

SUBCHAPTER 5. FIRE AND CASUALTY INSURANCE

Subchapter Historical Note

Subchapter 5, Administrative Orders and Declarations, was renamed Fire and Casualty Insurance by R.1997 d.194, effective May 19, 1997. See: 28 N.J.R. 5137(a), 29 N.J.R. 2462(b).

11:1-5.1 FAIR Plan Surcharge

(a) On August 3, 1988, the Commissioner of Insurance ascertained and determined that the net value of the New Jersey Insurance Development Fund, as of December 31, 1987, was more than five percent of the premiums written on basic property insurance in New Jersey in calendar year 1987. Accordingly, no further surcharge on said premiums and no further payments to said Fund shall be made.

(b) Application of surcharge when imposed by the Commissioner of Insurance shall be as follows:

1. A surcharge shall be imposed in an amount prescribed in an order of the Commissioner of Insurance on premiums of the following policies and endorsements effective on or after the date fixed by the Commissioner in his or her order.

i. All fire, extended coverage and other allied lines coverage (property damage and time element) written under the fire policy.

ii. All burglary and theft policies.

iii. Commercial multiple peril policies. For the purpose of this computation, 65 percent of the commercial multiple peril premium shall constitute the premium subject to the surcharge, except that on individual risks where such percentage appears unreasonable, a company may use actual division by line, provided the company maintains a separate record of those risks.

iv. Policies issued under the homeowners policy program. For the purpose of this computation, 85 percent of the homeowners premium shall constitute the premium subject to surcharge, except that on individual risks where such percentage appears unreasonable, a company may use actual division by line provided the company maintains a separate record on those risks.

2. The surcharge, if deemed necessary by the Commissioner of Insurance, shall apply to all new and renewal policies effective on or after the date fixed by the Commissioner in his or her order and to the additional premiums on all endorsements effective on or after that date.

3. Policies written for a term longer than one year with an effective date on or after the date fixed by the Commissioner in his or her order shall be charged, if deemed necessary by the Commissioner of Insurance, in accordance with this section.

4. Return of the surcharge, if any is charged by order of the Commissioner of Insurance, is permitted on policy activity such as endorsement decreasing premium and cancellations effective the date fixed by the Commissioner in his or her order.

5. For policies with an effective date on or after the date fixed by the Commissioner in his or her order, which are subject to audit, the surcharge, if any is charged by order of the Commissioner of Insurance, shall be based on the audited premium.

6. The surcharge, if deemed necessary by the Commissioner of Insurance, shall be charged in full. Rounding to the nearest whole dollar is not permitted.

7. If a surcharge is deemed necessary by the Commissioner of Insurance, commissions and premium taxes shall not be payable thereon, and the insurer is prohibited from absorbing such surcharge as an inducement for insurance or for any other reason.

(c) If a surcharge is deemed necessary by the Commissioner of Insurance, the surcharge shall be collected by each insurer and paid over to the State Treasurer of New Jersey, not later than March 1 and September 1 of each year.

(d) The method of billing shall be as follows:

1. If a surcharge is deemed necessary by the Commissioner of Insurance, the surcharge shall be a separate charge to the insured in addition to the premium to be paid and shall be shown separately or combined with the Guaranty Association charge.

2. If a surcharge is deemed necessary by the Commissioner of Insurance, when the surcharge is combined with the Guaranty Association charge, it shall be identified as "Surcharges," and when it is shown separately, it shall be identified as "Surcharge."

New Rule, R.1977 d.231, effective July 1, 1977.

See: 9 N.J.R. 278(f), 9 N.J.R. 371(b).

Amended by R.1978 d.78, effective March 2, 1978.

See: 10 N.J.R. 67(a), 10 N.J.R. 165(a).

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

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

This section was originally codified as 11:1-5.4. Section substantially amended.

Public Notice: Recertification to the Legislature of the need for continuation of the notice of cancellation and nonrenewal requirement applicable to fire and casualty insurance policies, excluding accident and health policies for the fiscal year commencing July 1, 1985.

See: 17 N.J.R. 1939(a).

Amended by R.1989 d.478, effective September 5, 1989.

See: 21 N.J.R. 1816(a), 21 N.J.R. 2796(a).

Provisions for surcharge and for payments to the New Jersey Insurance Development Fund deleted and replaced with references to orders of the Commissioner of Insurance.

Case Notes

The cost of use of money deposited by policyholder of insurance company in connection with its issuance of perpetual homeowner's policies held subject to both premiums tax and assessment under the NJ

Insurance Premium Tax and the NJ Insurance Underwriting Association Act, respectively; cost of deposit money to be calculated by multiplying the deposit amount by the interest rate representing the cost of money. *Mutual Insurance Co., v. Gluck*, 9 NJ Tax 55 (TC 1987) affirmed 10 N.J.Tax 234.

11:1-5.2 Notice of cancellation and nonrenewal of fire and casualty coverage

(a) All fire and casualty policies of insurance, except accident and health policies, shall provide for the issuing company to give:

1. Thirty days' written notice to the insured of the cancellation of any policy;
2. Thirty days' written notice of cancellation of any policy to any mortgagee mentioned in said policy; and
3. Thirty days' written notice to the insured of said company's intent not to renew any policy.

(b) Provisions of policies to be effective on or after July 1, 1977, which are issued by any company doing business in New Jersey and provide for less than 30 days' notice of cancellation and nonrenewal shall be null and void, with the following exceptions:

1. Provisions for cancellations for nonpayment of premium or for "moral hazard" (such as insurance fraud) under N.J.S.A. 17:29C-2;
2. Provisions for cancellations and nonrenewal notice which are controlled by N.J.S.A. 17:29C-6 et seq., (Automobile insurance), 39:6A-3 and rules promulgated thereunder (No-fault insurance).
3. Provisions in New Jersey FAIR Plan policies for five day notice to the insured and 10 days notice to the mortgagee with respect to any of the following properties or in any of the following circumstances:
 - i. Buildings which are unoccupied and accessible to unauthorized persons.
 - ii. Buildings which have been subject to damage by a peril insured against and the damage is not repaired or remedied within a reasonable time after the damage occurred.
 - iii. Buildings which are in danger of collapse because of serious structural conditions.
 - iv. The insured has been indicted for or convicted of arson or burning with intent to defraud, or there is evidence of incendiarism or attempt threat by the insured or representative of the insured.
 - v. Buildings which have an exceptional degree of hazard, such as fire ruins or dilapidated condition.
 - vi. Buildings which have any of the following conditions existing:
 - (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).

Case Notes

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 Insurance. Nothing herein shall imply a right to hearing procedures described in the Administrative Procedure Act, particularly "contested case" procedures. 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 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 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 Insurance of a pending appeal, cancellation will be processed and return premium (if any) forwarded to the producer of record.

(4) The Department of 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 return premium (if any) will be forwarded 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.

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. All insurance companies writing fire insurance on property located in New Jersey shall require their agents to designate the Firemen's Relief Association by code on each Policy Declaration Sheet and disclose the complete address at which the property is located including the legal name of the municipality.

4. Each insurance company shall use the Firemen's Relief Association code as promulgated by the Insurance Services Office in making its annual report pursuant to N.J.S.A. 54:18-1 to the respective treasurers of the duly incorporated Firemen's Relief Association in which any property on which the company has taken a fire insurance risk is located.

New Rule, R.1979 d.356, effective September 10, 1979.
See: 11 N.J.R. 347(b), 11 N.J.R. 520(c).
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 11:1-5.8.

11:1-5.5 Notice regarding flood damage coverage

(a) All fire and casualty insurers, including the New Jersey Insurance Underwriting Association (FAIR Plan), that write homeowners insurance, as defined in N.J.A.C. 11:2-41.2, shall provide their policyholders at least annually with a notice that includes the following information:

1. A homeowners insurance policy does not cover property damage from floods.

2. Flood means a general and temporary condition of partial or complete inundation of normally dry land area from:

- i. The overflow of inland or tidal waters;
- ii. The unusual and rapid accumulation or runoff of surface waters from any source;

iii. Mudslides (that is, mudflows) that are proximately caused by flooding and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, including your premises, as when earth is carried by a current of water and deposited along the path of the current;

3. Flood also includes the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding cyclical levels, which results in the partial or complete inundation of normally dry land area;

4. A separate policy of flood insurance may be available to cover flood damage at an additional premium; and

5. The insurer or insurance agent should be consulted to obtain further information about how to secure flood insurance, including the availability, terms and coverage.

(b) The notice shall be provided at new business inception and at least annually thereafter. For the purpose of this subsection, new business inception means when the application is taken; when the coverage is bound; or when the policy is presented to the insured. The notice may be included with other materials sent to the policyholder.

New Rule, R.1997 d.194, effective May 19, 1997.
See: 28 N.J.R. 5137(a), 29 N.J.R. 2462(b).

SUBCHAPTER 6. NEW JERSEY PROPERTY-LIABILITY INSURANCE GUARANTY ASSOCIATION ASSESSMENT PREMIUM SURCHARGE

11:1-6.1 Purpose and scope

(a) This subchapter provides for the recoupment by member insurers of the Association of assessments paid pursuant to N.J.S.A. 17:30A-8a(3).

(b) This subchapter applies to all assessments imposed on member insurers pursuant to N.J.S.A. 17:30A-8a(3) and which have not been recouped as of September 3, 1991. This subchapter does not apply to any assessments imposed on member insurers pursuant to N.J.S.A. 17:30A-8a(9).

Case Notes

When Medical Malpractice Reinsurance Association makes assessment against insurers, insurers are entitled to recoup that assessment through surcharges on insureds. In re New Jersey Medical Malpractice Reinsurance Recovery Fund Surcharge, Adopted New Rules, N.J.A.C. 11:18, 246 N.J.Super. 109, 586 A.2d 1317 (A.D.1991), certification denied 126 N.J. 328, 598 A.2d 886.

Statutory workers' compensation lien for benefits paid to injured employee by workers' compensation insurer was not enforceable against Property-Liability Insurance Guaranty Association. *Sussman v. Ostroff*, 232 N.J.Super. 306, 556 A.2d 1301 (A.D.1989), certification denied 117 N.J. 143, 564 A.2d 865.

Surplus lines insurers held excluded from operation of Property-Liability Insurance Guaranty Association Act, even prior to statutory amendment specifically excluding them from Act. *Railroad Roofing & Building Supply Co., Inc. v. Financial Fire & Casualty Co.*, 85 N.J. 384, 427 A.2d 66 (1981).

11:1-6.2 Definitions

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

“Association” means the New Jersey Property-Liability Insurance Guaranty Association established pursuant to N.J.S.A. 17:30A-1 et seq.

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

“Department” means the New Jersey Department of Insurance.

“Member insurer” is as defined in N.J.S.A. 17:30A-5f.

11:1-6.3 Establishment of Association assessment premium surcharge

(a) Upon a determination by the Commissioner that a surcharge on premiums is necessary to permit member insurers to recoup assessments paid to the Association pursuant to N.J.S.A. 17:30A-8a(3), he or she shall order within 30 days of the due date of an assessment that a surcharge be imposed on net direct written premiums for policies to which N.J.S.A. 17:30A-1 et seq. applies. The essential terms of the Order shall be published in the New Jersey Register.

(b) The amount of a surcharge shall be established by the Commissioner by Order. In determining the amount of a surcharge the Commissioner shall consider:

1. The amount of any assessment on member insurers imposed by the Association pursuant to N.J.S.A. 17:30A-8a(3);
2. The surcharge amount necessary in the Commissioner's opinion to permit member insurers to recoup any assessment paid to the Association pursuant to N.J.S.A. 17:30A-8a(3) over a reasonable time which shall not be less than one year; and
3. The net direct written premiums for all lines of insurance to which N.J.S.A. 17:30A-1 et seq. applies.