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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

August 30, 2006

Honorable M. Diane Koken, Commissioner
Insurance Department
1326 Strawberry Square
Harrisburg, PA 17120

Re: Regulation #11-225 (IRRC #2545)
Insurance Department
Property and Casualty Actuarial Opinion

Dear Commissioner Koken:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact me.

Sincerely,

Kim Kaufman/jw

Kim Kaufman
Executive Director
wbg
Enclosure

cc: Honorable Gibson E. Armstrong, Chairman, Senate Banking and Insurance Committee
Honorable Michael J. Stack, III, Minority Chairman, Senate Banking and Insurance Committee
Honorable Nicholas A. Micozzie, Majority Chairman, House Insurance Committee
Honorable Tony DeLuca, Democratic Chairman, House Insurance Committee

Comments of the Independent Regulatory Review Commission

on

Insurance Department Regulation #11-225 (IRRC #2545)

Property and Casualty Actuarial Opinion

August 30, 2006

We submit for your consideration the following comments on the proposed rulemaking published in the July 1, 2006 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Insurance Department (Department) to respond to all comments received from us or any other source.

1. Section 118a.4. - General requirements. - Reasonableness; Clarity.

Subsection (a)(2)(iii) includes the statement: "Other information that the Commissioner in the Commissioner's discretion may require to determine the individual's qualifications." The final-form regulation should state that the Commissioner or Department will give insurers written notice describing the types of "other information" required by the Commissioner and why they are required.

2. Section 118a.5. - Confidentiality. - Statutory authority; Reasonableness; Clarity.

Two commentators, the Insurance Federation of Pennsylvania (IFP) and Property Casualty Insurers Association of America (PCI), raised separate confidentiality concerns. IFP questions whether the Department has the statutory authority to provide the confidentiality protections set forth in the proposed regulation while PCI is concerned that the regulation does not provide enough protection.

Subsection (a) states that the "statement of actuarial opinion ... shall be treated as a public document." Meanwhile, Section 118a.5(b) reads:

Documents, materials or other information in the possession or control of the Department that are considered an actuarial report, workpapers or actuarial opinion summary provided in support of the statement of actuarial opinion, and any other material provided by the insurer to the Commissioner in connection with the actuarial report, workpapers or actuarial opinion summary, shall be confidential by law and privileged,

The statement in Subsection (a) allows for public inspection of the "statement of actuarial opinion" while the documents in Subsection (b) are not open to the public and will remain protected as confidential. Department staff refer to Section 320(d) of the Insurance Company

Law (Law) (40 P.S. § 443(d)) for the authority to maintain the confidentiality of documents listed in Subsection (b). However, Section 320(d) of the Law refers to documents submitted by the National Association of Insurance Commissioners (NAIC) Regulatory Information System and to “work products developed by the Insurance Department staff” as confidential. It is unclear how “material provided by the insurer” as described in Subsection (b) could be “work products developed” by the Department staff.

Similarly, Section 202-A(a) of the Insurance Department Act (40 P.S. § 65.2-A(a)) provides that the Commissioner shall maintain the confidentiality of documents received from the NAIC or from regulatory or law enforcement officials. There is no provision for the confidentiality of documents received from insurers.

The Department needs to explain the statutory and legal foundations for the confidentiality provided by this proposed regulation. This explanation should accompany the final-form regulation. The Department should also review the language of this section and clarify the provisions describing the extent and limits of the confidentiality afforded by the regulation.

3. Section 118a.6. Effective date and exemption. - Implementation procedure; Clarity

Subsection (c) discusses when a foreign insurer could be exempt. The Department has the authority to require that foreign insurers comply with this proposed regulation. However, it is unclear how and when the exemption would apply to a foreign insurer. In the final-form regulation, the Department should clarify the requirements for foreign insurers and identify how it would notify a foreign insurer that it is or is not exempt.

4. General - Reasonableness; Clarity.

The proposed regulation refers to a form and instructions issued by the NAIC. For example, Section 118a.4(a)(2)(i) requires an insurer to file “a properly completed biographical affidavit in the form adopted by the NAIC” with its request for approval of a qualified actuary. The final-form regulation should include information, such as an NAIC website, indicating where and how one can obtain the required NAIC document or form.

Facsimile Cover Sheet



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Date: August 30, 2006
Pages: 4

2006 AUG 30 PM 12:45
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INDEPENDENT REGULATORY
REVIEW COMMISSION

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Insurance Department's regulation #11-225 (IRRC #2545). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: Pete Salvatore Date: 8/30/06