

ii. An insurer which acts as a replacement carrier for the private passenger automobile insurance business from which the applicant seeks to withdraw assumes all of the legal rights, duties and obligations associated with the participation of private passenger automobile insurers in the automobile insurance market in this State.

2. An applicant shall be required to accept the quotas established by N.J.S.A. 17:33B-11(c)5 unless the applicant specifically requests and the Commissioner agrees to a waiver of this requirement.

(b) The Commissioner shall not consider any replacement carrier or carriers acceptable for the purposes of (a) above unless the applicant certifies that it will take any action(s) necessary to ensure that such replacement carrier(s) will maintain a net premium-to-surplus ratio not to exceed 2.5 to one. Where the replacement carrier is an affiliate of the applicant, the applicant shall provide a guarantee from its ultimate parent that such parent will take any action necessary to ensure the requirements set forth in this subsection are met.

1. The duration of the guarantee requirement set forth in (b) above shall be for a period not more than five years, such period to be coterminous with the remaining portion of the withdrawal period determined by the Commissioner pursuant to (a)1i above.

2. If the replacement carrier(s) is not an affiliate of the applicant, the Commissioner may waive the requirement set forth in (b) above if the applicant demonstrates to the Commissioner that the financial capacity of replacement carrier(s) to service the business to be assumed is equal to or greater than that of the withdrawing carrier, and that the financial condition and methods of operation of the proposed replacement carrier(s) is not such that the assumption of the applicant's book of business would render the replacement carrier's condition or operations hazardous to the public or policyholders of this State.

(c) If an applicant's request to withdraw involves other than private passenger automobile insurance, the applicant may be subject to conditions addressed either in the approved plan or, if the plan is waived pursuant to N.J.A.C. 11:2-29.3(a), in a reasonable substitute withdrawal procedure approved by the Commissioner.

Amended by R.1995 d.577, effective November 6, 1995.

See: 27 N.J.R. 2533(a), 27 N.J.R. 4311(a).

Amended by R.2005 d.111, effective April 4, 2005.

See: 36 N.J.R. 4358(a), 37 N.J.R. 1069(a).

Rewrote (a); in (b), deleted "less than one or" preceding "more than five years" in 1.

11:2-29.6 Agent rights

In accordance with N.J.S.A. 17:22-6.14a(n), agents of record of a company that transfers its business to another insurer pursuant to this subchapter shall continue to service such business and shall be offered contracts by the company to which business is transferred which contain terms and conditions concerning the use, control and ownership of

policy expirations and payment of commissions that are no less favorable than the agents' current contracts. Agent rights pursuant to this rule shall be governed by N.J.S.A. 17:22-6.14a(n).

New Rule, R.2005 d.111, effective April 4, 2005.

See: 36 N.J.R. 4358(a), 37 N.J.R. 1069(a).

Former N.J.A.C. 11:2-29.6, Confidentiality of plan of orderly withdrawal, recodified to N.J.A.C. 11:2-29.7.

11:2-29.7 Confidentiality of plan of orderly withdrawal

(a) All data or information contained in a proposed plan shall be confidential. All data or information contained in an approved plan is confidential and will not be disclosed by the Department to any person other than its employees and representatives, except the following items, but only upon written, specified request and upon notice to the insurer/applicant:

1. N.J.A.C. 11:2-29.4(a)3—Organizational chart;
2. N.J.A.C. 11:2-29.4(a)3ii—Agency relationships of affiliates by agent name, to the extent available through the Department's licensing system;
3. N.J.A.C. 11:2-29.4(a)4—Premium volume, number of current policyholders, market share and number of producers by line of business;
4. N.J.A.C. 11:2-29.4(a)5—Policyholder nonrenewal and producer termination notices;
5. N.J.A.C. 11:2-29.4(a)7—Name and address of each insurance producer to the extent available through the Department's licensing system;
6. N.J.A.C. 11:2-29.4(a)9—Copies of all correspondence and notices sent to various entities, as approved, to which the applicant owes a financial obligation;
7. N.J.A.C. 11:2-29.4(a)10—Certified statement of New Jersey incurred liabilities and reserves; and
8. N.J.A.C. 11:2-29.4(a)14—Establishment of special deposits or equivalent performance bonds as approved.

Recodified from N.J.A.C. 11:2-29.6 and amended by R.2005 d.111, effective April 4, 2005.

See: 36 N.J.R. 4358(a), 37 N.J.R. 1069(a).

Rewrote the section. Former N.J.A.C. 11:2-29.7, Fines and penalties, recodified to N.J.A.C. 11:2-29.9.

Case Notes

Ability to pay should not be considered in ordering restitution of misappropriated funds in trucking insurance fraud scheme. *Fortunato v. Pappas Trucking Insurance Agency, Inc.*, 96 N.J.A.R.2d (INS) 1.

11:2-29.8 Informational filing withdrawals

(a) Any proposed withdrawal informational filing filed on or after January 1, 2007, or with a commencement date on or after January 1, 2007, shall be subject only to the provisions of this section, N.J.A.C. 11:2-29.1 and 29.2, and N.J.S.A. 17:17-10 or 17:33B-30, as applicable, as amended by P.L. 2003, c.89.

(b) Any insurer seeking to withdraw shall file the information and otherwise comply with the requirements set forth in N.J.S.A. 17:17-10 or 17:33B-30, as applicable.

(c) An insurer may request a waiver of the one-year and 90-day waiting period for commencement of nonrenewals pursuant to N.J.S.A. 17:17-10b(2) or 17:33B-30a(2), a waiver of the requirement to send non-renewal notices no later than one year prior to the dates of the nonrenewals set forth in N.J.S.A. 17:17-10b(3) and 17:33B-30a(3), and a waiver of the maximum three-year non-renewal period set forth in N.J.S.A. 17:17-10b(4) and 17:33B-30a(4). A request shall include a list of the insurer's producers and their current business addresses, the proposed commencement date of the withdrawal, the name(s) of any replacement carrier(s) proposed to be utilized, the number of policies to be non-renewed, and the insurer's market share in this State with respect to the type of policies to be nonrenewed. The decision regarding the request for a waiver pursuant to this section shall constitute a final agency decision.

1. The Commissioner shall approve a request for waiver for any line(s), other than private passenger automobile, homeowners', workers' compensation, or medical malpractice liability, provided:

i. The insurer files notice of the proposed withdrawal with the Commissioner at least 120 days prior to the proposed date of initial non-renewal, and provides notice to policyholders 30 days after the notice is provided to the Commissioner;

ii. Non-renewals shall take place over a period not less than one policy cycle, there are no mid-term cancellations, except as otherwise specifically provided by law for the reason(s) set forth therein, and are performed on a random, equitable basis; and

iii. The Commissioner does not find that the waiver will adversely affect the market. In making this determination, the Commissioner shall consider, without limitation, the number of policies to be non-renewed, whether there are other insurers writing the line or lines of business from which the company seeks to withdraw, and whether there is sufficient capacity in the voluntary market with respect to the particular coverage involved.

2. With respect to private passenger automobile, homeowner's, workers' compensation, and medical malpractice liability coverages, the Commissioner shall approve a request for a waiver if the company does not have a market share of more than 9.5 percent for the particular coverage(s) involved, as of the date of the request, based on the most recent reported data available, or the Commissioner concludes that granting the waiver will not adversely affect the market after considering the standards set forth in (c)1iii above. If a waiver is granted, the insurer shall comply with the requirements in (c)1i and ii above. For purposes of this paragraph, for private passenger automobile insurance, market share shall be determined by the number of exposures, based on the most recent year-end consolidated report filed pursuant to N.J.A.C. 11:3-3A. For all other lines, market share shall be determined by premium volume, based on the most recent annual statement filed pursuant to N.J.S.A. 17:23-1.

3. For all lines, in addition to the foregoing, the Commissioner shall grant a waiver if he or she finds that the insurer is or would be in a hazardous financial condition absent provision of the waiver.

(d) An insurer may utilize a replacement carrier for the business that will not be renewed, pursuant to N.J.S.A. 17:17-10d or 17:33B-30d, as applicable, subject to approval by the Commissioner. The Commissioner shall approve a replacement carrier:

1. If the replacement is authorized to transact the line or lines of business being transferred;

2. The replacement carrier demonstrates to the satisfaction of the Department that it will be able to maintain a net premium-to-surplus ratio of not more than 2.5 to one for five years after the transfer;

3. The replacement carrier certifies that it will comply with N.J.S.A. 17:22-6.14a(n) with respect to agents' rights;

4. If the replacement carrier has not transacted the particular line involved in the transfer in this State, the replacement carrier demonstrates that it possesses the requisite services and experience such that its methods of operation will not be hazardous to the policyholders of this State; and

5. If the replacement carrier is not domiciled in this State, the replacement carrier provides evidence that it has notified its domiciliary regulator of its intent to assume the business, and the domiciliary regulator does not object to such action.

New Rule, R.2005 d.111, effective April 4, 2005.

See: 36 N.J.R. 4358(a), 37 N.J.R. 1069(a).

Former N.J.A.C. 11:2-29.8, Severability, recodified to N.J.A.C. 11:2-29.10.

11:2-29.9 Fines and penalties

Failure to comply with this subchapter may result in the imposition of sanctions by the Department including, but not limited to, sanctions pursuant to N.J.S.A. 17:33-2.

Recodified from N.J.A.C. 11:2-29.7 by R.2005 d.111, effective April 4, 2005.

See: 36 N.J.R. 4358(a), 37 N.J.R. 1069(a).

11:2-29.10 Severability

If any provision of this subchapter or its application to any person or circumstance is held invalid, such determination shall not affect other provisions or applications of this subchapter which can be given effect without the invalid provision or application, and to that end the provisions of this subchapter are separable.

Recodified from N.J.A.C. 11:2-29.8 by R.2005 d.111, effective April 4, 2005.

See: 36 N.J.R. 4358(a), 37 N.J.R. 1069(a).

SUBCHAPTER 30. (RESERVED)

SUBCHAPTER 31. MANNER OF DETERMINING
PREMIUM FOR PERPETUAL HOMEOWNERS
INSURANCE**11:2-31.1 Purpose**

This subchapter sets forth the manner of determining premium for perpetual homeowners insurance for any applicable statutory fee, surcharge, tax or assessment.

11:2-31.2 Scope

The provisions of this subchapter apply to all insurers transacting the business of perpetual homeowners insurance in this State, including all perils insured thereunder.

11:2-31.3 Definitions

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

“Annual adjustments” means any adjustments in the perpetual deposit account during the calendar year, exclusive of dividends. Increases include any additions to the account, such as policy fees and premium assessments. Decreases include the return of perpetual deposits, in whole or in part, due to the termination of policies and any other decreases, exclusive of dividends.

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

“Insurer” means an insurance company licensed to transact the business of perpetual homeowners insurance in this State.

“Net perpetual deposits” means the total perpetual deposits received by an insurer for perpetual homeowners insurance increased or decreased by annual adjustments.

“Perpetual deposit” means a payment by a policyholder for perpetual homeowners insurance.

“Perpetual homeowners insurance” means a homeowners policy and related endorsements, including all perils insured thereunder, which remains continuously in effect until cancelled, and is paid for with one lump sum deposit with no additional payment required, notwithstanding any subsequent fees or assessments.

Amended by R.2001 d.6, effective January 2, 2001.
See: 32 N.J.R. 3530(a), 33 N.J.R. 85(a).

11:2-31.4 Determination of premium

(a) For the purposes of any statutory fee, surcharge, tax or assessment based on premium and applicable to perpetual homeowners insurance, premium is:

1. The sum of the net perpetual deposits received for perpetual homeowners insurance from the inception of the policy through the calendar year immediately preceding the date that such applicable statutory fee, surcharge, tax or assessment is due, multiplied by:

2. The average annual interest rate on one-year U.S. Treasury bills for the calendar year in question.

(b) The premium base for any applicable statutory fee, surcharge, tax or assessment is calculated annually as set forth in (a) above less any so-called dividends returned or credited to policyholders during the calendar year in question.

11:2-31.5 Data filed; examination

(a) Each insurer shall include with the annual statement filed with the Commissioner, a list of the lines of business under which perpetual homeowners insurance is written, on form(s) prescribed by the Commissioner.

(b) All data submitted is examined by the Commissioner and he or she may make any further audit or investigation or reaudit as necessary. An insurer shall pay the reasonable expenses of any examination, pursuant to N.J.S.A. 17:23-22d.

Amended by R.2005 d.350, effective October 17, 2005.
See: 37 N.J.R. 2285(a), 37 N.J.R. 4026(a).

In (b), substituted “N.J.S.A. 17:23-22d” for “N.J.S.A. 17:23-4”.

11:2-31.6 Penalties

Failure to comply with these provisions may result in the imposition of sanctions by the Department including, but not limited to, sanctions pursuant to N.J.S.A. 17:33-2.

SUBCHAPTER 32. CUSTODIAL DEPOSITS

11:2-32.1 Purpose and scope

(a) The purpose of this subchapter is to set forth the procedures for the holding by the Commissioner of any required deposits and to establish the fees to be charged the depositor for the services of the custodian of such deposits pursuant to N.J.S.A. 17:20-1 et seq., 17:46B-1 et seq., 17:50-6, and 17B:18-37 et seq.

(b) This subchapter applies to all insurers required by the laws of this State to make a security deposit to be held for the benefit and security of all the policyholders of the company making such deposit. This subchapter also applies to any other entity required to make a deposit with the Commissioner in order to transact business in this State. This subchapter does not apply to any insurer under liquidation pursuant to N.J.S.A. 17:30C-1 et seq. or 17B:32-1 et seq., as applicable.

Amended by R.1996 d.3, effective January 2, 1996.
See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).

11:2-32.2 Definitions

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

“Bank” means a State or Federally chartered bank, savings bank, or savings and loan association which has trust powers and which has its principal office in New Jersey.