

(e) Management shall document and make available upon financial condition examination the basis upon which its assertions, required in (d) above, are made. Management may base its assertions, in part, upon its review, monitoring and testing of internal controls undertaken in the normal course of its activities.

1. Management shall have discretion as to the nature of the internal control framework used, and the nature and extent of documentation, in order to make its assertion in a cost effective manner and, as such, may include assembly of or reference to existing documentation.

2. Management's Report on Internal Control over Financial Reporting, required by (a) above, and any documentation provided in support thereof during the course of a financial condition examination, shall be deemed by the Department to be confidential information.

New Rule, R.2010 d.026, effective January 19, 2010.
See: 41 N.J.R. 3364(a), 42 N.J.R. 486(b).

Former N.J.A.C. 11:2-26.16, Confidentiality of documents, was recodified to N.J.A.C. 11:2-26.19.

11:2-26.17 Exemptions and effective dates

(a) Insurers having direct premiums written in this State of less than \$1,000,000 in any calendar year and less than 1,000 policyholders or certificateholders of directly written policies nationwide at the end of such calendar year shall be exempt from this subchapter for such year (unless the Commissioner makes a specific finding that compliance is necessary for the Commissioner to carry out statutory responsibilities) except that insurers having assumed premiums pursuant to contracts and/or treaties of reinsurance of \$1,000,000 or more will not be so exempt.

(b) Foreign or alien insurers filing audited financial reports in another state, pursuant to such other state's requirement of audited financial reports which have been found by the Commissioner to be substantially similar to the requirements herein, are exempt from compliance with this subchapter if:

1. A copy of the audited financial report, communication of internal control related matters noted in an audit, and the accountant's letter of qualifications which are filed with such other state are filed with the Commissioner in accordance with the filing dates specified in N.J.A.C. 11:2-26.4, 26.11 and 26.12, respectively (Canadian insurers may submit accountants' reports as filed with the Canadian Dominion Department of Insurance); and

2. A copy of any notification of adverse financial condition report filed with such other state is filed with the Commissioner within the time specified in N.J.A.C. 11:2-26.10.

(c) Foreign or alien insurers required to file Management's Report of Internal Control over Financial Reporting in another state are exempt from filing the report in this state provided the other state has substantially similar reporting

requirements and the report is filed with the commissioner of the other state within the time specified.

(d) Domestic insurers who have retained a certified public accountant on or before January 19, 2010 who qualifies as independent shall comply with this subchapter for the year ending December 31, 2010 and each year thereafter unless the Commissioner permits otherwise.

(e) Domestic insurers who have not retained a certified public accountant on or before January 19, 2010 who qualifies as independent may meet the following schedule for compliance unless the Commissioner permits otherwise:

1. As of December 31, 2010, file with the Commissioner an audited financial report; and

2. For the year ending December 31, 2011, and each year thereafter, such insurers shall file with the Commissioner all reports and communication required by this subchapter.

(f) Foreign insurers shall comply with this subchapter for the year ending December 31, 2010 and each year thereafter unless the Commissioner permits otherwise.

(g) The requirements for independent certified public accountants set forth at N.J.A.C. 11:2-26.6 shall be in effect for audits of the year beginning January 1, 2010 and each year thereafter.

(h) The requirements for management's report of internal control over financial reporting set forth at N.J.A.C. 11:2-26.16 are effective beginning with the reporting period ending December 31, 2010 and each year thereafter. An insurer or group of insurers that is not required to file a report because the total written premium is below the threshold and subsequently becomes subject to the reporting requirements shall have two years following the year the threshold is exceeded (but not earlier than December 31, 2010) to file a report. Likewise, an insurer acquired in a business combination shall have two calendar years following the date of acquisition or combination to comply with the reporting requirements.

(i) The requirements for audit committees as set forth in N.J.A.C. 11:2-26.14 are to be in effect January 19, 2010. An insurer or group of insurers that is not required to have independent audit committee members or only a majority of independent audit committee members (as opposed to a supermajority) because the total written and assumed premium is below the threshold and subsequently becomes subject to one of the independence requirements due to changes in premium shall have one year following the year the threshold is exceeded (but not earlier than January 19, 2010) to comply with the independence requirements. Likewise, an insurer that becomes subject to one of the independence requirements as a result of a business combination shall have one calendar year following the date of acquisition

or combination to comply with the independence requirements.

(j) Upon written application of any insurer, the Commissioner may grant an exemption from compliance with this subchapter if the Commissioner finds, upon review of the application, that compliance would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for a specific period or periods.

Amended by R.1993 d.68, effective February 1, 1993.

See: 24 N.J.R. 1940(a), 24 N.J.R. 2708(a), 25 N.J.R. 588(a).

Rule on compliance dates repealed; rule on exemptions recodified from 26.13, with new subsection (a) added.

Amended by R.1996 d.3, effective January 2, 1996.

See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).

Recodified from N.J.A.C. 11:2-26.14 and amended by R.2010 d.026, effective January 19, 2010.

See: 41 N.J.R. 3364(a), 42 N.J.R. 486(b).

Section was "Exemptions". In the introductory paragraph of (b), substituted "Foreign or alien insurers" for "Insurers"; in (b)1, substituted "communication of internal control related matters noted in an audit" for "the report on any significant deficiencies in internal controls" and inserted a comma following "26.12"; added new (c); added (d) through (i); and recodified former (c) as (j). Former N.J.A.C. 11:2-26.17, Penalties, recodified to N.J.A.C. 11:2-26.20.

11:2-26.18 Alien insurers

(a) In the case of alien insurers, the annual audited financial report shall be defined as the annual statement of total business on the form filed by such companies with their domiciliary supervision authority duly audited by an independent chartered or similarly certified accountant.

(b) For such insurers, the letter required in N.J.A.C. 11:2-26.7 shall state that the accountant is aware of the requirements relating to the annual audited statement filed with the Commissioner pursuant to N.J.A.C. 11:2-26.4 and shall affirm that the opinion expressed is in conformity with such requirements.

Amended by R.1993 d.68, effective February 1, 1993.

See: 24 N.J.R. 1940(a), 24 N.J.R. 2708(a), 25 N.J.R. 588(a).

Rule on reports prepared in accordance with generally accepted accounting principles repealed; rule on alien insurers recodified from 26.16.

Amended by R.1996 d.3, effective January 2, 1996.

See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).

Recodified from N.J.A.C. 11:2-26.15 by R.2010 d.026, effective January 19, 2010.

See: 41 N.J.R. 3364(a), 42 N.J.R. 486(b).

Former N.J.A.C. 11:2-26.18, Severability, recodified to N.J.A.C. 11:2-26.21.

11:2-26.19 Confidentiality of documents

All documents submitted to the Commissioner pursuant to this subchapter are confidential and not public documents as defined in the Public Records Act, N.J.S.A. 47:1A-1 et seq.

Recodified by R.1993 d.68, effective February 1, 1993.

See: 24 N.J.R. 1940(a), 24 N.J.R. 2708(a), 25 N.J.R. 588(a).

Rule on alien insurers recodified to 26.15; rule on confidentiality of documents recodified from 26.17.

Recodified from N.J.A.C. 11:2-26.16 by R.2010 d.026, effective January 19, 2010.

See: 41 N.J.R. 3364(a), 42 N.J.R. 486(b).

11:2-26.20 Penalties

Failure to comply with the provisions of this subchapter may result in the imposition of penalties as provided by law.

Recodified by R.1993 d.68, effective February 1, 1993.

See: 24 N.J.R. 1940(a), 24 N.J.R. 2708(a), 25 N.J.R. 588(a).

Rule on confidentiality of documents recodified to 26.16; rule on penalties recodified from 26.18.

Recodified from N.J.A.C. 11:2-26.17 by R.2010 d.026, effective January 19, 2010.

See: 41 N.J.R. 3364(a), 42 N.J.R. 486(b).

11:2-26.21 Severability

If any section of this subchapter is held to be invalid, the remaining parts of this subchapter are not to be affected.

Recodified by R.1993 d.68, effective February 1, 1993.

See: 24 N.J.R. 1940(a), 24 N.J.R. 2708(a), 25 N.J.R. 588(a).

Rule on penalties recodified to 26.17; rule on severability recodified from 26.19.

Recodified from N.J.A.C. 11:2-26.18 by R.2010 d.026, effective January 19, 2010.

See: 41 N.J.R. 3364(a), 42 N.J.R. 486(b).

SUBCHAPTER 27. DETERMINATION OF INSURERS IN A HAZARDOUS FINANCIAL CONDITION

11:2-27.1 Purpose and scope

(a) The purpose of this subchapter is to set forth the factors which the Commissioner shall consider in determining whether an insurer is in such condition as defined herein as to render the continuation of its business hazardous to its policyholders, creditors, or the general public. A determination of hazardous financial condition provides one of the grounds upon which the Commissioner may seek an order from the Superior Court to rehabilitate, liquidate the business, or conserve the assets within this State of domestic, foreign, or alien insurers pursuant to N.J.S.A. 17:30C-1 et seq. and 17B:32-31 et seq., or upon which an insurer may become subject to administrative supervision pursuant to N.J.S.A. 17:51A-1 et seq., and provides one of the grounds upon which the Commissioner may take action to revoke or non-renew an insurer's authority to transact insurance in this State, pursuant to law, including, but not limited to, N.J.S.A. 17:32-2 and 17B:23-2.

(b) This subchapter shall apply to all domestic, foreign, and alien insurers and all other entities subject to N.J.S.A. 17:30C-1 et seq., 17B:32-31 et seq., or N.J.S.A. 17:51A-1 et seq.

Emergency Amendment, R.1993 d.447, effective August 16, 1993 (expired October 15, 1993).

See: 25 N.J.R. 4286(a).