



April 3, 2019

Mr. Travis Smith, API, AINS
Filings Consultant
Governance, Enablement and Regulatory Services
Nationwide Insurance
1100 Locust Street
Des Moines, Iowa 50391

**Re: Request for No-Action Letter – Private Passenger Automobile Insurance
AMCO Insurance Company and Nationwide Insurance Company of
America; Case Number 329791**

Dear Mr. Smith:

The above referenced companies (collectively referred hereinafter to as “Nationwide”) submitted a request for a no-action letter on December 7, 2018, pursuant to Section 374.018¹.

Nationwide is requesting the Department allow Nationwide to use its existing rate stabilization rule until December 31, 2019. The existing rate stabilization rule is applicable to Nationwide’s private passenger insurance program. Nationwide indicates the additional time is necessary to allow current policyholders to reach their ultimate rates, under the existing rate stabilization rule, which was filed prior to Bulletin 16-05.

More specifically, Nationwide is requesting the Department issue a no-action letter, stating it will take no enforcement action under Section 374.046 against Nationwide for potentially utilizing rates which might otherwise be deemed excessive, inadequate or unfairly discriminatory in contravention of Section 379.470.

Section 374.018

The Missouri Department of Insurance, Financial Institutions and Professional Registration (“DIFP”) has authority under section 374.018, to issue no-action letters related to the business of insurance in the state. A no-action letter is defined as “a letter that states the intention of the department not to take enforcement actions under section 374.046 with respect to the requesting insurer, based on the specific facts then presented and applicable law, as of the date a no-action letter is issued.” 374.018.1.

¹ All references, unless otherwise noted, are to Missouri Revised Statutes 2016, as amended.

DIFP

An insurer requesting a no-action letter is under an affirmative obligation to make a full, true, and accurate disclosure of all information related to the activities for which the letter is requested, and each request must include complete copies of documents and shall identify all provisions of law applicable to the request. A no-action letter is not considered a statement of general applicability that would require promulgation by rule. The insurer seeking a no-action letter from DIFP has an affirmative obligation to make a full, true, and accurate disclosure of all information related to the request for the no-action letter.

Regulatory Background

Rates for private passenger automobile insurance in Missouri are subject to the provisions of Sections 379.420 to 379.510 RSMo. Under Section 379.470, “rates shall not be excessive, inadequate, as herein defined, nor shall they be unfairly discriminatory.” “Excessive” and “inadequate” have specific definitions prescribed to them within that same section of law. Section 379.470.6 also permits the usage of classifications for the establishment of rates; however, it does state that “such classifications and modifications shall be applicable to the fullest practicable extent to *all risks under the same or substantially the same circumstances or conditions*” (emphasis added).

As the insurance industry has evolved, particularly with regard to merger and acquisition activity and implementation of more advanced rating plans, a need arose for mechanisms to transition rating plan changes as those are applied to Missouri policyholders.

In response to industry requests, the Department issued Bulletin 11-02 on January 7, 2011. This Bulletin provided a regulatory safe harbor for insurers to utilize premium stabilization plans (also called rate capping or transitional rating plans). The regulatory safe harbor was based on a specific set of limited circumstances. Bulletin 11-02 was rescinded on January 12, 2015.

On February 2, 2016, the Department released Bulletin 16-03, a Request for Comment regarding Premium Stabilization. Subsequent to that Request for Comment, the Department held a public hearing again soliciting public comments regarding the use of premium stabilization rules or practices. On September 30, 2016, the Department issued Bulletin 16-05. In Bulletin 16-05, the Department provided a limited duration regulatory safe harbor under a set of specific pre-determined circumstances.

The Department recognizes other situations may arise that fall outside of the safe harbor extended in Bulletin 16-05. Nothing prevents or prohibits an insurer from seeking a no-action letter based upon circumstances which deviate from the pre-determined circumstances which form the basis of the regulatory safe harbor in Bulletin 16-05.

Discussion and Conclusion

Under Missouri insurance law, insurers are prohibited from charging rates that are excessive, inadequate or unfairly discriminatory. Consumers have a reasonable expectation they will be charged the same rate as other similarly situated insureds. Consumers also have a reasonable expectation the Department is monitoring insurance companies to ensure they are not being charged excessive, inadequate or unfairly discriminatory rates. At the same time, the Department recognizes significant changes in the market or rating plans can create significant rate disruptions which can result in negative impacts on policyholders.

With the issuance of Bulletin 16-05, the Department addressed those limited situations or circumstances that may warrant the use of transitional rating plans, balancing the competing public policy interests expressed in Missouri law of ensuring the financial solvency of insurance companies and protecting consumers against rates that are excessive, inadequate and unfairly discriminatory. In striking this balance, the Department was careful to limit the use of rate stabilization rules to a maximum of three years, when the disruption results from an insurer's revisions to its own rating plan.

The safe harbor provided in Bulletin 16-05 allowed insurers to use rate stability rules within certain limited time periods but did not include the ability for insurers to continuously extend previously filed premium transition rules by submitting new filings. The original rate stabilization and transition plans filed by Nationwide did not contemplate the provisions addressed in the Department's Bulletin 16-05. Nationwide implemented rate stabilization practices without knowing Bulletin 16-05 would be issued.

Nationwide has indicated it will no longer apply the Intra-Agency Transfer Rate Stability rules to any Missouri policies after December 31, 2020. Nationwide provided significant proprietary and trade secret information to the Department to evaluate in support of its no-action letter request. Nationwide also provided additional clarity regarding the methodology behind its rate stability rules which was not provided within its original filing. The Department carefully analyzed this and other information Nationwide submitted.

Therefore, for the reasons cited above, the Department affirms through the issuance of this no-action letter that it will not bring an enforcement action under Section 374.046 against Nationwide based on its implementation of the transition plan. Specifically, the Department states it will permit Nationwide until December 31, 2019 to fully implement the rate stabilization rules as originally contemplated in Nationwide's reenter's insurance product submission originally filed with the Department in SERFF Tracking Numbers NWPC-129688396 and NWPC-129748800. This additional time will ensure Nationwide insureds are not adversely

impacted by an unplanned acceleration of the remainder of the transitional rate. It does also, however, work towards finality to the rate stabilization rules so that all insureds will be charged the full, actuarially justified premium no later than December 31, 2020.

This no-action letter and enforcement relief granted herein reflect the interpretation and position of the DIFP based solely upon the facts as presented by Nationwide in its original request letter and through subsequent correspondence with the Department.

The relief issued by this letter does not excuse any other persons or insurers from compliance with any applicable Missouri laws. This letter does not create or confer any rights or obligations on the Department or other insurers subject to the provisions of Sections 379.420 to 379.510 RSMo. As with all no action letters, the relief offered in this no-action letter shall remain in effect as long as there is no change in material fact or law or the discovery of a material misrepresentation or omission made by Nationwide concerning the specific actions that are the subject of this letter. The determination of materiality shall be in the sole discretion of the Director.

Sincerely,



Chlora Lindley-Myers

CLM:aln