

Explanatory Statement Regarding Approval of Proposed Public Access Rule by the Management Committee

On September 21, 2008, following discussion and a public hearing to receive comments from interested parties, the Management Committee of the Interstate Insurance Product Regulation Commission (“Commission”) approved, as amended, a proposed amendment to the Establishment of Conditions and Procedures for Public Inspection and Copying of Information and Official Records of the Commission (“Public Access Rule”). This explanatory statement is being issued in accordance with the procedure established by Section 109 of the Commission’s Rule for Adoption, Amendment and Repeal of Rules for the Interstate Product Regulation Commission (“Rule on Rulemaking”).

The Management Committee has approved this proposed amendment because the Commission is required to promulgate rules establishing conditions and procedures for public inspection and copying of its information and official records, including product filing information pursuant to Article VIII §1 and Article X § 2 of the Interstate Insurance Product Regulation Compact (the “Compact”), as enacted into law by each Compacting State. The Management Committee believes that this amendment enhances the rule by correcting internal references and allowing for email requests for access to public records.

The change between the text of the rule as approved by the Management Committee and the text of the proposed rule contained in the notice of proposed rule published on June 6, 2008 is reflected in the redlined version of the rule, which is attached and incorporated herein by reference. The specific reason for the change is noted in brackets within the document.

With respect to comments made by interested parties, the Management Committee agreed with comments from the Industry Advisory Committee that product filings that are pending approval, have been disapproved or are withdrawn should not be public and should be exempt from public inspection, examination and copying. Concerns about the exposure of trade secret information and the potential loss of competitive advantage have not been sufficiently resolved.

AMENDMENT TO THE RULE FOR ESTABLISHMENT OF CONDITIONS AND PROCEDURES FOR PUBLIC INSPECTION AND COPYING OF INFORMATION AND OFFICIAL RECORDS OF THE INTERSTATE INSURANCE PRODUCT REGULATION COMMISSION

Purpose

In order to increase transparency in the review process and achieve consistency within the rule, the rule for establishment of conditions and procedures for public inspection and copying of information and official records of the interstate insurance product regulation commission shall be amended as follows (new language is underlined; deleted language is struck through; amendments made after public hearing appear in italics):

§ 103. Request for Access to Official Records.

....

(b) The following Records are not public and shall be exempt from inspection, examination and copying:

....

~~(11) Product filings that are pending approval, have been disapproved, or are withdrawn.~~

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(c) All requests for access to Commission records shall be in writing and be sent or delivered by mail, electronic mail, hand-delivery or facsimile transmission. The Commission shall not accept verbal ~~or electronic mail~~ requests. All requests shall include:

....

[The proposed deletion of § 103 (b)(11) was rejected by the Management Committee because it did not leave sufficient protection of trade secret information.]

§ 104. Response to Request for Public Records.

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(b) If a request is denied, in whole or in part, because it seeks Records that are not Public Records, the Custodian of Records shall send notice to the Requestor of the denial in writing within ten (10) working days of receipt of the request (or any longer period if extended pursuant to ~~Section 4~~ subsection (a) of this section) and the Requestor may appeal the denial as provided in ~~Article VII~~ Section 107 of this Rule. The notice of denial shall contain the following information:

(1) A description of the Record or portions of the Record to which access is denied provided the description does not disclose information exempt from disclosure.

(2) Identification of the category or categories that makes the Record exempt from disclosure under ~~Article III, Section 2~~ Section 103(b) of this Rule.

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§ 105. Applicable Fees and Charges.

(a) Upon a request for a copy or certified copy of Public Records, the Commission shall prepare an invoice reflecting the applicable charge based on the total number of copies and any special service charges within the time provided in ~~Article IV, Section 1~~ Section 104(a) of this Rule.

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§ 107. Appeals of Determination.

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(c) A notice of appeal must state the specific reasons upon which the Requestor asserts that a Record or any portion thereof qualifies as a Public Record, or upon which an Insurer claims the information qualifies as a Trade Secret. A notice of appeal that fails to comply with this requirement shall be dismissed for lack of specificity, but may be refiled within the period described in ~~Section 2~~ subsection (b) of this section. If a notice of appeal is not timely filed, the determination of the Custodian of Records shall be final and binding on the Requestor and the Insurer, as applicable.

....

(f) The Appeals Committee shall issue a written decision within sixty (60) calendar days of the mailing date of the notice of appeal, unless it has provided an Insurer with an opportunity to respond to a dispute involving Insurer's trade secret or it has requested oral testimony under ~~Section 5 of this Article~~ subsection (e) of this section, in which case it shall issue a final determination within sixty (60) calendar days after receipt of the Insurer's response or receipt of the transcript of oral testimony, whichever is later. The decision shall include a narrative explaining the basis of its decision.

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Adoption and Effective Date

This Amendment was adopted by the Commission pursuant to the procedures set forth in the Rule for Adoption, Amendment and Repeal of Rules for the Interstate Insurance Product Regulation Commission. This amendment was adopted on _____ and is effective on _____ on a prospective basis to filings submitted on or after the effective date and shall apply to public access requests made on or after _____.