INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE

Rate Filings Requirements: Voluntary Market Private Passenger Automobile Insurance Calculation of Maximum on Combined Commission and Broker, Other Acquisition Expense and General Expenses

Adopted Amendment: N.J.A.C. 11:3-16 Appendix Exhibit E

Proposed: September 19, 2005 at 37 N.J.R. 3542(a).

Adopted: March 13, 2006, by Steven M. Goldman, Acting Commissioner, Department of Banking and Insurance

Filed: March 16, 2006 as R 200 d.138 **with substantive and technical 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 and 17:29A-1 et seq.

Effective Date: April 17, 2006.

Expiration Date: July 3, 2006.

Summary of Public Comments and Agency Responses:

The Department of Banking and Insurance (Department) received timely written comments from the following: Allstate New Jersey Insurance Company, QBE Insurance Corporation, State Farm Indemnity Company, the Independent Insurance Agents and Brokers of New Jersey, the Insurance Council of New Jersey, the Property Casualty Insurers Association of America, and Professional Insurance Agents of New Jersey.

COMMENT: Several commenters expressed their support of the Department's proposed amendment. One commenter stated that it believes that the revised formula is necessary in a competitive marketplace and will promote superior customer service by allowing companies to submit a rate filing that more closely reflects their actual expenses.

RESPONSE: The Department appreciates the commenters' support.

COMMENT: One commenter questioned whether the proposed rules apply to private passenger automobiles written under a commercial automobile policy.

RESPONSE: The adopted rules do not apply to private passenger automobiles written under a commercial automobile policy, unless a company's private passenger automobile manual is used to rate the private passenger automobile.

COMMENT: One commenter stated that it appreciated the Department's proposal to eliminate the limits of the "expense provisions of filers to no more than the weighted average of the expense provisions for the 20 largest New Jersey private passenger automobile insurance companies that use the same general marketing methods," but the commenter argued that the proposed amendments will continue to improperly skew costs of filers. The commenter stated that they oppose maintaining caps in this case. The commenter requested the Department revise its proposal to permit filers to file actual expenses as part of their expense provisions as long as they can be supported with data.

The commenter believes that its suggested change will continue New Jersey's trend to an open and more competitive marketplace. Additionally, the commenter believes its recommendation will permit companies to compete in a more open and free market economy with many positive benefits to the consumer.

Finally, the commenter stated that if a company is unable to support its expense provisions with company-specific data, they would support the Department's proposal as an alternate method.

RESPONSE: The Department believes that this amendment is necessary to correct perceived biases in the existing N.J.A.C. 11:3-16 Appendix Exhibit E. While the New Jersey marketplace is becoming more competitive, the Department prefers at this time to allow expansion in the use of loss criteria in ratemaking, which relates more to the insureds, than expansion in the use of expense criteria, which relates more to the insurers.

COMMENT: One commenter requested that the Department clarify the provision pertaining to the average plus five percent. The commenter stated that it believed that the cap on expenses is five percent above the weighted average of all companies with similar methods.

RESPONSE: The commenter is correct; the cap on expenses is five percent above the weighted average of all companies with similar methods.

COMMENT: One commenter noted that the Department's amendment deletes the requirement that it compile a list of the 20 largest private passenger automobile companies or groups on May 31 of each year based on the most recent annual premium volume.

The commenter stated that, however, the proposed amendment still requires companies to calculate expense ratios based on the formula contained in N.J.A.C. 11:3-16 Appendix Exhibit E. The commenter suggested that the Department should provide the allowed expense ratios for each marketing method annually rather than requiring each company to compile the necessary data and make an independent calculation.

The commenter believes that obtaining the allowed expense ratios from the Department would eliminate unintended miscalculations by providing all companies with the same allowed expense data. The commenter believes that this would make the filing of this information less time consuming and prevent confusion.

RESPONSE: The Department intends to continue providing the allowed expense ratios annually, on May 31. As the calculation will now include all private passenger automobile companies, the Department will also provide a list showing each company's assignment to a marketing method. Consequently, the Department has not adopted the proposed deletion of the entire sentence in the Appendix that stated that the Department will compile the list of the 20 largest private passenger automobile companies or groups on May 31 of each year based on the most recent annual premium volume. Rather, on adoption the Department is changing this sentence to read that "The Department will compile the list of private passenger automobile companies or groups on May 31 of each year based on the most recent annual premium volume."

Summary of Agency-Initiated Change

The Department is clarifying the text in the first two sentences of the fourth paragraph of the Appendix to read that (addition in boldface) "… expense shall be calculated **by the Department** as a percentage of New Jersey written premium …" in order to make it clear that the Department is responsible for the calculation.

Federal Standards Statement

A Federal standards analysis is not required because the adopted amendments 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 with brackets with asterisks ***[thus]*):**

APPENDIX

EXHIBIT E

Calculation of Maximum on Combined Commission and Brokerage, ***[other]* *Other*** Acquisition Expense and General Expenses

The maximum allowed expense provision for commission and brokerage, other acquisition, and general expenses shall be calculated as a weighted average, plus five percent of the provision for all private passenger automobile companies or groups in this State that use the same marketing method as the filer, excluding the results of insurance carriers with membership requirements. The Department may, in its discretion, also exclude the expenses of carriers that are newly admitted and writing business in the State due to the potential distortion in the expenses of such carriers, including the effect of start-up costs.

The Department will compile the list of private passenger automobile companies or groups on May 31 of each year based on the most recent annual premium volume.

The companies and groups ***on the list*** shall be divided into one of the three marketing methods: (1) Independent Agents; (2) Captive Agents; or (3) Direct Writers. The designation of marketing method shall be based on the primary designation for the company or group in the A.M. Best Report (Property/Casualty). ***The list shall be posted on the Department's web site and made available to filers on request.***

The provision for commission and brokerage expense shall be calculated ***by the Department*** as a percentage of New Jersey written premium, as stated on New Jersey Page 14 of the Statutory Annual Statement for each company or group used in the calculation. The provision for general and other acquisition expense shall be calculated ***by the Department*** as a percentage of countrywide earned premium, as stated on Part 3 of the Insurance Expense Exhibit for each company or group used in the calculation. The maximum allowed expense provision, calculated by group of coverages (liability, risks, physical damage), shall be the weighted average of the total commission and brokerage, other acquisition, and general expense provisions for each company within each marketing method, plus an additional five percent.

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