

Final Rule
LSA Document #12-465(F)

DIGEST

Adds [760 IAC 1-80](#) to establish a process to allow the commissioner to determine whether certain filings or supporting information submitted to the department are confidential. Effective 30 days after filing with the Publisher.

[760 IAC 1-80](#)

SECTION 1. [760 IAC 1-80](#) IS ADDED TO READ AS FOLLOWS:

Rule 80. Confidentiality of Filings and Supporting Information

[760 IAC 1-80-1](#) Definitions

Authority: [IC 27-1-22-4](#)

Affected: [IC 24-2-1-2](#); [IC 24-2-3-2](#); [IC 27-1](#)

Sec. 1. The following definitions apply throughout this rule:

- (1) "Commissioner" means the commissioner of the department of insurance.
- (2) "Confidentiality request" means a written request made under section 2 of this rule by a filer providing a sufficient basis on which the commissioner may determine that a filing or supporting information is confidential.
- (3) "Filer" means an insurer, authorized third party, or rating organization making a casualty insurance filing of the type set forth in [IC 27-1-22-2](#).
- (4) "Filing" means each submission of:
 - (A) classifications;
 - (B) rules;
 - (C) rates;
 - (D) rating schedules;
 - (E) rating plans; and
 - (F) policy forms;and every modification of any of the foregoing filed by a filer.
- (5) "Insurer" has the meaning set forth in [IC 27-1-2-3\(x\)](#).
- (6) "Rating organization" has the meaning set forth in [IC 27-1-22-8\(a\)](#).
- (7) "Trade secret" has the meaning set forth in [IC 24-2-3-2](#).

(Department of Insurance; [760 IAC 1-80-1](#); filed May 16, 2013, 11:25 a.m.: [20130612-IR-760120465FRA](#))

[760 IAC 1-80-2](#) Requirements for confidentiality requests

Authority: [IC 27-1-22-4](#)

Affected: [IC 27-1-22-4](#)

Sec. 2. (a) If a filer marks a filing or supporting information "confidential", "trade secret", or "proprietary", the filer must also submit a confidentiality request to the commissioner. The confidentiality request must meet the requirements set forth in subsection (c).

(b) Filings containing a confidentiality request must be submitted through electronic mail or paper form.

(c) When making a confidentiality request, in addition to the requirements set forth in [IC 27-1-22-4\(e\)](#), a filer must include the following:

- (1) A written demonstration to the commissioner that the filing or supporting information contains a trade secret.

- (2) A written attestation by an officer of the insurer or rating organization that to the officer's best belief and knowledge, the filing contains a trade secret.
- (3) A written attestation by an officer of the insurer or rating organization that to the officer's best belief and knowledge, the information in the filing has not been made public in any other state.
- (4) A fee of one hundred dollars (\$100) for each confidentiality request.

(d) A filer must submit a filing containing a confidentiality request separately from filings or supporting information that is not confidential. Filings containing a confidentiality request should include only the material that may qualify for confidential treatment, descriptions or explanations pertaining to those materials, and support specific to those materials. Identifying references to corresponding public filings may be included.

(e) If a filer submits a filing or supporting information containing a confidentiality request and marks the filing or supporting information "confidential", "trade secret", or "proprietary", the entire filing and supporting information will be open to public inspection if the commissioner later determines that the filing is not confidential and the filing is not withdrawn.

(f) A written demonstration that a filing or supporting information is confidential must include evidence that the filing or supporting information:

- (1) is not generally known to the public;
- (2) confers an economic benefit to the insurer; and
- (3) is the subject of reasonable efforts to maintain its secrecy.

(Department of Insurance; [760 IAC 1-80-2](#); filed May 16, 2013, 11:25 a.m.: [20130612-IR-760120465FRA](#))

[760 IAC 1-80-3](#) Evidence of confidentiality

Authority: [IC 27-1-22-4](#)

Affected: [IC 27-1-22-4](#)

Sec. 3. If any filing or supporting information subject to a confidentiality request has been determined to be confidential by a state or federal:

- (1) agency; or
- (2) court;

evidence of such determination constitutes a sufficient basis on which the commissioner may determine that the filing or supporting information is confidential.

(Department of Insurance; [760 IAC 1-80-3](#); filed May 16, 2013, 11:25 a.m.: [20130612-IR-760120465FRA](#))

[760 IAC 1-80-4](#) Requests for additional information; tolling of deemer provision

Authority: [IC 27-1-22-4](#)

Affected: [IC 27-1-22-4](#)

Sec. 4. (a) If the commissioner finds that additional information is required from the filer to determine whether a filing or supporting information containing a confidentiality request is confidential, the filer submitting the confidentiality request must provide the requested information to the commissioner within fifteen (15) business days of receipt of the request from the commissioner. If a filer fails to provide the requested information within fifteen (15) business days of receipt of the request from the commissioner, the entire filing will be returned and deemed abandoned.

(b) If the commissioner requests additional information from a filer under subsection (a), the thirty (30) day deemer provision set forth in [IC 27-1-22-4\(e\)\(2\)](#) shall be tolled to and include the business day following the day the filer provides the requested information to the commissioner. Thereafter, a new thirty (30) day period will commence.

(Department of Insurance; [760 IAC 1-80-4](#); filed May 16, 2013, 11:25 a.m.: [20130612-IR-760120465FRA](#))

[760 IAC 1-80-5](#) Retention of documents

Authority: [IC 27-1-22-4](#)

Affected: [IC 27-1-22-4](#)

Sec. 5. (a) Filings or supporting information containing a confidentiality request returned to a filer under [IC 27-1-22-4\(e\)\(3\)\(A\)](#) or [IC 27-1-22-4\(e\)\(3\)\(B\)](#) shall be maintained by the insurer for the time period the filing is in public use. Documentation of previous returns or withdrawals of filings containing confidentiality requests shall be included in any similar future filings containing confidentiality requests.

(b) Filings that are not withdrawn or determined to be confidential will not be returned to the filer.

(Department of Insurance; [760 IAC 1-80-5](#); filed May 16, 2013, 11:25 a.m.: [20130612-IR-760120465FRA](#))

[760 IAC 1-80-6](#) Severability

Authority: [IC 27-1-22-4](#)

Affected: [IC 27-1-22-4](#)

Sec. 6. If:

(1) any section or portion of a section of this rule; or

(2) its applicability to any person or circumstance;

is held invalid by a court, the remainder of the rule or the applicability of the provision to other persons or circumstances shall not be affected.

(Department of Insurance; [760 IAC 1-80-6](#); filed May 16, 2013, 11:25 a.m.: [20130612-IR-760120465FRA](#))

LSA Document #12-465(F)

Notice of Intent: [20120815-IR-760120465NIA](#)

Proposed Rule: [20121024-IR-760120465PRA](#)

Hearing Held: November 16, 2012

Approved by Attorney General: May 3, 2013

Approved by Governor: May 16, 2013

Filed with Publisher: May 16, 2013, 11:25 a.m.

Documents Incorporated by Reference: None Received by Publisher

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Posted: 06/12/2013 by Legislative Services Agency

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