

**Comments of the
Consumer Federation of America
Center for Insurance Research
Center for Economic Justice**

**Proposed Revisions to Public Access Rule of the
Interstate Insurance Product Regulation Commission**

September 2, 2008

The Consumer Federation of America, the Center for Insurance Research and the Center for Economic Justice urge the Interstate Insurance Product Regulation Commission (IIPRC) to adopt the May 19, 2008 proposed amendment to the public information rule. These amendments make insurer product filings with the IIPRC public upon submission to the IIPRC. We strongly oppose the Vermont “compromise” proposal.

While we appreciate the efforts of Vermont to try to respond to consumer and industry concerns with a “compromise” proposal, the fact is that the Vermont proposal is not a compromise. The Vermont proposal will result in the continuation of product filings not being public upon submission. Moreover, and unfortunately, the Vermont proposal is not only worse than the May 19, 2008 proposal, but is also worse than no change at all because it purports to provide public disclosure and transparency when, in fact, no such transparency will occur. It is, in effect, pretend consumer protection. We also object to the Vermont proposal because it requires a complex set of procedures and significant costs which would not be required if the May 19, 2008 amendment were adopted.

The premise behind the Vermont proposal is that, without confidentiality of filings, insurers will not submit “innovative products” to the IIPRC and, consequently, insurers will not utilize the IIPRC. The premise of “innovative filings” is, however, false, as we explain in detail below and the rationale for the Vermont proposal is unfounded.

The remainder of our comments discusses the need for public disclosure of product filings upon submission and detail why industry complaints are without any merit.

The Purpose of Public Records Law

One of the most troubling aspects of the Vermont proposal is the apparent misunderstanding of the purpose of public records law. The purpose of public records laws is to allow the public to hold its government agencies accountable for their actions. A core principle of open government and public records laws is that individual government agencies do not get to decide what is or is not public and what is or is not good for the people to know. The legislature establishes that everything is public with certain exceptions, such as trade secrets and personal information. The goal is to give the agency direction – and not discretion – about what is and is not public. The Vermont proposal does exactly the opposite – it puts IIPRC staff in the position of determining on a case by case basis what is or is not public, and instead of relying on traditional trade secret determinations for which there is significant established law, creates a new, amorphous standard called “innovative product.”

The Need for Public Disclosure of Filings Upon Submission

The question arises, why is the IIPRC as a public agency, unwilling to declare that product filings are public upon submission? We know that a number of states with vibrant markets make filings public, so there is no evidence to support a claim that public disclosure chills competition. The Vermont proposal does not address consumer concerns with the need for transparency and public accountability of the IC.

Let us be candid – the industry opposes public disclosure of filings upon filing because it would give consumers and interested parties the opportunity to comment on filings during the review process. Insurers simply do not want any consumer input – this is illustrated by insurer opposition to funding for consumer advocates to meaningfully participate in the IIPRC startup and in development of product standards. The current situation allows only the insurer to interact with the reviewer. Public disclosure would enable consumers concerned about interpretation of product standards to weigh in during the review period.

The industry arguments – as well as those of some regulators – against public disclosure do not hold up under scrutiny.

The “Innovative Product” Competitive Advantage Myth

The premise behind the IIPRC is that insurers will save significant time and expense with a one-stop filing system. Insurers should be indifferent to the quality of product standards, because what they get is vastly improved efficiency. Public disclosure does nothing to disrupt that efficiency nor slow down the review process.

Industry argues that if filings are public upon filing, they will no longer make innovative filings with the commission because they will lose their competitive advantage. They argue that under the current state-by-state system, they file innovative products with those jurisdictions which do not make the filings public upon filing and, when approved, then go to other jurisdictions. These arguments are offered not only without a shred of proof, but are illogical and plainly at odds with reality.

Insurers argue that the development of a new product takes many months or years, including not only the product concept and form language, but pricing associated with the product. If a competitor wanted to copy the insurer without doing any analysis, all it would have to do is copy the filing and prices used by the filing company – this would take a matter of weeks and would not provide the filing company with any significant head start or competitive advantage in market penetration. On the other hand, if the competitor needed to do its own analysis and pricing, then such analysis and preparation would then take the same type of time as required by the filing company – months to evaluate the product before bringing it to market (and it is extremely implausible an insurer would issue a new product without doing its own pricing evaluation). In either case, a 30-day head start makes no difference because the filing company has a lead time of a year or more.

Just as the claim of “innovative filing” competitive advantage crumbles under modest scrutiny so does the industry claim that insurers currently go to select jurisdictions to file their innovative products. Assume an insurer has done this – gone to a small or medium sized state and gotten the product approved. The product is now approved in that state and is public information. When the insurer goes to a bigger state, its competitors already know about the product and there is no competitive advantage. The fact that a filing was approved in Wyoming does not mean that the initial product review in Florida, Texas, California or New York becomes a rubber stamp. Each of these jurisdictions would perform its own extensive review. We know this because of our experience as regulators in Texas. We routinely received form filings which the insurer stated had been approved in a number of other states – and on several occasions the Department rejected filings approved in other states.

“Innovative Filings” Are The Filings for Which Consumer Input is Most Important

At best, the Vermont proposal will provide public access to routine filings, while making any non-routine filing confidential. Insurers will simply stamp filings as innovative to ensure the filings are not public during the review process. More important, it is precisely the “innovative” products for which consumer input is most important. These are the products that stretch the applicability of product standards and for which there will be new interpretations of product standards.

Why Do Consumers Want to See Product Filings Before Approval?

The question has arisen, why do consumers need to see disapproved filings? The answer is that consumers need to see filings upon submission to be able to comment on filings during the review period. It is only during this period when reviewers will be truly receptive to any consumer comments. Once the filing has been approved, then consumer comments become something to rebut and defend against. In order to comment on filings during the review process, the filings must be public. By making the filings public, consumer may see filings which are eventually disapproved or modified. This enables consumers to evaluate the performance of the IIPRC by monitoring what products have been rejected.

Cost of Public Disclosure

While the Vermont proposal would clearly require extensive new procedures and significant costs, the original May 19, 2008 proposal would not be costly to implement. The May 19, 2008 proposal simply deletes product filings from the list of information exempt from public disclosure. The product filings would be treated like any other public document – the IIPRC staff would respond to a request for a copy of a filing by e-mailing a PDF copy to the requester. Or the IIPRC could post product filings to the web site. There is no need to re-engineer the SERFF system and incur the \$100,000 cost.

The May 19, 2008 proposal does not add any new requirements for determination of trade secret, either. Currently, a filing identifies trade secret information which the filing insurer does not want to make public upon approval of the product filing. This would not change and, consequently, no additional cost would be imposed on IIPRC staff.

Clarification of Public Information

The May 19, 2008 proposal should be supplemented with a statement about what parts of a filing are public information despite any insurer claims to the contrary. The proposed product form and advertising should be declared public information. In the case of long term care products, rate filings should also be declared public information.

Industry Arguments are Without Empirical Support

The Industry Advisory Committee complains that public disclosure means:

- “they do not have the right to expect a head start to hold on to a competitive advantage for innovative product features, strategies or markets.”

This argument is without proof and illogical, as discussed above

- “the public may be reviewing and commenting on filings that may never be introduced to the public.”

This is correct and a positive result. It may be because of public comments that a filing, which would otherwise have been approved, is modified or disapproved. That is the benefit of public disclosure and the reason why insurers are so strongly opposed to public disclosure of filings upon submission.

- “the IIPRC review process may be delayed/complicated due to the juggling of a review process and a public access process.”

This is a red herring issue. There already exists a public records procedure at the commission so there is no need for new and complex procedures. And any public comments received by the commission during the review process will be available to reviewers. This proposal does not require anything from reviewers other than to review any public comments submitted.

- “they will be asked to pay the cost of implementing the capabilities and processes required to accommodate the proposed changes (currently estimated at over \$100,000, and some addition to IIPRC staff).”

This is truly an outrageous argument. Insurers are paying for a one-stop filing process with a public agency. Insurers would be no more paying for public disclosure at the IIPRC than they pay for public disclosure at a state agency. **The IC is a public organization and not a subsidiary of the insurance industry.** The budget of the commission should be set to provide all the services necessary to carry out the public functions of the commission including public participation, public records and public meetings.

We also want to comment on remarks made by some regulators that the IIPRC is a start-up organization and should not pursue public disclosure because it will discourage customers and thereby threaten the IIPRC cash flow. The IIPRC is not a start-up stock company which needs to provide cash flow for venture capitalists – it is a public entity designed to assist insurers with efficient product filing. There is a cost to performing this service. If insurers are not willing to pay those costs, then there is an existing state-based system ready to accept their filings.

If insurers do not support the IIPRC, they certainly have no basis to complain to Congress about unresponsive state regulators. If any IIPRC members are opposed to public disclosure because you think some insurers will not participate because of public disclosure, then we ask you rethink your understanding of the IIPRC and the actions of your legislatures in delegating their authority to the IC. We are not asking you to take actions that punitive to insurers, but actions which are the norm in many member states.

Moreover, the treatment of the public access rule is a matter of principle. We consumer advocates support the concept of an IIPRC that develops strong national standards, rather than one that adopts the weakest state standards. Engaging in race to the bottom, solely to increase the initial number of product filings is short-sighted and improper. In our view, the end (quicker IIPRC filing growth) does not justify the means (making the IIPRC less accountable to the public). If the IIPRC truly wishes to become a viable national regulator, it must not cut corners along the way.

The “Shifting Sands” Argument is False

Insurers have also argued that by changing the public records procedure at this time, the IIPRC sends the message that IIPRC actions – on product standards or procedures – cannot be relied upon. Insurers seem to be selective about when changes to product standards or rules sends such a message because industry itself has already proposed changes to product standards adopted in the past year, yet don’t seem to worry about such changes sending a message of unreliability. The fact is that that IIPRC is a start-up and as such, it is normal and reasonable to expect changes as members and insurers work with the system. The public disclosure issue has always been hotly contested and even when the current procedure was developed, the IIPRC stated clearly that it would be reviewed immediately. There is no surprise here and no shifting sands arguments.

The rules of the IIPRC are constantly being changed as even a cursory review of the Commission docket shows, and neither industry nor consumers should assume that all IIPRC standards or rules are set in stone once they are adopted.

The “Lose Control of Our Filings” Argument is Not Supported by the Facts

Industry has argued that public disclosure of filings upon submission will force the filing insurer to lose control of its filing, whatever that means. The fact is that in many states, life and annuity filings are public upon submission and in most states, property casualty filings are public upon submission. Yet in neither case is there any evidence of competitive or other harm to the filing insurer from such disclosure.

There is No Evidence to Support the “Competitors Will Stymie Our Filing” Argument

Industry has argued that public disclosure of filings upon submission will lead competitors to file comments to stymie the approval of the filing company’s filing. Regulators in states where filings are public upon submission know – and can tell other IIPRC members – that no such action occurs and, even in the event that a competitor commented on a pending filing, such a comment would not impede the review process and would not prevent filing approval unless the comment identified a substantive problem with the filing. In such a case, where a substantive problem with a filing is identified, it does not matter whether it is a consumer or a competitor who filed the comment. What matters is that relevant information was brought to the attention of the filing reviewer.

Conclusion

In closing, we urge the Management Committee and membership of the IIPRC to adopt the May 19, 2008 proposed amendment to make product filings public upon submission to the IIPRC and to reject the well-intentioned, but flawed proposal from the good regulators of Vermont.