

CHAPTER 13
COMMERCIAL LINES INSURANCE

Authority

N.J.S.A. 17:1-8.1, 17:1-15e and 17:29AA-1 et seq.

Source and Effective Date

R.1997 d.521, effective November 10, 1997.
See: 29 N.J.R. 4248(a), 29 N.J.R. 5310(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 13, Commercial Lines Insurance, expires on May 9, 2003. See: 34 N.J.R. 2947(a).

Chapter Historical Note

Chapter 13, Commercial Lines Insurance, was adopted as R.1982 d.423, effective December 6, 1982. See: 14 N.J.R. 1045(a), 14 N.J.R. 1398(c).

Pursuant to Executive Order No. 66(1978), Chapter 13 was readopted as R.1987 d.512, effective November 12, 1987. See: 19 N.J.R. 1783(a), 19 N.J.R. 2302(b). Subchapter 6, Commercial Insurance Rating Plans, was adopted as R.1990 d.594, effective December 3, 1990. See: 21 N.J.R. 3430(a), 22 N.J.R. 3625(b). Subchapter 7, Commercial Lines Insurance: Policy Form Standards, was adopted as R.1991 d.411, effective August 5, 1991. See: 23 N.J.R. 159(a), 23 N.J.R. 2340(a).

Pursuant to Executive Order No. 66(1978), Chapter 13 was readopted as R.1992 d.492, effective November 10, 1992. See: 24 N.J.R. 2830(a), 24 N.J.R. 4408(a). Subchapter 8, Commercial Lines Insurance: Prospective Loss Costs Filing Procedures, was adopted as R.1993 d.411, effective August 16, 1993. See: 25 N.J.R. 1047(a), 25 N.J.R. 3829(b).

Pursuant to Executive Order No. 66(1978), Chapter 13 was readopted as R.1997 d.521, effective November 10, 1997. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. GENERAL PROVISIONS

11:13-1.1 Purpose

The Commercial Insurance Deregulation Act of 1982 (N.J.S.A. 17:29AA-1 et seq.) establishes a separate rating law for commercial lines insurance and exempts such lines from the provisions of N.J.S.A. 17:29AA-1 et seq. except as provided by the Act. This chapter provides rules for the implementation of the Act.

11:13-1.2 Scope

(a) This chapter applies to all policies or contracts of insurance issued by a licensed insurer pursuant to Title 17 of the Revised Statutes except:

1. Ocean marine, title, mortgage guaranty, workers' compensation and employers' liability, and policy or contract of reinsurance, other than joint reinsurance, as provided for in section 22 of the Commercial Insurance Deregulation Act of 1982, insurance written through the New Jersey Medical Malpractice Reinsurance Association, insurance written through the New Jersey Insurance

Underwriting Association, and the insurance issued by hospital service or medical service corporations;

2. Insurance issued for personal, family or household purposes;

i. Examples of policies of insurance issued for personal, family or household purposes are:

(1) Policies used solely to provide homeowners insurance, dwelling fire insurance on one to four family units, or individual fire insurance on dwelling contents;

(2) Policies principally used to provide primary insurance on private passenger automobiles that are individually owned and used for personal or family needs;

(3) Policies of personal inland marine, personal theft, residence glass, personal liability insurance and personal excess; and

(4) Policies of self-storage personal property insurance as defined at N.J.A.C. 11:17-1.2.

ii. Insurance issued for personal, family or household purposes does not include insurance used to cover business, professional or other commercial risks, such as farmowners, businessowners and commercial multi-peril policies.

Amended by R.1989 d.621, effective December 18, 1989.

See: 21 N.J.R. 1641(b), 21 N.J.R. 3926(a).

“Farmowners insurance” added as example of policies issued for personal, family or household purposes.

Amended by R.1997 d.278, effective July 7, 1997.

See: 28 N.J.R. 4707(a), 29 N.J.R. 2853(a).

Added (a)2i(5).

Amended by R.2002 d.104, effective April 1, 2002.

See: 33 N.J.R. 4056(a), 34 N.J.R. 1454(a).

In (a), substituted “that” for “which” in 2i(2), deleted 2i(4) and recodified former 2i(5) as 2i(4), and inserted “farmowners,” in 2ii.

11:13-1.3 Definitions

The following words and terms, when used in this chapter, have the following meanings unless the context clearly indicates otherwise.

“Commissioner” means the Commissioner of Banking and Insurance.

“Department” means Department of Banking and Insurance.

“Farmowners insurance” means a policy of insurance issued to the owner(s) of property used for agricultural purposes, which may include property coverages on dwellings, farm buildings and personal property including household property, farm equipment, livestock, farm produce and supplies; and farmers comprehensive personal liability coverages against liabilities as the owner of the farm property and operator of the farming enterprise. As defined herein, farmowners insurance is reported on the statutory Annual Statement as “Farmowners Multi Peril”.

“Insurer” means any person, corporation, company, association, joint underwriting association, partnership, or any other legal entity licensed under the laws of this State to transact the business of insurance in this State.

“Policy” means any contract of insurance subject to this chapter and includes, but is not limited to, all policies, contracts, certificates and endorsements.

“Rating Organization” means every person or persons, corporation, partnership, company, society or association engaged in the business of rate-making for two or more insurers.

“Special Risks” means:

1. Commercial lines insurance risks as specified on a list promulgated by the Commissioner, which are of an unusual nature or high loss hazard or are difficult to place or rate or which are excess or umbrella or which are eligible for export;

2. Inland marine insurance, other than personal lines (The 1976 Revision of the Nation-wide Marine Definition, adopted by the National Association of Insurance Commissioners, has been adopted by the State of New Jersey. This instrument describes, although not exclusively, the kinds of risks which may be classified or identified as inland marine insurance.);

3. Fidelity, surety or forgery bonds; or

4. Commercial lines insurance risks which produce minimum annual premium in excess of \$10,000 as specified in N.J.A.C. 11:13-4.

“Supplementary rate information” includes any manual or plan of rates, statistical plan, classification, rating schedule, rating rule and any other rule used by an insurer in making rates.

Amended by R.1989 d.621, effective December 18, 1989.

See: 21 N.J.R. 1641(b), 21 N.J.R. 3926(a).

Added definition for “farmowners insurance”.

Amended by R.1997 d.521, effective December 15, 1997.

See: 29 N.J.R. 4248(a), 29 N.J.R. 5310(a).

Amended “Commissioner”, “Department”, and “Special Risks”.

11:13-1.4 Rate and policy form requirements

(a) Pursuant to N.J.S.A. 17:29AA-10, rates shall not be made or used which are excessive, inadequate or unfairly discriminatory.

(b) Pursuant to N.J.S.A. 17:29AA-11 policy forms shall not be unfair, inequitable, misleading or contrary to law, nor shall they produce rates, which are excessive, inadequate or unfairly discriminatory.

11:13-1.5 Separability

If any provision of this chapter, or its application to any person or circumstances is held to be invalid, the remainder of this chapter and its application to the other persons or circumstances shall not be affected.

SUBCHAPTER 2. COMMERCIAL LINES FILINGS**11:13-2.1 Filing of rates, supplementary rate information, and policies**

(a) This subchapter sets forth procedures and requirements for the filing of commercial lines rates, supplementary rate information and policies. The requirements of this subchapter shall not be applicable to:

1. Policy forms exempted by order of the Commissioner; or
2. Rates, supplementary rate information or policy forms used in connection with any special risk provided, however, that policy forms which are used in connection with commercial lines risks producing a minimum annual premium in excess of \$10,000 as described under N.J.A.C. 11:13-4.1(a)4 and which are not otherwise described as special risks shall be subject to the requirements and filing procedures found in this subchapter.

(b) Pursuant to N.J.S.A. 17:29AA-5, every insurer and rating organization shall file with the Commissioner all rates and supplementary rate information and all changes and amendments thereof not later than 30 days after becoming effective.

(c) Pursuant to N.J.S.A. 17:29AA-6 insurers shall file copies of all policy forms for approval with the Commissioner at least 30 days prior to becoming effective.

(d) Filings submitted to the Commissioner must be explicit and self-contained, must be supported by statistics, where applicable, and must set forth the information upon which the filer relied in making the filing.

11:13-2.2 Filing of changes

(a) Filings containing changes in rates, supplementary rate information, including any manual rules or plans, or in policy forms or endorsement required to be filed with the Department shall be presented in the following fashion:

1. A copy of the page or pages containing the passage for which a change is proposed shall be filed in such form that the text is self-contained without need to refer to material not included in the filing. Matter to be changed or omitted by the filing shall be identified, preferably by marking the passages to be changed with a marking pencil; where matter is to be added, a mark () shall so indicate.
2. A memorandum shall be filed reciting the rule or section of form to be changed, properly referenced as to the manual or form, with newly added matter underlined and matter to be eliminated in brackets [].

(b) An explanatory note shall state the reason or purpose for the proposed change including any statistical support, and a calculation or estimate of the effect of the change on premiums and/or losses shall be submitted:

1. Filings of proposed rate changes must contain all information upon which the rate filer relied. Due consideration must be given to: past and prospective loss experience, including where pertinent, the conflagration and catastrophe hazards, if any, both within and without the State; all factors reasonably related to the kind of insurance involved; a reasonable profit for the insurer; and, in the case of participating insurer, policyholder's dividends.

11:13-2.3 Adoption of rates, supplementary rate information or policies of other filers

(a) If a filer adopts rates or supplementary rate information used by other filers or proposes to adopt policy forms or endorsements previously approved (or deemed approved) for other filers in New Jersey, the filing shall clearly identify such reference including the name of the filer and, if applicable, the date such filings were approved in this State, including any amendments thereof. The Department staff will give reasonable assistance to a filer in obtaining such information to the extent that it is a public record:

1. If the proponent wishes to adopt exactly and without any change filings of rate or supplementary rate information used by or policies and endorsements approved for rating organizations or accepted for reference purposes on behalf of advisory organizations in New Jersey, the filing shall clearly identify such reference but shall not include a copy of the material referred to.
 - i. If the proponent wishes to adopt such filing material with some exceptions, he shall clearly identify such reference and shall submit copies of only those pages containing such exceptions.
2. If the proponent wishes to adopt filings approved in New Jersey for other filers acting independently of rating organizations, the material made reference to must be filed, with any modifications identified as outlined under N.J.A.C. 11:13-2.2.

11:13-2.4 New filings

Policy forms and supplementary rate information such as manual rules or rating plans are rarely entirely new. Most such filings are built upon something previously or currently in use. Any required action with respect to such filings will be expedited if they are identified as to their foundation. Filings shall not be identified as new filings if they properly fall under the categories discussed under N.J.A.C. 11:13-2.2 and 2.3.

11:13-2.5 Filing Source Documents

(a) The Filing Source Documents, MARS001 and MARS002, herein incorporated by reference as Exhibits A and B in the Appendix of N.J.A.C. 11:1-2 shall be used in conjunction with the procedures and requirements set forth in N.J.A.C. 11:13-2.1 through 2.5 by all insurers and rating organizations in submitting filings required pursuant to the Commercial Insurance Deregulation Act of 1982 and this chapter.

(b) Every insurer and every rating organization submitting filings of policy forms, rules, rates or supplementary rate information shall complete and submit with the filing the Filing Source Documents, MARS001 and MARS002.

(c) Pursuant to N.J.S.A. 17:29AA-6, only a policy form filing which is accompanied by properly completed Filing Source Documents MARS001 and MARS002, shall be deemed approved by the Commissioner as of its deemed effective date unless disapproved by the Commissioner prior to that date.

Amended by R.2002 d.101, effective April 1, 2002.
See: 33 N.J.R. 1875(a), 34 N.J.R. 1431(b).
Rewrote the section.

SUBCHAPTER 3. EXPENSE EXPERIENCE

11:13-3.1 Expense experience

(a) N.J.A.C. 11:4-10.1 and 10.2 including all subsequent amendments and supplements are hereby adopted as rules with the modifications indicated in (b) below.

1. This document is available for review at or may be purchased from the New Jersey Department of Banking and Insurance, 201 East State Street, Trenton, New Jersey.

(b) The following are modifications to the rule referenced in (a) above:

1. Reference to N.J.S.A. 17:29A-5 contained in N.J.A.C. 11:4-10.1(a) is deleted and replaced with N.J.S.A. 17:29AA-16.

Amended by R.1997 d.521, effective December 15, 1997.
See: 29 N.J.R. 4248(a), 29 N.J.R. 5310(a).

SUBCHAPTER 4. SPECIAL RISKS

11:13-4.1 Special risks

(a) This subchapter sets forth procedures and requirements which are applicable to various categories of commercial lines risks herein designated as special risks pursuant to section 3.k of Commercial Insurance Deregulation Act of 1982. Such special risks are:

1. Commercial lines insurance risks as specified on a list promulgated by the Commissioner which are of an unusual nature or high loss hazard or are difficult to place or rate or which are excess or umbrella, or which are eligible for export;

2. Inland marine insurance, other than personal inland marine;

3. Fidelity, surety or forgery bonds; or

4. Commercial lines insurance risks which produce minimum annual premium in excess of \$10,000. Only premiums generated by coverages subject to the Commercial Insurance Deregulation Act of 1982 shall be used in determining whether a risk generates a premium sufficient to qualify under this paragraph. Risks producing a minimum annual premium in excess of \$10,000 shall be:

i. A single risk which generates annual premium in excess of \$10,000 written under a single policy.

ii. A single risk which generates annual premium in excess of \$10,000 written under more than one policy if all are written by the same insurer or group.

iii. A risk written under a single policy covering more than one risk which policy generates an annual premium in excess of \$10,000.

(b) Except as otherwise required by the provisions of this chapter or as may be ordered by the Commissioner, the requirements and procedures found in subchapters 2 and 3 above shall not apply to special risks.

11:13-4.2 Reporting requirements

(a) Expense experience statistics with respect to special risks written by an insurer shall be maintained in accord with subchapter 3 of this chapter and shall be reported promptly to the Department upon request.

(b) The Commissioner may require the filing of such additional reports as he deems necessary to implement the provisions of the Commercial Insurance Deregulation Act of 1982 and this chapter.

11:13-4.3 Examination

The underwriting files, premium, loss and expense statistics, financial and other records with respect to special risks written by an insurer shall be maintained in such detail as may be required by the Commissioner and shall be subject to examination by the Commissioner or his designee in the State as often as deemed necessary by the Commissioner.

SUBCHAPTER 5. PROCEDURE FOR THE REGULATION OF CONSENT TO HIGHER RATE FILINGS

11:13-5.1 Higher rate filings

(a) N.J.A.C. 11:4-7 including all subsequent amendments and supplements is hereby adopted as a rule with the modifications indicated in (b) below.

1. This document is available for review at or may be purchased from the New Jersey Department of Banking and Insurance, 201 East State Street, PO Box 325, Trenton, New Jersey.

(b) The following are modifications to the rule referenced in (a) above:

1. Reference to N.J.S.A. 17:29AA-22 contained in N.J.A.C. 11:4-7.1(b)11 is deleted and replaced with N.J.S.A. 17:29AA-26.

Amended by R.1997 d.521, effective December 15, 1997.

See: 29 N.J.R. 4248(a), 29 N.J.R. 5310(a).

Amended by R.2002 d.101, effective April 1, 2002.

See: 33 N.J.R. 1875(a), 34 N.J.R. 1431(b).

In (b)1, deleted exhibits.

SUBCHAPTER 6. COMMERCIAL INSURANCE
RATING PLANS

11:13-6.1 Purpose and scope

(a) This subchapter establishes standards for commercial insurance rating plans to modify rates in the development of premiums for specific risks.

(b) These standards are intended to:

1. Recognize expected loss differentials based on factors applied using sound underwriting principles;
2. Promote competition among insurers in the rating of individual commercial risks;
3. Promote fair and equitable treatment of insureds; and
4. Encourage loss control and safety measures.

(c) This subchapter applies to all insurers and rating organizations that file rates for commercial lines insurance.

11:13-6.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

“Base rate” means the unit charge by which the measure of exposure or the amount of insurance specified in a policy of insurance or covered thereunder is multiplied to determine the premium, which rate is filed with the Commissioner pursuant to N.J.S.A. 17:29AA-5.

“Commercial lines insurance” includes all insurance policies so defined in N.J.S.A. 17:29AA-3a.

“Commissioner” means the Commissioner of the New Jersey Department of Banking and Insurance.

“Department” means the New Jersey Department of Banking and Insurance.

“Filer” means a rating organization or any insurer making its own rates and proposing to establish a new rate, a rate change, or a rating rule.

“Commercial insurance rating plan” includes any plan of rates and rules for the adjustment of premiums from base rates for commercial lines insurance coverages.

“Policy” means any contract of commercial lines insurance including, but not limited to, all policies, contracts, certificates and endorsements.

“Supplementary rate information” includes any manual or plan of rates, statistical plan, classification, rating schedule, rating rule and any other rule used by an insurer in making rates.

Amended by R.1997 d.521, effective December 15, 1997.

See: 29 N.J.R. 4248(a), 29 N.J.R. 5310(a).

Amended “Commissioner” and “Department”.

11:13-6.3 Commercial insurance rating plans

(a) Filers may submit commercial insurance rating plans that provide for modification of rates in the development of premiums for specific risks.

(b) A commercial insurance rating plan shall be filed with the Commissioner in accordance with N.J.S.A. 17:29AA-5 and this subchapter.

(c) No insurer shall charge or collect from any insured a premium for any commercial lines insurance policy that deviates from the base rates filed with the Commissioner, except in accordance with a commercial insurance rating plan filed with the Commissioner in accordance with this subchapter:

Amended by R.1997 d.521, effective December 15, 1997.

See: 29 N.J.R. 4248(a), 29 N.J.R. 5310(a).

Deleted (c) and recodified (d) as (c).

11:13-6.4 Elements of plan

(a) A commercial insurance rating plan shall consist of rating rules that set forth the following:

1. The criteria for an insured's eligibility for premium modification as described in the plan;
2. A list or lists of underwriting factors and such descriptive statements or explanations as may be necessary to understand the application or use of each factor;
3. The maximum debit for each factor;
4. The maximum credit for each factor; and
5. The total maximum debits and credits for all factors combined.

11:13-6.5 Standards for commercial insurance rating plans

(a) Underwriting factors described in the plan shall be reasonably related to an increase or decrease in the risk expected.

(b) Maximum debits for each underwriting factor in the plan shall equal maximum credits for each underwriting factor in the plan on a percentage basis except when equal maximum credits and debits are clearly not appropriate and the filer of the plan provides a written explanation.

(c) An individual risk premium modification plan shall provide for a maximum 25 percent debit or credit from base rates for any single policy. This limitation shall not apply to experience and retrospective rating plans or expense modifications.

Amended by R.1992 d.492, effective December 7, 1992.

See: 24 N.J.R. 2830(a), 24 N.J.R. 4408(a).

Text at (a) regarding premium modification deleted.

11:13-6.6 Application or use of commercial insurance rating plans

(a) Commercial insurance rating plans shall not be used in a manner that results in excessive, inadequate or unfairly discriminatory rates.

(b) Commercial insurance rating plans shall be applied uniformly to all insureds who qualify for debits or credits in accordance with the plan as filed.

(c) No individual policy premium shall be modified until the debits and credits applicable to both risk and expense modification in accordance with the commercial insurance rating plan are determined by an inspection of the property.

(d) Insurers shall develop and retain information in their underwriting file about the application of a commercial insurance rating plan to any modification of an individual policy premium. This shall include any information used to determine the eligibility for debit or credit in accordance with the filed plan, such as inspection reports, photographs, results of engineering or professional evaluations, claim history, etc.

(e) Insurers shall make this information available for examination by the Department, or supply it to the Department within 10 days of receipt of a written request.

SUBCHAPTER 7. COMMERCIAL LINES INSURANCE: POLICY FORM STANDARDS

11:13-7.1 Purpose and scope

(a) These rules interpret provisions of the Commercial Insurance Deregulation Act, N.J.S.A. 17:29AA-1 et seq. and set standards for the acceptance or disapproval of policy forms submitted pursuant to N.J.S.A. 17:29AA-6. These standards are established pursuant to N.J.S.A. 17:29AA-11, which prohibits forms which are unfair, inequitable, misleading or contrary to law, or which produce rates that are excessive, inadequate or unfairly discriminatory.

(b) These rules do not apply to policy forms not required to be submitted by N.J.S.A. 17:29AA-6, which with some exceptions does not require the filing of policy forms insuring "special risks" as defined in N.J.S.A. 17:29AA-3k. These rules do not apply to policy forms issued by eligible surplus lines insurers in accordance with the Surplus Lines Law, N.J.S.A. 17:22-6.40 et seq. Nothing in these rules shall, however, authorize the acceptance or use, or prohibit the disapproval, of a policy form that is otherwise prohibited by another law or rule.

(c) These rules apply to all insurers which file policy forms pursuant to N.J.S.A. 17:29AA-6.

11:13-7.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

"Commercial lines insurance" includes all property-casualty insurance policies except those excluded by N.J.S.A. 17:29AA-3a and N.J.A.C. 11:18-1.1.

“Commissioner” means the Commissioner of the New Jersey Department of Banking and Insurance.

“Cost of legal defense” or “defense costs” means allocated attorney and all other litigation expenses that can be separately identified as arising from the defense of a specific claim.

“Day” means calendar day.

“Insurer” means any person, corporation, association, joint underwriting association subject to N.J.S.A. 17:29AA-22, partnership or company licensed under the laws of this State to transact the business of insurance and rating organizations that file policy forms on behalf of their members and subscribers.

“Liability insurance policy” means any insurance policy that provides coverage for legal liability, even if it contains other types of coverage.

“Policy” or “insurance policy” includes all endorsements.

Amended by R.1997 d.521, effective December 15, 1997.

See: 29 N.J.R. 4248(a), 29 N.J.R. 5310(a).

Amended “Commissioner”.

11:13-7.3 Defense costs within policy limits

(a) No commercial insurance policy shall be issued or renewed on a form required to be filed pursuant to N.J.S.A. 17:29AA-6 which contains a provision that includes defense costs within policy limits, except as provided in this section.

(b) Lawyers professional liability insurance policies may contain a provision that includes defense costs within policy limits provided it conforms to the standards set forth in (c) below.

(c) Lawyers professional liability insurance policy forms including the defense costs within policy limits shall contain policy provisions, which may be in the form of a mandatory endorsement, so as to incorporate the standards set forth below into the terms of each policy:

1. The policy form shall provide a minimum limit of liability of \$1,000,000.

2. Defense costs shall not reduce the portion of the limit of liability that remains available to pay claims until defense costs have been incurred in an amount that equals or exceeds 50 percent of the policy limit of liability. The portion of the limit of liability that remains available to pay claims may be reduced only by the portion of incurred defense costs greater than 50 percent of the policy limit of liability.

3. The portion of the limit of liability available to pay claims shall not be reduced to an amount less than 50 percent of the policy limit of liability, regardless of the amount of defense costs incurred.

4. No defense costs shall be charged against any deductible amount.

11:13-7.4 Exclusions from coverage

(a) The Department shall disapprove for use prior to January 1, 1999 policy forms subject to the requirements of this subchapter that exclude coverage for any bodily injury caused in whole or in part, either directly or indirectly, by lead paint or lead contamination, or arising out of or incidental to the inhalation, ingestion, use, handling, or contact with lead paint or lead contamination.

1. The Department shall approve for use prior to January 1, 1999 policy forms providing the coverage set forth in (a) above that provide reduced (sublimit) coverage of \$50,000 per occurrence in liability policies written with basic liability limits in excess of \$50,000, and any defense costs that are supplemental to the \$50,000 sublimit.

2. Policy forms filed pursuant to this chapter limiting or excluding coverage for liability caused by “pollution” or “pollutants” shall not limit or exclude coverage for liability for lead paint or lead contamination unless they include a limitation or exclusion filed pursuant to this rule.

(b) The Department shall approve for use on or after January 1, 1999 policy forms subject to the requirements of this subchapter that exclude coverage otherwise prohibited by (a) above, but only if the filing also includes policy provisions or rating rules as follows:

1. That the exclusion applies only if the covered premises were constructed prior to 1978; and

2. That the insured be allowed to secure liability coverage for lead paint or lead contamination if the premises covered by such policy has been certified as being free of existing lead hazards pursuant to standards to be established by the Department of Community Affairs.

(c) Insurers filing pursuant to (b) above shall provide insureds with written notice at least one year prior to renewal of a policy of the change in coverage resulting from the exclusion, which shall include the following statements:

1. That the exclusion applies only to premises constructed prior to 1978;

2. That the exclusion shall become part of the policy on renewal; and

3. That the insured may purchase liability coverage for lead paint or lead contamination if the premises covered by the policy has been certified as being free of existing lead hazards pursuant to standards to be established by the Department of Community Affairs.

New Rule, R.1998 d.44, effective January 20, 1998.

See: 28 N.J.R. 5137(b), 30 N.J.R. 367(a).

Former N.J.A.C. 11:13-7.4, "Refiling policy forms" recodified to N.J.A.C. 11:13-7.5.

11:13-7.5 Refiling policy forms

(a) Insurers with policy forms containing provisions that are inconsistent with the standards set forth in this subchapter shall amend those forms and refile them in accordance with N.J.S.A. 17:29AA-6 as follows:

1. For N.J.A.C. 11:13-7.4, by April 20, 1998, and the forms shall be effective no later than May 20, 1998.

(b) Policy forms refiled as set forth in (a) above shall comply with the standards set forth in this subchapter.

(c) Policy forms refiled in accordance with this rule shall be accompanied by a certification of an officer of the insurer that the policy form is being refiled in accordance with the standards set forth in this subchapter and that the refile has been done within the time provided by (a) above.

Recodified from N.J.A.C. 11:13-7.4 and amended by R.1998 d.44, effective January 20, 1998.

See: 28 N.J.R. 5137(b), 30 N.J.R. 367(a).

In (a), substituted "as follows:" for "by February 1, 1992", and added 1.

Law Review and Journal Commentaries

Administrative Procedure—Insurance. Steven P. Bann, 134 N.J.L.J. No. 4, 53 (1993).

Case Notes

Insurer's proposed absolute pollution exclusion endorsement would not be deemed approved under statutory automatic approval mechanism. Matter of Disapproval of Commercial Ins. Policy Forms of Ins. Co. of North America, 264 N.J.Super. 228, 624 A.2d 587 (A.D.1993).

Pronouncement by Commissioner of Department of Insurance that asbestos exclusions were not permitted constituted improper rule making. Matter of Disapproval of Commercial Ins. Policy Forms of Ins. Co. of North America, 264 N.J.Super. 228, 624 A.2d 587 (A.D.1993).

SUBCHAPTER 8. COMMERCIAL LINES INSURANCE: PROSPECTIVE LOSS COSTS FILING PROCEDURES

11:13-8.1 Purpose and scope

(a) This subchapter establishes data requirements and procedures for member/subscriber insurers in rating organizations to adopt or modify a rating organization's filed prospective loss costs.

(b) This subchapter applies to all rating organizations which file prospective loss costs and all insurer filings which adopt or modify a rating organization's prospective loss cost filing for commercial lines insurance made pursuant to N.J.S.A. 17:29AA-1 et seq.

(c) All filings made pursuant to this subchapter shall be made in accordance with N.J.A.C. 11:1-32.

11:13-8.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

"Commissioner" means the Commissioner of the New Jersey Department of Banking and Insurance.

"Department" means the New Jersey Department of Banking and Insurance.

"Expenses" means that portion of a rate attributable to commissions and brokerage, other acquisition expenses, general expenses, taxes, licenses, and fees.

"Loss costs multiplier" means the adjustment reflecting expenses, profit loading and any modifications that the insurer uses on the loss cost to produce final rates.

"Minimum premium" means the smallest amount of premium for which an insurer will issue coverage under a given policy.

"Prospective loss costs" means that portion of a rate that does not include provisions for expenses (other than loss adjustment expenses) or profit, and are based on historical aggregate losses and loss adjustment expenses adjusted through development to their ultimate value and projected through trending to a future point in time.

"Rate" means the unit charge by which the measure of exposure or the amount of insurance specified in a policy of insurance or covered thereunder is multiplied to determine the premium.

"Rating organization" means every person or persons, corporation, partnership, company, society, or association engaged in the business of ratemaking for two or more insurers.

"Supplementary rate information" means any manual or plan of rates, statistical plan, classification, rating schedule, rating rule, and any other rule used by an insurer in making rates.

Amended by R.1997 d.521, effective December 15, 1997.

See: 29 N.J.R. 4248(a), 29 N.J.R. 5310(a).

Amended "Commissioner" and "Department".

11:13-8.3 Prospective loss cost filing requirements for rating organizations

(a) A rating organization that desires to file prospective loss costs with the Commissioner shall develop a filing containing advisory prospective loss costs and supporting actuarial and statistical data.

(b) Rating organizations that file advisory prospective loss cost filings with the Commissioner shall:

1. Submit a filing that contains the advisory prospective loss costs and the underlying loss data and other supporting actuarial information for any calculations or assumptions underlying those loss costs; and
2. No longer develop or file minimum premiums with the filing of prospective loss costs.

(c) A rating organization shall provide the Department with printed manuals of loss costs, as well as rules and other supplementary rating information pursuant to N.J.S.A. 17:29AA-1 et seq., and may provide this information to its member/subscribers insurers upon request.

(d) Rating organizations shall continue to develop and file supplementary rating information on behalf of their member/subscriber insurers.

11:13-8.4 Prospective loss costs filing requirements for insurers

(a) In order for an insurer to incorporate a rating organization's filed prospective loss costs to establish its own rates, an insurer shall:

1. Be a member/subscriber insurer in the rating organization; and
2. File its loss costs multiplier using the Reference Filing Adoption Form (as set forth in Appendix A to this subchapter and incorporated herein by reference). An insurer's final rates shall be a combination of the prospective loss costs and the loss costs multiplier set forth in its filed Reference Filing Adoption Form.
 - i. An insurer may file modifications to the rating organization's prospective loss costs filing based on its own anticipated experience by using the Reference Filing Adoption Form. Supporting documentation shall be filed for any modification (upwards or downwards) to the rating organization's prospective loss costs filings.
 - ii. An insurer's filed loss costs multiplier shall remain in effect until the insurer withdraws the multiplier or files a revised Reference Filing Adoption Form.

(b) Insurers may vary expense loads by individual lines, sublines or classifications of insurance. Insurers may use variable or fixed expense loads or a combination of these to establish their expense loadings.

1. An insurer's loss cost multiplier based on its expenses plus any profit provision shall not include the surtax or the Property-Liability Insurance Guaranty Association's assessments on private passenger automobiles pursuant to N.J.S.A. 17:30A-8a(9) and 17:33B-49.

2. Insurers shall provide documentation to support its profit loading.

(c) Any participating insurer of a rating organization shall continue to use all rates and deviations currently in effect for its use until disapproved pursuant to N.J.S.A. 29AA-13, or until the insurer makes a filing to change its rates, either by making an independent filing or by submitting a Reference Filing Adoption Form.

(d) Once an insurer has filed a loss costs multiplier with the Department, such multiplier shall be deemed to be automatically applicable to subsequent rating organizations prospective loss costs filings, subject to the following requirements:

1. An insurer which intends to use a subsequent revision of prospective loss cost and effective date as filed by the rating organization, shall not file anything;
2. An insurer which intends to use prospective loss costs as filed but with a different effective date shall file with the Department its proposed effective date not more than 30 days after the effective date of the rating organization's prospective loss costs;
3. An insurer which intends to use a subsequent revision of the prospective loss costs and to change its loss costs multiplier, shall file a revised Reference Filing Adoption Form not more than 30 days after the effective date of the rating organization's prospective loss costs reference filing; and
4. An insurer which does not intend to use a subsequent revision of the prospective loss costs shall notify the Department not more than 30 days after the effective date of the rating organization's prospective loss costs reference filing. The insurer shall file a Non-Adoption of Prospective Lost Cost Form (as set forth in Appendix and incorporated herein by reference) with the Department.

(e) An insurer which has failed to adopt a rating organization's prospective loss cost shall file with the Department, within 30 days of the effective date of the insurer's rates.

1. A final printed manual page indicating the loss cost modification to be applied to the rating organization's prospective loss costs, including its effective date; or
2. Final printed manual pages indicating the final rates developed by application of the loss cost multiplier to the rating organization's loss costs, including the effective date.

11:13-8.5 Penalties

Rating organizations and insurers which fail to comply with the filing submission requirements of this subchapter shall be subject to penalties pursuant to N.J.S.A. 17:29AA-26.