

TITLE 11

INSURANCE

CHAPTER 1

ADMINISTRATION

Authority

N.J.S.A. 17:1-8.1, 17:1-15e, 17:17-1 et seq.,
17B:17-1 et seq. and 52:27EE-51.

Source and Effective Date

R.2006 d.307, effective July 30, 2006.
See: 37 N.J.R. 4156(a), 38 N.J.R. 3586(a).

Chapter Expiration Date

Chapter 1, Administration, expires on July 30, 2011.

Chapter Historical Note

Chapter 1, Plan of Organization of the Department of Insurance, was adopted as R.1971 d.11, effective January 20, 1971, and codified at N.J.A.C. 11:1 Subchapter 1. Notice was not published in the New Jersey Register.

Subchapter 3, Cancellation for Nonpayment of Premium Where Producer of Record Has Advanced Premium, was adopted as R.1972 d.168, effective August 25, 1972. See: 4 N.J.R. 128(b), 4 N.J.R. 221(b).

Subchapter 2, Filings; Property-Liability, was adopted as R.1973 d.120, effective May 1, 1973. See: 5 N.J.R. 113(a), 5 N.J.R. 190(b).

Subchapter 5, Administrative Orders and Declarations, was adopted as Emergency New Rule, R.1974 d.237, and the Motor Vehicle Liability Security Fund was declared exhausted, effective August 22, 1974. See: 6 N.J.R. 351(d).

Subchapter 4, Unfair Discrimination, was adopted as R.1975 d.128, effective September 1, 1975. See: 7 N.J.R. 168(a), 7 N.J.R. 276(b).

Subchapter 6, New Jersey Property-Liability Insurance Guaranty Association, was adopted as R.1975 d.170, effective July 1, 1975. See: 7 N.J.R. 229(a), 7 N.J.R. 334(b).

Subchapter 10, Insurance Licensing of Financial Institutions, was adopted as R.1976 d.166, effective May 27, 1976. See: 8 N.J.R. 233(a), 8 N.J.R. 300(c).

Subchapter 11, Conduct Constituting Violations by Brokers and Agents, was adopted as R.1976 d.235, effective July 22, 1976. See: 8 N.J.R. 287(e), 8 N.J.R. 398(b).

Subchapter 7, Service and Placement Fees, was adopted as R.1976 d.266, effective August 23, 1976. See: 7 N.J.R. 468(a), 8 N.J.R. 422(b).

Subchapter 8, Property-Casualty Agents, was adopted as R.1976 d.267, effective October 1, 1976. See: 7 N.J.R. 469(a), 8 N.J.R. 423(a).

Subchapter 12, Corporate and Partnership Licensee Requirements, was adopted as R.1976 d.412, effective December 16, 1976, operative March 1, 1977. See: 8 N.J.R. 421(c), 9 N.J.R. 24(b).

Subchapter 13, Disclosure Agreements for Motor Club Service Contracts Sold in Connection with Automobile Insurance Policies, was adopted as R.1982 d.177, effective June 7, 1982, operative August 15, 1982. See: 13 N.J.R. 879(b), 14 N.J.R. 579(a).

Subchapter 14, Insurance Licensees, was adopted as R.1982 d.336, effective October 4, 1982, operative November 19, 1982. See: 14 N.J.R. 748(a), 14 N.J.R. 1099(b).

Subchapter 9, Agents for Life Insurance, Health Insurance and Annuity Contracts-Temporary Licensing, was adopted as R.1983 d.603, effective January 3, 1984. See: 15 N.J.R. 1828(a), 16 N.J.R. 49(c).

The Executive Order No. 66(1978) expiration date of Subchapter 5, Administrative Orders and Declarations, was extended by gubernatorial directive from June 6, 1984 to September 6, 1984. See: 16 N.J.R. 1451(a).

Pursuant to Executive Order No. 66(1978), Subchapter 5, Administrative Orders and Declarations, was readopted as R.1984 d.426, effective October 1, 1984. See: 16 N.J.R. 1689(a), 16 N.J.R. 2677(a), 17 N.J.R. 2566(a).

Subchapter 15, Petitions for Rules, was adopted as R.1984 d.511, effective November 5, 1984. See: 16 N.J.R. 2224(b), 16 N.J.R. 3033(b).

Subchapter 10, Insurance Licensing of Financial Institutions, was repealed by R.1985 d.69, effective February 19, 1985. See: 16 N.J.R. 2919(a), 17 N.J.R. 458(a).

Subchapter 20, Cancellation and Nonrenewal of Property and Casualty/Liability Insurance Policies, was adopted as Emergency New Rule, R.1985 d.507, effective September 17, 1985, to expire November 16, 1985. See: 17 N.J.R. 2460(a). The provisions of R.1985 d.507 were readopted without change as R.1985 d.627 effective November 16, 1985. See: 17 N.J.R. 2978(b). The provisions of R.1985 d.626 were readopted without change as R.1986 d.27, effective January 14, 1986. See: 18 N.J.R. 419(b).

Pursuant to Executive Order No. 66(1978), Subchapter 20, Cancellation and Nonrenewal of Property and Casualty/Liability Insurance Policies, was adopted as R.1985 d.627, effective November 16, 1985. See: 17 N.J.R. 2978(b).

Subchapter 21, Loss Reserve Opinions, was adopted as R.1985 d.711, effective January 21, 1986. See: 17 N.J.R. 2596(a), 18 N.J.R. 196(b).

Subchapter 18, Approval of Business Names, was adopted as R.1986 d.10, effective February 3, 1986. See: 17 N.J.R. 41(a), 18 N.J.R. 278(a).

Subchapter 19, Branch Offices, was adopted as R.1986 d.11, effective February 3, 1986. See: 17 N.J.R. 42(a), 18 N.J.R. 280(a).

Subchapter 20, Cancellation and Nonrenewal of Property and Casualty/Liability Insurance Policies, was repealed, and Subchapter 20, Cancellation and Nonrenewal of Commercial and Homeowners' Insurance Policies, was adopted as new rules, effective July 7, 1986, with portions operative July 28, 1986, and Subchapter 22, Prohibition of Certain Cancellation and Nonrenewal Activity, was adopted as R.1986 d.272, effective July 7, 1986. See: 18 N.J.R. 457(b), 18 N.J.R. 1388(a).

Subchapter 16, Requirements for Filing a Downward Deviation in Currently Approved Rates, was adopted as R.1986 d.478, effective December 15, 1986. See: 18 N.J.R. 1998(a), 18 N.J.R. 2458(a).

Subchapter 25, Official Department Mailing List: Address Information, was adopted as R.1988 d.64, effective February 1, 1988. See: 19 N.J.R. 2236(a), 20 N.J.R. 294(b).

Subchapter 9, Agents for Life Insurance, Health Insurance and Annuity Contracts-Temporary Licensing, Subchapter 14, Insurance Licensees, Subchapter 18, Approval of Business Names, and Subchapter 19, Branch Offices, were repealed by R.1988 d.186, effective April 18, 1988. See: 20 N.J.R. 225(c), 20 N.J.R. 904(b).

Pursuant to Executive Order No. 66(1978), Subchapter 20, Cancellation and Nonrenewal of Commercial and Homeowners' Insurance Policies, and Subchapter 22, Prohibition of Certain Cancellation and Nonrenewal Activity, were readopted as R.1988 d.341, effective June 24, 1988. See: 20 N.J.R. 1061(a), 20 N.J.R. 1720(a).

Subchapter 10, Admission Requirements for Foreign and Alien Property and Casualty Insurers, was adopted as new rules by R.1989 d.329, effective June 19, 1989. See: 21 N.J.R. 426(a), 21 N.J.R. 1702(a).

Subchapter 26, Annual Publication of Insurer Profitability Information, was adopted as R.1989 d.538, effective October 16, 1989. See: 21 N.J.R. 2181(a), 21 N.J.R. 3297(c).

Subchapter 3, Cancellation for Nonpayment of Premium Where Producer of Record Has Advanced Premium, Subchapter 7, Service and Placement Fees, Subchapter 8, Property-Casualty Agents, and Subchapter 13, Disclosure Agreements for Motor Club Service Contracts Sold in Connection with Automobile Insurance Policies, were repealed by R.1990 d.11, effective January 2, 1990. See: 21 N.J.R. 1317(a), 22 N.J.R. 30(b).

Subchapter 28, Formation of a Domestic Property and Casualty Insurance Corporation (Stock or Mutual) or Reciprocal Insurance Exchange, was adopted as R.1990 d.162, effective March 19, 1990. See: 21 N.J.R. 3607(a), 22 N.J.R. 954(b), 22 N.J.R. 1266(a).

Subchapter 29, Temporary Certificate of Authority, was adopted as R.1991 d.15, effective January 7, 1991. See: 22 N.J.R. 2453(a), 23 N.J.R. 100(a).

Pursuant to Executive Order No. 66(1978), Chapter 1, Administration, was readopted as R.1991 d.101, effective January 31, 1991. See: 22 N.J.R. 3686(a), 23 N.J.R. 690(b).

Subchapter 32, Fees was adopted as new rules by R.1991 d.303, effective June 17, 1991, operative July 1, 1991. See: 23 N.J.R. 825(a), 23 N.J.R. 1948(a).

Subchapter 6, New Jersey Property-Liability Insurance Guaranty Association, was repealed, and a new Subchapter 6, New Jersey Property-Liability Insurance Guaranty Association Assessment Premium Surcharge was adopted as new rules by R.1991 d.461, effective September 3, 1991. See: 23 N.J.R. 823(b), 23 N.J.R. 2638(a).

Subchapter 33, Public Advocate Reimbursement Disputes, was adopted as new rules by R.1993 d.179, effective April 19, 1993. See: 24 N.J.R. 2706(a), 25 N.J.R. 1764(c).

Subchapter 35, Insurance Holding Company Systems, was adopted as emergency new rules by R.1993 d.445, effective August 16, 1993, to expire October 15, 1993. See: 25 N.J.R. 4275(a). The provisions of R.1993 d.445 were readopted without change as R.1993 d.554, effective October 15, 1993. See: 25 N.J.R. 4275(a), 25 N.J.R. 5170(b).

Subchapter 36, Examination of Insurers, was adopted as emergency new rules by R.1993 d.446, effective August 16, 1993, to expire October 15, 1993. See: 25 N.J.R. 4284(a). The provisions of R.1993 d.446 were readopted as R.1993 d.555, effective October 15, 1993. See: 25 N.J.R. 4284(a), 25 N.J.R. 5180(a).

Subchapter 3, Disability Discrimination Grievance Procedure, was adopted as new rules by R.1993 d.618, effective December 6, 1993. See: 25 N.J.R. 1327(a), 25 N.J.R. 5666(b). Subchapter 3 is exempt from expiration under 28 C.F.R. Part 35.

Subchapter 34, Surplus Lines: Exportable List, was adopted as new rules by R.1994 d.7, effective January 3, 1994. See: 24 N.J.R. 4331(a), 26 N.J.R. 236(b).

Subchapter 31, Surplus Lines Insurer Eligibility, was adopted as new rules by R.1994 d.102, effective February 22, 1994. See: 25 N.J.R. 1819(a), 26 N.J.R. 1096(a).

Subchapter 37, Licensing of Public Adjusters, was adopted as new rules by R.1994 d.207, effective April 18, 1994. See: 25 N.J.R. 5432(a), 26 N.J.R. 327(a), 26 N.J.R. 1711(a).

Subchapter 7, Medical Malpractice Reporting Requirements, was adopted as new rules by R.1994 d.493, effective September 19, 1994. See: 26 N.J.R. 1433(a), 26 N.J.R. 3864(a).

Subchapter 39, Disclosure of Material Transactions, was adopted as new rules by R.1995 d.234, effective May 1, 1995. See: 27 N.J.R. 816(a), 27 N.J.R. 1802(a).

Subchapter 21A, Actuarial Opinion and Memorandum for Life/Health Insurers, was adopted as new rules by R.1995 d.605, effective November 20, 1995. See: 27 N.J.R. 2998(a), 27 N.J.R. 4720(a).

Subchapter 26, Annual Publication of Insurer Profitability Information, Subchapter 29, Temporary Certificate of Authority, and Subchapter 33, Public Advocate Reimbursement Disputes, were repealed by R.1996 d.116, effective March 4, 1996. See: 27 N.J.R. 4121(a), 28 N.J.R. 1382(a).

Subchapter 38, Oversight of Fireman's Relief Associations, was adopted as new rules by R.1996 d.125, effective March 4, 1996, operative March 4, 1996, except for N.J.A.C. 11:1-38.4 which shall be operative January 1, 1997. See: 27 N.J.R. 634(a), 28 N.J.R. 1384(a).

Pursuant to Executive Order No. 66(1978), Chapter 1, Administration, was readopted as R.1996 d.116, effective January 31, 1996. See: 27 N.J.R. 4121(a), 28 N.J.R. 1382(a).

Petition for Rulemaking. See: 29 N.J.R. 707(c), 29 N.J.R. 948(b).

Subchapter 41, Surety Bonds for Contracts Involving the State, Local Contracting Units, Boards of Education, State Colleges and County Colleges, was adopted as R.1996 d.496, effective October 21, 1996. See: 28 N.J.R. 3505(a), 28 N.J.R. 4582(a).

Subchapter 38, Oversight of Firemen's Relief Associations, was adopted as R.1996 d.125, effective March 4, 1996, operative March 4, 1996, except for N.J.A.C. 11:1-38.4 which became operative July 1, 1997. See: 27 N.J.R. 634(a), 28 N.J.R. 1384(a), 29 N.J.R. 425(a).

Subchapter 43, Unusual Hardship For Covered Claims Under The New Jersey Property-Liability Insurance Guaranty Association and New Jersey Surplus Lines Insurance Guaranty Fund, was adopted as R.1997 d.512, effective December 1, 1997. See: 29 N.J.R. 3765(a), 29 N.J.R. 5065(b).

Subchapter 24, Use of Credit Cards, Charge Cards, Debit Cards Or Direct Account Deduction (Alternative Payment Method) To Pay Insurance Premiums, was adopted as R.1998 d.276, effective June 1, 1998. See: 29 N.J.R. 3588(a), 30 N.J.R. 2003(a).

Pursuant to Executive Order No. 66(1978), Chapter 1, Administration, was readopted as R.2001 d.75, effective January 31, 2001. See: 32 N.J.R. 4184(a), 33 N.J.R. 794(a), 33 N.J.R. 1920(a).

Subchapter 33, Surplus Lines Insurance: Procurement Procedure, was adopted as new rules by R.2003 d.37, effective February 3, 2003. See: 34 N.J.R. 641(a), 35 N.J.R. 612(a).

Subchapter 45, Notice to Policyholders of Consumer Insurance Rate Increases, was adopted as new rules by R.2003 d.496, effective December 15, 2003. See: 35 N.J.R. 3517(a), 35 N.J.R. 5595(a).

Subchapter 44, Standards for Safeguarding Customer Information, was adopted as new rules by R.2004 d.148, effective April 19, 2004. See: 35 N.J.R. 5210(a), 36 N.J.R. 1926(a).

Subchapter 46, Stock Workers' Compensation Security Fund, was adopted as new rules by R.2004 d.426, effective November 15, 2004. See: 36 N.J.R. 3476(a), 36 N.J.R. 5129(b).

Subchapter 47, Electronic Transactions, was adopted as new rules by R.2005 d.83, effective March 7, 2005. See: 36 N.J.R. 4207(a), 37 N.J.R. 775(a).

Subchapter 40, Recoupment of Fugitive Recovery Expenses by Surety Companies, was adopted as R.2005 d.247, effective August 1, 2005. See: 37 N.J.R. 198(a), 37 N.J.R. 2882(b).

Chapter 1, Administration, was readopted as R.2006 d.307, effective July 30, 2006. As a part of R.2006 d.307, Subchapter 45, Notice to Policyholders of Consumer Insurance Rate Increases, was renamed Notice to Policyholders of Personal Lines Insurance Rate Increases, effective September 5, 2006. See: Source and Effective Date. See, also, section annotations.

Subchapter 21, Loss Reserve Opinions, was repealed and Subchapter 21, Loss Reserve Opinions, was adopted as new rules by R.2007 d.232, effective August 6, 2007. See: 39 N.J.R. 752(a), 39 N.J.R. 3386(a).

- (1) Repeated failure to furnish heat, water, sewer or public lighting;
- (2) Failure to correct conditions dangerous to life, health or safety;
- (3) Failure to maintain the building in accordance with applicable law;
- (4) Failure to pay property taxes for two quarters.

vii. Building with any of the rental units in the building unoccupied and left unprotected against trespass. A rental unit will be deemed to be unprotected against trespass when an entrance door to such unit or an exterior door to a hall, stairway, or other common passage leading to such unit is missing, unlocked, not capable of being locked, or otherwise unsecured, or when a door or window in such unit which is accessible to entry has not been replaced or boarded up. If the owner remedies the condition that left the unit or units unprotected against trespass and so notifies the association within the 15-day time period for appeal to the association as provided by N.J.A.C. 11:1-5.3(c), then the association shall grant the appeal and the insurance shall continue without lapse.

viii. Buildings from which fixed and salvageable items have been or are being removed and the insured can give no reasonable explanation for such removal.

ix. Buildings which have been condemned.

x. When there is reasonable knowledge and belief that the property is endangered and is not reasonably protected from possible arson for profit.

Emergency New Rule, R.1974 d.259, effective September 20, 1974.
See: 6 N.J.R. 407(a).

“New Jersey Special Joint Underwriting Association.”

Emergency Amendment, R.1974 d.274, effective October 2, 1974.
See: 6 N.J.R. 436(b).

New Rule, R.1977 d.185, effective July 1, 1977.

See: 9 N.J.R. 177(c), 9 N.J.R. 282(b).

Originally designated 11:2-17.1; codified at 11:1-5.5.

Amended by R.1979 d.219, effective June 6, 1979.

See: 11 N.J.R. 249(e), 11 N.J.R. 348(b).

Recertification of 11:1-5.5.

See: 15 N.J.R. 810(a).

Recertification of 11:1-5.5.

See: 16 N.J.R. 2018(a).

Amended by R.1984 d.426, effective October 1, 1984.

See: 16 N.J.R. 1689(a), 16 N.J.R. 2677(a).

Recodified from 11:1-5.5.

Public Notice: Recertification to Legislature of the need for continuance of the Notice of cancellation and nonrenewal of fire and casualty coverage.

See: 18 N.J.R. 1623(a).

Amended by R.1990 d.107, effective February 5, 1990.

See: 21 N.J.R. 3240(b), 22 N.J.R. 391(a).

Changes at (b)3 regarding the provisions of fire and casualty insurance policies issued by the FAIR Plan.

Public Notice: Recertification to Legislature.

See: 22 N.J.R. 3057(b).

Public Notice: Recertification to Legislature.

See: 23 N.J.R. 2883(b).

Public Notice: Recertification to the Legislature of need for notice of cancellation and nonrenewal of fire and casualty insurance.

See: 24 N.J.R. 3181(a).

Public Notice: Recertification to Legislature.

See: 26 N.J.R. 4452(c).

Public Notice: Recertification to Legislature.

See: 27 N.J.R. 3492(a).

Public Notice: Recertification to Legislature.

See: 28 N.J.R. 3834(c).

Public Notice: Recertification to Legislature.

See: 29 N.J.R. 3368(a).

Public Notice: Recertification to Legislature.

See: 31 N.J.R. 2007(a).

Public Notice: Recertification to Legislature.

See: 32 N.J.R. 2959(b).

Public Notice: Recertification to Legislature.

See: 33 N.J.R. 2711(a).

Public Notice: Recertification to Legislature.

See: 34 N.J.R. 3138(a).

Public Notice: Cancellation and nonrenewal of fire and casualty coverage.

See: 35 N.J.R. 4141(a).

Public Notice: Cancellation and nonrenewal of fire and casualty coverage.

See: 36 N.J.R. 3443(b).

Public Notice: Cancellation and nonrenewal of fire and casualty coverage.

See: 37 N.J.R. 2897(a).

Public Notice: Cancellation and nonrenewal of fire and casualty coverage.

See: 38 N.J.R. 3329(a).

Public Notice: Cancellation and nonrenewal of fire and casualty coverage.

See: 39 N.J.R. 2660(b).

Public Notice: Cancellation and nonrenewal of fire and casualty coverage.

See: 40 N.J.R. 5295(a).

Public Notice: Cancellation and nonrenewal of fire and casualty coverage.

See: 41 N.J.R. 2987(a).

Public Notice: Cancellation and nonrenewal of fire and casualty coverage.

See: 42 N.J.R. 1918(b).

Case Notes

Language of an umbrella insurance policy was construed to require the carrier, a surplus lines insurer, to send the insured notice of nonrenewal at least 30 days prior to the expiration date of the policy, despite that surplus lines carriers are not subject to New Jersey Banking and Insurance Department regulations that require such advance notice of nonrenewal. The language of the policy was construed in a manner consistent with those regulations and consistent with record evidence of the standard practice in the surplus lines industry and case law precedent, thus establishing that the nonrenewal clause required the insurer to give notice of a conditional as well as an absolute intent not to renew the policy. *Piermount Iron Works, Inc. v. Evanston Ins. Co.*, 397 N.J. Super. 463, 938 A.2d 134, 2007 N.J. Super. LEXIS 378 (App.Div. 2007).

Regulation governing insurer's giving of notice of policy cancellation and nonrenewal did not obligate insurer to provide notice of nonrenewal of multiperil policy to mortgagee. *Howard Sav. Bank v. Liberty Mut. Ins. Co.*, 285 N.J. Super. 491, 667 A.2d 390 (A.D.1995).

Cancellation of homeowners' policy was governed by statute and regulation on notice of cancellation and nonrenewal of fire and casualty coverage. *DiGiacomo v. Saladino*, 279 N.J. Super. 96, 652 A.2d 223 (A.D.1995).

Insurer was required to demonstrate objective reason for exercising rights under clause allowing cancellation for any reason other than nonpayment of premium. *Harvester Chemical Corp. v. Aetna Cas. & Sur. Co.*, 277 N.J. Super. 421, 649 A.2d 1296 (A.D.1994), certification denied 139 N.J. 441, 655 A.2d 443.

Insurer had to give insured written notice when it did not to renew from any source other than insured. *Echevarias v. Lopez*, 240 N.J. Super. 104, 572 A.2d 671 (A.D.1990).

Statutory obligation to provide written notice of nonrenewal exists despite broker's assurance that insured does not intend to renew. *Echevarias v. Lopez*, 240 N.J.Super. 104, 572 A.2d 671 (A.D.1990).

Casualty policy for trailer park had expired where broker had sent timely and proper notice and insured chose not to renew. *Insinga v. Hegedus*, 231 N.J.Super. 562, 555 A.2d 1183 (A.D.1989).

Insurer could not claim broker was primarily responsible for nonrenewal notices. *Insinga v. Hegedus*, 231 N.J.Super. 562, 555 A.2d 1183 (A.D.1989).

Insurer held liable for fire loss where it failed to give notice of policy expiration as required by rule (citing former N.J.A.C. 11:1-5.5). *Barbara Corp. v. Bob Maneely Insurance Agency*, 197 N.J.Super. 339, 484 A.2d 1292 (App.Div.1984).

11:1-5.3 FAIR Plan short notice cancellation procedures

(a) When a notice of cancellation is served by mail, three days from the date of mailing shall be added to the otherwise applicable notice period.

(b) The association shall submit to the Commissioner, no later than three days after the last day of each month, a copy of all short notice cancellations issued during that month.

(c) The association shall notify the insured of any cancellation in a writing setting forth the reason or reasons for cancellation and the effective date. The writing shall advise the insured of a right to appeal the cancellation to the association within 15 days of the date of mailing, and if the appeal is denied, to the Department of Banking and Insurance. This hearing shall not be considered a contested case under the Administrative Procedure Act (APA). The appeal shall be processed in the following manner:

1. Upon issuance of a short notice cancellation, the file will be placed into special suspense, for a period of 15 days from the date of mailing of notice. If no written notice of appeal is received from the insured or his representative within that period, cancellation will be processed and return premium (if any) forwarded to the producer of record.

2. If timely written request for appeal is received, the following steps will be taken:

i. The N.J.I.U.A. appeals committee will review and determine the appeal within five working days from receipt of request for appeal. If the result of the appeal is favorable, a letter advising the insured or his representative, the producer and the mortgagee (if any) of favorable action will be sent together with reinstatement notice stating that no lapse in coverage has occurred.

ii. If the appeals committee denies the appeal for reinstatement, a letter advising the insured or his representative, the producer or mortgagee (if any) of this action and a right to appeal to the Commissioner will be sent; a copy will be forwarded to the Department of Banking and Insurance.

(1) The file will remain in suspense for 30 days awaiting notice of appeal to the Commissioner.

(2) Upon receipt of the appeal request, the Department of Banking and Insurance will notify N.J.I.U.A. and advise that the file should be held in suspense for an additional period.

(3) If, after 35 days have elapsed from the association's decision to deny appeal and no notification has been received from the Department of Banking and Insurance of a pending appeal, cancellation will be processed and premium returned (if any) to the producer of record.

(4) The Department of Banking and Insurance will advise N.J.I.U.A. of its decision. If the appeal is granted, the policy will be reinstated without lapse. If the appeal is denied, cancellation will be processed and premium returned (if any) to the producer of record.

New Rule, R.1975 d.210, effective July 23, 1975.

See: 7 N.J.R. 273(a), 7 N.J.R. 369(b).

"New Jersey Special Joint Underwriting Association charge".

Amended by R.1976 d.134, effective May 5, 1976.

See: 8 N.J.R. 197(a), 8 N.J.R. 300(a).

Repealed by R.1977 d.17, effective January 26, 1977.

See: 8 N.J.R. 559(a), 9 N.J.R. 93(a).

New Rule, R.1979 d.219, effective June 6, 1979.

See: 11 N.J.R. 249(e), 11 N.J.R. 348(b).

Amended by R.1984 d.426, effective October 1, 1984.

See: 16 N.J.R. 1689(a), 16 N.J.R. 2677(a).

Recodified from 11:1-5.6.

Amended by R.2001 d.75, effective March 5, 2001.

See: 32 N.J.R. 4184(a), 33 N.J.R. 794(a).

Rewrote (c).

11:1-5.4 Distribution of fire insurance premium tax

(a) Fire insurance premium taxes paid by insurers not domiciled in the State of New Jersey are required to be distributed to the respective Firemen's Relief Association in which the property is situated.

(b) A three digit Firemen's Relief Association Code, published in the ISO New Jersey Public Fire Protection Classifications Manual, has been promulgated by the Insurance Services Office (ISO) for the purpose of coding the policies to properly allocate the premium taxes.

(c) The following steps shall be taken to assure correct tax distribution:

1. All agents, surplus lines agents and brokers producing fire insurance on any risks located in New Jersey are required to properly describe the risk and its location on the Policy Declaration Sheet.

2. The description of the property shall contain the complete address at which the property is located including the legal name of the municipality and the Firemen's Relief Association Code as promulgated by the Insurance Services Office.

3. Refer the matter for further deliberations, the nature of which shall be specified to the petitioner and in the notice of action and which shall conclude within 90 days of such referral. Upon conclusion of such further deliberations, the Department shall either deny the petition or grant the petition and initiate a rulemaking proceeding within 90 days.

Amended by R.2003 d.139, effective April 7, 2003.

See: 34 N.J.R. 4041(a), 35 N.J.R. 1546(a).

Rewrote the section.

11:1-15.4 Rulemaking activity

(a) The Department shall provide notice of new rules, amendments, repeals or adoptions by posting these rules on its website at <http://www.state.nj.us/dobi/legsregs.htm> and to the news media maintaining a press office in the State House Complex.

(b) The Department shall post its proposals in the Department's Library, which is located on the 1st Floor, 20 West State Street, Trenton, NJ 08625. The Department shall also distribute its proposals to the Department's list of "interested persons" by e-mail or hard copy. Interested persons are those who have informed the Department in writing that they wish to receive notice of its proposed regulations.

New Rule, R.2003 d.139, effective April 7, 2003.

See: 34 N.J.R. 4041(a), 35 N.J.R. 1546(a).

11:1-15.5 Sufficient public interest for the purposes of extending the comment period or granting a public hearing

(a) In determining whether sufficient public interest has been demonstrated for the purposes of extending the comment period pursuant to N.J.A.C. 1:30-5.4, the Commissioner shall consider the following criteria:

1. Whether comments received indicated a previously unrecognized impact on regulated entities or persons; or
2. Whether comments received raise unanticipated issues related to the notice of proposal.

(b) In determining whether sufficient public interest has been demonstrated for purposes of conducting a public hearing pursuant to N.J.A.C. 1:30-5.5, the Commissioner shall consider the application of an interested person that has been submitted on a form prescribed by the Commissioner. Such application shall be submitted within 60 days following the publication of the notice of proposal in the New Jersey Register.

1. A person interested in having a public hearing held on a notice of proposal shall submit an application on a form prescribed by the Commissioner, to Legislative and Regulatory Affairs, Department of Banking and Insurance, 20 West State Street, PO Box 325, Trenton, NJ 08625-0896. The application shall contain the following information:

i. The person's name, address, telephone number, agency or association (if applicable);

ii. The citation and title of the proposed rule and the date the notice of proposal was published in the New Jersey Register; and

iii. The reasons a public hearing regarding the notice of proposal is considered necessary pursuant to (c) below.

(c) Sufficient public interest for the purpose of holding a public hearing, pursuant to N.J.A.C. 1:30-5.5, shall be demonstrated if upon reviewing the application the Commissioner determines that additional data, findings and/or analysis regarding the notice of proposal are necessary for the Department to review prior to adoption of the proposal in order to ensure that the notice of proposal does not violate the intent of the statutory authority.

(d) A public hearing on a notice of proposal shall be conducted in accordance with the provisions of N.J.A.C. 1:30-5.5.

(e) The recommendations of the hearing officer, and the Commissioner's decision to accept, reject or modify any recommendations shall be summarized and published in the New Jersey Register pursuant to N.J.A.C. 1:30-5.5(g).

New Rule, R.2003 d.139, effective April 7, 2003.

See: 34 N.J.R. 4041(a), 35 N.J.R. 1546(a).

SUBCHAPTER 16. REQUIREMENTS FOR FILING A DOWNWARD DEVIATION IN CURRENTLY APPROVED RATES

11:1-16.1 Purpose and scope

(a) The purpose of this subchapter is to promote competition among insurers for the benefit of the insurance consuming public by permitting insurers subject to N.J.S.A. 17:29A-1 et seq. to effect expeditiously certain decreases in rates currently approved by the Department when, in an insurer's judgment, economic or competitive reasons or conditions warrant such a decrease.

(b) A further purpose is to enable an insurer to return to its previously approved rate level without delay or regulatory review when, in its judgment, the conditions or reasons for the decrease no longer pertain.

(c) This subchapter shall apply to every property and liability insurer which makes its own rates and to every member or subscriber of a rating organization on whose behalf rate filings are made pursuant to the provisions of N.J.S.A. 17:29A-1 et seq. For the purpose of this subchapter, the term "insurer" shall include all such independent insurers and rating organization members or subscribers who are subject to the provisions of N.J.S.A. 17:29A-1 et seq.

11:1-16.2 Filing requirements

(a) Any insurer, subject to the provisions of N.J.S.A. 17:29A-1 et seq., to effect a decrease in rates currently approved by the Commissioner, shall comply with the following filing requirements:

1. The insurer by a rate filing shall notify the Commissioner of Banking and Insurance at least 30 days prior to the date it wants to put into effect a decrease in rates currently approved for it by the Commissioner. In such rate filing, the insurer shall state the basis for the decrease in rates and its agreement that the decrease in rates shall remain in effect for at least six months from the effective date. Within 15 days of receipt of a filing of such a proposed decrease in rates, the Commissioner will notify the insurer of any finding as to the unacceptability of the filing for a decrease in rates. The Commissioner will only find unacceptable a decrease rate filing if, in his or her opinion, the decrease in rates may have a tendency or capacity to imperil the financial condition of the filing insurer.

2. The decrease in rates may be up to 20 percent from the rates currently approved for use by the insurers and must apply to all policyholders either by coverage or line of insurance.

3. After a filing has been in effect for six months or more, an insurer may automatically withdraw its decrease or any portion thereof by so notifying the Commissioner of Banking and Insurance at least 30 days prior to the withdrawal date.

Amended by R.2001 d.75, effective March 5, 2001.
See: 32 N.J.R. 4184(a), 33 N.J.R. 794(a).

In (a)1, inserted "or her" preceding "opinion".
Amended by R.2006 d.307, effective September 5, 2006.
See: 37 N.J.R. 4156(a), 38 N.J.R. 3586(a).

In (a)1, substituted "15 days of receipt of a" for "a 15-day period following the", and inserted "any finding as to".

SUBCHAPTERS 17 THROUGH 19. (RESERVED)

SUBCHAPTER 20. RENEWAL, CANCELLATION AND
NONRENEWAL OF COMMERCIAL AND
HOMEOWNERS INSURANCE POLICIES

11:1-20.1 Scope

(a) This subchapter shall apply to all commercial insurance policies which are in force, issued or renewed on or after November 7, 1986 by companies licensed to do business in this state except workers' compensation insurance, employers liability, fidelity, surety, performance and forgery bonds, ocean marine and aviation insurance and accident and health insurance and any policy written by a surplus lines insurer. With the exception of N.J.A.C. 11:1-20.3 and 11:1-20.4(d),

this subchapter shall not be applicable to multi-state location risks or policies subject to retrospective rating plans.

(b) This subchapter shall also apply to all policies of homeowners' insurance as defined at N.J.A.C. 11:2-41.2 which are in force, issued or renewed on or after January 17, 1995.

(c) These rules are not exclusive, and the Commissioner may also consider other provisions of statutes and regulations to be applicable to the circumstances or situations addressed herein. Policies may provide terms more favorable to policyholders than are required by these rules. The rights provided by these rules are in addition to and do not prejudice any other rights policyholders may have at common law, or under statutes and regulations.

(d) In addition to these rules, the Commissioner may implement a market assistance plan providing for a voluntary group of insurers in order to aid insureds in obtaining commercial insurance coverages specified therein.

Amended by R.1987 d.114, effective February 17, 1987.
See: 18 N.J.R. 2301(b), 19 N.J.R. 359(a).
Amended by R.1995 d.52, effective January 17, 1995.
See: 26 N.J.R. 4303(a), 27 N.J.R. 363(a).
Amended by R.1996 d.116, effective March 4, 1996.
See: 27 N.J.R. 4121(a), 28 N.J.R. 1382(a).

Case Notes

In an insurance dispute, the language of an umbrella insurance policy was construed to require the carrier, a surplus lines insurer, to send the insured notice of nonrenewal at least 30 days prior to the expiration date of the policy, despite that surplus lines carriers are not subject to New Jersey Banking and Insurance Department regulations that require such advance notice of nonrenewal. The language of the policy was construed in a manner consistent with those regulations and consistent with record evidence of the standard practice in the surplus lines industry and case law precedent, thus establishing that the nonrenewal clause required the insurer to give notice of a conditional as well as an absolute intent not to renew the policy; since the insurer did not give the required notice, the policy did not expire and there was coverage on the date the insured's employee was involved in an on-the-job accident. *Piermount Iron Works, Inc. v. Evanston Ins. Co.*, 397 N.J. Super. 463, 938 A.2d 134, 2007 N.J. Super. LEXIS 378 (App.Div. 2007).

Cancellation of homeowners' policy was governed by statute and regulation on notice of cancellation and nonrenewal of fire and casualty coverage. *DiGiacomo v. Saladino*, 279 N.J. Super. 96, 652 A.2d 223 (A.D.1995).

Rules upheld as properly adopted on an emergency basis and in compliance with authorizing statutes; constitutional challenges of vagueness, deprivation of private property and impairment of contract denied. *In the Matter of N.J.A.C. 11:1-20*, 208 N.J. Super. 182, 505 A.2d 177 (App.Div.1986).

11:1-20.2 Renewal, nonrenewal and cancellation notice requirements

(a) No policy shall be nonrenewed upon its expiration date unless a valid written notice or nonrenewal has been mailed or delivered to the insured in accordance with the provisions of this subchapter. For the purpose of this subchapter, policies not having a fixed expiration date shall be deemed to expire annually on the anniversary of their inception.

(b) Subject to N.J.A.C. 11:1-20.2(m) for medical malpractice liability insurance policies, no notice of nonrenewal shall be valid unless it is mailed or delivered by the insurer to the insured not more than 120 days nor less than 30 days prior to the expiration of the policy.

(c) Subject to N.J.A.C. 11:1-20.2(m) for medical malpractice liability insurance policies, with respect to payment of the renewal premium, notice of the amount of the renewal premium and any change in contract terms shall be given to the insured in writing not more than 120 days nor less than 30 days prior to the due date of the premium and shall clearly state the effect of nonpayment of the premium by the due date.

(d) No cancellation, other than a cancellation based upon nonpayment of premium or for moral hazard as defined in (f) below, shall be valid unless notice is mailed or delivered by the insurer to the insured, and to any person entitled to notice under the policy, not more than 120 days nor less than 30 days prior to the effective date of such cancellation except, however, that failure to send such notice to any designated mortgagee or loss payee shall invalidate the cancellation only as to the mortgagee's or loss payee's interest.

(e) A policy shall not be cancelled for nonpayment of premium unless the insurer, at least 10 days prior to the effective cancellation date, has mailed or delivered to the insured notice as required in this subchapter of the amount of premium due and the due date. The notice shall clearly state the effect of nonpayment by the due date. No cancellation for nonpayment of premium shall be effective if payment of the amount due is made prior to the effective date set forth in the notice.

(f) A policy shall not be cancelled for moral hazard unless the insurer, at least 10 days prior to the effective termination date, has mailed or delivered to the insured notice as required in this subchapter and the basis for termination conforms to the following definitions of moral hazard:

1. The risk, danger or probability that the insured will destroy, or permit to be destroyed, the insured property for the purpose of collecting the insurance proceeds. Any change in the circumstances of an insured that will increase the probability of such a destruction may be considered a "moral hazard"; and

2. The substantial risk, danger or probability that the character, circumstances or personal habits of the insured may increase the possibility of loss or liability for which an insurer will be held responsible. Any change in the character or circumstances of an individual, corporate, partnership or other insured that will increase the probability of such a loss or liability may be considered a "moral hazard."

(g) No nonrenewal or cancellation shall be valid unless the notice contains the standard or reason upon which the termination is premised and specifies in detail the factual basis upon which the insurer relies.

(h) All notices of nonrenewal and cancellation, except those for nonpayment of premium, must contain a statement which shall be clearly and prominently set out in boldface type or other manner which draws the reader's attention advising the insured that the insured may file a written complaint about the cancellation or nonrenewal with the New Jersey Department of Banking and Insurance, Division of Enforcement and Consumer Protection, PO Box 325, Trenton, New Jersey 08625-0325. The statement also shall advise the insured to contact the Department of Banking and Insurance immediately, in the event he or she wishes to file a complaint.

(i) No nonrenewal or cancellation shall be valid unless notice thereof is sent;

1. By certified mail; or

2. By first class mail, if at the time of mailing the insurer has obtained from the Post Office Department a date stamped proof of mailing showing the name and address of the insured, and the insurer has retained a duplicate copy of the mailed notice.

(j) For the purposes of this subchapter, if an insurer fails to send a notice of nonrenewal as required by this subchapter or fails to issue and deliver a policy replacing at the end of the policy period a policy previously issued and delivered by the insurer, or fails to issue and deliver a certificate or notice extending the term of a policy beyond its policy period or term, or fails to provide notice of renewal as specified at (c) above, the insured shall be entitled to continue the expiring policy at the same terms and premium until such time as the insurer shall send appropriate notice of termination or renewal under this subchapter. Nothing in this subchapter shall prohibit an insurer from replacing its policy with a policy issued by another insurer with which it is under common management and control, provided the insurer obtains its policyholder's consent to do so and maintains records of such actions.

(k) An insurer shall not be required to provide notice of nonrenewal or cancellation as specified in this subchapter if the insured has replaced coverage elsewhere or has otherwise specifically requested termination. The insurer must, however, maintain in its file properly documented proof that termination was made at the request of the insured. Where the termination request is submitted by the insured's authorized representative, the insurer's file must contain documentation that the authorized representative has been specifically authorized by the insured to convey the termination request to the insurer.

(l) An insurer may in writing delegate to its appointed agent or to another person or legal entity the performance of any or all of the notice functions set forth in this section. However, delegation of these functions by the insurer to any person or entity shall not relieve the insurer of its responsibilities hereunder. No notice, whether provided by the insurer directly or through a person or entity authorized to act

on the insurer's behalf, shall be deemed effective unless provided in conformance with the requirements of this section.

(m) Each notice of renewal or nonrenewal by an insurer authorized to transact medical malpractice liability insurance in this State for a medical malpractice liability policy shall comply with the requirements applicable to such notices set forth in (a) through (l) above, except that such notices shall be mailed or delivered by the insurer to the insured not less than 60 days prior to the expiration of the policy.

Administrative Correction to (i)2.

See: 21 N.J.R. 3919(a).

Amended by R.1987 d.114, effective February 17, 1987.

See: 18 N.J.R. 2301(b), 19 N.J.R. 359(a).

Amended by R.1996 d.116, effective March 4, 1996.

See: 27 N.J.R. 4121(a), 28 N.J.R. 1382(a).

Administrative correction.

See: 29 N.J.R. 1324(a).

In (j), inserted "or renewal" following "... insurer shall send appropriate notice of termination".

Amended by R.2001 d.75, effective March 5, 2001.

See: 32 N.J.R. 4184(a), 33 N.J.R. 794(a).

Amended by R.2005 d.169, effective June 6, 2005.

See: 37 N.J.R. 4871(a), 37 N.J.R. 2040(a).

Inserted reference to Subject to N.J.A.C. 11:1-20.2(m) for medical malpractice liability insurance policies in (b) and (c); added (m).

Amended by R.2006 d.307, effective September 5, 2006.

See: 37 N.J.R. 4156(a), 38 N.J.R. 3586(a).

In (a), inserted "written".

Case Notes

Addition of regulatory exclusion to directors and officers liability policy did not constitute constructive nonrenewal of policy and did not trigger association's right to purchase discovery period. *American Cas. Co. of Reading, Pennsylvania v. Continisio*, C.A.3 (N.J.)1994, 17 F.3d 62.

In an insurance dispute, the language of an umbrella insurance policy was construed to require the carrier, a surplus lines insurer, to send the insured notice of nonrenewal at least 30 days prior to the expiration date of the policy, despite that surplus lines carriers are not subject to New Jersey Banking and Insurance Department regulations that require such advance notice of nonrenewal. The language of the policy was construed in a manner consistent with those regulations and consistent with record evidence of the standard practice in the surplus lines industry and case law precedent, thus establishing that the nonrenewal clause required the insurer to give notice of a conditional as well as an absolute intent not to renew the policy; since the insurer did not give the required notice, the policy did not expire and there was coverage on the date the insured's employee was involved in an on-the-job accident. *Piermount Iron Works, Inc. v. Evanston Ins. Co.*, 397 N.J. Super. 463, 938 A.2d 134, 2007 N.J. Super. LEXIS 378 (App.Div. 2007).

Insurer, through subsequent actions or conduct, could waive right to cancel coverage for non-payment of premiums. *Iafelice ex rel. Wright v. Arpino*, 319 N.J. Super. 581, 726 A.2d 275 (N.J. Super. A.D. 1999).

Insurer could not claim indemnification against broker in failing to notify insured of lapse in coverage. *Meric Trucking & Leasing Co. v. Philip Lehman Co., Ltd.*, 247 N.J. Super. 261, 588 A.2d 1285 (A.D.1991).

Thirty day notice requirement was satisfied by notice sent 89 days before expiration. *Meric Trucking & Leasing Co. v. Philip Lehman Co., Ltd.*, 247 N.J. Super. 261, 588 A.2d 1285 (A.D.1991).

11:1-20.3 Policy provisions relating to cancellation or nonrenewal

(a) All commercial insurance policy forms issued or renewed on or after January 6, 1987, and all homeowners' insurance policy forms issued on or after March 18, 1995 must contain a provision setting forth the following statement:

Pursuant to New Jersey law, this policy cannot be cancelled or nonrenewed for any underwriting reason or guideline which is arbitrary, capricious or unfairly discriminatory or without adequate prior notice to the insured. The underwriting reasons or guidelines that an insurer can use to cancel or nonrenew this policy are maintained by the insurer in writing and will be furnished to the insured and/or the insured's lawful representative upon written request.

This provision shall not apply to any policy which has been in effect for less than 60 days at the time notice of cancellation is mailed or delivered, unless the policy is a renewal policy.

1. The policy provision language set forth at (a) above is mandatory and, notwithstanding any other law to the contrary, need not be submitted to the Department for approval.

Amended by R.1987 d.114, effective February 17, 1987.

See: 18 N.J.R. 2301(b), 19 N.J.R. 359(a).

Amended by R.1995 d.52, effective January 17, 1995.

See: 26 N.J.R. 4303(a), 27 N.J.R. 363(a).

11:1-20.4 Cancellation and nonrenewal underwriting guidelines

(a) No insurer may cancel or nonrenew a policy based upon underwriting guidelines which are arbitrary, capricious or unfairly discriminatory.

(b) The following guidelines are approved for use by insurers:

1. Nonpayment of premium;
2. Moral hazard, as defined at N.J.A.C. 11:1-20.2(f);
3. Material misrepresentation or nondisclosure to the company of a material fact at the time of acceptance of the risk;
4. Increased hazard or material change in the risk assumed which could not have been reasonably contemplated by the parties at the time of assumption of the risk;
5. Substantial breaches of contractual duties, conditions or warranties that materially affect the nature and/or insurability of the risk;
6. Lack of cooperation from the insured on loss control matters materially affecting insurability of the risk;