-year total.</u>**
- Item 24 = Item 22- Item 23, for the seven-year total only.
- Item 25 = Item 2 x Additional Non-Excessive Profit Allowance.[2.5 percent divided by 1 minus the Federal corporate tax rate of 35 percent].
- Item 26 = Item 2 x Holding Company Non-Excessive Subsidization [0.5 percent].
- Item 27 = Item 24 - Item 25 - Item 26, for the seven-year total only.
- Item 28 = Exhibit 7, Item 2.

**[**Items 29 - 33 are on an all coverages combined basis only.**]**

- Item 29 = Exhibit 8, Item 2.

- Item 30 = Exhibit 8, Item 5.
- Item 31 is the amount of qualified reinvestment into the New Jersey automobile insurance market **on all coverages combined basis only**.
- Item 32 = Item 27 - Item 28 - Item 29 - Item 30, for the seven-year total only.
- **Item 33-36 are on an all coverages combined basis only.**
- **Item 33 = (Item 32 x -1) – Item 31 if Item 32 is less than zero, and zero otherwise.**
- **Item 34a = Item 14.**
- **Item 34b = Item 25.**
- **Item 34c = Item 26.**
- **Item 34 = Item 34a + Item 34b + Item 34c.**
- **Item 35 = Item 33 – Item 34 if positive, and zero otherwise.**
- Item **[**33**]** **36** = Item **[**31**]** **35** - Item 2x **[-]** 5 percent for **[**the seven-year total for all coverages combined**]** **each calendar-accident year** if positive, and zero otherwise.

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