

1900 Rates and Rating Organizations

1901 Consent-to-rate Filings (Excess Rates) [Formerly Regulation 33]

1.0 Purpose

- 1.1 The purpose of this Regulation is to provide definitive instructions among licensed agents and brokers and insurers with regard to securing and providing insurance for applicants under consent-to-rate filings, in accordance with 18 **Del.C.** §2509, at rates in excess of those filed with and approved by the Insurance Commissioner. This Regulation will facilitate the applicant/insured's efforts to obtain a policy of insurance, ensuring that these transactions are in the best interest of the insured, and further that the rating procedures are not excessive or unfairly discriminatory.

2.0 Authority

- 2.1 This Regulation is adopted pursuant to 18 **Del.C.** §314, and promulgated in accordance with the procedures specified in the Administrative Procedures Act, 29 **Del.C.** Ch. 64. 18 **Del.C.** §2509 of the Insurance Code states that "upon the written application of the insured stating his reasons therefor, filed with and approved by the Commissioner, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk."
- 2.2 Agents and brokers have an obligation under 18 **Del.C.** §1717, "Duties of licensed insurance personnel," in the conduct of their business "to insure that each transaction undertaken will, to the extent of the licensee's capabilities, meet the needs of the insurance-buying public."

3.0 Requirements for Filing

- 3.1 Pursuant to 18 **Del.C.** Ch. 25, and 18 **Del.C.** §2509 in particular, licensed insurers are authorized to issue policies of insurance at rates higher than those on file with the Department, for those risks which would not be accepted at filed and approved rate levels.
- 3.2 When a licensed agent and/or broker is unable to cover a risk at regular rates, the risk may be submitted to a licensed, appointed agent for any insurance company licensed to do business in Delaware, or to a licensed broker, for quotation of a rate in excess of that otherwise applicable.
- 3.3 If submitted to another agent or broker for quotation, that agent or broker must be licensed for that kind or line of insurance within which the risk would be placed.
- 3.4 Once a quote is received, the producer of record shall explain to the insured the coverage, the rates, and the circumstances necessitating an excess rate on the risk. Upon informing the insured of this information, the consent-to-rate action shall be initiated by completing the form prescribed by section 4.0.
- 3.5 Consent-to-rate forms shall be filed with the Insurance Department no later than fifteen calendar days after the effective date of the coverage. The consent-to-rate filing shall be issued in triplicate, one for the applicant, one for the producer's records, and the original for the Commissioner's records. All copies must be signed by the applicant indicating acknowledgment and acceptance of the rate proposed for the coverage.
- 3.6 All such policies shall be written subject to approval by the Commissioner. In the event a consent-to-rate filing is disapproved, the termination shall be on a pro rata basis, effective ten calendar days after receipt of the Commissioner's disapproval action.
- 3.7 In the event that the Commissioner does not approve the filing, the disapproval will specify in what respects he finds the filing to be unacceptable. The notice of disapproval shall be provided to the producer, the insurer, and the insured.

4.0 Consent-To-Rate Application Form

- 4.1 The application for approval of a rate on a risk in excess of that provided in a filing otherwise applicable shall be submitted in the format attached hereto, and in accordance with section 3.5 above.

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5.0 Applicability

- 5.1 This Regulation applies to those lines of insurance subject to regulatory jurisdiction under 18 **Del.C.** §2502(a). This Regulation does not apply to surplus lines insurance. The terms of Insurance Department Bulletin 79-1 do not apply to this Regulation.

6.0 Severability

- 6.1 If any provision of this Regulation or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Regulation which can be given effect without the invalid provision or application, and to that end the provisions of this Regulation are severable.

7.0 Effective Date

- 7.1 All consent-to-rate requests must be submitted, as described in this Regulation, effective on October 15, 1980.

8.0 Penalty

- 8.1 Agents and/or brokers who fail to comply with the terms of this Regulation shall be subject to the provisions of 18 **Del.C.** §1732 and the penalties therefor.

9.0 APPENDIX

CONSENT-TO-RATE FILINGS

Note: The following is a format to be used by agents and brokers requesting approval for "excess" rates. Forms will not be provided by the Delaware Insurance Department.

CONSENT-TO-RATE APPLICATION FORMAT

TO:INSURANCE COMMISSIONER

STATE OF DELAWARE

841 SILVER LAKE BOULEVARD

DOVER, DELAWARE 19904

ATTN.: RATING SECTION

Pursuant to 18 **Del.C.** §2509, and in accordance with Regulation 1901 (Formerly Regulation 33), the following information is submitted, seeking approval for the coverage at the rate indicated.

9.1 RISK IDENTIFICATION

9.1.1 Name of Insured/Risk _____

Address _____

9.1.2 The location of the risk _____

9.1.3 The type of insurance (description of coverage to be provided)

9.1.4 Limits of liability _____

9.1.5 Dates of coverage: From _____ To _____

9.1.6 Insurer providing coverage _____

9.1.7 Rates:

1. Total manual rate for this risk \$ _____

2. Total proposed rate for this risk' \$ _____

9.1.8 For personal lines: Was this risk submitted for consideration by the Delaware automobile Insurance Plan (Assigned Risk)/Delaware FAIR Plan? _____

If not, state reason why not _____

9.2 PRODUCER'S STATEMENT

9.2.1) Name of Producer _____

9.2.2) Business Address _____

9.2.3) Telephone Number _____

9.2.4) Description of circumstances which cause the risk to be regarded as an other than ordinary risk subject to regular rates as filed.

(Be specific in this statement. Remarks in the nature of "class of business" or "type of risk" will not be adequate to review the request for an excess rate)

PRODUCER'S CERTIFICATION

Pursuant to Regulation 1901 (Formerly Regulation 33), I certify that I have informed the applicant/risk to be insured of the circumstances regarding the risk, and, further, that I have informed the insured of the excess rate and of the premium to be applied, as reflected above, by _____, for

(Name of Insurer)

covering the risk.

Date: _____

Signature

(Typed or Printed Name)

9.3 Insured's Statement

I have been advised of and understand the contents of this application for a consent-to-rate in excess of the rate otherwise applicable. I request that the proposed rate and resulting premium be approved, pursuant to 18 **Del.C.** §2509.

Date: _____

Signature

(Typed or Printed Name)

Date: _____

Witness Signature

(Typed or Printed Name)