



REGULATORY ORDER NO. R 17-07

**ORDER MODIFYING THE RATE FILING REQUIREMENTS FOR CERTAIN TYPES
OF PROPERTY & CASUALTY RATING PLANS**

Purpose

This order identifies certain situations in which otherwise applicable filing requirements are modified, per Alaska Statute (AS) 21.39.040(f), and to clarify the modified filing requirements applicable in those situations.

Background

Insurers and rating organizations have expressed an interest in implementing rating rules that would allow rating elements to be determined based on mutual agreement between the insurer and insured ("negotiable"). These plans, including those from the National Council on Compensation Insurance, Inc. and the Insurance Services Office, Inc., have generally had premium eligibility thresholds of \$500,000 or more to be eligible for the negotiable rating rule, and would apply to retrospectively rated policies or policies with high deductibles or retentions.

Findings

1. Under AS 21.39.040(f), the director may issue an order suspending or modifying the filing requirements for kinds of insurance where the filing and approval of rates are, in the director's opinion, not desirable or necessary for the protection of the public.
2. Modifying the rate filing requirements for filings as set forth in this Order promotes equity and availability for insurance consumers since such filings:
 - a. allow additional flexibility in the market which works to ensure that insureds are able to obtain adequate insurance protection; and
 - b. enable eligible insurers to utilize their expertise to develop rates for complex risks that may better reflect insured's unique risk characteristics and nuances of individualized coverage solutions than would be possible otherwise.
3. Allowing negotiable rating rules in the limited circumstances set forth in this Order will not lessen the protection of insureds or the public, since:
 - a. insurers' rates must still comply with all statutes and regulations not specifically identified as exempted in this Order;
 - b. insurers' obligations to their policyholders will not be altered and remain as outlined in the policy contracts;

- c. the availability of Alaska Insurance Guaranty Association protections will not be altered;
- d. the premium eligibility criteria ensure that eligible insureds are large and sophisticated with highly qualified staff who are fully capable to watch out for the insured's interests;
- e. the limited application to retrospective rating plans, high deductible or loss reimbursement rating plans, and excess rating plans ensures that eligible arrangements are limited to those where the portion of the policyholder's overall risk that is covered by the subject policy is relatively small. Accordingly, the negotiable premiums represent a small part of the overall expected costs of the risk.
- f. ratemaking and statistical data will be unaffected as insurers must still comply with statistical reporting requirements of AS 21.39.130; and
- g. the division maintains oversight of insurers' use of negotiable rating via requirements related to filings and data collection and availability.

Order

Consistent with the foregoing, the director orders:

- A. A retrospective rating plan, deductible or loss reimbursement rating plan, or excess rating plan may contain a provision that allows premiums or individual premium components to be set based on negotiation between the insured and the insurer, subject to the following:
 - 1. for a deductible, loss reimbursement, or excess plan, the per occurrence or per claim deductible, self-insured retention, or loss reimbursement limit must be at least \$100,000. If the applicable coverage is instead written over an aggregate deductible, self-insured retention, or loss reimbursement limit, the aggregate must be at least an amount that results in an equivalent proportion of expected risk transfer as a \$100,000 per occurrence or per claim deductible, self-insured retention, or loss reimbursement limit, and the filing must demonstrate the equivalence;
 - 2. eligibility for the plan must require that a policyholder generate premium, calculated based on applicable manual rates or rating systems¹, of at least the greater of \$500,000 or the eligibility threshold approved by the division for any applicable Rating Organization for that line of business; and
 - 3. the insurers' obligations to their policyholders shall not be altered solely due to utilizing the negotiable rating provisions.
- B. Insurers, or a rating organization on behalf of its member/subscriber insurers, shall file a manual page containing a rule, consistent with the requirements in paragraph A above, prior to an insurer issuing policies using the negotiable rating flexibility. However, nothing in this order requires an insurer to offer a negotiable rating option to its policyholders.

¹ If the insurer does not have an approved rating plan from which to calculate the policyholder's premium, premium should be calculated using the approved rating plan for the applicable Rating Organization for that line of business. If there is no approved Rating Organization rating plan that contemplates similar coverage, the insurer may use their best judgment to calculate a premium based on expected losses and expenses that would be incurred if coverage were provided by a guaranteed cost policy without a deductible.

- C. Member/subscriber insurers may file deviations in accordance with AS 21.39.070, but the requirements of paragraph A above must be met.
- D. For each policy of an eligible insured, an insurer shall maintain an underwriting file containing documentation identifying any individual premium components that resulted from the negotiations, and documentation sufficient to demonstrate the premium is not inconsistent with AS 21.36.090, AS 21.36.120, or AS 21.39.030(a). The underwriting file must be made available to the division upon the division's request.
- E. The filings required by paragraph B above must be filed in accordance with AS 21.39.040 and must comply with all applicable provisions of AS 21.39 and 3 AAC 31.200 – 299, however, notwithstanding AS 21.39.040(d), the division will not require the filing to provide specific, supporting documentation of the negotiable rating rule's compliance with AS 21.36.090, AS 21.36.120, and AS 21.39.030(a). The division also will not consider the negotiable rating rule to violate AS 21.39.040(a) or any requirement for strict application of rating organization promulgated rates, including Regulatory Order R 76-1 for workers' compensation.
- F. Applicable statistical reporting requirements are unaffected by the use of a negotiable rating rule.
- G. Insurers must maintain a list of policies issued utilizing the negotiable rating rule, including the premium charged and the otherwise chargeable premium calculated based on applicable manual rates or rating systems². This listing must be made available to the division upon the division's request, and will be held confidential in accordance with AS 21.06.150(g).
- H. This order applies to all kinds of commercial insurance, as defined in AS 21.12.130, for which filing requirements are subject to AS 21.39, and including workers' compensation insurance, as defined in AS 21.12.070(a)(3).

This order is effective October 5th, 2017.



Lori Wing-Heier
Director

² See footnote 4 for how to calculate the "otherwise chargeable premium" when the insurer does not have an approved rating plan that accommodates rating the policy other than the subject negotiable rating plan.