

INSURANCE  
DEPARTMENT OF BANKING AND INSURANCE  
DIVISION OF PROPERTY CASUALTY

Private Passenger Automobile Insurance: Rate Filing Review Procedures

Proposed Amendments: N.J.A.C. 11:3-18

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

Authority: N.J.S.A. 17:1-8, 17:1-15e, 17:29A-1 et seq. and 52:27EE-46 et seq.

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

Proposal Number: PRN 2007-36

Submit written comments by April 6, 2006 to:

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The agency proposal follows:

Summary

The Department of Banking and Insurance (Department) is amending N.J.A.C. 11:3-18, its rules on Private Passenger Automobile Insurance 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 establishment of a Division of Rate Counsel in the Department of the Public Advocate, N.J.S.A. 52:27EE-46, and

private passenger automobile insurance rate filings. The Department will be addressing other personal lines 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. Pursuant to N.J.S.A. 52:27EE-48, 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. 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 pursuant to N.J.S.A. 17:29A-46.6 or 17:36-5.35; 2) prior approval rate filings of seven percent or less; or 3) rule or form filings for any other form of insurance.

The Department is amending N.J.A.C. 11:3-18.1(a) by adding a statutory cross reference to N.J.S.A. 52:27EE-46 et seq., the authorizing provision for the Public Advocate's intervention

in private passenger automobile rate filings. N.J.A.C. 11:3-18.1(b) is being amended to clarify that this subchapter only applies to private passenger automobile rate filings and to correct a statutory cross reference from N.J.S.A. 11:29A-14 to N.J.S.A. 17:29A-14. The Department is also amending N.J.A.C. 11:3-18.1 to include new subsection (d), which reiterates the statutory limitations of N.J.S.A. 52:27EE-46 et seq. on the jurisdiction or authority of the Public Advocate's Division of Rate Counsel to intervene in private passenger auto insurance rate filings.

The Department is proposing to amend the definition of "annual informational filing" found in N.J.A.C. 11:3-18.2 by deleting the reference therein to N.J.A.C. 11:3-16.7(a), a reserved section. The definition of "filer" is being amended to delete the phrase "or making an annual informational filing." The definition of "prior approval filing" is being amended to delete the reference to N.J.A.C. 11:3-16.7(d)" because the section was repealed, and the term "flex rate filings" is being replaced with "limited rate change filings." A cross reference to N.J.A.C. 11:3-16B, the rules regarding limited rate changes, is being added. A definition of "Public Advocate" is also being added. The Department is deleting the definition of "qualified member" of a rating organization because N.J.S.A. 17:29A-6.1, which required certain insurers to make their own rates, was repealed effective March 12, 1990, pursuant to P.L. 1990, c. 8, § 102.

The Department is amending N.J.A.C. 11:3-18.3(a) by deleting the phrase "pursuant to N.J.S.A. 17:29A-6.1a(2), which are not qualified members of rating organizations as defined in N.J.A.C. 11:3-18.2" in order to further reflect the repeal of N.J.S.A. 17:29-6.1. Additionally, the Department is deleting the term "make" and replacing it with the term "submit." The Department is also adding subsection (g) to provide the address to which insurers should send copies of rate filings that are required to be submitted to the Public Advocate.

N.J.A.C. 11:3-18.4(a) is being amended to conform the first sentence in it to N.J.A.C. 11:3-18.3(b) with respect to establishing the date on which the Department's review of a prior approval filing shall commence. Subsection (a) is also being amended to require the filer to concurrently provide a copy of a prior approval filing to the Public Advocate. Current subsection (b) is being recodified as (c) and a new subsection (b) is being added that requires the Public Advocate to notify the Department and the filer if it intends to intervene no later than 10 days after receipt of the filing. Paragraph (b)2 (recodified as (c)2) is being amended to require the Department to send a copy of the notice that the filing is incomplete to the Public Advocate, if the Department has received from the Public Advocate notice of its intent to intervene on the filing. The Department is recodifying current subsection (c) as (d). This subsection is also being amended to provide that if the Department requests further information from the filer, the filer shall submit the information to the Department and simultaneously send it to the Public Advocate within 10, rather than 15, days of the filer's receipt of the request.

N.J.A.C. 11:3-18.4 is being further amended by adding a new subsection (e), which provides that the Department deems the filing requirements of N.J.A.C. 11:3-16 to be sufficient information to review and evaluate any rate change requested. This provision also establishes procedures and timeframes for obtaining clarifying or explanatory information when requested. A new subsection (f) is also being added to require that, no later than 60 days after receipt of a filing, that the Public Advocate shall file with the Department its report and recommendations, and simultaneously submit a copy to the filer. Current subsection (d) is being recodified as (g) and the reference to "a registered intervenor" is being changed to "the Public Advocate." The Department notes that N.J.A.C. 11:3-17, its Rate Intervenor rules, were repealed as part of the re-adoption of N.J.A.C. 11:3 (see 38 N.J.R. 2828(c)), effective July 3, 2006, and operative

July 16, 2006. Current N.J.A.C. 11:3-18.4 subsections (e) and (f) are also being recodified as (h) and (i).

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 calendars.

### Social Impact

The proposed amendments will affect the Department, the Public Advocate, insurers and rating organizations that make filings on private passenger automobile insurance rates in the voluntary market. The proposed amendments provide for the Public Advocate's intervention in an already established rate filing review process utilized by the Department, which currently only includes insurers and rating organizations. The Department notes that the Public Advocate Restoration Act of 2005 amends N.J.S.A. 17:29A-46.8, which was the authorizing provision for rate intervenors, by adding paragraph k, which provides that the provision shall expire July 16, 2006. The Department believes that the proposed amendments will have a positive impact on all parties in that they provide for an orderly process for the review by the Department of private passenger automobile rate filings in which the Public Advocate may intervene. The proposed amendments also clarify the manner in which parties may participate in the process and 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 private passenger automobile insurance rate increase requests, which will afford greater protection to the public from unwarranted rate increases.

### Economic Impact

These amendments reflect the requirements of N.J.S.A. 52:27EE-46 et seq. which established the Division of Rate Counsel in the Department of the Public Advocate. Although the proposed amendments include the Public Advocate in the Department's existing private passenger automobile insurance rate review process, the amendments are essentially procedural in nature and will not have a significant economic impact. These amendments establish timeframes and procedures applicable to the Public Advocate's role in the process. The amendments may cause insurance companies or rating organizations to incur minimal costs associated with providing copies of certain filings to the Public Advocate.

### Federal Standards Statement

A Federal standards analysis is not required because the proposed amendments 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 these proposed amendments.

### Regulatory Flexibility Analysis

The proposed amendments may apply to “small businesses” as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These “small businesses” include insurance companies authorized to write private passenger automobile insurance or rating organizations which file rating information.

These proposed amendments implement requirements imposed by N.J.S.A. 52:27EE-46 et seq., which establishes the Division of Rate Counsel in the Department of the Public Advocate and outlines its authority and jurisdiction for intervening in private passenger automobile insurance rate filings by all private passenger automobile insurers in the voluntary market. The proposed amendments amend the existing process for the review of private passenger automobile rate filings by the Department. As noted above in the Economic Impact, the amendments requiring notice to the Public Advocate should have a minimal cost impact on insurers and rating organizations. The Department does not believe that these amendments will impose any undue burden on small businesses. These amendments will not require small businesses to use any professional services beyond those currently utilized in order to comply. The Department recognizes that the amendment to N.J.A.C. 11:3-18.4(d) reduces the time for a filer to respond to a request from the Department for further information from 15 to 10 days of the filer’s receipt of the request. Varying the time for compliance with a request for further information based upon the size of the filer would be inconsistent with the objective of these rules, which is to have a uniform process for all filers. In addition, such requests for additional information do not toll the time period within which the Department must deny filings for private passenger automobile insurance rate increases to avoid their being deemed approved pursuant to N.J.S.A. 17:29A-14 and N.J.A.C. 11:3-18.4. Therefore, like the amendments requiring the providing of certain

notices to the Public Advocate, this proposed amendment provides no differentiation in compliance requirements based on the size of a filer's business.

### Smart Growth Impact

The proposed amendments 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 proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus])

## SUBCHAPTER 18. PRIVATE PASSENGER AUTOMOBILE INSURANCE: RATE FILING REVIEW PROCEDURES

### 11:3-18.1 Purpose and scope

(a) This subchapter sets forth the procedures used by the Department to review voluntary market private passenger automobile insurance rate filings and implements N.J.S.A. 17:29A-1 et seq. **and N.J.S.A. 52:27EE-46 et seq.** It is intended to provide for the expeditious review and disposition of automobile insurance rate filings consistent with applicable statutes regarding insurance and administrative procedures.

(b) This subchapter applies to **private passenger automobile** rate filings that require prior approval of the Commissioner made pursuant to N.J.S.A. [11:29A-14] **17:29A-14**.

(c) (No change.)



**(d) The Public Advocate Division of Rate Counsel shall have no jurisdiction or authority to participate or intervene in:**

**i. Expedited prior approval rate filings made by an insurer or affiliated group of insurers pursuant to N.J.S.A. 17:29A-46.6 or 17:36-5.35;**

**ii. Prior approval rate filings having an overall impact of seven percent or less; or**

**iii. Rule or form filings for any other form of insurance.**

11:3-18.2 Definitions

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

“Annual informational filing” means a filing made in accordance with the provisions of N.J.S.A. 17:29A-36.2b and N.J.A.C. 11:3-16.4 [or 16.7(a)].

. . .

“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[, or making an annual informational filing].

. . .

“Prior approval filing” means a filing made pursuant to N.J.S.A. 17:29A-14 and N.J.A.C. 11:3-16.6 [or 16.7(d)] to alter, supplement, or amend rating systems or any part thereof, except [flex rate] **limited rate change** filings **pursuant to N.J.A.C. 11:3-16B.**

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

[“Qualified member” of a rating organization means an insurer member or subscriber of a rating organization whose total written private passenger car years insured on a calendar year basis, is less than 1.5 percent on January 1, 1990 and one percent on or after January 1, 1991, of the total written private passenger car years insured by all insurers writing motor vehicle insurance in this State in the voluntary market, pursuant to N.J.S.A. 17:29A-6.1a2.]

. . .

### 11:3-18.3 General provisions applicable to all filings

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

1. Insurers [required to] **that** make their own rates [pursuant to N.J.S.A. 17:29A-6.1a(2), which are not qualified members of rating organizations as defined in N.J.A.C. 11:3-18.2] shall [make] **submit** filings themselves.

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

(b) - (f) (No change.)

**(g) Any filing or other item which is required to be provided 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**

11:3-18.4 Procedures for review of prior approval filings

(a) The time period for the Department's review of a prior approval filing shall commence the day after the filing is received. **The filer shall concurrently provide a copy of the filing to the Public Advocate.**

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

[(b)] (c) The Department shall advise the filer if the filing is incomplete not later than 25 days after receipt of the filing.

1. (No change.)

2. Notice to the filer that the filing has been found to be incomplete shall specify the missing item(s) or information. **The Department shall send a copy of the notice that the filing is incomplete to the Public Advocate, if notice of the intent of the Public Advocate to intervene on the filing has been received.**

3. (No change.)

[(c)] (d) If the Department requests further information from the filer, which information must be provided to the Department upon request pursuant to N.J.A.C. 11:3-16.8, 16.9 or 16.10, the filer shall submit the information to the Department **and simultaneously to the Public Advocate** within [15] **10** days of the receipt of the request.

**(e) The Department deems the filing requirements set forth in N.J.A.C. 11:3-16 to be sufficient information to review and evaluate any rate change requested. Therefore, no supplemental information, other than limited clarifying or explanatory information as**

referenced in (e)1 and 2 below, shall be required. If necessary, the following procedures may be used to obtain clarifying or explanatory information.

1. Not later than 20 days after its receipt of a filing, the Public Advocate may request in writing that the filer provide information to clarify or explain information contained in the filing. Not later than 10 days after receipt of any such request, the filer shall provide the clarifying or explanatory information to the Public Advocate.

2. Copies of any correspondence between the parties, and any additional information or documents supplied by the filer in response to a request by the Public Advocate shall also be simultaneously provided to the Department.

(f) No later than 60 days after receipt of a filing, the Public Advocate shall file with the Department its report and recommendations, and simultaneously submit a copy to the filer.

[(d)] (g) Not later than 60 days after receipt of a filing by the Department either the filer or [a registered intervenor] the Public Advocate pursuant to N.J.S.A. 17:29A-46.8 may request in writing a hearing on the filing. A request for hearing shall include a statement of facts and issues in sufficient detail so as to notify the Department and any other party of the matters in dispute.

[(e)] (h) Upon receipt of a request for a hearing, 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. - 2. (No change.)

[(f)] (i) (No change in text.)