

**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).

Executive Order No. 66(1978) Expiration Date

Chapter 13, Commercial Lines Insurance, expires on November 10, 2002.

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.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

- 11:13-1.1 Purpose
- 11:13-1.2 Scope
- 11:13-1.3 Definitions
- 11:13-1.4 Rate and policy form requirements
- 11:13-1.5 Separability

SUBCHAPTER 2. COMMERCIAL LINES FILINGS

- 11:13-2.1 Filing of rates, supplementary rate information, and policies
- 11:13-2.2 Filing of changes
- 11:13-2.3 Adoption of rates, supplementary rate information or policies of other filers
- 11:13-2.4 New filings
- 11:13-2.5 Filing questionnaires

SUBCHAPTER 3. EXPENSE EXPERIENCE

- 11:13-3.1 Expense experience

SUBCHAPTER 4. SPECIAL RISKS

- 11:13-4.1 Special risks
- 11:13-4.2 Reporting requirements
- 11:13-4.3 Examination

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

- 11:13-5.1 Higher rate filings

SUBCHAPTER 6. COMMERCIAL INSURANCE RATING PLANS

- 11:13-6.1 Purpose and scope
- 11:13-6.2 Definitions
- 11:13-6.3 Commercial insurance rating plans
- 11:13-6.4 Elements of plan
- 11:13-6.5 Standards for commercial insurance rating plans
- 11:13-6.6 Application or use of commercial insurance rating plans

SUBCHAPTER 7. COMMERCIAL LINES INSURANCE: POLICY FORM STANDARDS

- 11:13-7.1 Purpose and scope
- 11:13-7.2 Definitions
- 11:13-7.3 Defense costs within policy limits
- 11:13-7.4 Refiling policy forms

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

- 11:13-8.1 Purpose and scope
- 11:13-8.2 Definitions
- 11:13-8.3 Prospective loss cost filing requirements for rating organizations
- 11:13-8.4 Prospective loss costs filing requirements for insurers
- 11:13-8.5 Penalties

APPENDIX A

APPENDIX B

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 which 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;

(4) Policies of farmowners insurance; and

(5) 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 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).

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.

(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 Refiling policy forms

(a) Insurers with policy forms containing provisions 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 by February 1, 1992.

(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 refiled has been done within the time provided by (a) above.

Law Review and Journal Commentaries

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

Case Notes

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).

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).

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 cost 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.