TITLE 11

DEPARTMENT OF INSURANCE

CHAPTER 1

ADMINISTRATION

Authority

N.J.S.A. 17:1C-6(e).

Source and Effective Date

R.1991 d.101, effective January 31, 1991.
See: 22 N.J.R. 3686(a), 23 N.J.R. 690(b).

Executive Order No. 66(1978) Expiration Date

Chapter 1, Administration, expires on January 31, 1996.

Chapter Historical Note

Chapter 1 was originally filed as the Plan of Organization of the Department of Insurance, effective January 20, 1971 as R.1971 d.11, and codified at Subchapter 1. Notice was not published in the New Jersey Register.

Subchapter 2, Filings, was adopted as R.1973 d.120, effective May 1, 1973. See: 5 N.J.R. 113(a), 5 N.J.R. 190(b).

Subchapter 3, concerning cancellation for nonpayment of premium where producer of record has advanced premium, was adopted as R.1972 d.168, effective August 25, 1972. See: 4 N.J.R. 128(b), 4 N.J.R. 221(b). Subchapter 3 was repealed by R.1990 d.11, effective January 2, 1990. See: 21 N.J.R. 1317(a), 22 N.J.R. 30(b).

Subchapter 4, Unfair Discrimination, was adopted as R.1975 d.128, concerning sex and/or marital status discrimination, effective September 1, 1975. See: 7 N.J.R. 168(a), 7 N.J.R. 276(b).

Subchapter 5, Administrative Orders and Declarations, was adopted as Emergency New Rule, R.1974 d.237, Motor Vehicle Liability Security Fund declared exhausted, effective August 22, 1974. See: 6 N.J.R. 351(d). Pursuant to Executive Order No. 66(1978), Subchapter 5 was to expire on June 6, 1984. Gubernatorial waiver of the five-year sunset provision of this order extended the expiration of Subchapter 5 until September 6, 1984. See: 16 N.J.R. 1451(a). Subchapter 5 was readopted as R.1984 d.426, effective October 1, 1984. See: 16 N.J.R. 1689(a), 16 N.J.R. 2677(a), 17 N.J.R. 2566(a).

Subchapter 6, New Jersey Property-Liability Insurance Guaranty Association, was adopted as R.1975 d.170, effective July 1, 1975. See: 7 N.J.R. 229(a), 7 N.J.R. 334(b).

Subchapter 7, Service and Placement Fees, was adopted as R.1976 d.266, effective August 23, 1976. See: 7 N.J.R. 468(a), 8 N.J.R. 422(b). Subchapter 7 was repealed by R.1990 d.11, effective January 2, 1990. See: 21 N.J.R. 1317(a), 22 N.J.R. 30(b).

Subchapter 8, Property-Casualty Agents, was adopted as R.1976 d.267, effective October 1, 1976. See: 7 N.J.R. 469(a), 8 N.J.R. 423(a). Section 8.1 of the subchapter was repealed by R.1988 d.186, effective April 18, 1988. See: 20 N.J.R. 225(c), 20 N.J.R. 904(b). Subchapter 8 was repealed by R.1990 d.11, effective January 2, 1990. See: 21 N.J.R. 1317(a), 22 N.J.R. 30(b).

Subchapter 9, Agents for Life Insurance, Health Insurance and Annuity Contracts—Temporary Licensing, was adopted as R.1983 d.603, effective January 3, 1984. See: 15 N.J.R. 1828(a), 16 N.J.R. 49(c). Subchapter 9 was repealed by R.1988 d.186, effective April 18, 1988. See: 20 N.J.R. 225(c), 20 N.J.R. 904(b).

Subchapter 10, Insurance Licensing of Financial Institutions, was adopted as R.1976 d.166, effective May 27, 1976. See: 8 N.J.R. 233(a), 8 N.J.R. 300(c). Subchapter 10 was amended by R.1977 d.405, effective October 26, 1977 and R.1978 d.17, effective January 23, 1978. See: 9 N.J.R. 437(a), 9 N.J.R. 536(c); 9 N.J.R. 585(a), 10 N.J.R. 70(a). Subchapter 10 was repealed by R.1985 d.69, effective February 19, 1985. See: 16 N.J.R. 2919(a), 17 N.J.R. 458(a). A new Subchapter 10, Admission Requirements for Foreign and Alien Property and Casualty Insurers, was adopted as R.1989 d.329, effective June 19, 1989. See: 21 N.J.R. 426(a), 21 N.J.R. 1702(a).

Subchapter 11, Conduct Constituting Violations by Brokers and Agents, was adopted as R.1976 d.235, effective July 22, 1976. See: 8 N.J.R. 287(e), 8 N.J.R. 398(b).

Subchapter 12, Corporate and Partnership Licensee Requirements, was adopted as R.1976 d.412, effective December 16, 1976 and March 1, 1977. See: 8 N.J.R. 421(c), 9 N.J.R. 24(b).

Subchapter 13, Disclosure Agreements for Motor Club Service Contracts Sold in Connection with Automobile Insurance Policies, was adopted as R.1982 d.177, effective June 7, 1982 (operative August 15, 1982). See: 13 N.J.R. 879(b), 14 N.J.R. 579(a). Subchapter 13 was repealed by R.1990 d.11, effective January 2, 1990. See: 21 N.J.R. 1317(a), 22 N.J.R. 30(b).

Subchapter 14, Insurance Licensees, was adopted as R.1982 d.336, effective October 4, 1982 (operative November 19, 1982). See: 14 N.J.R. 748(a), 14 N.J.R. 1099(b). Subchapter 14 was repealed by R.1988 d.186, effective April 18, 1988. See: 20 N.J.R. 225(c), 20 N.J.R. 904(b).

Subchapter 15, Petitions for Rules, was adopted as R.1984 d.511, effective November 5, 1984. See: 16 N.J.R. 2224(b), 16 N.J.R. 3033(b).

Subchapter 16, Requirements for Filing a Downward Deviation in Currently Approved Rates, was adopted as R.1986 d.478, effective December 15, 1986. See: 18 N.J.R. 1998(a), 18 N.J.R. 2458(a).

Subchapter 17 has had no rulemaking activity and remains "Reserved".

Subchapter 18, Approval of Business Names, was adopted as R.1986 d.10, effective February 3, 1986. See: 17 N.J.R. 41(a), 18 N.J.R. 278(a). Subchapter 18 was repealed by R.1988 d.186, effective April 18, 1988. See: 20 N.J.R. 225(c), 20 N.J.R. 904(b).

Subchapter 19, Branch Offices, was adopted as R.1986 d.11, effective February 3, 1986. See: 17 N.J.R. 42(a), 18 N.J.R. 280(a). Subchapter 19 was repealed by R.1988 d.186, effective April 18, 1988. See: 20 N.J.R. 225(c), 20 N.J.R. 904(b).

Subchapter 20, Cancellation and Nonrenewal of Property and Casualty/Liability Insurance Policies, was adopted as Emergency New Rule, R.1985 d.507, effective September 17, 1985 (expired November 16, 1985). See: 17 N.J.R. 2460(a). An emergency amendment was filed as R.1985 d.626, effective November 15, 1985 (expired January 14, 1986). See: 17 N.J.R. 2915(a). The provisions of R.1985 d.507 were readopted without change as R.1985 d.627, effective November 16, 1985. See: 17 N.J.R. 2978(b). The provisions of R.1985 d.626 were readopted without change as R.1986 d.27, effective January 14, 1986. See: 18 N.J.R. 419(b). The existing text of Subchapter 20 was repealed by R.1986 d.272 and new rules adopted concerning Cancellation and Nonrenewal of Commercial Insurance Policies, effective July 7, 1986 with portions operative July 28, 1986. See: 18 N.J.R. 457(b), 18 N.J.R. 1388(a). Pursuant to Executive Order No. 66(1978), Subchapter 20 was readopted as R.1988 d.341, effective June 24, 1988. See: 20 N.J.R. 1061(a), 20 N.J.R. 1720(a).

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Subchapter 21, Loss Reserve Opinions, was adopted as R.1985 d.711, effective January 21, 1986. See: 17 N.J.R. 2596(a), 18 N.J.R. 196(b).

Subchapter 22, Prohibition of Certain Cancellation and Nonrenewal Activity, was adopted as R.1986 d.272, effective July 7, 1986. See: 18 N.J.R. 457(b), 18 N.J.R. 1388(a). Pursuant to Executive Order No. 66(1978), Subchapter 22 was readopted as R.1988 d.341, effective June 24, 1988. See: 20 N.J.R. 1061(a), 20 N.J.R. 1720(a).

Subchapters 23 and 24 have had no rulemaking activity and remain "Reserved".

Subchapter 25, Official Department Mailing List: Address Information, was adopted as R.1988 d.64, effective February 1, 1988. See: 19 N.J.R. 2236(a), 20 N.J.R. 294(b).

Subchapter 26, Annual Publication of Insurer Profitability Information, was adopted as R.1989 d.538, effective October 16, 1989. See: 21 N.J.R. 2181(a), 21 N.J.R. 3297(c).

Subchapter 27 has had no rulemaking activity and remains "Reserved".

Subchapter 28, Formation of a Domestic Property and Casualty Insurance Corporation (Stock or Mutual) or Reciprocal Insurance Exchange, was adopted as R.1990 d.162, effective March 19, 1990. See: 21 N.J.R. 3607(a), 22 N.J.R. 954(b), 22 N.J.R. 1266(a).

Subchapter 29, Temporary Certificate of Authority, was adopted as R.1991 d.15, effective January 7, 1991. See: 22 N.J.R. 2453(a), 23 N.J.R. 100(a).

Pursuant to Executive Order No. 66(1978), all subchapters within Chapter 1, Administration, were readopted as R.1991 d.101. See: Source and Effective Date. See also, section annotations for specific rulemaking activity.

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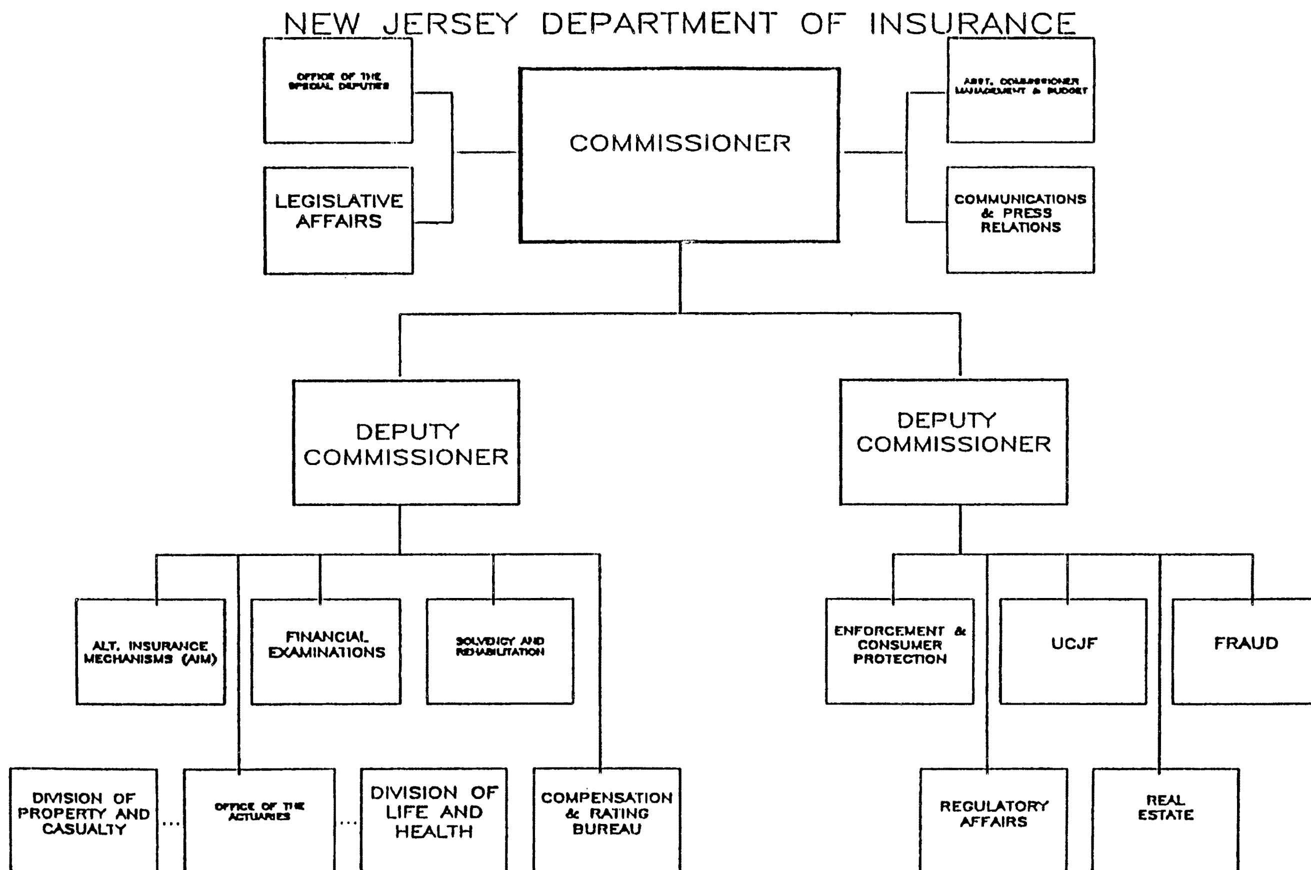
SUBCHAPTER 1. ORGANIZATION

11:1–1.1 Organization of the Department

(a) The organization of the Department of Insurance appears on following page.

Amended by R.1973 d.195, effective July 24, 1973.
See: 5 N.J.R. 282(c).
Amended by R.1974 d.89, effective April 9, 1974.
See: 6 N.J.R. 199(a).
Amended by R.1988 d.1, effective December 1, 1987.
See: 20 N.J.R. 99(a).
New organizational chart.
Amended by R.1988 d.454, effective August 26, 1988.
See: 20 N.J.R. 2377(a).
New organizational chart.
Amended by R.1991 d.476, effective August 23, 1991.
See: 23 N.J.R. 2862(c).
New organizational chart.
Amended by R.1994 d.557, effective October 17, 1994.
See: 26 N.J.R. 4405(a).



11:1–1.2 Public information

In accordance with N.J.S.A. 52:14B–3(1), the public may obtain information or make general submissions or requests by contacting:

Division of Public Affairs
Department of Insurance
20 West State Street
CN 325
Trenton, New Jersey 08625

New Rule, R.1988 d.454, effective August 26, 1988.
See: 20 N.J.R. 2377(a).

11:1–1.3 Sharing of information with other insurance departments

(a) The Commissioner may share any information regarding the financial condition of insurers, including information that is not subject to public inspection or copying pursuant to the "Right to Know" law, N.J.S.A. 47:1A–1 et seq., with the National Association of Insurance Commissioners or any insurance regulatory of another state or U.S. territory, provided that such agency is authorized and irrevocably agrees to hold such information confidential to the same extent as is provided under the laws of this State.

(b) The Commissioner may enter into an agreement with the National Association of Insurance Commissioners or any insurance regulator of any state or U.S. territory by which the Commissioner shall hold any information received from such agency as confidential and not subject to public inspection or copying pursuant to the "Right to Know" law, N.J.S.A. 47:1A–1 et seq., to the same extent such information is required to be held confidential pursuant to that agency's laws or other requirements.

New Rule, R.1995 d.367, effective July 3, 1995.
See: 27 N.J.R. 1736(a), 27 N.J.R. 2582(a).

SUBCHAPTER 2. FILINGS; PROPERTY–LIABILITY

11:1–2.1 Filings of rates, manual rules, rating plans, policy forms and endorsements

(a) This regulation establishes requirements as to the format of filings pertaining to rates, manual rules, rating plans, policy forms and endorsements, and presents guidelines as to required supporting information.

(b) Such filings submitted to this Department for approval 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.

(c) The following applies to various categories of such filings.

Amended by R.1975 d.34, effective February 19, 1975.
See: 7 N.J.R. 9(b), 7 N.J.R. 115(a).

11:1-2.2 Filings of changes

(a) Filings containing changes in rates, rules, plans and forms previously approved for the filer 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 relies, including past and prospective loss and expense experience, and due consideration must be given to investment income from unearned premium and loss reserves in any proposed profit provision in the rates.

Amended by R.1975 d.34, effective February 19, 1975.
See: 7 N.J.R. 9(b), 7 N.J.R. 115(a).

11:1-2.3 Adoption of rules and forms approved for other filers

(a) If a filer proposes to adopt rules, rating plans, policy forms or endorsements previously approved for other filers in New Jersey, the filing shall clearly identify such reference including the name of the filer and 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. Reference to filings of rating organizations or advisory organizations:

i. If the proponent wishes to adopt exactly and without any change filings approved for rating organizations or accepted for reference purposes on behalf of advisory organizations in New Jersey, the filing shall clearly identify such reference and shall not include a copy of the material referred to;

ii. If the proponent wishes to adopt filing material with some exceptions, he shall follow the procedure outlined under this subsection, submitting only pages containing such exceptions.

2. Reference to filings of individual filers:

i. 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 in Section 2 of this Subchapter.

Amended by R.1975 d.34, effective February 19, 1975.
See: 7 N.J.R. 9(b), 7 N.J.R. 115(a).

11:1-2.4 New filings

Manual rules, rating plans and policy forms are rarely entirely new. Most such filings are built upon something previously or currently in use. Action on 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 Section 2 or 3 of this Subchapter.

Amended by R.1975 d.34, effective February 19, 1975.
See: 7 N.J.R. 9(b), 7 N.J.R. 115(a).

11:1-2.5 Notification

A copy of the filing with a duplicate covering letter shall be submitted to the Department of Insurance and to the Office of the Public Advocate, Division of Rate Counsel, 744 Broad Street, 29th and 30th Floors, Newark, New Jersey 07102. Both copies of the filing shall be accompanied by a transmittal form (copies of which can be obtained from the Department of Insurance, 201 East State Street, Trenton, New Jersey 08625) properly completed and signed by the person authorized by the company to make filings.

New Rule R.1975 d.34, effective February 19, 1975.
See: 7 N.J.R. 9(b), 7 N.J.R. 115(a).
Public Notice: change of address.
See: 16 N.J.R. 1813(b).

Case Notes

Filing of insurance rates was a "proceeding" in which Rate Counsel was authorized to intervene. State Farm Mut. Auto. Ins. Co. v. State, Dept. of Public Advocate, 227 N.J.Super. 99, 545 A.2d 823 (A.D.1988), certification granted 114 N.J. 479, 555 A.2d 605, affirmed 118 N.J. 336, 571 A.2d 957.

Rate Counsel is entitled to compensation in a "proceeding initiated" by insurance company. State Farm Mut. Auto. Ins. Co. v. State, Dept. of Public Advocate, 227 N.J.Super. 99, 545 A.2d 823 (A.D.1988), certification granted 114 N.J. 479, 555 A.2d 605, affirmed 118 N.J. 336, 571 A.2d 957.

SUBCHAPTER 3. DISABILITY DISCRIMINATION GRIEVANCE PROCEDURE

Authority

N.J.S.A. 17:1C-6(e), 42 U.S.C. § 12101 et seq., and 28 C.F.R. § 35.107.

Source and Effective Date

R.1993 d.618, effective December 6, 1993.
See: 25 N.J.R. 1327(a), 25 N.J.R. 5666(b).

Executive Order No. 66(1978) Expiration Date

Subchapter 3, Disability Discrimination Grievance Procedure, is exempt from expiration under 28 C.F.R. Part 35.

11:1-3.1 Definitions

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

"ADA" means the Americans with Disabilities Act, 42 U.S.C.A. § 12101 et seq.

"Agency" means the New Jersey Department of Insurance.

"Designated decision maker" means the Commissioner of Insurance or his or her designee.

11:1-3.2 Purpose

(a) These rules are adopted by the agency in satisfaction of the requirements of the ADA and regulations promulgated pursuant thereto, 28 C.F.R. 35.107.

(b) The purpose of these rules is to establish a designated coordinator whose duties shall include assuring that the agency complies with and carries out its responsibilities under the ADA. Those duties shall also include the investigation of any complaint filed with the agency pursuant to N.J.A.C. 11:1-3.5 through 3.8.

11:1-3.3 Required ADA notice

In addition to any other advice, assistance or accommodation provided, a copy of the following notice shall be given to anyone who inquires regarding the agency's compliance with the ADA or the availability of accommodation which would allow a qualified individual with a disability to receive services or participate in a program or activity provided by the agency.

AGENCY NOTICE OF ADA PROCEDURE

The agency has adopted an internal grievance procedure providing for prompt and equitable resolution of grievances alleging any action prohibited by the U.S. Department of Justice regulations implementing Title 11 of the Americans with Disabilities Act. Title 11 states, in part, that "no otherwise qualified disabled individual shall, solely by reason of such disability, be excluded from participation in, be denied the benefits of or be subjected to discrimination" in programs or activities sponsored by a public entity.

Rules describing and governing the internal grievance procedure can be found in the New Jersey Administrative Code, N.J.A.C. 11:1-3. As those rules indicate, grievances should be addressed to the agency's designated ADA Coordinator, who has been designated to coordinate ADA compliance efforts, at the following address:

ADA Coordinator
New Jersey Department of Insurance
CN 329
Trenton, New Jersey 08625

1. A grievance may be filed in writing or orally, but should contain the name and address of the person filing it, and briefly describe the alleged violation. A form for this purpose is available from the designated ADA coordinator. In cases of employment related grievances, the procedures established by the Department of Personnel, N.J.A.C. 4A:7-1.1 et seq. will be followed where applicable.

2. A grievance should be filed promptly within 30 days after the grievant becomes aware of the alleged violation. (Processing of allegations of discrimination which occurred before this grievance procedure was in place will be considered on a case-by-case basis.)

3. An investigation, as may be appropriate, will follow the filing of a grievance. The investigation will be conducted by the agency's designated ADA Coordinator. The rules contemplate informal but thorough investigations, affording all interested persons and their representatives, if any, an opportunity to submit evidence relevant to a grievance.

4. In most cases a written determination as to the validity of the grievance and a description of the resolution, if any, will be issued by the designated decision maker and a copy forwarded to the grievant no later than 45 days after its filing.

5. The ADA coordinator will maintain the files and records of the agency relating to the grievances filed.

6. The right of a person to a prompt and equitable resolution of the grievance filed hereunder will not be impaired by the person's pursuit of other remedies such as the filing of an ADA grievance with the responsible Federal department or agency or the New Jersey Division on Civil Rights. Use of this grievance procedure is not a prerequisite to the pursuit of other remedies.

7. The rules will be construed to protect the substantive rights of interested persons, to meet appropriate due process standards and to assure that the agency complies with the ADA and implementing Federal rules.

11:1–3.4 Designated ADA coordinator

(a) The designated coordinator of ADA compliance and complaint investigation for the agency is:

ADA Coordinator
New Jersey Department of Insurance
CN 329
Trenton, New Jersey 08625

(b) All inquiries regarding the agency's compliance with the ADA and the availability of accommodation which would allow a qualified individual with a disability to receive services or participate in a program or activity provided by the agency should be directed to the designated coordinator identified in (a) above.

(c) All grievances alleging that the agency has failed to comply with or has acted in a way that is prohibited by the ADA should be directed to the designated ADA coordinator identified in this section, in accordance with the procedures set forth in N.J.A.C. 11:1–3.5 through 3.8.

11:1–3.5 Grievance procedure

A grievance alleging that the agency has failed to comply with the ADA or has acted in a way that is prohibited by the ADA shall be submitted either in writing or orally to the designated ADA coordinator identified in N.J.A.C. 11:1–3.4 within 30 days of the grievant becoming aware of the alleged violation. A grievance alleging employment discrimination will be processed pursuant to the rules of the Department of Personnel, N.J.A.C. 4A:7–1.1 through 3.4, if those rules are applicable.

11:1–3.6 Grievance contents

(a) A grievance submitted pursuant to this subchapter may be submitted in or on the form set forth at N.J.A.C. 11:1–3.7.

(b) A grievance submitted pursuant to this subchapter shall include the following information:

1. The name of the grievant and/or any alternate contact person designated by the grievant to receive communication or provide information for the grievant;

2. The address and telephone number of the grievant or alternate contact person; and

3. A description of manner in which the ADA has not been complied with or has been violated, including times and locations of events and names of witnesses if appropriate.

11:1–3.7 Grievance form

The following form may be utilized for the submission of a grievance pursuant to this subchapter:

Americans with Disabilities Act Grievance Form

Date:______________________________

Name of grievant:________________________

Address of grievant:______________________

Telephone number of grievant:________________

Name, address and telephone number

of alternate contact person:_________________

Agency alleged to have denied access:

Department:__________________________

Division:____________________________

Bureau or office:________________________

Location:____________________________

Incident or barrier:_______________________

Please describe the particular way in which you believe you have been denied the benefits of any service, program or activity or have otherwise been subject to discrimination. Please specify dates, times and places of incidents, and names and/or positions of agency employees involved, if any, as well as names, addresses and telephone numbers of any witnesses to any such incident. Attach additional pages if necessary.

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Proposed access or accommodation:

If you wish, describe the way in which you feel access may be had to the benefits described above, or that accommodation could be provided to allow access.

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A copy of the above form may be obtained by contacting the designated ADA coordinator identified at N.J.A.C. 11:1–3.4.

11:1-3.8 Investigation

(a) Upon receipt of a grievance submitted pursuant to this subchapter, the designated ADA coordinator will notify the grievant of the receipt of the grievance and the initiation of an investigation into the matter. The designated ADA coordinator will also indicate a date by which it is expected that the investigation will be completed, which date shall not be later than 45 days from the date of receipt of the grievance unless a later date is agreed to by the grievant.

(b) Upon completion of the investigation, the designated ADA coordinator shall prepare a report for review by the designated decision maker for the agency. The designated decision maker shall render a written decision within 45 days of receipt of the grievance, if practicable or unless a later date is agreed to by the grievant, which decision shall be transmitted to the grievant and/or the alternate contact person if so designated by the grievant.

SUBCHAPTER 4. UNFAIR DISCRIMINATION

11:1-4.1 (Reserved)

11:1-4.2 Sex and/or marital discrimination

(a) No person engaged in the business of insurance in the State of New Jersey shall refuse to issue any policy of insurance, or shall cancel or decline to renew such policy because of the sex and/or marital status of the applicant or policyholder.

(b) A contravention of the preceding subsection shall be deemed an unfair and/or deceptive practice in the conduct of the business of insurance in this State in violation of N.J.S.A. 17:29B-1 et seq. and/or N.J.S.A. 17B:30-1 et seq.

(c) This rule is to be effective September 1, 1975.

11:1-4.3 Complications of pregnancy

(a) This regulation is applicable to all persons engaged in the business of life and health insurance in the State of New Jersey.

(b) "Complications of pregnancy" shall mean:

1. Conditions (when the pregnancy is not terminated) whose diagnoses are distinct from pregnancy but are adversely affected by pregnancy or are caused by pregnancy, such as, acute nephritis, nephrosis, cardiac decompensation, missed abortion, and similar medical and surgical conditions of comparable severity, but shall not include false labor, occasional spotting, physician-prescribed rest during the period of pregnancy, morning sickness, hyperemesis gravidarum, preeclampsia, and similar conditions associated with the management of a difficult pregnancy not constituting a nosologically distinct complication of pregnancy; and

2. Nonelective caesarean section, ectopic pregnancy, which is terminated, and spontaneous termination of pregnancy, which occurs during a period of gestation in which a viable birth is not possible.

(c) General provisions include the following:

1. No person engaged in the business of life and health insurance in this State shall treat complications of pregnancy more restrictively than any other sickness or illness under any contract of insurance issued for delivery in New Jersey.

2. A contravention of the preceding paragraph shall be deemed evidence of an unfair trade practice in the conduct of business of insurance in this State in violation of N.J.S.A. 17B:30-1 et seq.

New Rule, R.1976 d.161, effective September 1, 1976.
See: 8 N.J.R. 196(b), 8 N.J.R. 300(b).

SUBCHAPTER 5. ADMINISTRATIVE ORDERS AND DECLARATIONS

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: Cancellation and nonrenewal of fire and casualty insurance.
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).

Case Notes

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.

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 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.

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

Authority

N.J.S.A 17:1-8.1, 17:1C-6(c) and 17:30A-1 et seq.

Source and Effective Date

R.1991 d.461, effective September 3, 1991.
See: 23 N.J.R. 823(b), 23 N.J.R. 2638(a).

Subchapter Historical Note

Subchapter 6, New Jersey Property-Liability Insurance Guaranty Association, was adopted as R.1975 d.170, effective July 1, 1975. See: 7 N.J.R. 229(a), 7 N.J.R. 334(b). Pursuant to Executive Order No. 66(1978), Subchapter 6 was readopted as R.1991 d.101, effective January 31, 1991. See: 22 N.J.R. 3686(a), 23 N.J.R. 690(b).

Prior rulemaking activity in Subchapter 6, New Jersey Property-Liability Insurance Guaranty Association, repealed by R.1991 d.461, effective September 3, 1991. See: 23 N.J.R. 823(b), 23 N.J.R. 2638(a).

11:1-6.1 New Jersey Property-Liability Insurance Guaranty Association
Amended by R.1975 d.319, effective October 22, 1975.
See: 7 N.J.R. 368(a), 7 N.J.R. 507(d).
Amended by R.1976 d.134, effective May 5, 1976.
See: 8 N.J.R. 197(a), 8 N.J.R. 300(a).

Public Notice: Imposition of a Surcharge for Recoupment of the Property-Liability Insurance Guaranty Association Assessment.

See: 23 N.J.R. 3536(a).

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.

(c) A surcharge imposed pursuant to this subchapter shall apply to all policies for all kinds of insurance, except life insurance, accident and health insurance, workers' compensation insurance, title insurance, annuities, surety bonds, credit insurance, mortgage guaranty insurance, municipal bond coverage, fidelity insurance, investment return assurance, ocean marine insurance and pet health insurance.

(d) A surcharge imposed pursuant to this subchapter and by applicable Orders of the Commissioner shall be identified to the insured as "New Jersey Property-Liability Insurance Guaranty Association Surcharge" and the amount of the surcharge shall be shown as a separate item on the premium bill rounded to the nearest dollar. The surcharge

amount shall not be treated as premium for accounting purposes or for commissions, but must be coded and reported in accordance with instructions issued by the statistical agents under the direction of the Commissioner.

(e) Any change in premium by endorsement subsequent to the effective date of the policy shall reflect the appropriate change in the surcharge. In the case of flat cancellations, the entire surcharge amount shall be returned to the policyholder.

(f) All assessments imposed on member insurers by the Association pursuant to N.J.S.A. 17:30A–8a(3) shall be considered a receivable by the insurer for accounting purposes. The receivable shall also be considered an admitted asset for statutory accounting purposes. Any surcharges on policies as established by this subchapter shall be considered an offset to the receivable by the insurer for accounting purposes. If an insurer ceases to write all lines of business to which N.J.S.A. 17:30A–1 et seq. applies for any reason, the receivable shall be cancelled to the extent it has not been offset by any surcharges collected and the assessment shall be treated as an expense by the insurer for accounting purposes.

(g) Surcharges on premiums for multi-year policies, including perpetual insurance policies, shall be billed annually pursuant to the procedures established by this subchapter and applicable Orders of the Commissioner.

(h) Surcharges collected by an insurer pursuant to this subchapter are not taxable premiums for the purposes of determining the insurer's tax liability pursuant to N.J.S.A. 54:18A–1 et seq.

(i) An insurer shall not be required to collect a surcharge if the expense of collecting the surcharge exceeds the amount of the surcharge.

(j) A surcharge established pursuant to this subchapter shall provide recoupment to insurers for any assessment imposed pursuant to N.J.S.A. 17:30A–8(3). Such assessments shall not be considered obligations within the context of the retaliatory provisions set forth in N.J.S.A. 17:32–15.

(k) Upon a finding by the Commissioner that the surcharge is no longer necessary to permit member insurers to recoup assessments paid to the Association pursuant to N.J.S.A. 17:30A–8(3), he or she shall order that imposition of the surcharge be terminated. Upon termination of the surcharge, any debit or credit balance shown on that year's reconciliation form shall remain on the insurer's books to be applied in the annual reconciliation form filed the following year and each year thereafter.

11:1–6.4 Reporting requirements

(a) All insurers collecting a surcharge established pursuant to this subchapter shall file by March 1 of each year a reconciliation form on a form to be provided by the Commissioner. The form shall show the assessments paid to the Association and the surcharges collected by the insurer, if any, during the calendar year immediately preceding.

11:1–6.5 Penalties

Failure to comply with the provisions of this subchapter may result in the imposition of penalties as authorized by law, including, but not limited to, penalties set forth in N.J.S.A. 17:33–2.

SUBCHAPTER 7. MEDICAL MALPRACTICE REPORTING REQUIREMENTS

Authority

N.J.S.A. 17:8–8.1, 17:1C–6(e), 17:30D–1 et seq.

Source and Effective Date

R.1994 d.493, effective September 19, 1994.
See: 26 N.J.R. 1433(a), 26 N.J.R. 3864(a).

11:1–7.1 Purpose and scope

(a) The purpose of these rules is to implement N.J.S.A. 17:30D–17(a) and (b). These statutory provisions require insurers, insurance associations and licensed medical practitioners to notify the Medical Practitioner Review Panel of any medical malpractice claim settlements, judgments or arbitration awards involving a licensed practitioner, any termination or denial of malpractice insurance coverage to a practitioner, or any surcharge assessed against a practitioner. These proposed rules establish the form and content of the notice required under these statutory provisions.

(b) These rules apply to all insurers or insurance associations authorized to issue medical malpractice liability insurance in New Jersey, and to all practitioners licensed by the State Board of Medical Examiners.

11:1–7.2 Definitions

The following words and terms, as 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 Insurance.

"Medical malpractice liability insurance" means insurance coverage against the legal liability of the insured and against loss, damage or expense incident to a claim arising out of the death or injury of any person as the result of negligence or malpractice in rendering professional services by any licensed medical practitioner or health care facility or a claim arising out of ownership, operation or maintenance of the practitioner's or facility's business premises, including primary and excess coverages.

"Medical Practitioner Review Panel" or "Panel" means the panel established pursuant to N.J.S.A. 45:9–19.8.

"Practitioner" means any person licensed to practice medicine and surgery under N.J.S.A. 45:9–1 et seq., podiatry under N.J.S.A. 45:5–1 et seq., or a medical resident or intern.

"State Board of Medical Examiners" means the board established pursuant to N.J.S.A. 45:9–1.

11:1–7.3 Medical malpractice reporting requirements

(a) Any insurer or insurance association authorized to issue medical malpractice liability insurance in the State shall notify the Medical Practitioner Review Panel in writing of the following:

1. Any medical malpractice claim settlement, judgment or arbitration award involving any practitioner licensed by the State Board of Medical Examiners and insured by an insurer or insurance association;

2. Any termination or denial of medical malpractice liability coverage to a practitioner; and

3. Any surcharge assessed against a practitioner because of the practitioner's practice method or medical malpractice claims history.

(b) Any practitioner licensed by the State Board of Medical Examiners who is not covered by a policy of medical malpractice liability insurance issued in this State, or has coverage through a self-insured health care facility or health maintenance organization, or has medical malpractice liability insurance which has been issued by an insurer or insurance association from outside the State, shall notify the Panel in writing of any medical malpractice claim settlement, judgment or arbitration award to which the practitioner is a party.

(c) The initial written notice referred to in (a) and (b) above may be either in letter form or the malpractice report form of the National Practitioner Data Bank and shall contain at least the following information:

1. The name and address of the insurer, insurance association or practitioner submitting the information;

2. The name and address and any other information relating to the identity of the practitioner about whom the information is being submitted; and

3. In the case of a claim settlement, judgment or arbitration award, the name, address and other information relevant to the identity of the claimant making the medical malpractice liability claim against the practitioner, as well as the amount and relevant details of the claim settlement, judgment or arbitration award.

(d) The initial written notice referred to in (a) and (b) above shall be mailed by regular mail or delivered no later than seven days after the settlement, judgment or arbitration award is officially agreed to or entered, the notice of termination or denial of coverage is issued to the practitioner, or notice of the surcharge has been issued to the practitioner.

(e) In addition to the information provided in the initial written notice referred to in this section, the Panel may request in writing such supplemental relevant information as it determines to be necessary, which shall be received by the Panel no later than 30 days following the date of the Panel's written request.

11:1–7.4 Confidentiality

All information or documentation submitted to the Panel pursuant to this subchapter is confidential, except for release to a government agency under certain circumstances and conditions as set forth at N.J.S.A. 45:9–19.3 and 19.10.

11:1–7.5 Penalties

(a) Any insurer, insurance association or practitioner failing to notify the Medical Malpractice Review Panel pursuant to the requirements of this subchapter shall be subject to such penalties as the Commissioner may determine in accordance with N.J.S.A. 17:30D–12. Additionally, the Commissioner may assess a fine not to exceed $1,000 for the first violation and $2,000 for the second and each subsequent violation, which may be recovered in a summary proceeding pursuant to N.J.S.A. 2A:58–1 et seq.

(b) Any practitioner failing to notify the Medical Practitioner Review Panel pursuant to the requirements of this subchapter shall be subject to disciplinary action and civil penalties in accordance with N.J.S.A. 45:1–21, 22 and 25.

SUBCHAPTERS 8 THROUGH 9. (RESERVED)

SUBCHAPTER 10. ADMISSION REQUIREMENTS FOR FOREIGN AND ALIEN PROPERTY AND CASUALTY INSURERS

Law Review and Journal Commentaries

Insurance. P.R. Chenoweth, 138 N.J.L.J. 56 (1994).

11:1–10.1 Purpose

This subchapter establishes the procedures, requirements and standards which govern the application of foreign and alien companies engaged in the business of property and casualty insurance for a Certificate of Authority to transact the business of insurance in the State of New Jersey.

11:1–10.2 Scope

This subchapter applies to any foreign and alien company engaged in the business of property and casualty insurance that applies for a Certificate of Authority to transact the business of insurance in the State of New Jersey. The filing requirements contained in this subchapter shall not apply to the continuation, renewal or timely reinstatement of existing Certificates of Authority except where the Commissioner, pursuant to law, shall otherwise so require.

11:1–10.3 Definitions

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

"Affiliate" of, or person "affiliated" with, a specific person, means a person who or which directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

"Alien insurer" means an insurer formed under the laws of any country other than the United States of America, its states, districts, territories, commonwealths, or possessions.

"Authorized insurer" means a domestic, foreign or alien insurer, duly authorized by a Certificate of Authority issued by the Commissioner of the Department of Insurance of the State of New Jersey to transact the business of insurance in the State of New Jersey.

"Certificate of authority" means a certificate issued by the Commissioner of the Department of Insurance of the State of New Jersey evidencing the authority of an insurer to transact the business of insurance in the State of New Jersey.

"Commissioner of Insurance" or "Commissioner" means the Commissioner of the Department of Insurance of the State of New Jersey, or his or her designee as may be permitted by law.

"Committee on Admissions" of the Department of Insurance of the State of New Jersey means the advisory committee appointed by the Commissioner to aid in the review of applications for admission to transact the business of insurance in the State of New Jersey and to render to the Commissioner's recommendations as to the disposition of such applications.

"Control" (including the terms "controlling", "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise; unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10 percent or more of the voting securities of any other person, provided that no such presumption of control shall of itself relieve any person so presumed to have control from any requirement of this subchapter. This presumption may be rebutted by a showing made in the manner provided by N.J.S.A. 17:27A–3(i) that control does not exist in fact. The Commissioner may determine, after furnishing all interested persons with notice and an opportunity to be heard and after making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

"Department" means the Department of Insurance of the State of New Jersey.

"Domestic insurer" means an insurer formed under the laws of the State of New Jersey.

"Domicile" means:

1. As to alien insurers, the country under the laws of which the insurer was formed;

2. As to all other insurers, including United States branches of alien insurers, the state, districts, territories, commonwealths or possessions under the laws of which the insurer was formed;

"Foreign insurer" means an insurer formed under the laws of a jurisdiction of the United States of America, other than the State of New Jersey.

"Hazardous financial condition" means a financial condition deemed to exist when the standards contained in N.J.A.C. 11:1–10.4(a)1 indicate, either singly or in combination of two or more, that the financial condition of any insurer which has applied to transact, or is already transacting the business of insurance in any jurisdiction, is considered by the Commissioner to be precarious to the policyholders, claimants, creditors, or the public.

"Hazardous operations" means operations deemed to exist when the standards contained in N.J.A.C. 11:1–10.4(a)2 indicate, either singly or in combination of two or more, that the operations of any insurer transacting the business of insurance in any jurisdiction is considered by the Commissioner to be precarious to the policyholders, claimants, creditors or the general public. "Insurance holding company system" means two or more affiliated persons, one or more of whom or which is an insurer.

"Insurer" means any person or persons, corporation, partnership or company authorized by the laws of this State to transact the business of insurance in this State; except that it shall not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

"NAIC" means the National Association of Insurance Commissioners.

"Person" means an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but shall not include any securities broker performing no more than the usual and customary broker's function.

"Subsidiary" of a specified person means an affiliate controlled by such person directly or indirectly through one or more intermediaries.

11:1–10.4 General eligibility requirements

(a) In order for a foreign or alien company engaged in the business of property and casualty insurance to be admitted to transact the business of insurance in the State of New Jersey, the requirements in this section shall be satisfied in addition to any other requirements in this subchapter or any other provision of law.

1. The insurer shall satisfy the Commissioner that it is not in a hazardous financial condition. A hazardous financial condition shall exist when the following factors indicate, either singly or in combination of two or more, that the financial condition of any insurer which has applied to transact, or is already transacting the business of insurance in any jurisdiction, is considered by the Commissioner to be precarious to the policyholders, stockholders or the public:

i. The existence of adverse findings reported in financial condition and market conduct examination reports;

ii. The NAIC Insurance Regulatory Information System ratios and or its related reports have been deemed adverse;

iii. The ratios of commission expense, general insurance expense, policy benefits and reserve increases to annual premium and net investment income could lead to an impairment of capital and surplus;

iv. That the asset portfolio of the insurer, when viewed in light of current economic conditions, is determined by the Commissioner to be of insufficient value, liquidity or diversity to assure the insurer's ability to meet its outstanding obligations as they mature;

v. The ability of an assuming reinsurer to meet the obligations being assumed and whether the insurer's reinsurance program provides sufficient protection for the company's remaining surplus, after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer;

vi. That the insurer's operating loss in the last 12 month period, or any shorter period of time as the Commissioner may determine, including, but not limited to, net capital gain or loss, change in nonadmitted assets, and cash dividends paid to stockholders, is greater than 50 percent of such insurer's remaining surplus for policyholders in excess of the minimum required;

vii. Whether any affiliate of an insurer, subsidiary or reinsurer of such insurer, is insolvent, or, in the opinion of the Commissioner, threatened with insolvency, or delinquent in the payment of its monetary or other obligations;

viii. Whether contingent liabilities, pledges or guarantees which, either individually or collectively, involve a total amount which, in the opinion of the Commissioner, may affect the solvency of the insurer;

ix. Whether any person controlling an insurer is delinquent in making payments of net premiums to such insurer;

x. The age and collectibility of receivables;

xi. Whether the management of an insurer, including officers, directors or any other person who directly or indirectly controls the operation of such insurer, has failed to demonstrate the level of competence and fitness deemed necessary by the Commissioner;

xii. Whether management of an insurer has filed any false or misleading financial statement, or has released any false or misleading financial statement to lending institutions or to the public, or has made a false or misleading entry, or has omitted an entry of a material amount in the books of the insurer;

xiii. Whether, in the opinion of the Commissioner, the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner; and

xiv. Whether, in the opinion of the Commissioner, the insurer has experienced, or is likely to experience in the foreseeable future, cash flow and/or liquidity problems.

2. The insurer shall satisfy the Commissioner that its financial condition is not such as would render its operations hazardous to the policyholders, stockholders or the general public. Such operations shall be deemed hazardous when the following standards indicate, either singly or in combination of two or more, that the operations of any insurer transacting the business of insurance in any jurisdiction is considered by the Commissioner to be precarious to the policyholder, stockholders or the general public.

i. That the insurer has refused to maintain, or to submit for examination, books, records, accounts, or any other information about the company's affairs deemed relevant by the Commissioner;

ii. That the insurer has concealed or removed records or altered any valuable information from such records, or removed or altered any assets in violation of any applicable state law;

iii. That the insurer has willfully violated its charter or bylaws; and/or

iv. That the insurer has an officer, director or manager who has unlawfully refused to be examined under oath concerning the affairs of the insurer.

3. The insurer shall satisfy the following capital and surplus licensure requirements:

i. An applicant shall satisfy, at a minimum, the statutorily-prescribed minimum capital and surplus requirements for all lines of insurance that it is authorized to write pursuant to the Certificate of Authority issued by its state or country of domicile, whether or not the applicant desires to transact any of those lines of insurance in the State of New Jersey. The Department shall make an adjustment of surplus regarding all applicant companies as follows:

(1) There shall be deducted from unassigned funds special deposits not held for the protection of all policyholders; and

(2) All applicants shall include in their Annual Statement a provision for unauthorized reinsurance for unearned premiums and losses in connection with the reinsurance in all companies not authorized to transact business in New Jersey. An amount in these items slightly larger than that required for New Jersey shall be acceptable where the liability is based on the calculation for some other state. These penalties may be adjusted for subsequent legal action on license status in the State of New Jersey or in other jurisdictions.

ii. Requirements for an application to meet the minimum capital and surplus amounts for all lines of insurance that it is authorized to write pursuant to the Certificate of Authority issued by its state or country of domicile may be modified by the Commissioner if the applicant:

(1) Does not transact one or more of the kinds of insurance contained in the Certificate of Authority issued by its state or county of domicile; and

(2) Submits a resolution by its board of directors stating that it will refrain from transacting the kind(s) of insurance permitted by the Certificate of Authority issued by its state, districts, territories, commonwealth, possessions or country of domicile.

4. The applicant shall be deemed ineligible if any one of the following conditions exist:

i. An applicant company which has received from the NAIC a "first priority" designation for the calendar year next preceding its application date shall not be considered for admission until such designation has been removed by the NAIC;

ii. An applicant company which is a member of an insurance holding company system, where its parent or subsidiary has received from the NAIC a "first priority" designation, shall not be considered for admission until such designation has been removed by the NAIC from the parent or subsidiary;

iii. An applicant company which has been identified as "second or third priority" and/or has failed four or more Insurance Regulatory Information System (IRIS) tests shall have its application deferred until it has demonstrated to the Commissioner and its state, districts, territories, commonwealth, possessions or country of domicile that these IRIS test results are not indicative of a financial condition that may be hazardous to the general public, policyholders and stockholders; or

iv. An applicant company which has failed to file with the NAIC an Annual Statement for the prior year shall have its application deferred until it has filed with the NAIC such Annual Statement.

5. The insurer shall satisfy the following seasoning requirements:

i. Subject to the provisions of this subchapter, no applicant shall be considered for a Certificate of Authority to transact the business of insurance in the State of New Jersey unless the Commissioner has been furnished with evidence that the applicant, under its present control, has been authorized by its/their state(s), district(s), territory(ies), commonwealth(s), possession(s) or country(ies) of domicile, to engage in the kind(s) of insurance business for which the applicant seeks a Certificate of Authority, and has in fact been actively engaged in such business for a period of at least five years prior to the date of the application for the New Jersey Certificate of Authority.

ii. An applicant insurer qualified under (a)5i above shall demonstrate that:

(1) During any three of the last five years, including therein either of the two most current years of business operations, it generated a net income from operations, after Federal taxes, as reported in the Underwriting and Investment Exhibit in the Annual Statement;

(2) Surplus has not decreased due to operations over the five year period in question; and

(3) It has received one of the top three ratings, or, in the case of Dun and Bradstreet, an evaluation acceptable to the Department, from at least two of the following: Standard and Poor's; Dun and Bradstreet; Moody's; and A.M. Best. If the applicant has received a rating of less than one of the top three ratings, the Department shall be so notified even if one of the top three ratings is received as required herein.

iii. The Commissioner may, upon the request of an applicant, on a case by case basis, waive, in the case of (a)5iii(1), (2), (3), (5) and (6) below, or reduce, in the case of (a)5iii(4) below, the five year seasoning requirement required by (a)5i and ii above. In determining whether a reduction or waiver is appropriate in a particular case, the Commissioner shall consider whether the requirements of this section have been satisfied, and, in addition, whether any one of the applicable requirements provided in (a)5iii(1) through (6) below have been satisfied. These requirements include:

(1) Whether the applicant is a wholly-owned subsidiary of an insurer which has been authorized to transact the business of insurance in the State of New Jersey for at least five years. The Commissioner shall be satisfied as to the financial condition and methods of operation of the authorized insurer who shall effectively guaranty, by a resolution passed by its board of directors, the minimum capital and surplus requirements required by statute of the applicant during the first five years of its operation in this State; or

(2) Whether the applicant is a wholly-owned subsidiary of an insurer which has been authorized to transact the business of insurance in the State of New Jersey for at least one year, and secured admission into New Jersey by having been in operation for at least five years pursuant to (a)5i and ii above. The Commissioner shall be satisfied as to the financial condition and methods of operation of the authorized insurer, which shall effectively guaranty, by a resolution passed by its board of directors, the minimum capital and surplus requirements required by statute of the applicant during the first five years of its operation in this State. The insurer parent shall also be required to have one of the top two ratings, or, in the case of Dun and Bradstreet, an evaluation acceptable to the Department, from at least two of the following: Standard and Poor's; Dun and Bradstreet; Moody's and A.M. Best; or

(3) Whether the applicant is the continuing corporation resulting from a merger or consolidation of insurers, at least one of which has been authorized in its state or country of domicile to transact the kind(s) of insurance business for which the applicant seeks a New Jersey Certificate of Authority and has been actively engaged in such insurance business for at least five years and is currently in good standing; or

(4) Whether the applicant, being an insurance company with a non-insurance company parent, has completed three full years of operation, and, subsequent to its first two years of operation, has available a filed examination report conducted by its state of domicile, which report is in accordance with the New Jersey Department of Insurance standards for examinations. The first two full years of operations covered by the examination report shall be sufficient to make the report useful and meaningful to the Department. The applicant shall also be required to have experienced profitable operations in two of the three years, including the most current year of business. Additionally, the applicant shall obtain or satisfy all of the following:

(A) A financial guaranty from its ultimate parent that the applicant will meet the minimum required capital and surplus requirements on a quarterly basis, for a period of five years from the date of admission;

(B) The ultimate parent must be a United States corporation actively engaged in business for a period of not less than five years prior to the date of application for the New Jersey Certificate of Authority;

(C) The ultimate parent shall have one of the top two ratings, or, in the case of Dun and Bradstreet, an evaluation acceptable to the Department, from at least two of the following for at least three years prior to application and shall maintain said rating for at least three years after admission: Standard and Poor's; Dun and Bradstreet; and Moody's. The Commissioner may initiate proceedings to revoke authorization for non-compliance with this requirement; and

(D) The ultimate parent shall have a net worth of at least $25,000,000, which amount shall be set by the Commissioner upon his or her consideration of the general financial condition of the parent and relevant underwriting factors such as, but not limited to, the volume to be written and the type of risk, and any other factors which the Commissioner, in his or her discretion, shall consider to be appropriate; or

(5) Whether the applicant obtains a surety bond or bonds issued by an insurance company or insurance companies approved by the Commissioner and authorized in the State of New Jersey, in an amount to be determined by the Commissioner, with a minimum requirement of $5,000,000 and issued for a period of time as shall be determined by the Commissioner, but which shall not exceed five years. The Commissioner shall exercise his or her discretion in setting an amount for a surety bond upon consideration of the factors noted in (a)5iii(4)(D) above. This bond shall be prepared in such a way as to meet the requirements of the Department concerning the protection of New Jersey policyholders, claimants and creditors of the applicant insurance company; or

(6) Whether the applicant demonstrates to the Commissioner that a line or lines of insurance in this State for which the applicant is seeking authority is underserved in this State at the time the request for

waiver is made. For purposes of this provision "line of insurance" shall be construed to mean a sub-line of business or category of business within the line, and shall not be construed to mean an entire line of business. Any applicant seeking a waiver of the five year seasoning requirement set forth in (a)5i and ii above pursuant to this provision shall submit a written request for such waiver which shall include the following:

(A) Such information and documentation as may be necessary to demonstrate to the Commissioner that there is no reasonable or adequate market among authorized insurers for the type of insurance coverage involved. In making this showing, the applicant shall demonstrate that there is, in fact, a market for the type of coverage involved in the request, that it is presently underserved, and that the applicant will serve that market. A showing that the coverage is presently listed on the Exportable List promulgated by the Commissioner pursuant to N.J.S.A. 17:22–6.43 and N.J.A.C. 11:1–34 shall be deemed to demonstrate that the coverage is presently underserved in this State;

(B) Documentation that the applicant possesses the requisite underwriting, managerial and financial capability and expertise to write the particular business involved in the request, to the extent the original application for admission does not so demonstrate; and

(C) A certification that the applicant acknowledges that if the request is granted and the applicant is admitted to transact business under such waiver, the applicant's authority to transact business shall be limited only to the type of coverage involved in the request, and that the applicant may not write any other business so long as it does not satisfy the seasoning requirements set forth (a)5i and ii above or any waiver therefrom set forth in (a)5iii (1) through (5) above. This shall not be construed to limit the ability of the applicant to request that the Commissioner remove the restriction upon a showing that it satisfies the seasoning requirements pursuant to (a)5i and ii above, or waiver therefrom set forth in (a)5iii(1) through (5) above, and that it is otherwise qualified to write such business pursuant to law, including, but not limited to, this subchapter.

6. The insurer shall procure a New Jersey Certificate of Authority by establishing compliance with the applicable requirements of N.J.S.A. 17:17–1 et seq. and shall successfully complete an admissions process which shall include a detailed review by the Commissioner of the business affairs and financial condition of the applicant as provided by this subchapter.

(b) An applicant company intending to make a formal application for admission shall first submit a letter of intent which shall consist of the preliminary information set forth in N.J.A.C. 11:1–10.5.

Amended by R.1995 d.347, effective July 3, 1995.
See: 27 N.J.R. 1737(a), 27 N.J.R. 2582(b).
Added (a)5iii(6).

11:1–10.5 Letter of intent

(a) Prior to the acceptance of a final application for a Certificate of Authority in the State of New Jersey, all foreign and alien insurers engaged in the business of property and casualty insurance who desire to transact the business of insurance in the State of New Jersey shall submit, as a preliminary application, a letter of intent, which shall include the information required in (a)1 through 8 below.

1. The name of the applicant;

2. Where applicable, the name of any person, as defined in this subchapter, or other entity, by whom the applicant is controlled;

3. The applicant's current insurance holding company systems chart;

4. Where applicable, the name of any insurer(s) currently licensed in the State of New Jersey with whom the applicant is affiliated;

5. The type(s) of insurance proposed to be written by the applicant in the State of New Jersey;

6. A certified copy of the applicant's most recent Annual Statement, prepared on the NAIC annual and quarterly statements forms used by New Jersey domestic insurers;

7. A certified copy of the applicant's current Certificate of Authority from its state, district, commonwealth, territory, possession or country of domicile; and

8. The results of the most recent NAIC Insurance Regulatory Information System (IRIS) tests and related communications concerning the applicant, which shall satisfy the requirements of N.J.A.C. 11:1–10.4(a)4i–ii.

11:1–10.6 Final application

(a) After the submission of the letter of intent as required by N.J.A.C. 11:1–10.5, the applicant shall be instructed by the Department to file the following items:

1. A copy of its charter as currently in force, certified by the lawful custodian of the original document;

2. A copy of its bylaws as currently in force, certified by a senior officer of the company;

3. A statement of the company's financial condition as of December 31 of the preceding calendar year, in the NAIC format, signed and sworn to by the president of the company, its corporate secretary and its treasurer;

4. A Certificate of Compliance under the official seal of the commissioner of insurance of the company's domiciliary state or country;

5. A certified copy of a report of the most recent examination of the company's affairs by the department of insurance or its equivalent, of the state or country in which the company is domiciled;

6. An appointment, by the company, of the Commissioner as attorney for service of process;

7. An application for admission, on a form to be prescribed and provided by the Department, including the payment of a non-refundable application fee of $1,000;

8. A "statement of opinion" by a qualified actuary relating to loss and loss adjustment expense reserves, pursuant to N.J.A.C. 11:1–21;

9. A copy of the applicant's quarterly financial statements for the current year, in the NAIC format, and for such other periods of time as shall be required by the Commissioner;

10. Where applicable, a certified copy of the filing made pursuant to the Holding Company Act of the state, district, territory, commonwealth, possessions or country of domicile, for the last fiscal period, supplemented as necessary to meet the requirements of N.J.S.A. 17:27A–3(a) and (b) and applicable Securities and Exchange Commission filing requirements;

11. A statement of ownership of the applicant. This statement shall include all shareholders of record who control five percent or more of the outstanding shares of the applicant, directly or indirectly;

12. A copy of any agreements by which the right to conduct or influence any of the affairs of the applicant is transferred to others;

13. Any employment or deferred compensation agreements in which any officer, director or shareholder who controls five percent or more of the outstanding shares of the applicant, directly or indirectly, participates;

14. Any tender offer materials (advertisements, invitations, etc.) if any tender offer has been made by the company or its parent to acquire another company within the three years preceding;

15. Modified NAIC biographical affidavits, to be completed by all directors and senior officers on a form prescribed and provided by the Department;

16. A corporate plan of operation consisting of:

i. A schedule listing the following:

(1) All jurisdictions in which the applicant has applied for authorization to transact the business of insurance during the preceding 10 years and the dates and results of such applications;

(2) All jurisdictions from which the applicant has withdrawn during the preceding 10 years, and the reasons for withdrawal; and

(3) All administrative, civil or criminal actions, orders, proceedings and determinations thereof to which the applicant, or its affiliates, or any of its directors or principal officers have been subject, due to an alleged violation of any law governing insurance operations in any jurisdiction during the preceding 10 years. Where the alleged violation is a felony or its equivalent in a jurisdiction which does not use this designation of a crime, such actions, orders, proceedings and determinations shall include violations not related to insurance operations. If a license has been refused, suspended or revoked by any jurisdiction, the applicant shall furnish an explanation and a copy of any orders, proceedings, and determinations related thereto.

ii. A description of the applicant's present business plan or plan(s) for conducting an insurance business, including, but not limited to:

(1) Geographical areas in which business is being written;

(2) The types of insurance to be written;

(3) Marketing methods;

(4) A summary of the methods for establishing premium rates; and

(5) A description of agency systems, including any managing general agency contracts.

iii. A proposed plan for conducting an insurance business in the State of New Jersey, including, but not limited to:

(1) The geographical area in which business is intended to be done;

(2) The types of insurance intended to be written;

(3) Proposed marketing methods;

(4) Proposed methods for the establishment of premium rates; and

(5) A three year forecast of anticipated premiums in this State by line of business.

iv. A summary of the applicant's reinsurance program on assumed and ceded business, indicating the name of the reinsurers, retentions, maximum risks, types of contract (such as pro rata), excess of loss, and any other information which may be relevant to this part of the applicant's operation. Additional information may be requested by the Department in order to supplement or clarify information already provided by the applicant;

v. A summary of the applicant's reinsurance assumed program, with retentions, maximum risks, types of business, types of contracts to be issued, and other factors which may, in the opinion of the Department, be relevant to this part of the applicant's operations;

vi. The number and ratio of complaints as defined by the state or country of domicile to the premium volume in the state or country of domicile, for those lines of business in which the state, districts, territories, commonwealth, possessions or country of domicile makes such determinations; and

vii. Copies of all management, exclusive agency, administrative services, or any other operating contracts with affiliates or non-affiliates, where applicable, signed by the parties and certified to by the company secretary and chief operating officer.

17. If a United States Branch, the applicant shall provide the Department with:

i. A certificate of deposit from its insurance commissioner showing the amount in trust for policyholders;

ii. A certified copy of power of attorney in favor of its United States manager; and

iii. A certified copy of a deed of trust to the trustee of the funds of the company.

18. If the applicant is an alien insurer, a statement of trusteed surplus in the United States.

(b) The Department shall evaluate the difference between the admitted value and the actual market value of all bonds held by the company.

(c) Applicants who wish to write or have the authority to write health insurance in the State of New Jersey shall complete and submit a consumer suitability study on a form prescribed and provided by the Department. This study shall be reviewed and approved by the Department.

(d) Applicants who desire authority to write workers' compensation and employers' liability insurance shall, prior to admission, become members of the Compensation, Rating and Inspection Bureau, located at 60 Park Place, Newark, New Jersey 07102. The Bureau shall be consulted for membership at the point in time when all requirements for admission have been satisfied and the application for admission is actually submitted. The Bureau shall be advised by the Department that the applicant is in the process of filing for admission in the State of New Jersey.

11:1–10.7 Review procedures; appeals

(a) Upon receipt of a final application, the Commissioner shall conduct a thorough background investigation and review which shall include the information contained in N.J.A.C. 11:1–10.4, 10.5 and 10.6, inquiries regarding claims settlement practices and any other information which, in the opinion of the Commissioner, may be necessary to make an appropriate decision on an application.

(b) Applicant companies shall ensure that all filings submitted to the Department are current. Any amendments, changes or replacements to constituent documents on file shall be timely updated.

(c) Applications accepted after the 1st day of December of each year shall have their review deferred until the Annual Statement for the current year is available and received for review. The review of the filings of the prior year shall begin as of the 1st day of April of each year, after the receipt of Annual Statements, which shall be submitted not later than the 1st day of March of each year.

(d) Before a decision on an application is made, the Department may request from an applicant, in writing, any additional information it may require. Failure by an applicant to respond to written inquiries by the Department within 45 days may be considered grounds for rejection of the application.

(e) Application reviews shall be conducted by the Department on a monthly basis. The Committee on Admissions shall make a recommendation to the Commissioner concerning each application which has been reviewed. The Commissioner shall consider the recommendation and make his or her decision on the application within 10 working days from receipt of the recommendation. Written notice of the decision shall be mailed to the applicant by registered mail within 10 working days of the date of the Commissioner's decision.

(f) When the Commissioner rejects an application, the notice of rejection shall include a statement specifying the reasons for the rejection.

1. Such notice shall further inform the applicant of the right to request an informal Departmental review of the rejection within 20 days of receipt of the notice of rejection.

2. Such notice shall further inform the applicant of the right to provide to the Department a written statement, with supporting documentation, if any, disputing with specificity the reasons for rejection within 30 days of the receipt of the notice of rejection.

3. Upon the timely receipt of the request for Departmental review and the written statement of the company, if any, the Department shall promptly review the application, attached documents, department records and the written statement. In appropriate circumstances, the Commissioner may provide the applicant with an opportunity to present its position in person.

4. If, after reviewing the record, the Commissioner determines that the applicant has failed to qualify, the Commissioner shall promptly so inform the applicant.

Amended by R.1990, d.17, effective January 2, 1990.
See: 21 N.J.R. 3418(a), 22 N.J.R. 30(a).

No right to an appeal is granted statutorily, therefore the reference to the appeal according to the Administrative Procedure Act was removed, no such authorization by rule was intended at (f)4.

11:1–10.8 Requirements upon admission

(a) Applicants contemplating the writing of homeowners or comprehensive personal liability polices in the State of New Jersey shall be required to afford coverage against liability for the payment of any obligation which the policyholder may incur to an injured domestic servant, or household employee, or the dependents thereof, pursuant to the provisions of the Workers' Compensation Law of the State of New Jersey. The Compensation, Rating and Inspection Bureau shall be informed by the Department accordingly.

(b) Applicants who wish to have their Certificate of Authority limited to "reinsurance" only, may disregard the regulatory requirements concerning membership in the Compensation, Rating and Inspection Bureau and the completion of a consumer suitability study for health insurance identified in N.J.A.C. 11:1–10.6(c) and (d).

(c) In clarification of N.J.A.C. 11:2–29.5(a)1i, if an applicant is granted authority to transact private passenger automobile insurance, the approval shall provide that if the applicant (insurer) later seeks to withdraw from transacting such business pursuant to N.J.A.C. 11:2–29, the period of time which such insurer must seek to place its business with a replacement carrier, which shall begin on the date of the Commissioner's approval of the plan of orderly withdrawal, shall be based on the time between the date of issuance of the certificate of authority and the date of the filing of a complete plan of orderly withdrawal as set forth in N.J.A.C. 11:2–29.4, as follows:

1. For insurers authorized to transact business up to two years, the period shall not exceed one year;

2. For insurers authorized to transact business beyond the period in (c)1 above up to four years, the period shall not exceed two years;

3. For insurers authorized to transact business beyond the period set forth in (c)2 above up to five years, the period shall not exceed three years;

4. For insurers authorized to transact business beyond the period set forth in (c)3 above up to six years, the period shall not exceed four years; and

5. For insurers authorized to transact business beyond the period set forth in (c)4 above, the period shall be established by the Commissioner pursuant to N.J.A.C. 11:2–29.5(a)1i, but shall not exceed five years.

(d) The provisions set forth in (c) above shall also apply to any private passenger automobile insurer seeking to withdraw on or after November 20, 1995. However, the provisions set forth in (c) above shall not apply to any insurer authorized or admitted to transact business acting as an approved replacement carrier for an insurer which has withdrawn from transacting private passenger automobile insurance pursuant to N.J.A.C. 11:2–29. If such replacement carrier seeks to withdraw from transacting private passenger automobile insurance, the time period over which such insurer shall be required to seek to place its business with an acceptable replacement carrier shall be governed solely by N.J.A.C. 11:2–29.5(a)1i, without regard to (c) above.

(e) As a condition of approving the application for admission, the Commissioner may limit the applicant's authority to write business, including a limitation on the amount of premium volume the applicant may write, for a period not to exceed five years, consistent with the applicant's corporate business plan of operation submitted pursuant to N.J.A.C. 11:1–10.6(a)16 and other applicable laws. In determining whether to limit the applicant's authority, the Commissioner shall consider all relevant factors, including, but not limited to:

1. The amount of capital and surplus of the applicant;

2. The resources available to service the business to be transacted; and

3. The applicant's proposed marketing methods and resources.

(f) In the case of private passenger automobile insurance, any limitation imposed pursuant to (e) above shall be based solely on a determination that exceeding such limitation would result in the insurer being or becoming in an unsafe or unsound financial condition, as determined consistent with the criteria set forth in N.J.S.A. 17:33B–19 and 17:33B–20.

(g) An insurer shall not limit its writings pursuant to any premium volume limitation imposed pursuant to (e) or (f) above until the insurer notifies the Department that it is approaching such limitation and the Department notifies the insurer to so limit its writings.

Amended by R.1995 d.604, effective November 20, 1995.
See: 27 N.J.R. 2854(a), 27 N.J.R. 4717(c).

11:1–10.9 Compliance

This subchapter shall apply to all applicants submitting a letter of intent on or after June 19, 1989. Applicants whose letters of intent have been received by the Department prior to June 19, 1989 may elect to proceed under this subchapter if they so notify the Department no later than July 19, 1989. Applicants whose letters of intent have been received by the Department prior to June 19, 1989 who do not timely notify the Department that they wish to proceed under this subchapter shall have their applications reviewed under the procedures pre-existing this subchapter.

11:1–10.10 Severability

If any provision of this subchapter or the application thereof to any person or circumstance is held invalid, the

remainder of the subchapter and the application of such provision to other persons or circumstances shall not be affected thereby.

See: 9 N.J.R. 585(b), 10 N.J.R. 69(b).

SUBCHAPTER 11. CONDUCT CONSTITUTING VIOLATIONS BY BROKERS AND AGENTS

11:1-11.1 Scope

This rule does not purport to describe all conduct within the proscription of the statute. Such other conduct found by the commissioner to constitute violation prior to this rule remains as a reason for sanctions under the statute. Nor is it possible to describe herein all forms of conduct which may in future be found to fall under the prohibition of the statutes.

11:1-11.2 Unworthiness and bad faith under N.J.S.A. 17:22-6.16(h) and 17B:22-27(12)

(a) Any licensed agent or broker who is a shareholder or who is serving as an officer of record of a corporate licensee which declares insolvency, dissolves, ceases to do business or does not renew its insurance licenses primarily to avoid payment of fines or debts to insolvent insurers, other insurance licensees, insureds, guaranty associations or governmental entities is engaging in conduct demonstrating unworthiness and bad faith.

(b) Any licensee engaging in the above conduct shall be subject to the usual penalties and may be prohibited from licensing of or association with any other incorporated licensee.

(c) A showing that the licensee has placed 10 per cent or more of the book of business of the moribund corporate licensee into a new corporation controlled by one or more persons associated with the prior corporation shall raise a presumption of violative conduct.

11:1-11.3 Disciplinary action; restitution

(a) Violation of any of the rules of the Department of Insurance, or of any insurance statute, shall be sufficient cause for any disciplinary action permitted by statute.

(b) In accordance with the provisions of N.J.S.A. 17:22-6 through 6.16a and 17B:22-1 through 28, the commissioner in appropriate circumstances will exercise his authority to impose restitution of moneys owed to others as a condition to the issuance of a license or to the reinstatement of a license after revocation or suspension, including revocation or suspension in states other than New Jersey.

New Rule, R.1978 d.11, effective January 18, 1978.

SUBCHAPTER 12. CORPORATE AND PARTNERSHIP LICENSEE REQUIREMENTS

11:1-12.1 (Reserved)

Repealed by R.1988 d.186, effective April 18, 1988.
See: 20 N.J.R. 225(b), 20 N.J.R. 904(b).
This section was "Corporate licensee definitions".

11:1-12.2 Responsibility of active officers of corporate licensees

(a) Active officers shall be held individually responsible for all insurance related conduct of the corporate licensee.

(b) Every license application, amended application and renewal must be accompanied by a sworn statement signed by each active officer listed thereon that he consents to being an active officer and that he has read and is fully aware of the meaning of the departmental regulations relevant thereto.

11:1-12.3 (Reserved)

Repealed by R.1988 d.186, effective April 18, 1988.
See: 20 N.J.R. 225(c), 20 N.J.R. 904(b).
This section was "Corporate application requirements".

11:1-12.4 (Reserved)

Repealed by R.1988 d.186, effective April 18, 1988.
See: 20 N.J.R. 225(c), 20 N.J.R. 904(b).
This section was "Partnership licensee definitions".

11:1-12.5 Responsibility of active members of partnership licensee

Active members shall be held individually responsible for all insurance related conduct of the partnership licensee.

11:1-12.6 (Reserved)

Repealed by R.1988 d.186, effective April 18, 1988.
See: 20 N.J.R. 225(c), 20 N.J.R. 904(b).
This section was "Partnership application requirements".

SUBCHAPTERS 13 THROUGH 14. (RESERVED)

SUBCHAPTER 15. PETITIONS FOR RULES

11:1-15.1 Scope

This subchapter shall apply to all petitions made by interested persons for the promulgation, amendment or repeal of any rule by the Department of Insurance, pursuant to N.J.S.A. 52:14B-4(f).

11:1–15.2 Procedure for petitioner

(a) Any person who wishes to petition the Department to promulgate, amend or repeal a rule must submit to the Commissioner, in writing, the following information:

1. Name of the petitioner;

2. The substance or nature of the rulemaking which is requested;

3. The reasons for the request and the petitioner's interest in the request; and

4. References to the authority of the Department to take the requested action.

(b) Petitions shall be sent to the following address:

Commissioner of Insurance
New Jersey Department of Insurance
CN 325
Trenton, N.J. 08625

(c) Any document submitted to the Department of Insurance which is not in substantial compliance with (a) above shall not be deemed to be a petition for a rule requiring further department action pursuant to N.J.S.A. 52:14B–4(f).

11:1–15.3 Procedure of the Department

(a) Upon receipt of a petition in compliance with N.J.A.C. 11:1–15.2, the Department will file a notice of petition with the Office of Administrative Law for publication in the New Jersey Register. The notice will include:

1. The name of the petitioner;

2. The substance or nature of the rulemaking action which is requested;

3. The problem or purpose which is the subject of the request; and

4. The date the petition was received.

(b) Within 30 days of receiving the petition, the Department will mail to the petitioner, and file with the Office of Administrative Law for publication in the Register, a notice of action on the petition which will include:

1. The name of the petitioner;

2. The Register citation for the notice of petition, if that notice appeared in a previous Register;

3. Certification by the Commissioner that the petition was duly considered pursuant to law;

4. The nature or substance of the Department's action upon the petition; and

5. A brief statement of reasons for the Department's action.

(c) Department action on a petition may include:

1. Denying the petition;

2. Filing a notice of proposed rule or a notice of preproposal for a rule with the Office of Administrative Law; or

3. Referring the matter for further deliberations, the nature of which will be specified and which will conclude upon a specified date. The results of these further deliberations will be mailed to petitioner and submitted to the OAL for publication in the Register.

SUBCHAPTER 16. REQUIREMENTS FOR FILING A DOWNWARD DEVIATION IN CURRENTLY APPROVED RATES

11:1–16.1 Purpose and scope

(a) The purpose of this subchapter is to promote competition among insurers for the benefit of the insurance consuming public by permitting insurers subject to N.J.S.A. 17:29A–1 et seq. to effect expeditiously certain decreases in rates currently approved by the Department when, in an insurer's judgment, economic or competitive reasons or conditions warrant such a decrease.

(b) A further purpose is to enable an insurer to return to its previously approved rate level without delay or regulatory review when, in its judgment, the conditions or reasons for the decrease no longer pertain.

(c) This subchapter shall apply to every property and liability insurer which makes its own rates and to every member or subscriber of a rating organization on whose behalf rate filings are made pursuant to the provisions of N.J.S.A. 17:29A–1 et seq. For the purpose of this subchapter, the term "insurer" shall include all such independent insurers and rating organization members or subscribers who are subject to the provisions of N.J.S.A. 17:29A–1 et seq.

11:1–16.2 Filing requirements

(a) Any insurer, subject to the provisions of N.J.S.A. 17:29A–1 et seq., to effect a decrease in rates currently approved by the Commissioner, shall comply with the following filing requirements:

1. The insurer by a rate filing shall notify the Commissioner of Insurance at least 30 days prior to the date it wants to put into effect a decrease in rates currently approved for it by the Commissioner. In such rate filing, the insurer shall state the basis for the decrease in rates and its agreement that the decrease in rates shall remain in effect for at least six months from the effective date. Within a 15–day period following the filing of such a proposed decrease in rates, the Commissioner will notify the insurer of the unacceptability of the filing for a

decrease in rates. The Commissioner will only find unacceptable a decrease in rate filing if, in his opinion, the decrease in rates may have a tendency or capacity to imperil the financial condition of the filing insurer.

2. The decrease in rates may be up to 20 percent from the rates currently approved for use by the insurers and must apply to all policyholders either by coverage or line of insurance.

3. After a filing has been in effect for six months or more, an insurer may automatically withdraw its decrease or any portion thereof by so notifying the Commissioner of Insurance at least 30 days prior to the withdrawal date.

SUBCHAPTERS 17 THROUGH 19. (RESERVED)

SUBCHAPTER 20. CANCELLATION AND NONRENEWAL OF COMMERCIAL AND HOMEOWNERS' INSURANCE POLICIES

11:1–20.1 Scope

(a) This subchapter shall apply to all commercial insurance policies which are in force, issued or renewed on or after November 7, 1986 by companies licensed to do business in this state except workers' compensation insurance, employers liability, fidelity, surety, performance and forgery bonds, ocean marine and aviation insurance and accident and health insurance and any policy written by a surplus lines insurer. With the exception of N.J.A.C. 11:1–20c3 and 11:1–20.4(d), this subchapter shall not be applicable to multi-state location risks or policies subject to retrospective rating plans.

(b) This subchapter shall also apply to all policies of homeowners' insurance as defined at N.J.A.C. 11:2–41.2 which are in force, issued or renewed on or after January 17, 1995.

(c) These rules are not exclusive, and the Commissioner may also consider other provisions of statutes and regulations to be applicable to the circumstances or situations addressed herein. Policies may provide terms more favorable to policyholders than are required by these rules. The rights provided by these rules are in addition to and do not prejudice any other rights policyholders may have at common law, or under statutes and regulations.

(d) In addition to these rules, the Commissioner may implement a market assistance plan providing for a voluntary group of insurers in order to aid insureds in obtaining commercial insurance coverages specified therein.

Amended by R.1987 d.114, effective February 17, 1987.
See: 18 N.J.R. 2301(b), 19 N.J.R. 359(a).
Amended by R.1995 d.52, effective January 17, 1995.
See: 26 N.J.R. 4303(a), 27 N.J.R. 363(a).

Case Notes

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).

Rules upheld as properly adopted on an emergency basis and in compliance with authorizing statutes; constitutional challenges of vagueness, deprivation of private property and impairment of contract denied. In the Matter of N.J.A.C. 11:1–20, 208 N.J.Super. 182, 505 A.2d 177 (App.Div.1986).

11:1–20.2 Nonrenewal and cancellation notice requirements

(a) No policy shall be nonrenewed upon its expiration date unless a valid notice of nonrenewal has been mailed or delivered to the insured in accordance with the provisions of this subchapter. For the purpose of this subchapter, policies not having a fixed expiration date shall be deemed to expire annually on the anniversary of their inception.

(b) No notice of nonrenewal shall be valid unless it is mailed or delivered by the insurer to the insured not more than 120 days nor less than 30 days prior to the expiration of the policy.

(c) With respect to payment of the renewal premium, notice of the amount of the renewal premium and any change in contract terms shall be given to the insured in writing not more than 120 days nor less than 30 days prior to the due date of the premium and shall clearly state the effect of nonpayment of the premium by the due date.

(d) No cancellation, other than a cancellation based upon nonpayment of premium or for moral hazard as defined in (f) below, shall be valid unless notice is mailed or delivered by the insurer to the insured, and to any person entitled to notice under the policy, not more than 120 days nor less than 30 days prior to the effective date of such cancellation except, however, that failure to send such notice to any designated mortgagee or loss payee shall invalidate the cancellation only as to the mortgagee's or loss payee's interest.

(e) A policy shall not be cancelled for nonpayment of premium unless the insurer, at least 10 days prior to the effective cancellation date, has mailed or delivered to the insured notice as required in this subchapter of the amount of premium due and the due date. The notice shall clearly state the effect of nonpayment by the due date. No cancellation for nonpayment of premium shall be effective if payment of the amount due is made prior to the effective date set forth in the notice.

(f) A policy shall not be cancelled for moral hazard unless the insurer, at least 10 days prior to the effective termination date, has mailed or delivered to the insured notice as required in this subchapter and the basis for termination conforms to the following definitions of moral hazard:

1. The risk, danger or probability that the insured will destroy, or permit to be destroyed, the insured property for the purpose of collecting the insurance proceeds. Any change in the circumstances of an insured that will increase the probability of such a destruction may be considered a "moral hazard"; and

2. The substantial risk, danger or probability that the character, circumstances or personal habits of the insured may increase the possibility of loss or liability for which an insurer will be held responsible. Any change in the character or circumstances of an individual, corporate, partnership or other insured that will increase the probability of such a loss or liability may be considered a "moral hazard."

(g) No nonrenewal or cancellation shall be valid unless the notice contains the standard or reason upon which the termination is premised and specifies in detail the factual basis upon which the insurer relies.

(h) All notices of nonrenewal and cancellation, except those for nonpayment of premium, must contain a statement which shall be clearly and prominently set out in boldface type or other manner which draws the reader's attention advising the insured that the insured may file a written complaint about the cancellation or nonrenewal with the New Jersey Department of Insurance, Division of Licensing and Enforcement, CN 325, Trenton, New Jersey 08625. The statement also shall advise the insured to contact the Insurance Department immediately, in the event he or she wishes to file a complaint.

(i) No nonrenewal or cancellation shall be valid unless notice thereof is sent;

1. By certified mail; or

2. By first class mail, if at the time of mailing the insurer has obtained from the Post Office Department a date stamped proof of mailing showing the name and address of the insured, and the insurer has retained a duplicate copy of the mailed notice.

(j) For the purposes of this subchapter, if an insurer fails to send a notice of nonrenewal as required by this subchapter or fails to issue and deliver a policy replacing at the end of the policy period a policy previously issued and delivered by the insurer, or fails to issue and deliver a certificate or notice extending the term of a policy beyond its policy period or term, or fails to provide notice of renewal as specified at (c) above, the insured shall be entitled to continue the expiring policy at the same terms and premium until such time as the insurer shall send appropriate notice of termination under this subchapter. Nothing in this subchapter shall prohibit an insurer from replacing its policy with a policy issued by another insurer with which it is under common management and control, provided the insurer obtains its policyholder's consent to do so and maintains records of such actions.

(k) An insurer shall not be required to provide notice of nonrenewal or cancellation as specified in this subchapter if the insured has replaced coverage elsewhere or has otherwise specifically requested termination. The insurer must, however, maintain in its file properly documented proof that termination was made at the request of the insured. Where the termination request is submitted by the insured's authorized representative, the insurer's file must contain documentation that the authorized representative has been specifically authorized by the insured to convey the termination request to the insurer.

(*l*) An insurer may in writing delegate to its appointed agent or to another person or legal entity the performance of any or all of the notice functions set forth in this section. However, delegation of these functions by the insurer to any person or entity shall not relieve the insurer of its responsibilities hereunder. No notice, whether provided by the insurer directly or through a person or entity authorized to act on the insurer's behalf, shall be deemed effective unless provided in conformance with the requirements of this section.

Administrative Correction to (i)2.
See: 21 N.J.R. 3919(a).
Amended by R.1987 d.114, effective February 17, 1987.
See: 18 N.J.R. 2301(b), 19 N.J.R. 359(a).

Case Notes

Addition of regulatory exclusion to directors and officers liability policy did not constitute constructive nonrenewal of policy and did not trigger association's right to purchase discovery period. American Cas. Co. of Reading, Pennsylvania v. Continisio, C.A.3 (N.J.)1994, 17 F.3d 62.

Insurer could not claim indemnification against broker in failing to notify insured of lapse in coverage. Meric Trucking & Leasing Co. v. Philip Lehman Co., Ltd., 247 N.J.Super. 261, 588 A.2d 1285 (A.D. 1991).

Thirty day notice requirement was satisfied by notice sent 89 days before expiration. Meric Trucking & Leasing Co. v. Philip Lehman Co., Ltd., 247 N.J.Super. 261, 588 A.2d 1285 (A.D.1991).

11:1–20.3 Policy provisions relating to cancellation or nonrenewal

(a) All commercial insurance policy forms issued or renewed on or after January 6, 1987, and all homeowners' insurance policy forms issued on or after March 18, 1995 must contain a provision setting forth the following statement:

Pursuant to New Jersey law, this policy cannot be cancelled or nonrenewed for any underwriting reason or guideline which is arbitrary, capricious or unfairly discriminatory

or without adequate prior notice to the insured. The underwriting reasons or guidelines that an insurer can use to cancel or nonrenew this policy are maintained by the insurer in writing and will be furnished to the insured and/or the insured's lawful representative upon written request.

This provision shall not apply to any policy which has been in effect for less than 60 days at the time notice of cancellation is mailed or delivered, unless the policy is a renewal policy.

1. The policy provision language set forth at (a) above is mandatory and, notwithstanding any other law to the contrary, need not be submitted to the Department for approval.

Amended by R.1987 d.114, effective February 17, 1987.
See: 18 N.J.R. 2301(b), 19 N.J.R. 359(a).
Amended by R.1995 d.52, effective January 17, 1995.
See: 26 N.J.R. 4303(a), 27 N.J.R. 363(a).

11:1–20.4 Cancellation and nonrenewal underwriting guidelines

(a) No insurer may cancel or nonrenew a policy based upon underwriting guidelines which are arbitrary, capricious or unfairly discriminatory.

(b) The following guidelines are approved for use by insurers:

1. Nonpayment of premium;

2. Moral hazard, as defined at N.J.A.C. 11:1–20.2(f);

3. Material misrepresentation or nondisclosure to the company of a material fact at the time of acceptance of the risk;

4. Increased hazard or material change in the risk assumed which could not have been reasonably contemplated by the parties at the time of assumption of the risk;

5. Substantial breaches of contractual duties, conditions or warranties that materially affect the nature and/or insurability of the risk;

6. Lack of cooperation from the insured on loss control matters materially affecting insurability of the risk;

7. Fraudulent acts against the company by the insured or its representatives that materially affect the nature of the risk insured;

8. Loss of or reduction in available insurance capacity. For the purposes of this paragraph, loss of or reduction in available insurance capacity shall exist if:

i. An insurance department or court of competent jurisdiction has declared the insurer to be financially impaired or unsound, which shall include such actions as suspension, conservatorship, rehabilitation or liquidation; or

ii. Based upon information set forth in the insurer's annual statements, the insurer has experienced a significant deterioration in its financial condition during the most recent annual statement period resulting in its designation by the National Association of Insurance Commissioners as being in need of "immediate attention", and the insurer's:

(1) Ratio of net premium to surplus to policyholders has gone above four to one and its surplus to policyholders has fallen below 25 percent of net loss and loss expense reserves; or

(2) Ratio of net premium to surplus to policyholders has increased to at least six to one; or

(3) Ratio of net losses and loss reserves to surplus to policyholders has increased to at least six to one.

9. Material increase in exposure arising out of changes in statutory or case law subsequent to the issuance of the insurance contract or any subsequent renewal thereof;

10. Loss of or substantial changes in applicable reinsurance. For the purposes of this paragraph, loss of or substantial changes in applicable reinsurance shall be deemed to exist if any of the following have occurred;

i. Termination by the reinsurer of treaty or facultative reinsurance affecting the individual risk or line, class or subclass of insurance, as applicable, proposed for cancellation and/or nonrenewal; or

ii. Substantial reductions in the amount of available reinsurance or other changes to such contracts which effectively prohibit the insurer from providing coverage at the same limits and terms as the existing policy; or

iii. Changes in the financial condition of the reinsurer which adversely affect its ability to honor its obligations. A change in the financial condition of the reinsurer shall be evidenced by an order issued by an insurance department or court of competent jurisdiction declaring the insurer to be financially impaired or unsound, which shall include such actions as suspension, conservatorship, rehabilitation or liquidation.

11. Failure by the insured to comply with any Federal, State or local fire, health, safety, building or construction regulation, law or ordinance with respect to an insured risk which substantially increases any hazard insured against within 60 days of written notification of a violation of any such law, regulation or ordinance;

12. Failure by the insured to provide reasonable and necessary underwriting information to the company upon written request therefor and a reasonable opportunity to respond; and

13. Agency termination, provided:

i. The insurer documents that replacement coverage at comparable rates and terms has been provided to the insured, and the insurer has informed the insured, in writing, of his or her right to continue coverage with the insurer; or

ii. The insurer has informed the insured, in writing, of his or her right to continue coverage with the insurer and the insured has agreed, in writing, to the cancellation or nonrenewal based upon the termination of his or her appointed agent.

(c) Only the specific language of the underwriting guidelines as set forth in (b) above is deemed to be approved by the Commissioner for use in the cancellation and nonrenewal of policies which are subject to the provisions of this subchapter.

(d) In addition to the approved guidelines set forth in (b) above, an insurer may use other guidelines for cancellation or nonrenewal provided such guidelines are not arbitrary, capricious or unfairly discriminatory.

(e) Any underwriting guideline or standard premised on adverse loss experience shall be limited in application to nonrenewals only and shall specifically identify the type of loss experience which supports and justifies the nonrenewal action.

(f) All underwriting guidelines or standards utilized by the insurer for the cancellation or nonrenewal of commercial lines coverages which are subject to the provisions of this subchapter shall be maintained by the insurer in writing and shall indicate the effective date(s) thereof. An insurer's underwriting guidelines shall be made available to the Department upon request.

(g) Only those guidelines which are in effect at the inception date of the original policy or any subsequent renewal of that policy, as applicable, may be utilized by the insurer to cancel or nonrenew during that policy period.

(h) The requirement of (g) above shall not be construed to limit an insurer's ability to modify from time to time its underwriting guidelines; however the modified guidelines only may be applied to policies issued or renewed subsequent to the effective date of such modification.

(i) If the Commissioner finds an underwriting guideline is being utilized by an insurer in an arbitrary, capricious or unfairly discriminatory manner, the Commissioner shall issue a preliminary order prohibiting the use of such a guideline in the proscribed manner and shall require such insurer to rescind any notice of cancellation or nonrenewal based on such application of the underwriting guideline which has not yet become effective pending a hearing. Following the hearing, if the preliminary order is sustained, the Commissioner shall prohibit further application of the guideline in the manner found to be arbitrary, capricious or unfairly discriminatory, except that, if the insurer can demonstrate to the Commissioner that it will be significantly prejudiced by the proscription, the Commissioner shall permit the continued application of that guideline, with respect to policies written prior to the date of preliminary order during a reasonable run-off period to be specified by the Commissioner and not to exceed three years. If the preliminary order is not sustained, coverage which has been extended pending the hearing may be cancelled by the insurer in accordance with the provisions of N.J.A.C. 11:1-20.2.

(j) In the event that the Commissioner shall issue a preliminary order proscribing the manner in which an underwriting guideline is being used by an insurer, pursuant to (i) above, the insurer may request an expedited hearing on the Commissioner's preliminary order.

(k) With respect to retrospectively rated risks and multistate location risks, insurers shall maintain records of those policies which are either cancelled or nonrenewed and the reasons upon which such termination was based.

(*l*) Nothing in this section shall prohibit an insurer from cancelling a policy or coverage which has been in effect for less than 60 days at the time notice of cancellation is mailed or delivered. Except as may be otherwise provided by statute, such cancellations shall be subject to the remaining provisions of this subchapter.

Amended by R.1987 d.114, effective February 17, 1987.
See: 18 N.J.R. 2301(b), 19 N.J.R. 359(a).

Law Review and Journal Commentaries

Insurance. P.R. Chenoweth, 138 N.J.L.J. No. 14, 56 (1994).

Case Notes

Attorney fees were not permitted in physician's suit challenging medical malpractice policy. Giri v. Medical Inter-Insurance Exchange of New Jersey, 251 N.J.Super. 148, 597 A.2d 561 (A.D.1991).

11:1-20.5 Cancellation or nonrenewal based on loss of or reduction in available insurance capacity

(a) Every cancellation or nonrenewal based upon loss of or reduction in available insurance capacity shall be supported by the following documentation:

1. A narrative description of the specific facts underlying the insurer's loss of or reduction in capacity.

2. Identification of the individual risk(s) or line, class or subclass of insurance, as applicable, proposed for termination and an explanation of the basis for the selection, which shall demonstrate that the insurer's selection is not arbitrary, capricious or unfairly discriminatory. An unsupported statement, such as "underwriting judgment", shall not constitute a valid explanation.

3. With respect to terminations subject to N.J.A.C. 11:1-22, an explanation of how the loss of or reduction in capacity affects the insurer's risks throughout the line,

class or category of insurance proposed for cancellation and/or nonrenewal.

4. An explanation of why cancellation or nonrenewal is necessary to cure the capacity problem and why other measures, including but not limited to cessation of new business writings, do not present a viable alternative to termination of existing business; and

5. With respect to terminations subject to N.J.A.C. 11:1–22, an explanation of how the cancellation or nonrenewals will be implemented with respect to individual risks and the steps that will be taken to ensure that the cancellation/nonrenewal decisions will not be applied in an arbitrary, capricious or unfairly discriminatory manner.

(b) Whenever an insurer proposes to cancel or nonrenew, on an individual basis, a policy which is subject to the provisions of this subchapter due to loss of or reduction in insurance capacity, the insurer shall furnish the Department with written notice of the termination. The notice shall include the information set forth at (a)1, 2 and 4 above and shall be mailed to the Department at the same time notice of termination is mailed or delivered to the insured.

New Rule, R.1987 d.114, effective February 17, 1987.
See: 18 N.J.R. 2301(b), 19 N.J.R. 359(a).

11:1–20.6 Cancellation and nonrenewal based on changes in statutory or case law

(a) Every cancellation or nonrenewal based on material increase in exposure resulting from changes in statutory or case law subsequent to issuance of the insurance contract shall be supported by the following documentation:

1. Copies of or appropriate references to the applicable statute or case;

2. A narrative description of the changes resulting from the statute or case and how the changes affect the coverages provided under the contract to increase the insurer's exposure in a material fashion. The narrative should also document that the modification to policy coverages arising from the change in statutory or case law was such that it could not have been reasonably foreseen by the insurer;

3. Identification of the individual risk(s), line(s), class(es) or subclass(es) of insurance affected by the change in statutory or case law;

4. If all risks within the lines, classes or subclasses identified in item 3 above are not to be cancelled or nonrenewed, an explanation of the basis for selection of individual risk(s) or lines, classes or subclasses, as applicable, which shall demonstrate that such selection is not arbitrary, capricious or unfairly discriminatory;

5. Explanation of why cancellation and/or nonrenewal is necessary to cure the insurer's increased exposure and why other measures, including but not limited to, premium modification or revision of coverage limits or terms, do not present a viable alternative to termination.

(b) Whenever an insurer proposes to cancel or nonrenew, on an individual basis, a policy which is subject to the provisions of this subchapter due to material increase in exposure arising out of changes in statutory or case law, the insurer shall furnish the Department with written notice of the termination. The notice shall include the information set forth at (a)1, 2, 3 and 5 above and shall be mailed to the Department at the same time notice of termination is mailed or delivered to the insured.

New Rule, R.1987 d.114, effective February 17, 1987.
See: 18 N.J.R. 2301(b), 19 N.J.R. 359(a).

11:1–20.7 Cancellation or nonrenewal based on loss of or substantial changes in applicable reinsurance

(a) Every cancellation or nonrenewal based on loss of or substantial changes in applicable reinsurance shall be supported by the following documentation:

1. All information set forth at N.J.A.C. 11:1–22.2(b)1 through 8;

2. Copy of termination notice or other notice reflecting substantial changes in applicable reinsurance;

3. Copy of order issued by insurance department or court of competent jurisdiction, where applicable; and

4. Name, address and telephone number of each reinsurer contacted by the insurer in its effort to obtain replacement coverage, name and title of each company representative contacted and the outcome.

(b) Whenever an insurer proposes to cancel or nonrenew, on an individual basis, a policy which is subject to the provisions of this subchapter due to loss of or substantial changes in applicable reinsurance, the insurer shall furnish the Department with written notice of the termination. The notice shall include the information set forth at N.J.A.C. 11:1–22.2(b)2, 3, 4 and 7 and (a)2, 3 and 4 above.

(c) In lieu of cancellation or nonrenewal, insurers shall offer to continue the policyholder's coverage at limits which reflect at least the insurer's net retention as identified pursuant to (a) above. In no event shall the insurer's offer to continue coverage at reduced limits relieve it from requirements that are otherwise applicable to cancellations and nonrenewals under N.J.A.C. 11:1–22 or this subchapter.

New Rule, R.1987 d.114, effective February 17, 1987.
See: 18 N.J.R. 2301(b), 19 N.J.R. 359(a).

11:1-20.8 Cancellation and nonrenewal based on agency termination

(a) Every cancellation or nonrenewal based on agency termination shall be supported by the following documentation:

1. Explanation of the basis for the insurer's termination of the agency contract;

2. Explanation of why the individual risk(s) or line, class or subclass, as applicable, of insurance must be cancelled or nonrenewed as a result of the agency termination and why coverage cannot or should not be continued through referral to another active agent of the insurer or written by the insurer on a direct basis;

3. Evidence of the provision of replacement coverage to the insured, where applicable;

4. Copy of the insured's statement consenting to the termination of coverage, where applicable; and

5. Copy of the written notice issued by the insurer advising the insured of his or her right to continue coverage with the insurer.

New Rule, R.1987 d.114, effective February 17, 1987.
See: 18 N.J.R. 2301(b), 19 N.J.R. 359(a).

11:1-20.9 Policy provisions

No policy shall contain provisions which are inconsistent with the requirements of this subchapter.

Recodified from 11:1-20.5 by R.1987 d.114, effective February 17, 1987.
See: 18 N.J.R. 2301(b), 19 N.J.R. 359(a).

11:1-20.10 Separability

If any provision of this subchapter or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the subchapter and the application of such provision to other persons or circumstances shall not be affected thereby.

Recodified from 11:1-20.6 by R.1987 d.114, effective February 17, 1987.
See: 18 N.J.R. 2301(b), 19 N.J.R. 359(a).

11:1-20.11 Penalties

(a) In addition to any other penalty authorized by law, the Commissioner may, after notice and a hearing, impose penalties as prescribed by N.J.S.A. 17:29A-1 et seq., 17:29AA-1 et seq., 17:29B-7 and 11, 17:30C-1 et seq., 17:32-1 et seq. and 17:33-2.

(b) As an alternative or in addition to the penalties set forth in (a) above, the Commissioner, where he deems such action will further the purposes of this subchapter, may require immediate reinstatement without lapse of any policy which has been cancelled or nonrenewed in violation of the provisions of this subchapter.

1. The Commissioner shall not order any reinstatement more than one year after the effective date of the nonrenewal or cancellation, provided, however, that the one year period shall be tolled during the course of any administrative proceedings initiated by the Department and any subsequent judicial review of those proceedings.

2. Nothing herein shall be deemed to create any right or cause of action on behalf of any insured to enforce the penalties set forth in this subsection.

Amended and recodified from 11:1-20.7 by R.1987 d.114, effective February 17, 1987.
See: 18 N.J.R. 2301(b), 19 N.J.R. 359(a).

11:1-20.12 (Reserved)

Recodified from 11:1-20.8 by R.1987 d.114, effective February 17, 1987.
See: 18 N.J.R. 2301(b), 19 N.J.R. 359(a).
Repealed by R.1990 d.321, effective June 18, 1990.
See: 22 N.J.R. 1225(b), 22 N.J.R. 1940(a).
Formerly contained a rule which established a two year expiration date for the subchapter.

SUBCHAPTER 21. LOSS RESERVE OPINIONS

11:1-21.1 General requirements

(a) Every licensed company writing property and casualty insurance in New Jersey must submit, as an addendum to the Annual Statement, a statement of opinion relating to loss and loss adjustment expense reserves for all lines of business written by the company.

1. The statement of opinion shall be in the form of a letter and must be submitted by June 30.

2. The statement of opinion shall be prepared and signed by a qualified actuary.

i. A "qualified actuary" shall mean a fellow in good standing of the Casualty Actuarial Society with three years recent experience in loss reserving, or an associate in good standing of the Casualty Actuarial Society with five years recent experience in loss reserving.

(b) Failure to file the statement of opinion in the form and time frame specified in this subchapter will subject the company to the penalties described in N.J.S.A. 17:23-2.

(c) The statement of opinion must consist of a paragraph identifying the actuary, a scope paragraph describing the subjects on which an opinion is to be expressed and describing the scope of the actuary's review, and an opinion paragraph expressing the conclusions of the actuary. One or more additional paragraphs may be needed in individual cases if the actuary must qualify the opinion or explain some aspect of the annual statement which is not already sufficiently explained in the annual statement.

(d) N.J.A.C. 11:1–21.3 and 11:1–21.4 provide examples for illustrative purposes, of language which in typical circumstances would be included in the remainder of the statement of opinion. The illustrative language should be modified as needed to meet the circumstances of a particular case, and the actuary should in any case use language which clearly expresses his or her professional judgment.

11:1–21.2 Identification paragraph

(a) The opening paragraph must indicate the actuary's relationship to the company.

1. For a company actuary, the opening paragraph of the opinion should contain the sentence: "I, (name and title of actuary), am an officer (employee) of (named insurer) a fellow of the Casualty Actuarial Society and meet the requirements of a qualified actuary."

2. For a consultant, the opening paragraph of the opinion should contain the sentence: "I, (name and title of consultant), am associated with the firm of (name of firm if applicable). I am a fellow of the Casualty Actuarial Society meeting the requirements of a qualified actuary and have been retained by the (name of insurer) with regard to loss and loss adjustment expense reserves."

11:1–21.3 Scope paragraph

(a) The scope paragraph must contain a sentence such as the following: "I have examined the assumptions and methods used in determining reserves as shown in the annual statement of the company as prepared for filing with New Jersey Department of Insurance, as of December 31, 19___." The paragraph should list those items and amounts with respect to which the actuary is expressing an opinion. The list must include but not necessarily be limited to:

1. Reserve amount for unpaid losses.

2. Reserve amount for unpaid loss adjustment expenses.

(b) If the actuary has examined the underlying records and/or summaries, the scope paragraph must also include a sentence such as the following: "My examination included such review of the assumptions and methods used and of the underlying basis records and/or summaries and such tests and calculations as I considered necessary."

(c) If the actuary has not examined the underlying records and/or summaries, but has relied upon those prepared by the company, the scope paragraph must include a sentence such as one of the following:

1. "I relied upon underlying records and/or summaries prepared by the responsible officers or employees of the company or group to which it belongs. In other respects, my examination included such review of the assumptions and methods used and such tests of the calculations as I considered necessary."

2. "I relied upon (name of firm) for the accuracy of the underlying records and/or summaries. In other respects, my examination included such review of the underlying assumptions and methods used and such tests of the calculations as I considered necessary."

11:1–21.4 Opinion paragraph

(a) The opinion paragraph must include a sentence which covers at least the points listed in the following illustration: "In my opinion, the amounts carried in the balance sheet on account of the items identified above:

1. Are computed in accordance with generally accepted loss reserving practices and are fairly stated in accordance with sound loss reserving principles;

2. Are based on factors relevant to policy provisions;

3. Meet the requirements of the insurance laws of (state of domicile); and

4. Make a reasonable provision for all unpaid loss and loss expense obligations of the Company under the terms of its policies and agreements."

i. Reasonable in (a)4 above shall mean with good and sufficient reason, being in the judgment of the actuary neither inadequate nor excessive.

(b) If there has been any material change in the assumptions and/or methods from those of previous statements of opinion, that change should be described in the statement of opinion by inserting a phrase such as: "A material change in assumptions (and/or methods) was made during the past year, but such change accords with accepted loss reserving practices." A description of the change should follow, including how it affects reserve amounts.

(c) If unable to form an opinion, the actuary should refuse to issue a statement of opinion. If the opinion is adverse or qualified, the actuary should issue an adverse or qualified opinion explicitly stating the reason(s) for such opinion.

SUBCHAPTER 21A. ACTUARIAL OPINION AND MEMORANDUM FOR LIFE/HEALTH INSURERS

Authority

N.J.S.A. 17:1C–6, 17:1–8.1, 17:23–20 et seq., 17:44A–1 et seq., 17B:18–42, 17B:21–1 and 17:51A–1 et seq.

Source and Effective Date

R.1995 d.605, effective November 20, 1995.
See: 27 N.J.R. 2998(a), 27 N.J.R. 4720(a).

11:1–21A.1 Purpose and scope

(a) The purpose of these rules is to prescribe:

1. Guidelines and standards for statements of actuarial opinion and for memoranda in support thereof;

2. Guidelines and standards for statements of actuarial opinion which are to be submitted when a company is exempt from submitting an asset adequacy analysis pursuant to this subchapter; and

3. Rules applicable to the appointment of an appointed actuary.

(b) These rules shall apply to all insurers authorized or admitted to transact life, accident and health or annuity business in this State, all fraternal benefit societies doing business in this State pursuant to N.J.S.A. 17:44A–1 et seq., and to all such insurers and fraternal benefit societies which are authorized to reinsure life insurance, annuities or accident and health insurance business in this State.

(c) These rules shall apply to all annual statements filed with the Commissioner on or after November 20, 1995. Except with respect to companies which are exempted pursuant to N.J.A.C. 11:1–21A.4, a statement of opinion on the adequacy of the reserves and related actuarial items based on an asset adequacy analysis in accordance with N.J.A.C. 11:1–21A.6, and a memorandum in support thereof in accordance with N.J.A.C. 11:1–21A.7, shall be required each year. Any company so exempted shall file a statement of actuarial opinion pursuant to N.J.A.C. 11:1–21A.5.

(d) Notwithstanding (c) above, the Commissioner may require any company otherwise exempt pursuant to this subchapter to submit a statement of actuarial opinion and to prepare a memorandum in support thereof in accordance with N.J.A.C. 11:1–21A.6 and 21A.7 if, in the opinion of the Commissioner, an asset adequacy analysis is necessary with respect to the company.

11:1–21A.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, except where the context clearly indicates otherwise:

"Actuarial opinion" means:

1. With respect to N.J.A.C. 11:1–21A.6, 21A.7 or 21A.8, the opinion of an appointed actuary regarding the adequacy of the reserves and related actuarial items based on an asset adequacy test in accordance both with N.J.A.C. 11:1–21A.6 and with actuarial standards accepted at the time of rendering the opinion;

2. With respect to N.J.A.C. 11:1–21A.5, the opinion of an appointed actuary regarding the calculation of reserves and related items, in accordance both with N.J.A.C. 11:1–21A.5 and actuarial standards accepted at the time of rendering the opinion which specifically relate to this opinion.

"Actuarial Standards Board" means the board established by the American Academy of Actuaries to develop and promulgate standards of actuarial practice.

"Alien company" means a company formed under the laws of any country other than the United States, its states, districts, territories, commonwealths, and possessions.

"Annual Statement" means that statement required by N.J.S.A. 17:23–1, 17B:21–1 and 17:44A–34, as applicable, to be filed by the company with the Commissioner annually.

"Appointed actuary" means any individual who is appointed or retained in accordance with the requirements set forth in N.J.A.C. 11:1–21A.3(f) to provide the actuarial opinion and supporting memorandum as required by this subchapter.

"Asset adequacy analysis" means an analysis that meets the standards and other requirements referred to in N.J.A.C. 11:1–21A.3(g). This analysis may include, but shall not be limited to, cash flow testing, sensitivity testing or applications of risk theory.

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

"Company" means an insurer, fraternal benefit society or reinsurer subject to the provisions of this subchapter.

"Foreign company" means a company formed under the laws of a jurisdiction of the United States, other than this State.

"Fraternal benefit society" is as defined at N.J.S.A. 17:44A–1.

"Insurer" means any person or entity authorized to transact life, accident or health, or annuities business in this State or authorized to reinsure such business in this State in accordance with Title 17 or 17B of the New Jersey Statutes.

"NAIC" means the National Association of Insurance Commissioners.

"Non–investment grade bonds" are those designated as classes 3, 4, 5 or 6 by the NAIC Securities Valuation Office.

"Qualified actuary" means any individual who meets the requirements set forth in N.J.A.C. 11:1–21A.3(e).

11:1–21A.3 General requirements

(a) There shall be included on or attached to Page 1 of the annual statement for each year, beginning with 1995, the statement of an appointed actuary, entitled "Statement of Actuarial Opinion," setting forth an opinion relating to reserves and related actuarial items held in support of policies and contracts, in accordance with N.J.A.C. 11:1–21A.6; provided, however, that any company exempted

pursuant to N.J.A.C. 11:1–21A.4 from submitting a statement of actuarial opinion in accordance with N.J.A.C. 11:1–21A.6 shall include on or attach to Page 1 of the annual statement a statement of actuarial opinion rendered by an appointed actuary in accordance with N.J.A.C. 11:1–21A.5.

(b) If in the previous year a company provided a statement of actuarial opinion in accordance with N.J.A.C. 11:21A.5, and in the current year fails the exemption criteria of N.J.A.C. 11:1–21A.4(c), (d) or (g) to again provide an actuarial opinion in accordance with N.J.A.C. 11:1–21A.5, the statement of actuarial opinion in accordance with N.J.A.C. 11:1–21A.6 shall not be required until August 1 following the date of the annual statement. In this instance, the company shall provide a statement of actuarial opinion in accordance with N.J.A.C. 11:1–21A.5 as part of the annual statement with appropriate qualification noting the intent to subsequently provide a statement of actuarial opinion in accordance with N.J.A.C. 11:1–21A.6.

(c) In the case of a statement of actuarial opinion required to be submitted by a foreign or alien company, the Commissioner may accept the statement of actuarial opinion filed by such company with the insurance supervisory regulator of another state if the Commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this State.

(d) Upon written request by the company, the Commissioner may grant an extension of the date for submission of the statement of actuarial opinion.

(e) For purposes of this subchapter, a "qualified actuary" is an individual who:

1. Is a member in good standing of the American Academy of Actuaries;

2. Is qualified to sign statements of actuarial opinion for life and health insurance company annual statements in accordance with the American Academy of Actuaries qualification standards for actuaries signing such statements;

3. Is familiar with the valuation requirements applicable to life and health insurance companies;

4. Has not been found by the Commissioner (or if so found has subsequently been reinstated as a qualified actuary), following notice and opportunity for a hearing, to have:

i. Violated any provision of, or any obligation imposed by, the insurance laws or other law in the course of his or her dealings as a qualified actuary;

ii. Been found guilty of fraudulent or dishonest practices;

iii. Demonstrated his or her incompetency, lack of cooperation, or untrustworthiness to act as a qualified actuary;

iv. Submitted to the Commissioner during the past five years, pursuant to this subchapter, an actuarial opinion or memorandum that the Commissioner rejected because it did not meet the provisions of this subchapter, including standards set by the Actuarial Standards Board; or

v. Resigned or been removed as an actuary within the past five years as a result of acts or omissions indicated in any adverse report on examination or as a result of failure to adhere to generally acceptable actuarial standards; and

5. Has not failed to notify the Commissioner of any action taken by any commissioner of any other state similar to that under (e)4 above.

(f) For purposes of this subchapter, an "appointed actuary" is a qualified actuary who is appointed or retained to prepare the statement of actuarial opinion required by this subchapter, either directly by or by the authority of the board of directors through an executive officer of the company. The company shall give the Commissioner timely written notice of the name, title (and, in the case of a consulting actuary, the name of the firm) and manner of appointment or retention of each person appointed or retained by the company as an appointed actuary and shall state in such notice that the person meets the requirements set forth in (e) above. Once notice is furnished, no further notice is required with respect to this person, provided that the company shall give the Commissioner timely written notice in the event the actuary ceases to be appointed or retained as an appointed actuary or to meet the requirements set forth in (e) above. If any person appointed or retained as an appointed actuary replaces a previously appointed actuary, the notice shall so state and give the reasons for replacement.

(g) The asset adequacy analysis required by this subchapter shall conform to the Standards of Practice as promulgated from time to time by the Actuarial Standards Board and to any additional standards under this subchapter, which standards are to form the basis of the statement of actuarial opinion in accordance with N.J.A.C. 11:1–21A.6, and shall be based on methods of analysis as are deemed appropriate for such purposes by the Actuarial Standards Board.

(h) The statement of actuarial opinion shall apply to all in force business on the statement date regardless of when or where issued (for example, reserves of Exhibits 8, 9 and 10, and claim liabilities in Exhibit 11, Part I of the Appendix incorporated herein by reference, and equivalent items in the separate account statement or statements).

(i) If the appointed actuary determines as the result of asset adequacy analysis that a reserve should be held in addition to the aggregate reserve held by the company and calculated in accordance with methods set forth in N.J.S.A. 17B:19–8b, e, f and g, N.J.S.A. 17B:19–5, and N.J.A.C. 11:4–6, the company shall establish such additional reserve.

1. For years ending prior to December 31, 1997, the company may, in lieu of establishing the full amount of the additional reserve in the annual statement for that year, set up an additional reserve in an amount not less than the following:

i. For the year ending December 31, 1995, the additional reserve divided by three.

ii. For the year ending December 31, 1996, two times the additional reserve divided by three.

(j) Additional reserves established under (i) above and deemed not necessary in subsequent years may be released. Any amounts released must be disclosed in the actuarial opinion for the applicable year. The release of such reserves shall not be deemed an adoption of a lower standard of valuation.

11:1–21A.4 Required opinions

(a) Every company doing life, health or annuities business in this State shall annually submit the opinion of an appointed actuary as provided for by this subchapter. The type of opinion submitted shall be determined by the provisions set forth in this section and shall be in accordance with the applicable provisions in this subchapter.

(b) For purposes of this subchapter, companies shall be classified as follows based on the admitted assets as of the end of the calendar year for which the actuarial opinion is applicable:

1. Category A shall consist of those companies whose admitted assets do not exceed $20 million;

2. Category B shall consist of those companies whose admitted assets exceed $20 million but do not exceed $100 million;

3. Category C shall consist of those companies whose admitted assets exceed $100 million but do not exceed $500 million; and

4. Category D shall consist of those companies whose admitted assets exceed $500 million.

(c) Any Category A company that, for any year beginning with 1995, meets all of the following criteria shall be eligible for exemption from submission of a statement of actuarial opinion in accordance with N.J.A.C. 11:1–21A.6 for the year in which these criteria are met. The ratios in (c)1, 2 and 3 below shall be calculated based on amounts as of the end of the calendar year for which the actuarial opinion is applicable.

1. The ratio of the sum of capital and surplus to the sum of cash and invested assets is at least equal to .10.

2. The ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is less than .30.

3. The ratio of the book value of the non-investment grade bonds to the sum of capital and surplus is less than .50.

4. The Examiner Team for the NAIC has not designated the company as a first priority company in any of the two calendar years preceding the calendar year for which the actuarial opinion is applicable, or a second priority company in each of the two calendar years preceding the calendar year for which the actuarial opinion is applicable, or the company has resolved the first or second priority status to the satisfaction of the commissioner of the company's state of domicile and the commissioner has so notified the chair of the NAIC Life and Health Actuarial Task Force and the NAIC Staff and Support Office.

(d) Any Category B company that, for any year beginning with 1995, meets all of the following criteria shall be eligible for exemption from submission of a statement of actuarial opinion in accordance with N.J.A.C. 11:1–21A.6 for the year in which the criteria are met. The ratios in (d)1, 2 and 3 below shall be calculated based on amounts as of the end of the calendar year for which the actuarial opinion is applicable.

1. The ratio of the sum of capital and surplus to the sum of cash and invested assets is at least equal to .07.

2. The ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is less than .40.

3. The ratio of the book value of the non-investment grade bonds to the sum of capital and surplus is less than .50.

4. The Examiner Team for the NAIC has not designated the company as a first priority company in any of the two calendar years preceding the calendar year in which the actuarial opinion is applicable, or a second priority company in each of the two calendar years preceding the calendar year for which the actuarial opinion is applicable, or the company has resolved the first or second priority status to the satisfaction of the commissioner of the company's state of domicile and the commissioner has so notified the chair of the NAIC Life and Health Actuarial Task Force and the NAIC Staff and Support Office.

(e) Any Category A or Category B company that meets all of the criteria set forth in (c) and (d) above, whichever is applicable, shall be exempted from submission of a statement of actuarial opinion in accordance with N.J.A.C.

11:1–21A.6, unless the Commissioner specifically indicates to the company that the exemption may not be taken.

(f) Any Category A or Category B company that, for any year beginning with 1995, is not exempted pursuant to (e) above, shall be required to submit a statement of actuarial opinion in accordance with N.J.A.C. 11:1–21A.6 for the year for which it is not exempt.

(g) Any Category C company that, after submitting an opinion in accordance with N.J.A.C. 11:1–21A.6, meets all of the following criteria shall not be required, unless required in accordance with (h) below, to submit a statement of actuarial opinion in accordance with N.J.A.C. 11:1–21A.6 more frequently than every third year. Any Category C company which fails to meet all of the following criteria for any year shall submit a statement of actuarial opinion in accordance with N.J.A.C. 11:1–21A.6 for that year. The ratios in (g)1, 2 and 3 below shall be calculated based on amounts as of the end of the calendar year for which the actuarial opinion is applicable.

1. The ratio of the sum of capital and surplus to the sum of cash and invested assets is at least equal to .05.

2. The ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is less than .50.

3. The ratio of the book value of the non-investment grade bonds to the sum of the capital and surplus is less than .50.

4. The Examiner Team for the NAIC has not designated the company as a first priority company in any of the two calendar years preceding the calendar year for which the actuarial opinion is applicable, or a second priority company in each of the two calendar years preceding the calendar year for which the actuarial opinion is applicable, or the company has resolved the first or second priority status to the satisfaction of the commissioner of the company's state of domicile and the commissioner has so notified the chair of the NAIC Life and Health Actuarial Task Force and the NAIC Staff and Support Office.

(h) Any company which is not required by this section to submit a statement of actuarial opinion in accordance with N.J.A.C. 11:1–21A.6 for any year shall submit a statement of actuarial opinion in accordance with N.J.A.C. 11:1–21A.5 for that year unless, as provided for by N.J.A.C. 11:1–21A.1(d), the Commissioner requires a statement of actuarial opinion in accordance with N.J.A.C. 11:1–21A.6.

(i) Every Category D company shall submit a statement of actuarial opinion in accordance with N.J.A.C. 11:1–21A.6 for each year beginning with 1995.

11:1–21A.5 Statement of actuarial opinion not including an asset adequacy analysis

(a) The statement of actuarial opinion required by this section shall consist of the following:

1. A paragraph identifying the appointed actuary and his or her qualifications;

2. A regulatory authority paragraph stating that the company is exempt pursuant to this subchapter from submitting a statement of actuarial opinion based on an asset adequacy analysis and that the opinion, which is not based on an asset adequacy analysis, is rendered in accordance with this section;

3. A scope paragraph identifying the subjects on which the opinion is to be expressed and describing the scope of the appointed actuary's work; and

4. An opinion paragraph expressing the appointed actuary's opinion as required by this subchapter.

(b) The following language is that which in typical circumstances shall be included in a statement of actuarial opinion in accordance with this section. The language may be modified as needed to meet the circumstances of a particular case, but the appointed actuary shall use language which clearly expresses his or her professional judgment. However, in any event the opinion shall retain all pertinent aspects of the language provided in this section.

1. The opening paragraph should indicate the appointed actuary's relationship to the company.

i. For a company actuary, the opening paragraph of the actuarial opinion should read as follows: "I, [name of actuary], am [title] of [name of company] and a member of the American Academy of Actuaries. I was appointed by, or by the authority of, the board of directors of said insurer to render this opinion as stated in the letter to the Commissioner dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health companies."

ii. For a consulting actuary, the opening paragraph of the actuarial opinion should contain a sentence such as: "I, [name and title of actuary], a member of the American Academy of Actuaries, am associated with the firm of [insert name of consulting firm]. I have been appointed by, or by the authority of, the board of directors of [name of company] to render this opinion as stated in the letter to the Commissioner dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health companies."

2. The regulatory authority paragraph should include a statement such as the following: "Said company is exempt pursuant to Regulation [insert designation] of the [name of state] Insurance Department from submitting a statement of actuarial opinion based on an asset adequacy analysis. This opinion, which is not based on an asset adequacy analysis, is rendered in accordance with N.J.A.C. 11:1–21A.5 [or cite equivalent section]."

3. The scope paragraph should contain a sentence such as the following: "I have examined the actuarial assumptions and actuarial methods used in determining reserves and related actuarial items listed below, as shown in the annual statement of the company, as prepared for filing with state regulatory officials, as of December 31. [ ]." The paragraph should list items and amounts with respect to which the appointed actuary is expressing an opinion. The list should include, but not be limited to:

i. Aggregate reserve and deposit funds for policies and contracts included in Exhibit 8 in the Appendix;

ii. Aggregate reserve and deposit funds for policies and contracts included in Exhibit 9 in the Appendix;

iii. Deposit funds, premiums, dividend and coupon accumulations and supplementary contracts not involving life contingencies included in Exhibit 10 in the Appendix; and

iv. Policy and contract claims—liability end of current year included in Exhibit 11, Part I in the Appendix.

4. If the appointed actuary has examined the underlying records, the scope paragraph should also include the following: "My examination included such review of the actuarial assumptions and actuarial methods and of the underlying basic records and such tests of the actuarial calculations as I considered necessary."

5. If the appointed actuary has not examined the underlying records, but has relied upon listings and summaries of policies in force prepared by the company or a third party, the scope paragraph should include a sentence such as one of the following:

"I have relied upon listings and summaries of policies and contracts and other liabilities in force prepared by [name and title of company officer certifying in force records] as certified in the attached statement. (See accompanying affidavit by a company officer.) In other respects my examination included review of the actuarial assumptions and actuarial methods and such tests of the actuarial calculations as I considered necessary;" or

"I have relied upon [name of accounting firm] for the substantial accuracy of the in force records inventory and information concerning other liabilities, as certified in the attached statement. In other respects my examination included review of the actuarial assumptions and actuarial methods and such tests of the actuarial calculations as I considered necessary."

The statement of the person certifying shall follow the form indicated by (b)10 below.

6. The opinion paragraph should include the following:

"In my opinion the amounts carried in the balance sheet on account of the actuarial items identified above:

i. Are computed in accordance with those presently accepted actuarial standards which specifically relate to the opinion required under this section;

ii. Are based on actuarial assumptions which produce reserves at least as great as those called for in any contract provision as to reserve basis and method, and are in accordance with all other contract provisions;

iii. Meet the requirements of the insurance laws and regulations of the state of [state of domicile] and are at least as great as the minimum aggregate amounts required by the state in which this statement is filed;

iv. Are computed on the basis of assumptions consistent with those used in computing the corresponding items in the annual statement of the preceding year-end with any exceptions as noted below; and

v. Include provision for all actuarial reserves and related statement items which ought to be established.

The actuarial methods, considerations and analyses used in forming my opinion conform to the appropriate Compliance Guidelines as promulgated by the Actuarial Standards Board, which guidelines form the basis of this statement of opinion."

7. The concluding paragraph shall document the eligibility for the company to provide an opinion as provided by this section, and shall include the following: "This opinion is provided in accordance with N.J.A.C. 11:1–21A.5 [or cite equivalent section]. As such it does not include an opinion regarding the adequacy of reserves and related actuarial items when considered in light of the assets which support them. Eligibility for this section is confirmed as follows:

i. The ratio of the sum of capital and surplus to the sum of cash and invested assets is [insert amount], which equals or exceeds the applicable criteria based on the admitted assets of the company (N.J.A.C. 11:1–21A.4(c) through (h)).

ii. The ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is [insert amount], which is less than the applicable criteria based on the admitted assets of the company (N.J.A.C. 11:1–21A.4(c) through (h)).

iii. The ratio of the book value of the non-investment grade bonds to the sum of capital and surplus is [insert amount], which is less than the applicable criteria of .50.

iv. To my knowledge, the NAIC Examiner Team has not designated the company as a first priority company in any of the two calendar years preceding the calendar year for which the actuarial opinion is applicable, or a second priority company in each of the two calendar years preceding the calendar year for which the actuarial opinion is applicable or the company has resolved the first or second priority status to the satisfaction of the commissioner of the company's state of domicile.

v. To my knowledge there is not a specific request from any commissioner requiring an asset adequacy analysis opinion."

Below the paragraph, the following information shall be included: the signature of appointed actuary; the address of appointed actuary; and the telephone number of appointed actuary.

8. If there has been any change in the actuarial assumptions from those previously employed, that change shall be described in the annual statement or in a paragraph of the statement of actuarial opinion, and the reference in (b)6iv above to consistency should read as follows: ". . .with the exception of the change described on Page [ ] of the annual statement (or in the preceding paragraph)."

i. The adoption for new issues or new claims or other new liabilities of an actuarial assumption which differs from a corresponding assumption used for prior new issues or new claims or other new liabilities shall not be deemed a change in actuarial assumptions within the meaning of this paragraph.

9. If the appointed actuary is unable to form an opinion, he or she shall refuse to issue a statement of actuarial opinion. If the appointed actuary's opinion is adverse or qualified he or she shall issue an adverse or qualified actuarial opinion explicitly stating the reason(s) for such opinion. This statement should follow the scope paragraph and precede the opinion paragraph.

10. If the appointed actuary does not express an opinion as to the accuracy and completeness of the listings and summaries of policies in force, there shall be attached to the opinion the statement of a company officer or accounting firm who prepared such underlying data similar to the following: "I [name of firm], [title] of [name and address of company or accounting firm], hereby affirm that the listings and summaries of policies and contracts in force as of December 31, [ ], prepared for and submitted to [name of appointed actuary], were prepared under my direction and, to the best of my knowledge and belief, are substantially accurate and complete." The following shall be listed below this statement:

i. The signature of the officer of the company or accounting firm;

ii. The address of the officer of the company or accounting firm; and

iii. The telephone number of the officer of the company or accounting firm.

11:1–21A.6 Statement of actuarial opinion based on an asset adequacy analysis

(a) The statement of actuarial opinion submitted in accordance with this section shall consist of:

1. A paragraph identifying the appointed actuary and his or her qualifications in the format set forth in (b)1 below;

2. A scope paragraph identifying the subjects on which an opinion is to be expressed and describing the scope of the appointed actuary's work, including a tabulation delineating the reserves and related actuarial items which have been analyzed for asset adequacy and the method of analysis in the format set forth in (b)2 below, and identifying the reserves and related actuarial items covered by the opinion which have not been so analyzed;

3. A reliance paragraph describing those areas, if any, where the appointed actuary has deferred to other experts in developing data, procedures or assumptions (for example, anticipated cash flows from currently owned assets, including variation in cash flows according to economic scenarios as set forth in (b)3 below, supported by a statement of each such expert in the form prescribed in (e) below);

4. An opinion paragraph expressing the appointed actuary's opinion with respect to the adequacy of the supporting assets to mature the liabilities in the format set forth in (b)6 below; and

5. One or more additional paragraphs as may be needed in individual company cases as follows:

i. If the appointed actuary considers it necessary to state a qualification of his or her opinion;

ii. If the appointed actuary must disclose the method of aggregation for reserves of different products or lines of business for asset adequacy analysis;

iii. If the appointed actuary must disclose reliance upon any portion of the assets supporting the Asset Valuation Reserve (AVR), Interest Maintenance Reserve (IMR) or other mandatory or voluntary statement of reserves for asset adequacy analysis;

iv. If the appointed actuary must disclose an inconsistency in the method of analysis or basis of asset allocation used at the prior opinion date with that used for this opinion;

v. If the appointed actuary must disclose whether additional reserves of the prior opinion date are released as of this opinion date, and the extent of the release; and

vi. If the appointed actuary chooses to add a paragraph briefly describing the assumptions which form the basis for the actuarial opinion.

(b) The following paragraphs shall be included in the statement of actuarial opinion in accordance with this section. The language is that which in typical circumstances shall be included in a statement of actuarial opinion. The language may be modified as needed to meet the circumstances of a particular case, but the appointed actuary shall use language which clearly expresses his or her professional judgment. However, in any event the opinion shall retain all pertinent aspects of the language provided in this section.

1. The opening paragraph should generally indicate the appointed actuary's relationship to the company and his or her qualifications to sign the opinion.

i. For a company actuary, the opening paragraph of the actuarial opinion should read as follows: "I, [name], am [title] of [insurance company name] and a member of the American Academy of Actuaries. I was appointed by, or by the authority of, the board of directors of said insurer to render this opinion as stated in the letter to the Commissioner dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."

ii. For a consulting actuary, the opening paragraph should contain a sentence such as: "I, [name], a member of the American Academy of Actuaries, am associated with the firm of [name of consulting firm]. I have been appointed by, or by the authority of, the board of directors of [name of company] to render this opinion as stated in the letter to the Commissioner dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."

2. The scope paragraph shall include a statement such as the following: "I have examined the actuarial assumptions and actuarial methods used in determining reserves and related actuarial items listed below, as shown in the annual statement of the company, as prepared for filing with state regulatory officials, as of December 31, 19[ ]. Tabulated below are those reserves and related actuarial items which have been subject to asset adequacy analysis."

i. The tabulation of reserves and related actuarial items included in the scope paragraph shall be in the format of Exhibits 8, 9, 10 and 11, set forth in the Appendix to these rules and incorporated herein by reference.

3. If the appointed actuary has relied on other experts to develop certain portions of the analysis, the reliance paragraph shall include a statement such as the following:

i. "I have relied on [name], [title] for [for example, anticipated cash flows from currently owned assets, including variations in cash flows according to economic scenarios] and, as certified in the attached statement, . . ."; or

ii. "I have relied on personnel as cited in the supporting memorandum for certain critical aspects of the analysis in reference to the accompanying statement."

Such a statement of reliance on other experts should be accompanied by a statement by each of such experts in the form prescribed by (e) below.

4. If the appointed actuary has examined the underlying asset and liability records, the reliance paragraph shall also include the following:

"My examination included such review of the actuarial assumptions and actuarial methods and of the underlying basic asset and liability records and such tests of the actuarial calculations as I considered necessary."

5. If the appointed actuary has not examined underlying records, but has relied upon listings and summaries of polices in force and/or asset records prepared by the company or a third party, the reliance paragraph shall include a sentence such as:

"I have relied upon listings and summaries [of policies and contracts, of asset records] prepared by [name and title of company officer certifying in-force records] as certified in the attached statement. In other respects my examination included such review of the actuarial assumptions and actuarial methods and such tests of the actuarial calculations as I considered necessary"; or

"I have relied upon [name of accounting firm] for the substantial accuracy of the in-force records inventory and information concerning other liabilities, as certified in the attached statement. In other respects my examination included review of the actuarial assumptions and actuarial methods and tests of the actuarial calculations as I considered necessary."

Such a statement shall be accompanied by a statement by each person relied upon in the form prescribed in (e) below.

6. The opinion paragraph shall include the following:

i. "In my opinion the reserves and related actuarial values concerning the statement items identified above:

(1) Are computed in accordance with presently accepted actuarial standards consistently applied and are fairly stated, in accordance with sound actuarial principles.

(2) Are based on actuarial assumptions which produce reserves at least as great as those called for in any contract provision as to reserve basis and method, and are in accordance with all other contract provisions;

(3) Meet the requirements of the insurance laws and regulations of the state of [company's state of domicile] and are at least as great as the minimum aggregate amounts required by the state in which this statement is filed;

(4) Are computed on the basis of assumptions consistent with those used in computing the corresponding items in the annual statement of the preceding year-end (with any exceptions noted below);

(5) Include provision for all actuarial reserves and related statement items which ought to be established;"

ii. "The reserves and related items, when considered in light of the assets held by the company with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on such assets, and the considerations anticipated to be received and retained under such policies and contracts, make adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the company;"

iii. "The actuarial methods, considerations and analyses used in forming my opinion conform to the appropriate standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis of this statement of opinion;"

iv. One of the following as applicable:

(1) "This opinion is updated annually as required by statute. To the best of my knowledge, there have been no material changes from the applicable date of the annual statement to the date of the rendering of this opinion which should be considered in reviewing this opinion"; or

(2) "The following material change(s) which occurred between the date of the statement for which this opinion is applicable and the date of this opinion should be considered in reviewing this opinion: [describe the change or changes];"

v. "The impact of unanticipated events subsequent to the date of this opinion is beyond the scope of this opinion. The analysis of asset adequacy portion of this opinion should be viewed recognizing that the company's future experience may not follow all the assumptions used in the analysis"; and

vi. Following the last paragraph of the opinion, the signature of appointed actuary as well as the address and telephone number of appointed actuary.

(c) The adoption for new issues or new claims or other new liabilities of an actuarial assumption which differs from a corresponding assumption used for prior new issues or new claims or other new liabilities shall not be deemed a change in actuarial assumptions within the meaning of this section.

(d) If the appointed actuary is unable to form an opinion, he or she shall refuse to issue a statement of actuarial opinion. If the appointed actuary's opinion is adverse or qualified, he or she shall issue an adverse or qualified actuarial opinion explicitly stating the reason(s) for such opinion. This statement should follow the scope paragraph and precede the opinion paragraph.

(e) If the appointed actuary does not express an opinion as to the accuracy and completeness of the listings and summaries of policies in force and/or asset oriented information, there shall be attached to the opinion the statement of a company officer or accounting firm who prepared such underlying data similar to the following:

i. "I [name of officer], [title], of [name of company or accounting firm], hereby affirm that the listings and summaries of policies and contracts in force as of December 31, 19[ ], and other liabilities prepared for and submitted to [name of appointed actuary] were prepared under my direction and, to the best of my knowledge and belief, are substantially accurate and complete." The signature, address and telephone number of the officer of the company or accounting firm shall also be listed; or

ii. "I [name of officer], [title], or [name of company, accounting firm or security analyst], hereby affirm that the listings, summaries and analyses relating to data prepared for and submitted to [name of appointed actuary] in support of the asset-oriented aspects of the opinion were prepared under my direction and, to the best of my knowledge and belief, are substantially accurate and complete." The signature, address and telephone number of the officer of the company, accounting firm or security analyst shall also be listed.

11:1–21A.7 Description of actuarial memorandum including an asset adequacy analysis

(a) The appointed actuary shall prepare a memorandum to the company describing the analysis done in support of his or her opinion regarding the reserves under an opinion filed pursuant to N.J.A.C. 11:1–21A.6. The memorandum shall be made available for examination by the Commissioner upon his or her request but shall be returned to the company after such examination and shall not be considered a record of the Department subject to public inspection or copying pursuant to the "Right to Know" law, N.J.S.A. 47:1A–1 et seq., or subject to automatic filing with the Commissioner.

(b) In preparing the memorandum, the appointed actuary may rely on, and include as a part of his or her own memorandum, memoranda prepared and signed by other actuaries who are qualified within the meaning of N.J.A.C. 11:1–21A.3(e), with respect to the areas covered in such memoranda, and so state in their memoranda.

(c) If the Commissioner requests a memorandum and no such memorandum exists or if the Commissioner finds that the analysis described in the memorandum fails to meet the standards of the Actuarial Standards Board or the standards and requirements of this subchapter, the Commissioner may designate a qualified actuary to review the opinion and prepare such supporting memorandum as is required for review. The reasonable and necessary expense of the independent review shall be paid by the company but shall be directed and controlled by the Commissioner.

(d) The reviewing actuary shall have the same status as an examiner pursuant to N.J.S.A. 17:23–20 et seq. for purposes of obtaining data from the company and the work papers and documentation of the reviewing actuary shall be retained by the Commissioner. The reviewing actuary shall not be an employee of a consulting firm involved with the preparation of any prior memorandum or opinion for the insurer pursuant to this subchapter for any one of the current year or the preceding three years. Any information provided by the company to the reviewing actuary and included in the work papers shall be considered as material provided by the company to the Commissioner and shall be kept confidential and shall not be subject to public inspection or copying pursuant to the "Right to Know" law, N.J.S.A. 47:1A–1 et seq. However, the memorandum or other material may otherwise be released by the Commissioner with the written consent of the company involved, or to the American Academy of Actuaries upon request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the Commissioner for preserving the confidentiality of the memorandum or other material. Notwithstanding this subsection, once any portion of the confidential memorandum is cited by the company in its marketing or is cited before any governmental agency other than a state insurance department or is released by the company to the news media, all portions of the memorandum shall no longer be deemed confidential.

(e) When an actuarial opinion under N.J.A.C. 11:1–21A.6 is provided, the memorandum shall demonstrate that the analysis has been done in accordance with the standards for asset adequacy referred to in N.J.A.C. 11:1–21A.3(g) and any additional standards under this subchapter. The memorandum shall specify:

1. For reserves:

i. Product descriptions, including market description, underwriting and other aspects of a risk profile and the specific risks the appointed actuary deems significant;

ii. Source of liability in force;

iii. Reserve method and basis;

iv. Investment reserves; and

v. Reinsurance arrangements;

2. For assets:

i. Portfolio descriptions, including a risk profile disclosing the quality, distribution and types of assets;

ii. Investment and disinvestment assumptions;

iii. Source of asset data; and

iv. Asset valuation bases;

3. The analysis basis, including, but not limited to:

i. Methodology;

ii. Rationale for inclusion/exclusion of different blocks of business and how pertinent risks were analyzed;

iii. Rationale for degree of rigor in analyzing different blocks of business;

iv. Criteria for determining asset adequacy; and

v. Effect of Federal income taxes, reinsurance and other relevant factors;

4. A summary of results; and

5. Conclusion(s).

(f) The memorandum shall include the following statement: "Actuarial methods, considerations and analyses used in the preparation of this memorandum conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis for this memorandum."

11:1–21A.8 Additional considerations for analysis

(a) For the asset adequacy analysis for the statement of actuarial opinion provided in accordance with N.J.A.C. 11:1–21A.6, reserves and assets may be aggregated by either of the following methods:

1. Aggregate the reserves and related actuarial items, and the supporting assets, for different products or lines of business, before analyzing the adequacy of the combined assets to mature the combined liabilities. The appointed actuary must be satisfied that the assets held in support of the reserves and related actuarial items so aggregated are managed in such a manner that the cash flows from the aggregated assets are available to help mature the liabilities from the blocks of business that have been aggregated; or

2. Aggregate the results of asset adequacy analysis of one or more products or lines of business, the reserves for which prove through analysis to be redundant, with the results of one or more products or lines of business, the reserves for which prove through analysis to be deficient. The appointed actuary must be satisfied that the asset adequacy results for the various products or lines of business for which the results are so aggregated:

i. Are developed using consistent economic scenarios, or

ii. Are subject to mutually independent risks, that is, the likelihood of events impacting the adequacy of the assets supporting the redundant reserves is completely unrelated to the likelihood of events impacting the adequacy of the assets supporting the deficient reserves.

3. In the event of any aggregation, the actuary must disclose in his or her opinion that such reserves were aggregated on the basis of the method set forth in (a)1, (a)2i or (a)2ii above, whichever is applicable, and describe the aggregation in the supporting memorandum.

(b) The appointed actuary shall analyze only those assets held in support of the reserves which are the subject for specific analysis, hereafter called "specified reserves." A particular asset or portion thereof supporting a group of specified reserves may not support any other group of specified reserves. An asset may be allocated over several groups of specified reserves. The annual statement value of the assets held in support of the reserves shall not exceed the annual statement value of the specified reserves, except as provided in (c) below. If the method of asset allocation is not consistent from year to year, the extent of its inconsistency shall be described in the supporting memorandum.

(c) An appropriate allocation of assets in the amount of the Interest Maintenance Reserve (IMR), whether positive or negative, shall be used in any asset adequacy analysis. Analysis of risks regarding asset default may include an appropriate allocation of assets supporting the Asset Valuation Reserve (AVR); these AVR assets may not be applied for any other risks with respect to reserve adequacy. Analysis of these and other risks may include assets supporting other mandatory or voluntary reserves available to the extent not used for risk analysis and reserve support. The amount of the assets used for the AVR must be disclosed in the Table of Reserves and Liabilities of the opinion and in the memorandum. The method used for selecting particular assets or allocated portions of assets shall be disclosed in the memorandum.

(d) For the purpose of performing the asset adequacy analysis required by this subchapter, the qualified actuary is expected to follow standards adopted by the Actuarial Standards Board; nevertheless, the appointed actuary shall consider in the analysis the effect of at least the following interest rate scenarios:

1. Level with no deviation;

2. Uniformly increasing over 10 years at one-half percent per year and then level;

3. Uniformly increasing at one percent per year over five years and then uniformly decreasing at one percent per year to the original level at the end of 10 years and then level;

4. An immediate increase of three percent and then level;

5. Uniformly decreasing over 10 years at one-half percent per year and then level;

6. Uniformly decreasing at one percent per year over five years and then uniformly increasing at one percent per year to the original level at the end of 10 years and then level; and

7. An immediate decrease of three percent and then level.

i. For the above and other scenarios which may be used, projected interest rates for a five year Treasury Note need not be reduced beyond the point where the five year Treasury Note yield would be at 50 percent of its initial level.

ii. The beginning interest rates may be based on interest rates for new investments as of the valuation date similar to recent investments allocated to support the product being tested or be based on an outside index, such as Treasury yields, of assets of the appropriate length on a date close to the valuation date. The method used to determine the beginning yield curve and associated interest rates shall be specifically defined. The beginning yield curve and associated interest rates shall be consistent for all interest rate scenarios.

(e) The appointed actuary shall retain on file, for at least seven years, sufficient documentation so that it will be possible to determine the procedures followed, the analyses performed, the bases for assumptions and the results obtained.

11:1-21A.9 Penalties

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

APPENDIX

ASSET ADEQUACY TESTED AMOUNTS RESERVES AND LIABILITIES					
Statement Item	Formula Reserves (1)	Additional Actuarial Reserves (a) (2)	Analysis Method (b)	Other Amount (3)	Total Amount (1)+(2)+(3) (4)
Exhibit 8					
A Life Insurance					
B Annuities					
C Supplementary Contracts Involving Life Contingencies					
D Accidental Death Benefit					
E Disability-Active					
F Disability-Disabled					
G Miscellaneous					
Total (Exhibit 8 Item 1, Page 3)					
Exhibit 9					
A Active Life Reserve					
B Claim Reserve					
Total (Exhibit 9 Item 2, Page 3)					
Exhibit 10					
1 Premiums and Other Deposit Funds					
1.1 Policyholder Premiums (Page 3, Line 10.1)					
1.2 Guaranteed Interest Contracts (Page 3, Line 10.2)					
1.3 Other Contract Deposit Funds (Page 3, Line 10.3)					
2 Supplementary Contracts Not Involving Life Contingencies (Page 3, Line 3)					
3 Dividend and Coupon Accumulations (Page 3, Line 5)					
Total Exhibit 10					
Exhibit 11 Part 1					
1 Life (Page 3, Line 4.1)					
2 Health (Page 3, Line 4.2)					
Total Exhibit 11, Part 1					
Separate Accounts (Page 3, Line 27)					
TOTAL RESERVES					

IMR	(Page ____ Line ____)	
AVR	(Page ____ Line ____)	(c)

Notes:

(a) The additional actuarial reserves are the reserves established under N.J.A.C. 11:1-21A.3(h) or (i).
(b) The appointed actuary should indicate the method of analysis, determined in accordance with the standards for asset adequacy analysis referred to in N.J.A.C. 11:1-21A.3(g), by means of symbols which should be defined in footnotes to the table.
(c) Allocated amount.

SUBCHAPTER 22. PROHIBITION OF CERTAIN CANCELLATION AND NONRENEWAL ACTIVITY

11:1–22.1 Scope; definitions

(a) This subchapter shall apply to all commercial insurance policies which are in force, issued or renewed on or after the effective date of this subchapter by companies licensed to do business in this State except workers' compensation insurance and forgery bonds, ocean marine and aviation insurance and accident and health insurance and any policy written by a surplus lines insurer. This subchapter shall not be applicable to multi-state location risks.

(b) This subchapter shall also apply to all policies of homeowners' insurance as defined at N.J.A.C. 11:2–41.2 which are in force, issued or renewed on or after January 17, 1995.

(c) These rules are not exclusive, and the Commissioner may also consider other provisions of statutes and regulations to be applicable to the circumstances or situations addressed herein.

(d) For the purposes of this subchapter, the terms "block" and "class" shall mean any group of insureds, however defined or designated, to which a common plan or program of cancellation or nonrenewal applies. A class may include one or more blocks.

Amended by R.1987 d.114, effective February 17, 1987.
See: 18 N.J.R. 2301(b), 19 N.J.R. 359(a).
Amended by R.1995 d.52, effective January 17, 1995.
See: 26 N.J.R. 4303(a), 27 N.J.R. 363(a).

11:1–22.2 Prohibitions

(a) The following acts or practices are specifically prohibited with respect to those policies subject to the provisions of this subchapter:

1. Effecting or attempting to effect a mid-term premium increase and/or a reduction in the amount or type of coverage provided under the policy unless prior written approval therefor has been obtained from the Commissioner.

2. Block nonrenewing entire lines or classes of insurance, except pursuant to a plan submitted to the Commissioner at least 60 days in advance of its implementation date which is not disapproved within 30 days after its filing with the Commissioner. For the purpose of this paragraph, the termination or attempted termination of an appointed agent solely to achieve the block nonrenewal of entire lines or entire classes of insurance shall be deemed a nonrenewal subject to this paragraph.

3. Block cancelling entire lines of insurance or classes of business except pursuant to a plan approved by the Commissioner. For the purposes of this paragraph, the termination or attempted termination of an appointed agent solely to achieve the block cancellation of entire lines of insurance or entire classes of business shall be deemed a cancellation subject to this paragraph.

(b) Notwithstanding (a)2 and (a)3 above, an insurer may cancel or nonrenew a line or class of business where such cancellation or nonrenewal is necessary because of loss or substantial changes in applicable reinsurance by filing a plan with the Commissioner pursuant to the requirements of this subsection. The insurer's plan must be filed with the Commissioner at least 10 days prior to the issuance of any notice of cancellation or nonrenewal.

1. Any such plan shall contain a certification by an elected officer of the company:

i. That the loss or substantial change in applicable reinsurance or the financial condition of the reinsurer necessitates the cancellation or nonrenewal action;

ii. That the insurer has made a good faith effort to obtain replacement reinsurance but was unable to do so due to either the unavailability or unaffordability of replacement reinsurance;

iii. Identifying the category of risks, the total number of risks written by the company in that category, and the number of risks intended to be cancelled or nonrenewed;

iv. Identifying the total amount of the insurer's net retention for the risks intended to be cancelled or nonrenewed;

v. Identifying the total amount of risk ceded to each reinsurer and the portion of that total that is no longer available;

vi. Explaining how the loss of or reduction in reinsurance affects the company's risks throughout the entire line or category or insurance proposed for cancellation and/or nonrenewal;

vii. Explaining why cancellation and/or nonrenewal is necessary to cure the loss of or reduction in available reinsurance; and

viii. Explaining how the cancellations or nonrenewals, if approved, will be implemented with respect to individual risks and the steps that will be taken to ensure that the cancellation/nonrenewal decisions will not be applied in an arbitrary, capricious or unfairly discriminatory manner.

2. Any plan for cancellation or nonrenewal due to loss of or substantial changes in applicable reinsurance may be submitted to the Department as provided at (b) above only if the guideline meets the standards set forth at N.J.A.C. 11:1–20.4(b)10. A plan for termination based on any other guideline for loss of or substantial changes in available reinsurance must be submitted to the Department for approval as specified at N.J.A.C. 11:1–22.2(a)2 or 3, as applicable.

(c) Notwithstanding (a)2 and (a)3 above, an insurer may cancel or nonrenew a line or class of insurance based upon a material increase in exposure arising out of changes in statutory or case law subsequent to the issuance of the insurance contract or loss of or reduction in available insurance capacity by filing a plan with the Commissioner pursuant to the requirements of this subsection. The insurer's plan must be filed with the Commissioner at least 10 days prior to the issuance of any notice of cancellation or nonrenewal.

1. Any plan for cancellation or nonrenewal due to loss of or reduction in available insurance capacity may be submitted to the Department as provided at (c) above, only if the guideline meets the standards set forth at N.J.A.C. 11:1–20.4(b)8. A plan for termination based on any other guideline for loss of or reduction in available insurance capacity must be submitted to the Department for approval as specified at N.J.A.C. 11:1–22.2(a)2 or 3, as applicable.

(d) Notwithstanding (a)2 and (a)3 above, an insurer may nonrenew a line or class of insurance based upon agency termination by filing a plan with the Commissioner pursuant to the requirements of this subsection. The insurer's plan must be filed with the Commissioner at least 10 days prior to the issuance of any notice of nonrenewal.

1. Any plan for nonrenewal due to agency termination may be submitted to the Department as provided at (d) above only if the guideline meets the standards at N.J.A.C. 11:1–20.4(b)13. A plan for nonrenewal based on any other guideline for agency termination must be submitted to the Department for approval as specified at N.J.A.C. 11:1–22.2(a)2.

Amended by R.1987 d.114, effective February 17, 1987.
See: 18 N.J.R. 2301(b), 19 N.J.R. 359(a).

Case Notes

Rule proposal cited in action contesting validity of rules governing policy cancellation and nonrenewal. In the Matter of N.J.A.C. 11:1–22, 208 N.J.Super. 182, 505 A.2d 177 (App.Div.1986).

11:1–22.3 Penalties

(a) In addition to any other penalty authorized by law, the Commissioner may, after notice and a hearing, impose penalties as prescribed by N.J.S.A. 17:29A–1 et seq., 17:29AA–1 et seq., 17:29B–7 and 11, 17:30C–1 et seq., 17:32–1 et seq. and 17:33–2.

(b) As an alternative or in addition to the penalties set forth in (a) above, the Commissioner, where he deems such action will further the purposes of this subchapter, may require immediate reinstatement without lapse of any policy which has been nonrenewed or cancelled in violation of the provisions of this subchapter.

1. The Commissioner shall not order any reinstatement more than one year after the effective date of the nonrenewal or cancellation, provided, however, that the one year period shall be tolled during the course of any administrative proceedings initiated by the Department and any subsequent judicial review of those proceedings.

2. Nothing herein shall be deemed to create any right or cause of action on behalf of any insured to enforce the penalties set forth in this subsection.

Amended by R.1987 d.113, effective February 17, 1987.
See: 18 N.J.R. 2301(b), 19 N.J.R. 359(a).

11:1–22.4 (Reserved)

Repealed by R.1990 d.321, effective June 18, 1990.
See: 22 N.J.R. 1225(b), 22 N.J.R. 1940(a).
Formerly contained rule which established a two year expiration date for the subchapter.

SUBCHAPTERS 23 THROUGH 24. (RESERVED)

SUBCHAPTER 25. OFFICIAL DEPARTMENT MAILING LIST: ADDRESS INFORMATION

11:1–25.1 Purpose

The purpose of this subchapter is to ensure that the Department's official mailing address records remain accurate and updated at all times and thereby maximize the use of Department resources and the effectiveness of Department mailings.

11:1–25.2 Scope

This subchapter shall apply to any person, partnership, corporation or any other legal entity that is required to submit an annual financial statement or report to the Commissioner pursuant to any of the following: N.J.S.A. 17:16A–13, 17:22–6.45, 17:23–1, 17:35–8, 17:35–19, 17:44A–34, 17:45–12, 17:46A–7, 17:46B–55, 17:46C–9, 17:48–11, 17:48A–15, 17:48C–26, 17:48D–13, 17:48E–36, 17:50–8 or 17B:21–1.

11:1–25.3 Official mailing list; change in address information

(a) For the purpose of disseminating Department information, including but not limited to, bulletins, certificates of

authority, orders to show cause, administrative orders, and public notices, the Department's official mailing list shall be based upon the mailing address information as provided in the 1985 annual financial statement or report filed pursuant to the respective insurance laws requiring such, as set forth above at N.J.A.C. 11:1–25.2. The mailing address provided in the 1985 annual financial statement or report shall be deemed the official mailing address of the person, partnership, corporation or other legal entity which filed such statement or report, unless the Department has been specifically notified otherwise of a change in the mailing address. In such cases, the mailing address the Department has been notified of shall be deemed the official mailing address.

1. In cases where no mailing address is designated, the home address as provided in the 1985 annual financial statement or report filed shall be deemed the official mailing address of the person, partnership, corporation or other legal entity which filed such statement or report, unless the Department has been specifically notified otherwise of a change in the home address. In such cases, the home address the Department has been notified of shall be deemed the official mailing address.

2. If an insurer's or other regulated entity's mailing address, or home address if applicable, is different on the 1985 annual financial statement or report than on the 1986 annual financial statement or report and the Department has not otherwise been specifically notified of such change, the insurer or other regulated entity shall notify the Department in writing of the address change, within 10 days of the effective date of this subchapter, by sending the notification to the Department at the address set forth in (b) below.

(b) Upon any change in the mailing address, or home address if applicable, the insurer or other regulated entity shall notify the Department in writing of such change no later than 10 days from the date the new address became effective. All address change notifications shall be sent to:

Supervisor of Insurance Reports
Division of Financial Examinations
New Jersey Department of Insurance
CN 325
Trenton, New Jersey 08625

(c) Department information, as defined in subsection (a) above, shall be addressed to the secretary of the company and mailed to the official mailing address.

(d) Unless the Department is notified otherwise in accordance with the above provisions, the mailing address last provided to the Department pursuant to this rule shall be deemed correct and any communications mailed to such shall be deemed properly mailed and received.

11:1–25.4 Penalties

Failure to comply with the provisions of this subchapter shall constitute a violation of the insurance laws of this State and may result in the imposition of any penalties authorized by law.

SUBCHAPTER 26. ANNUAL PUBLICATION OF INSURER PROFITABILITY INFORMATION

11:1–26.1 Purpose and scope

(a) This subchapter authorizes and directs the Department to compile and publish annually summary data on the profitability of insurers authorized to do business in New Jersey.

(b) This subchapter further authorizes the Commissioner to issue Orders directing insurers to submit data necessary to supplement or update information otherwise available that is necessary to prepare the annual report on insurer profitability.

11:1–26.2 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 Insurance.

"Department" means the New Jersey Department of Insurance.

"Insurer" means any person, firm, association, corporation or partnership by the Commissioner to conduct the business of property-casualty insurance in New Jersey.

"NAIC" means the National Association of Insurance Commissioners.

"Total rate of return" means underwriting return and investment return on both reserves plus capital and surplus, related as a percentage to capital and surplus.

11:1–26.3 Annual report of insurer profitability

(a) The Department shall compile and publish annually a report on the profitability of insurers conducting business in New Jersey. The report shall be published within 60 days of the Department's receipt of annual profitability reports issued by the NAIC, but not later than September 15th of each year.

(b) The report shall contain aggregated or summary information that may be derived from reports issued by the NAIC, other recognized publishers of financial information, data on file with the Department, and data supplied as required from insurers pursuant to N.J.A.C. 11:1–26.4.

(c) The report shall be formatted so as to provide information on insurer profitability, including total rate of return, in a manner understandable to the public, and may include summary data by line of insurance, or by kind of insurer. It may further include such comparisons with data from prior years, with countrywide data, or with data of other states as may be desirable.

(d) The report shall be prepared in a manner so as to prevent the unauthorized disclosure of any privileged information on file with the Department pursuant to N.J.S.A. 17:23–6.

(e) The Department shall deliver a copy of the report to the Governor, the Senate President and the Assembly Speaker, and shall further make available copies for members of the general public upon request.

1. The Department may condition delivery of a copy of the report to a person requesting it upon payment of a reasonable fee pursuant to N.J.S.A. 17:1–8.

2. The amount of the fee shall be determined each year based upon the costs of producing the report, including costs of compilation, publication and distribution.

11:1–26.4 Orders to obtain information; penalties

(a) The Commissioner may from time to time issue Orders directing insurers to provide information to supplement or update information generally available or filed with the Department which is reasonably necessary to prepare the annual report of insurer profitability.

(b) The terms of any Order issued in accordance with (a) above shall allow the insurer at least 30 days from date of mailing to respond.

(c) A copy of any Order issued pursuant to (a) above shall be mailed to all insurers required to respond at their mailing address currently on file with the Department in accordance with N.J.A.C. 11:1–25.

(d) The terms of any Order issued pursuant to (a) above may exempt from compliance any insurer whose market share is so small as to render any information derived of negligible value.

(e) The terms of any Order issued pursuant to (a) above may provide that penalties as provided by law may be imposed upon insurers which fail to respond within the time provided by the Order, or which fail to provide accurate information.

SUBCHAPTER 27. (RESERVED)

SUBCHAPTER 28. FORMATION OF A DOMESTIC PROPERTY AND CASUALTY INSURANCE CORPORATION (STOCK OR MUTUAL) OR RECIPROCAL INSURANCE EXCHANGE

11:1–28.1 Purpose

This subchapter sets forth the filing requirements for the granting of a certificate of authority to transact property and casualty insurance in this State, pursuant to N.J.S.A. 17:17–1 et seq., 17:46A–1 et seq., and 17:46B–1 et seq., and to transact business as a reciprocal insurance exchange, pursuant to N.J.S.A. 17:50–1 et seq.

11:1–28.2 Scope

This subchapter applies to all persons seeking to form a property and casualty insurance corporation or reciprocal insurance exchange in this State.

11:1–28.3 Definitions

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

"Actuary" means a person who is a fellow in good standing of the Casualty Actuarial Society with three years recent experience in loss reserving or an associate in good standing of the Casualty Actuarial Society with five years recent experience in loss reserving.

"Annual statement" means the form of statement that is described in N.J.S.A. 17:23–1.

"Applicant" means a domestic corporation seeking to obtain a certificate of authority to transact property and casualty insurance in this State or the attorney in fact representing a proposed reciprocal insurance exchange seeking to obtain a certificate of authority to transact business pursuant to N.J.S.A. 17:50–1 et seq.

"Attorney in fact" or "attorney" means a person or corporation possessing the power of attorney to act on behalf of a reciprocal insurance exchange.

"Certificate of authority" means a certificate issued by the Commissioner evidencing the authority of a corporation to transact insurance in this State.

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

"Department" means the New Jersey Department of Insurance.

"Domestic insurer" means an insurer formed under the laws of this State.

"Property and casualty insurance" means all lines of business for which an insurance company may be formed to transact, pursuant to N.J.S.A. 17:17–1, and includes mortgage guarantee insurance and title insurance pursuant to N.J.S.A. 17:46A–1 et seq. and 17:46B–1 et seq., respectively.

11:1–28.4 Types of insurance

(a) The following are the types of insurance which a company may be formed to transact under the stated paragraphs of N.J.S.A. 17:17–1:

1. Paragraph "a" means fire and allied lines, earthquake and growing crops;

2. Paragraph "b" means ocean marine, inland marine, automobile physical damage and aircraft physical damage;

3. Paragraph "e" means worker's compensation and employer's liability, automobile liability (bodily injury), automobile liability (property damage) and other liability;

4. Paragraph "f" means boiler and machinery;

5. Paragraph "g" means fidelity and surety;

6. Paragraph "i" means credit;

7. Paragraph "j" means burglary and theft;

8. Paragraph "k" means glass;

9. Paragraph "l" means sprinkler leakage and water damage;

10. Paragraph "m" means livestock;

11. Paragraph "n" means smoke and smudge; and

12. Paragraph "d" means accident and health insurance as defined in N.J.S.A. 17B:17–4.

(b) The following are the miscellaneous coverages allowed under N.J.S.A. 17:17–1, paragraph "o":

1. All loss to buildings and structures, including consequential loss, and against loss or damage to property of others, caused by an insured;

2. The perils of radioactive contamination and all other perils causing physical loss to nuclear energy installations and facilities including consequential loss; and

3. All other miscellaneous coverage, including, but not limited to, the following:

i. Loss or damage to property by epidemic;

ii. Loss or damage to property by power failure or mechanical breakdown;

iii. Loss or damage to property or any insurable interest therein caused by insects or by radiation resulting from atomic fission;

iv. Engine breakdown;

v. Loss or damage to property of the assured caused by falling of tanks or equipment for protecting property against fire, by explosion other than steam boilers, pipes, engines, motor, and machinery connected therewith (except fire);

vi. Loss resulting from the right to participate in associations or pools, such as NEPIA and NELIA, which associations or pools are authorized to write "All Risks" insurance involving nuclear fuel exposure;

vii. Economic security; and

viii. All other liability not covered under N.J.S.A. 17:17–1(e), including voluntarily assumed liability.

(c) A stock insurance company may be formed to transact solely the following lines of business:

1. Mortgage guarantee insurance, pursuant to N.J.S.A. 17:46A–1 et seq.; and

2. Title insurance, pursuant to N.J.S.A. 17:46B–1 et seq.

11:1–28.5 Feasibility study

(a) In order for an applicant to be granted a certificate of authority to transact property and casualty insurance in this State or, in the case of reciprocal insurance exchanges, to be issued a permit to solicit pursuant to N.J.S.A. 17:50–10, the requirements of this section shall be satisfied in addition to any other requirements in this subchapter or any other provision of law.

(b) Any applicant seeking to obtain a certificate of authority to transact property and casualty insurance in this State or, in the case of reciprocal insurance exchanges, seeking to obtain a permit to solicit pursuant to N.J.S.A. 17:50–10, shall first submit a feasibility study to the Commissioner which shall include, but not be limited to, the following:

1. A detailed plan of operation of the applicant which shall:

i. Include and explain its plans of operation;

ii. Explain its source of funding;

iii. Describe its marketing strategy;

iv. Describe its underwriting procedures and guidelines;

ii. In the case of reciprocal insurance exchanges, the ownership chart shall show the interrelationship between the parent and all affiliates of the attorney in fact engaged in the business of insurance and shall also show the relationship of the attorney in fact to the ultimate parent and illustrate all intermediate parent(s) having control of the attorney in fact as the term control is defined in (d)7i above;

8. An audited financial statement of the intermediate and ultimate parent(s) or attorney in fact, as applicable, prepared by a certified public accountant;

i. For the purposes of the audited financial statement, intermediate and ultimate parent means any person, directly or indirectly, who owns, controls, holds with power to vote, or holds proxies representing 10 percent or more of the voting securities of any other person;

ii. In the case of an attorney in fact, the Commissioner may accept a report other than an audited financial statement if, in his or her opinion, the structure of the attorney in fact is such that an audited financial statement is not prepared in the normal course of business;

9. A pro forma balance sheet of the company certified by an officer of the applicant;

10. A certified copy of the by-laws of the proposed insurer or reciprocal insurance exchange, as applicable;

11. A copy of the applicant's stock certificate if applicable;

12. Complete copies of the biographical sketches of the applicant's incorporators, directors and officers;

13. Any financing agreements with a bank or other financial institution;

14. Management, operating or expense sharing agreements;

15. An original affidavit of the officers and directors completed and signed in the format of Appendix C appended to this subchapter, which is hereby incorporated by reference as part of these rules;

16. Reinsurance agreements or proposed reinsurance programs;

17. A detailed written outline from the applicant explaining its plan of operations containing the information specified in N.J.A.C. 11:1–28.5(b)1, and a summary of the applicant's initial rating system which shall include:

i. Rates by lines of business;

ii. Statistical agent;

iii. Independent filings; and

iv. The rating bureau (if any);

18. A five year projection certified by a qualified actuary containing the information required by N.J.A.C. 11:1–28.5(b)3; and

19. Documents pertaining to authority to write workers' compensation insurance (if applicable).

11:1–28.10 Certificate of authority

(a) When satisfied that an applicant has complied with all of the requirements of this subchapter and all of the requirements of N.J.S.A. 17:17–1 et seq., 17:46A–1 et seq., 17:46B–1 et seq. and 17:50–1 et seq., as applicable, to entitle it to engage in business and that the proposed methods of operation of the applicant and the background of the officers and directors are not such as would render its operation hazardous to the public or its policyholders, the Commissioner shall issue a certificate to the applicant authorizing it to commence business. The Commissioner shall specify in the certificate the particular kind or kinds of insurance the applicant is authorized to transact.

(b) The Commissioner may refuse to issue a certificate of authority if he or she finds that any of the applicant's directors or officers has been convicted of a crime involving fraud, dishonesty or like moral turpitude or that said persons are not persons of good character and integrity.

(c) No corporation shall transact the business for which it is incorporated until it has received a certificate of authority from the Commissioner. Except for reciprocal insurance exchanges, if any corporation fails to obtain such certificate within one year from the date of certification of its certificate of incorporation by the Attorney General pursuant to N.J.S.A. 17:17–5, the corporation shall be dissolved and its certificate of incorporation shall be null and void.

(d) In clarification of N.J.A.C. 11:2–29.5(a)1i, if an applicant is granted authority to transact private passenger automobile insurance, the approval shall provide that if the applicant (insurer) later seeks to withdraw from transacting such business pursuant to N.J.A.C. 11:2–29, the period of time which such insurer must seek to place its business with a replacement carrier, which shall begin on the date of the Commissioner's approval of the plan of orderly withdrawal, shall be based on the time between the date of issuance of the certificate of authority and the date of the filing of a complete plan of orderly withdrawal as set forth in N.J.A.C. 11:2–29.4, as follows:

1. For insurers authorized to transact business up to two years, the period shall not exceed one year;

2. For insurers authorized to transact business beyond the period in (d)1 above up to four years, the period shall not exceed two years;

3. For insurers authorized to transact business beyond the period set forth in (d)2 above up to five years, the period shall not exceed three years;

4. For insurers authorized to transact business beyond the period set forth in (d)3 above up to six years, the period shall not exceed four years; and

5. For insurers authorized to transact business beyond the period set forth in (d)4 above, the period shall be established by the Commissioner pursuant to N.J.A.C. 11:2-29.5(a)1i, but shall not exceed five years.

(e) The provisions set forth in (d) above shall also apply to any private passenger automobile insurer seeking to withdraw on or after November 20, 1995. However, the provisions set forth in (d) above shall not apply to any insurer authorized or admitted to transact business acting as an approved replacement carrier for an insurer which has withdrawn from transacting private passenger automobile insurance pursuant to N.J.A.C. 11:2-29. If such replacement carrier seeks to withdraw from transacting private passenger automobile insurance, the time period over which such insurer shall be required to seek to place its business with an acceptable replacement carrier shall be governed solely by N.J.A.C. 11:2-29.5(a)1i, without regard to (d) above.

(f) As a condition of approving the application for certificate of authority, the Commissioner may limit the applicant's authority to write business, including a limitation on the amount of premium volume the applicant may write, for a period not to exceed five years, consistent with the applicant's feasibility study submitted pursuant to N.J.A.C. 11:1-28.5 and other applicable laws. In determining whether to limit the applicant's authority, the Commissioner shall consider all relevant factors, including, but not limited to:

1. The amount of capital and surplus of the applicant;

2. The resources available to service the business to be transacted; and

3. The applicant's proposed marketing methods and resources.

(g) In the case of private passenger automobile insurance, any limitation imposed pursuant to (f) above shall be based solely on a determination that exceeding such limitation would result in the insurer being or becoming in an unsafe or unsound financial condition, as determined consistent with the criteria set forth in N.J.S.A. 17:33B-19 and 17:33B-20.

(h) An insurer shall not limit its writings pursuant to any premium volume limitation imposed pursuant to (f) or (g) above until the insurer notifies the Department that it is approaching such limitation and the Department notifies the insurer to so limit its writings.

Amended by R.1995 d.604, effective November 20, 1995.
See: 27 N.J.R. 2854(a), 27 N.J.R. 4717(c).

11:1-28.11 Failure to comply with subchapter; denial of certificate of authority

Failure to submit the information required by this subchapter completely and accurately may result in the denial of a certificate of authority to transact property and casualty insurance in this State.

11:1-28.12 Severability

If any provision of this subchapter or the application thereof to any person or circumstance is held invalid, the remainder of the subchapter and the application of such provision to other persons or circumstances shall not be affected thereby.

APPENDIX A

Format for the Preparation of a Domestic

Property/Liability Insurance Company's

Certificate of Incorporation

1. On the face of the certificate, the title should be called the following:

   "CERTIFICATE OF INCORPORATION OF ______"

2. The introductory paragraph upon the face of said certificate should open as follows:

   "We, the undersigned, intending to form a corporation under Chapters 17 to 33 of Title 17 of the Revised Statutes of New Jersey as amended and supplemented, do hereby certify and state:"

   OR

   "This is to certify that we, the undersigned, intending to form a corporation under Title 17, Chapters 17 to 33 of the Revised Statutes of New Jersey as amended and supplemented, do hereby certify and state:"

   ******

NOTE: If the proposed company intends to write "health insurance" as defined in N.J.S.A. 17B:17-4 of the life and health insurance code, as part of paragraph "d" of N.J.S.A. 17:17-1, the introductory paragraph upon the face of said certificate should open as follows:

"This is to certify that we, the undersigned, intending to form a corporation under Title 17, Chapters 17 to 33 and Title 17B, Chapter 17-4 of the Revised Statutes of New Jersey as amended and supplemented, do hereby certify and state:

3. FIRST: The name of the corporation shall be: (Name of the Proposed Corporation)

4. SECOND: The principal office of the corporation in the State of New Jersey, which shall also be its registered office, is to be located at (name and number of the street, road, etc.), (City or Township of ______, or Borough of ______), County of ______, State of New Jersey, and the registered agent upon whom process may be served shall be (the corporation and/or a name of an individual).

v. Explain the administrative and legal arrangements to be made for the adjustment of claims and the recovery of salvage and subrogation;

vi. Describe its territory of operation;

vii. Describe the qualifications of the senior officers of the applicant responsible in the areas of claims, underwriting and investment;

viii. Describe the proposed maximum amount of coverage by line of business;

ix. Describe the proposed retention by line of business;

x. Describe the proposed reinsurance arrangements;

xi. Describe the proposed methods for the handling of consumer complaints;

xii. Include the applicant's proposed organization chart; and

xiii. Describe the proposed dividend policy;

2. A summary of the applicant's initial rating system to the extent its proposed operations are regulated which shall include:

i. Rates by lines of business;

ii. Proposed statistical agents (if any);

iii. Independent filings; and

iv. The rating bureau (if any);

3. A five year projection of the following certified by a qualified actuary and accompanied by a narrative explaining the sources of anticipated premium and all assumptions made in developing the entire projection:

i. Assets, liabilities and surplus and other funds in the format of the Assets page and the Liabilities and Surplus and Other Funds page in the Annual Statement representing the start-up year of the applicant and the five successive year-ends;

ii. Underwriting and investment income in the format of the Underwriting and Investment Exhibit, Statement of Income in the Annual Statement for each of the five years;

iii. The following information by line of business for each of the five years (the line of business classifications shall be those set forth in the Underwriting and Investment Exhibit, Part Two in the Annual Statement):

(1) Premiums earned;

(2) Losses incurred;

(3) Loss expenses incurred; and

(4) Ratios of the sum of the losses and loss expenses to premium earned; and

iv. The projected values required in the Underwriting and Investment Exhibit, Part Four—Expenses in the Annual Statement; and

4. The name of the proposed insurer or reciprocal insurance exchange which shall be reviewed for acceptability by the Commissioner, and if acceptable, shall be reserved for the time that such proposed insurer's or reciprocal insurance exchange's application is pending.

(c) In addition to the requirements in (b) above, the Commissioner may require any additional information he or she deems necessary in order to make an adequate evaluation of the applicant.

(d) Each applicant shall submit a $1,000 filing fee with the filing of the information required by (b) above to cover the costs of Department review of such information.

(e) Within 60 days from the receipt of a complete feasibility study and filing fee required by (b) and (d) above, the Commissioner shall notify the applicant in writing that he or she either accepts or rejects the applicant's feasibility study. If the Commissioner notifies the applicant that the feasibility study is accepted, the applicant shall comply with the additional information requirements set forth in N.J.A.C. 11:1–28.6.

11:1–28.6 Additional information requirements

(a) After review and acceptance of the feasibility study pursuant to N.J.A.C. 11:1–28.5, an applicant seeking to obtain a certificate of authority or a permit to solicit in the case of reciprocal insurance exchanges, shall submit the following to the Commissioner:

1. The corporation's original certificate of incorporation, which the Department will submit for review and certification by the State Attorney General of New Jersey.

i. A suggested form for the preparation of a certificate of incorporation is appended to this subchapter as Appendix A, which is hereby incorporated by reference as part of these rules.

ii. After approval and certification by the State Attorney General of New Jersey, the corporation shall submit the certificate of incorporation to the county clerk of the county of the corporation's domicile for recording. The corporation shall then file the original recorded certificate of incorporation with the Commissioner.

iii. In the case of proposed reciprocal insurance exchanges, in lieu of the requirements in (a)1i and ii above, the attorney in fact, if a corporation, shall file with the Commissioner a copy of its certificate of incorporation. The attorney in fact shall also file a declaration containing the information required in

N.J.S.A. 17:50–3 and an instrument authorizing service of process on the Commissioner, pursuant to N.J.S.A. 17:50–4;

2. Biographical affidavits for each incorporator, officer and director of the proposed insurance corporation or attorney in fact, as applicable, in the format of Appendix B appended to this subchapter, which is hereby incorporated by reference as part of these rules; and a criminal history record check request pursuant to N.J.A.C. 11:1–28.7; and

3. The by-laws of the proposed insurer or reciprocal insurance exchange, as applicable.

(b) All filings required by this subchapter or other information reasonably deemed necessary by the Commissioner or otherwise required by law shall be sent to:

New Jersey Department of Insurance
Financial Exams Division
20 West State Street
CN 325
Trenton, New Jersey 08625
Attention: Formation of domestic companies

11:1–28.7 Criminal history record check

(a) The applicant shall submit New Jersey State Police Requests for Criminal History Record Information and the fee required to pay for their processing, for each officer, director, incorporator or stockholder with controlling interest of the proposed insurer or attorney in fact and for each member of the board of trustees, as applicable.

(b) Upon request by the Commissioner, each officer, director, incorporator or stockholder with controlling interest of the proposed insurer or attorney in fact and each member of the board of trustees, as applicable, shall have impressions taken and submit them to the Commissioner on a New Jersey State Police fingerprint card with the fee required to pay for their processing.

(c) Upon request by the Commissioner, an applicant shall submit copies of any complaint, indictment, judgment of conviction or other related documents.

11:1–28.8 Permit to solicit

In the case of reciprocal insurance exchanges only, after review and evaluation of the information filed pursuant to N.J.A.C. 11:1–28.5, 28.6 and 28.7, the Commissioner may issue a permit to solicit to such reciprocal exchange as provided in N.J.S.A. 17:50–10. After such permit is issued, such proposed reciprocal exchange shall comply with the remaining sections of this subchapter.

11:1–28.9 Organization examination

(a) A stock company shall deposit the whole amount of capital stock set forth in the certificate of incorporation and the required minimum surplus in cash, and a mutual company shall deposit the amount of cash equal to the required minimum net assets, for all lines of insurance such stock or mutual company is authorized to write pursuant to its certificate of incorporation. A reciprocal insurance exchange shall deposit the required minimum capital and surplus requirements pursuant to N.J.S.A. 17:50–5.

(b) All applicants shall also submit a security deposit pursuant to N.J.S.A. 17:20–1, 17:46B–7 and 17:50–6, as applicable, registered in the following format:

"Commissioner of Insurance of the State of New Jersey, as trustee, in trust for the benefit and security of the policyholders of (Name of company F.I.D. No.)."

(c) After the required capital and surplus amounts have been deposited and credited in cash to the applicant and a security deposit has been filed with the Commissioner pursuant to (a) and (b) above, the applicant shall notify the Commissioner in writing that such deposits have taken place. Within 30 days after such notification the Department will contact the applicant and arrange for an organization examination to be conducted on the site of the applicant's home office.

(d) The applicant shall make available to the Department for review and copy as necessary to conduct an organization exam the following, without limitation:

1. The Certificate of Incorporation;

2. Certified copies of the incorporators', stockholders', company's and attorney in fact's organization resolutions, as applicable;

3. The names, home addresses (including zip codes) and occupations of directors elected;

4. The names and titles of the applicant's officers;

5. The name and address of the bank in which the securities are deposited and the person to contact to verify securities owned;

6. The name of the applicant's registered agent and the resolution authorizing him to accept service of process;

7. A complete ownership chart depicting a diagram of ultimate control in the format of Schedule Y—Organization Chart contained in the Annual Statement;

i. For the purposes of the ownership chart, control exists if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing five percent or more of the voting securities of any other person;

5. THIRD: The kinds of insurance to be transacted by the corporation shall be the kinds of insurance specified by the following paragraphs under N.J.S.A. 17:17–1 and 17B:17–4:

   (a) Against direct or indirect, loss or damage to property, including loss of use or occupancy by fire, etc.

   ALL PARAGRAPHS DESIRED MUST BE SPELLED OUT IN FULL. Paragraphs "c" and "h" may not be included. Coverages available under paragraph "o" are on an attached list. If the corporation desires to write any coverages under paragraph "o", these must also be spelled out in full. If health insurance is desired, 17B:17–4 must be quoted.

6. FOURTH: The corporation is to be a stock company.

7. FIFTH: The amount of capital stock of the corporation shall be $______ divided into ______ shares of common stock having a par value of $______ per share. See 17:17–8. The whole amount of the capital stock set forth in the certificate of incorporation must be actually paid in.

8. SIXTH: The duration of the corporation shall be perpetual.

At Option of the Company:

9. SEVENTH: The corporation may issue both participating and non-participating policies with respect to any kind of insurance which the corporation is authorized to transact. Dividends shall be in accordance with rates and rules applicable to such kind or kinds of insurance as may be determined by the Board of Directors, subject to statutory requirements. The Board of Directors shall have the power to adopt by-laws pertaining to such declaration and payment which, in their judgment, seems necessary or desirable.

10. EIGHTH: The principal officers of this corporation shall be a Chairman of the Board of Directors, one or more Vice Chairmen of the Board of Directors, a President, one or more Vice Presidents, a Secretary, a Treasurer, and such other officers as the Board of Directors may determine to elect in accordance with the provisions of the by-laws of this corporation by resolution adopted by a majority of the entire Board. All officers shall hold office for a term of one year unless sooner removed by the entire Board of Directors.

11. NINTH: The Board of Directors, in addition to all other rights and powers bestowed upon it by law, shall have the power, without the assent or vote of the shareholders, to make, alter, and repeal by-laws as set forth in the by-laws. (By-laws made by the Board may be altered, repealed, and new by-laws made by the shareholders.)

12. TENTH: The company reserves the right to amend, alter, change, or repeal any provision contained in this certificate, in the manner now or hereafter prescribed by law. All rights and powers conferred herein on shareholders, directors, and officers are subject to this reserved power.

13. ELEVENTH: The names and addresses of the incorporators are as follows:

    (ten or more) Name Typed ______,
    Home Address ______

14. TWELFTH: The names and addresses of the first Board of Directors and Officers of the corporation and their term of office are as follows:

    Name Typed ______ Home Address
    ______ Term of Office

IN WITNESS WHEREOF, we the undersigned have hereunto set our hands effective this ______ day of ______, 19__. (Ten or more names typed and official signatures)

______ (L.S.)
(Names)

STATE OF ______)
ss
COUNTY OF ______)

On this ______ day of ______, 19__, before me a Notary Public within and for said County, personally appeared (ten or more names), ______, ______, ______, known to be persons named as incorporators and who executed this Certificate of Incorporation and, who being duly sworn, depose and say that they executed the same as their free act and deed and for the uses and purposes therein expressed.

______
Notary Public

(Notary Seal)

APPENDIX B

BIOGRAPHICAL AFFIDAVIT

(Print or Type)

Name and Address of Company:

______
______
______

In connection with the above named company, I herewith make representations and supply information about myself as hereinafter set forth. (Attach addendum or separate sheet if space hereon is insufficient to answer any question fully.) IF ANSWER IS "NONE" OR "NO EXCEPTIONS", SO STATE:

1. Affiant's Full Name: ______
   Marital Status: ______
2. Other Names Used at any Time: ______

3. Date of Birth: ________ Place of Birth: ________
   Color of Hair: ________ Eyes: ________
   Height: ________ Weight: ________
4. Social Security No.: ________
5. Schooling: High School ________
   College ________
   Graduate ________
   or Professional ________
   Degree (List) ________

   (ATTACH LIST OF ALL EDUCATIONAL INSTITUTIONS AND LOCATION—CITY AND STATE)
6. (Member of Professional Societies or Associations List): ________
7. I control directly or indirectly, or own legally or beneficially 10% or more of the outstanding capital stock (in voting power) of, the following insurers: ________

7a. If any of the above stock is pledged or hypothecated in any way, please detail fully: ________
8. Present Chief Occupation:
   Position or Title ________
   Employer's Name ________
   Address ________

   How long in this Position? ________
   How long with this employer? ________ Where? ________
9. Other jobs, positions, directorates, or officerships concurrently held at present: ________
10. Complete Employment Record for Past 20 Years:

DATES	EMPLOYER AND ADDRESS	TITLE

(Use Reverse Side If Necessary)

11. For the last 10 years, I have lived at the following address or addresses:

ADDRESS	CITY	DATES

12. I have never been adjudicated as bankrupt, except as follows: ________
13. I have never been convicted or had a sentence imposed, suspended or had pronouncement of a sentence suspended or been pardoned for conviction of, or pleaded guilty of or nolo contendere to an information or an indictment charging a felony for embezzlement, theft or larceny, mail fraud, or violating any corporate securities statute or any insurance law, nor have I been the subject of a cease and desist order of any federal or state securities regulatory agency, except as follows: ________
14. During the last 10 years, I have neither been refused a professional, occupational, or vocational license by any public or governmental licensing agency or regulatory authority, nor has such a license held by me ever been suspended or revoked, except as follows: ________

14a. I presently hold or have held in the past the following professional, occupational, and vocational licenses issued by public or governmental licensing agencies or authorities (state date license issued, issuer of license, date terminated, reason for termination): ________

15. I have never been an officer, director, trustee, investment committee member, key employee, or controlling stockholder of an insurer which, while I occupied any such position or capacity with respect to it, became insolvent or was placed in conservatorship or was enjoined from or ordered to cease and desist from violating any securities or insurance law, except as follows: ________
16. The certificate of authority or license to do business of any insurance company of which I was an officer, director or key management person has never been suspended or revoked while I occupied such position, except as follows: ________
17. No insurer of which I was an officer, director or key management person at the time has ever been denied or refused or voluntarily withdrawn its application for a license or certificate of authority, except as follows: ________
18. Neither I nor any company of which I was an officer, director or key management person at the time has ever been subject to any civil action alleging fraud, negligence or violation of any applicable racketeering statutes (state or federal), except as follows: ________

Dated and signed this ______ day of ________
at ________

I hereby certify under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge and belief and further, by the affixation of my signature hereon, I hereby give my certified consent to the New Jersey Department of Insurance to verify the representations and information supplied in response to all questions on the biographical data form, with any Federal, State, municipal or other agency which may have knowledge and/or information thereof.

____
(Signature of Affiant)

State of ________)
ss
County of ________)

Personally appeared before me the above named ______, personally known to me, who, being duly sworn, deposes and says that affiant executed the above instrument and that the statements and answers contained therein are true and correct to the best of affiant's knowledge and belief.

Subscribed and sworn to before me this ______ day of ______ 19__

____
Notary Public

My Commission Expires______

APPENDIX C

AFFIDAVIT OF OFFICERS AND DIRECTORS OF

STATE OF NEW JERSEY)
ss
COUNTY OF)

The undersigned ________________ President, ________________ Secretary, and ________________
____
____
____
a majority of the directors of ______ Insurance Company, a corporation formed under Title 17, Chapter 17, of the "Revised Statutes", and having its principal office at No. ______ Street, in the ______ of ______ in said State, being duly sworn, on their respective oaths do depose and say that they are the officers and directors of the said corporation as above mentioned; that the amount of the capital stock of the said company set forth in its certificate of incorporation is $______ consisting of ______ shares of a par value of $______; that the whole amount of such capital has been subscribed for and taken in good faith by diverse individuals, firms and/or corporations and has been paid in cash as follows:

___ Shares @ ___% of par value or $______ per share amounting to $____
___ Shares @ ___% of par value or $______ per share amounting to ____
___ Shares @ ___% of par value or $______ per share amounting to ____
___ Shares @ ___% of par value or $______ per share amounting to ____
Total Paid In .... $______
being applicable to Capital .... $______
Surplus .... ______
Other Funds (to be specified) .... ______
.... $______

Said deponents further severally depose and say that the assets arising from the sale of said capital stock was and is *bona fide* the property of said company, and is now possessed by it, in its corporate name and capacity, either in money or in such stocks, bonds, bonds and mortgages, and other investments required and allowed by law, and that no part of the said capital has been withdrawn, pledged or in any manner impaired, and that no part or portion thereof has been loaned or advanced to said company by any persons, partnership or corporation, for the purpose of being used as such capital on the organization of said company.

And the deponents further severally depose and say that all the books, accounts and records containing the transactions with the subscribers to capital and in the acquisition of assets have been submitted to ________ the person appointed by the Commissioner of Insurance of the State of New Jersey to examine the capital, securities and affairs of said company on its organization and that to such person there were exhibited the assets composing the original capital and surplus of said company paid in by the stockholders on its organization.

And the said deponents further severally say, according to the best of their respective knowledge, information and belief, that there is no intention or design existing on the part of any person or persons whomsoever, to withdraw any part or portion of the said moneys and capital, until the same is wanted for investment or to be otherwise legitimately used or appropriated to and for the sole and exclusive use and benefit of the said company in its corporate capacity, in strict conformity with the statute in such case made and provided; and that there is not any agreement, arrangement or understanding, either expressed or implied, made or existing between the said company or its officers or directors, or any or either of them, or any other person or persons, to the effect or import that the money advanced or paid in by any stockholder shall be loaned or returned to him, or to any stockholder, or any other person or persons, for his or their use or accommodation, upon the hypothecation of stock of said company as security therefor, or upon any other securities, terms or conditions whatsoever; and further, that the said company is not, nor are any of its officers or directors, in any way, manner or form, pledged or committed to make any investment, loan or disposition of the said capital, or any part or portion thereof, which is not in strict conformity, in all respects, with the statute of the State of New Jersey hereinbefore recited.

And the deponents further severally depose and say, that they do not know and are not informed of any matter, cause or thing whatsoever, which in their judgment or belief, can or will, in any manner or form, impair, lessen or jeopardize the said capital or any part thereof.

____
____
____
____

Subscribed and sworn to before me at ________ N.J., this ________ day of ________ A.D. 19__

____
____
(Official Title)

SUBCHAPTER 29. TEMPORARY CERTIFICATE OF AUTHORITY

11:1–29.1 Purpose

This subchapter sets forth the filing requirements for an insurer to obtain a temporary certificate of authority which authorizes an insurer to transact private passenger automobile insurance in this State pursuant to N.J.S.A. 17:33B–29 while its application for a formal certificate of authority pursuant to N.J.A.C. 11:1–10 is pending or upon certification by the insurer that it intends to file such an application within 180 days of the date of its application for a temporary certificate of authority.

11:1–29.2 Scope

This subchapter applies to all insurers seeking to obtain a temporary certificate of authority to transact private passenger automobile insurance in this State pursuant to N.J.S.A. 17:33B–29.

11:1–29.3 Definitions

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

"Actuary" means a fellow in good standing of the Casualty Actuarial Society with three years recent experience in loss reserving or an associate in good standing of the Casualty Actuarial Society with five years recent experience in loss reserving.

"Annual Statement" means the form of statement that is described in N.J.S.A. 17:23–1.

"Applicant" means an insurer, presently authorized to transact private passenger automobile insurance in another state, which is applying for a temporary certificate of authority to transact private passenger automobile insurance in this State while its application for a "formal" certificate of authority pursuant to N.J.A.C. 11:1–10 is pending or upon certification that it intends to file such an application within 180 days of the date of its application for a temporary certificate of authority.

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

"Formal certificate of authority" means a certificate of authority issued pursuant to N.J.S.A. 17:32–1 et seq. and N.J.A.C. 11:1–10.

"NAIC" means the National Association of Insurance Commissioners.

"Private passenger automobile insurance" means direct insurance on private passenger automobiles as defined in N.J.S.A. 39:6A–2.

"Temporary certificate of authority" means a certificate issued by the Commissioner pursuant to N.J.S.A. 17:33B–29 and this subchapter which authorizes an insurer to transact the business of private passenger automobile insurance in this State.

11:1–29.4 Temporary certificate of authority; issuance

(a) The Commissioner may issue a temporary certificate of authority which authorizes an insurer to transact the business of private passenger automobile insurance in this State to any insurer which:

1. Is organized as a stock or mutual company;

2. Is currently authorized and licensed to issue private passenger automobile insurance policies or make contracts of private passenger automobile insurance in one or more states of the United States;

3. Meets the current capital or asset requirements of N.J.S.A. 17:17–1 et seq. for capital stock or mutual companies which insure private passenger automobiles. The Department shall make an adjustment of surplus regarding all applicants as follows:

i. There shall be deducted from unassigned funds special deposits not held for the protection of all policyholders; and

ii. All applicants shall include in their Annual Statement a provision for unauthorized reinsurance pursuant to the calculation required in page 3 of the Annual Statement blank for Liabilities, Surplus and Other Funds in connection with the reinsurance in all companies not authorized to transact business in New Jersey. Where the liability is based on the calculation for some other state, the Commissioner may accept an amount of these items slightly larger than that required for New Jersey. This penalty may be adjusted for subsequent legal action regarding the license status of reinsurers in the State of New Jersey or in other jurisdictions; and

4. Has complied with the deposit requirements pursuant to N.J.S.A. 17:20–1 et seq.

(b) Any insurer applying for a temporary certificate of authority shall submit the following to the Commissioner:

1. A completed admission application form on a form provided by the Commissioner;

2. A certified copy of the applicant's certificate of incorporation;

3. Certified copies of the applicant's certificate of authority and certificate of good standing from the applicant's state of domicile;

4. A certified copy of the applicant's most recent Annual Statement;

5. A statement of opinion, by a qualified actuary, relating to the applicant's loss and loss adjustment expense reserves for all lines of business written by such applicant, containing the information required by N.J.A.C. 11:1–21 or a certified copy of the applicant's most recent loss reserve opinion statement required by the applicant's state of domicile;

6. An annual audited financial report conforming to the requirements of N.J.A.C. 11:2–26 or a certified copy of the applicant's most recent audited financial report required by the applicant's state of domicile which is substantially similar to the report required by N.J.A.C. 11:2–26;

7. A certified copy of the applicant's certificate of deposit which shall show that such applicant has complied with the deposit requirements in N.J.S.A. 17:20–1 et seq.;

8. A certified copy of a report of the most recent examination of the applicant's affairs by the department of insurance or its equivalent, of the applicant's state of domicile;

9. An appointment, by the applicant, of the Commissioner as attorney for service of process on a form provided by the Commissioner;

10. A copy of the applicant's quarterly financial statements for the current year, in the NAIC format, and for such other periods of time as the Commissioner may require;

11. Where applicable, a certified copy of the filing made pursuant to the Holding Company Act of the applicant's state of domicile, for the last fiscal period, supplemented as necessary to meet the requirements of N.J.S.A. 17:27A–3(a) and (b) and applicable Securities and Exchange Commission filing requirements;

12. Modified NAIC biographical affidavits to be completed by all directors and senior officers of the applicant on a form prescribed and provided by the Department;

13. A listing of all administrative, civil or criminal actions, orders, proceedings and determinations thereof to which the applicant, or its affiliates or any of its directors or principal officers have been subject, due to an alleged violation of any law governing insurance operations in any jurisdiction during the preceding 10 years. Where the alleged violation is a felony or its equivalent in a jurisdiction which does not use this designation of a crime, such actions, orders, proceedings and determinations shall include violations not related to insurance operations. If a license has been refused, suspended or revoked by any jurisdiction, the applicant shall furnish an explanation and a copy of any orders, proceedings and determinations related thereto;

14. A corporate plan of operation, including, but not limited to, a summary of the applicant's reinsurance program on assumed and ceded business, indicating the names of the reinsurers, retentions, maximum risks, types of contracts (such as pro rata), excess of loss and any other information which may be relevant to this part of the applicant's operation. Additional information may be requested by the Department in order to supplement or clarify information already provided by the applicant; and

15. A statement certified by an officer of the applicant that:

i. The applicant has filed, or intends to file within 180 days of the date of its application for a temporary certificate of authority, an application for formal admission pursuant to N.J.A.C. 11:1–10; and

ii. The applicant is familiar with the requirements for formal admission set forth in N.J.A.C. 11:1–10 and believes that it meets or will meet these requirements. The statement shall also indicate any waiver the applicant intends to request pursuant to N.J.A.C. 11:1–10.4(a)5iii.

(c) Any application for a temporary certificate of authority shall be deemed approved if not disapproved by the Commissioner within 30 days from the receipt of an application which, in the opinion of the Commissioner, contains all of the information required by (b) above.

11:1–29.5 Temporary certificate of authority; renewal

(a) A temporary certificate of authority shall be effective for a period of one year and may be renewed for only one additional year. No temporary certificate of authority shall be issued or renewed on or after January 1, 1993.

(b) If the temporary certificate of authority will expire prior to the issuance of a formal certificate of authority, the insurer shall apply for renewal of its temporary certificate of authority by filing an application containing the information specified in N.J.A.C. 11:1–29.4(b)3, 4, 5, 6, 7, 8 and 10, and any changes or amendments to the other information submitted for the initial application. Applications for renewal must be submitted not earlier than 60 days nor later than 30 days prior to the expiration of the temporary certificate of authority.

(c) If the Commissioner finds that the insurer has failed to apply for a formal certificate of authority, has failed to actively pursue gaining formal admission or has been denied a formal certificate of authority, prior to the expiration of its temporary certificate of authority, such insurer may apply to renew its temporary certificate of authority as provided in (b) above.

1. The insurer shall also submit a detailed statement explaining why it has failed to apply for a formal certificate of authority, has failed to actively pursue gaining formal admission or, if denied a formal certificate of authority, what actions it has taken and is taking to cure the deficiencies that resulted in denial.

2. Pending a determination of such insurer's application for renewal, the Commissioner may permit the insur-

er to continue to service existing business pursuant to terms and conditions he or she may impose.

3. Any temporary certificate of authority renewed pursuant to this subsection may be subject to terms and conditions to be met within specified periods of time as determined by the Commissioner. Failure to meet any term or condition within the time prescribed may result in the revocation of the insurer's temporary certificate of authority.

(d) If an insurer has not been issued a formal certificate of authority, the insurer shall submit a plan of orderly withdrawal pursuant to N.J.S.A. 17:33B-30 containing information that the Commissioner may prescribe not later than 90 days prior to the expiration of the renewed temporary certificate of authority or the expiration of a temporary certificate of authority issued on or after January 1, 1992. Upon review and approval of the plan of orderly withdrawal, the Commissioner may extend the duration of the temporary certificate of authority for the time deemed necessary to effectuate the approved plan.

11:1-29.6 Applicability of insurance laws

All insurers authorized to transact business pursuant to a temporary certificate of authority are subject to all applicable laws in Subtitle 3 of Title 17 of the Revised Statutes and all applicable regulations in Title 11 of the New Jersey Administrative Code.

11:1-29.7 Penalties

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

11:1-29.8 Severability

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

SUBCHAPTER 30. (RESERVED)

SUBCHAPTER 31. SURPLUS LINES INSURER ELIGIBILITY

Authority

N.J.S.A. 17:1-8; 17:1-8.1; 17:1C-6(e); and 17:22-6.40 et seq.

Source and Effective Date

R.1994 d.102, effective February 22, 1994.
See: 25 N.J.R. 1819(a), 26 N.J.R. 1096(a).

11:1-31.1 Purpose and scope

(a) This subchapter sets forth the filing requirements and procedures for unauthorized insurers which seek to become eligible surplus lines insurers in this State in accordance with the Surplus Lines Law, N.J.S.A. 17:22-6.40 et seq.

(b) This subchapter applies to unauthorized insurers which seek to become eligible surplus lines insurers in this State and currently eligible surplus lines insurers.

11:1-31.2 Definitions

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

"Alien applicant" means an applicant which is an unauthorized insurer formed under the laws of any country other than the United States, its states, districts, territories, commonwealths, possessions or the Panama Canal Zone.

"Applicant" means an unauthorized foreign or alien insurer applying for a certificate of eligibility in this State.

"Certificate of eligibility" means a certificate issued to an unauthorized insurer by the Commissioner pursuant to N.J.S.A. 17:22-6.45 evidencing that it is an eligible surplus lines insurer in this State.

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

"Department" means the New Jersey Department of Insurance.

"Eligible surplus lines insurer" or "surplus lines insurer" means an unauthorized foreign or alien insurer in which an insurance coverage is placed or may be placed pursuant to N.J.S.A. 17:22-6.40 et seq.

"Foreign applicant" means an applicant which is an unauthorized insurer formed under the laws of a jurisdiction of the United States other than this State.

"NAIC" means the National Association of Insurance Commissioners.

"Surplus lines agent" means a person licensed pursuant to N.J.S.A. 17:22A-1 et seq. and N.J.A.C. 11:17 with the authority to place insurance coverages on behalf of unauthorized insurers.

"Unauthorized insurer" means a foreign or alien insurer that is not duly authorized to transact business in this State by a current certificate of authority issued pursuant to the laws of this State.

11:1-31.3 General requirements

(a) No surplus lines agent shall place any coverage in this State with any unauthorized insurer which is not an eligible surplus lines insurer in this State, except for the placement of an insurance risk pursuant to N.J.S.A. 17:22-6.45(h), where insurance on a risk eligible for export is not procurable from eligible surplus lines insurers. No unauthorized insurer shall become an eligible surplus lines insurer unless made eligible by the Commissioner in accordance with N.J.S.A. 17:22-6.45 and this subchapter.

(b) No certificate of eligibility shall be issued to an applicant unless it demonstrates the following:

1. That it is either:

i. Currently authorized in its state or country of domicile as to the kind or kinds of insurance proposed to be so placed for not less than one year preceding the application for eligibility; or

ii. The subsidiary of an admitted insurer or eligible surplus lines insurer that has been admitted or eligible for not less one year preceding the application for eligibility;

2. Satisfactory evidence of financial integrity. Satisfactory evidence of financial integrity may be demonstrated if the applicant satisfies all of the requirements for the issuance of a certificate of eligibility pursuant to N.J.S.A. 17:22-6.40 et seq. and this subchapter, and after review of the information required to be submitted pursuant to this subchapter or from any other available source (for example, the NAIC, A.M. Best and Standard and Poor's), the Commissioner does not find:

i. That any factors exist from which he or she may determine that the applicant is in a hazardous financial condition as set forth in N.J.A.C. 11:2-27; or

ii. That the applicant's condition or methods of operation are such as would render its operation hazardous to the public or policyholders in this State;

3. That it has capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction, of not less than twice the amount of the minimum capital and surplus required by this State for like admitted insurers;

i. An alien applicant shall also maintain in the United States an irrevocable trust fund in a state or federally chartered bank in an amount not less than $2,500,000 for the protection of all of its policyholders in the United States. The trust fund shall conform to the requirements set forth in N.J.S.A. 17:22-6.45(d)(1);

4. In lieu of the capital and surplus requirements and trust fund requirements set forth in (b)3 and (b)3i above, any Lloyd's or other similar group of alien insurers, which group includes unincorporated individual insurers shall maintain a trust fund of not less than $50,000,000 as security to the full amount thereof for all policyholders and creditors in the United States of each member of the group. The trust fund shall conform to the requirements set forth in N.J.S.A. 17:22-6.45(d)(1);

5. An insurance exchange created by laws of another state may be approved by the Commissioner as an eligible surplus lines insurer. Such an insurance exchange shall comply with the applicable financial requirements set forth in N.J.S.A. 17:22-6.45(d)(1) in addition to the requirements set forth in this subchapter;

6. That it has complied with all of the requirements of N.J.S.A. 17:22-6.45 and this subchapter to entitle it to transact business as an eligible surplus lines insurer in this State;

7. That its condition or methods of operations are not such as would render its operation hazardous to the public or policyholders in this State;

8. That it is of good reputation as to providing service to the policyholders and the payment of losses and claims; and

9. That its management is not incompetent or untrustworthy, or so lacking in insurance company managerial experience as to make the proposed operation hazardous to the insurance buying public; and that it is not affiliated directly or indirectly through ownership, control, reinsurance transactions or other insurance or business relations, with any person or persons whose business operations are or have been detrimental to policyholders, stockholders, investors, creditors or to the public.

(c) All information submitted pursuant to this subchapter shall be sent to:

New Jersey Department of Insurance
Division of Financial Examinations
Attention: Surplus Lines Insurer Eligibility
CN-325
Trenton, New Jersey 08625-0325

11:1-31.4 Certificate of eligibility; filing requirements

(a) All applicants shall submit the following to the Commissioner:

1. A copy of the applicant's charter as currently in force, certified by the lawful custodian of the original document;

2. A copy of the applicant's bylaws as currently in force, certified by a senior officer of the applicant;

3. A certified copy of the applicant's current certificate of authority from the applicant's state or country of domicile;

4. A certified copy of a report of the most recent examination of the applicant's affairs by the department of insurance, or its equivalent, of the applicant's state or country of domicile;

5. An annual audited financial report conforming to the requirements of N.J.A.C. 11:2-26 or a certified copy of the applicant's most recent audited financial report required by the applicant's state or country of domicile which is substantially similar to the report required by N.J.A.C. 11:2-26;

6. Directors' and officers' biographical affidavits on a form provided by the Commissioner;

7. A statement of opinion by qualified actuary, relating to the applicant's loss and loss adjustment expense reserves for all lines of business written by the applicant, containing the information required by N.J.A.C. 11:1–21;

8. A summary of the applicant's assumed and ceded reinsurance business, indicating the treaty parties, retentions, maximum risks, types of contract (that is, prorata, facultative, etc.) and any other information which may be relevant to the applicant's reinsurance portfolio, including, but not limited to, such information necessary to demonstrate that any credit for reinsurance shown in the applicant's financial statements as either an asset or deduction from liability is allowed pursuant to N.J.S.A. 17:51B–1 et seq. and N.J.A.C. 11:2–28;

i. The Department may require that the applicant file a copy of any specific reinsurance treaty or contract to address questions or concerns based upon the Department's review of the summary of assumed and ceded reinsurance business;

9. If the applicant is a member of a holding company system, a certified copy of the information filed pursuant to the holding company act of the state, district, territory, commonwealth, possessions or country of domicile, supplemented as necessary to meet the requirements of N.J.S.A. 17:27A–3 and applicable Securities and Exchange Commission requirements pursuant to 15 U.S.C. 77a et seq. and 15 U.S.C. 78a et seq., including the names of all shareholders of record who control, either directly or indirectly, five percent or more of the applicant's outstanding shares;

10. A listing of all jurisdictions in which the applicant has applied for authorization to transact the business of insurance as a licensed insurer or surplus lines insurer during the preceding 10 years, including the dates and results of such application;

11. A listing of all jurisdictions from which the applicant has withdrawn during the preceding 10 years, including the reasons for withdrawal;

12. A listing of all administrative, civil or criminal actions, orders, proceedings and determinations thereof to which the applicant, its affiliates, or any of its directors or officers have been subject, due to an alleged violation of any law governing insurance operations in any jurisdiction during the preceding 10 years. Where the alleged violation is a felony or its equivalent, such criminal actions, orders, proceedings and determinations shall also include violations unrelated to insurance operations. If a license has been refused, suspended or revoked by any jurisdiction, the applicant shall furnish an explanation and a copy of any orders, proceedings and determinations related thereto;

13. A description of the applicant's present business plan or plans for conducting an insurance business, including, but not limited to:

i. The geographical areas in which the applicant currently conducts business;

ii. The kinds of insurance the applicant currently writes;

iii. The applicant's current marketing methods;

iv. A summary of the applicant's current methods for establishing premium rates; and

v. A description of agency systems, including any managing general agency contracts;

14. A proposed plan for conducting insurance business in this State, including, but not limited to:

i. The geographical area in which the applicant intends to conduct business;

ii. The kinds of insurance the applicant intends to write;

iii. The applicant's proposed marketing methods;

iv. The applicant's proposed methods for the establishment of premium rates; and

v. A three year forecast of anticipated premiums in this State by line of business;

15. A certification signed by an officer of the applicant that it will comply with the following conditions for continued surplus lines eligibility upon being issued a certificate:

i. For all applicants:

(1) Annually file with the Department a statement of opinion by a qualified actuary relating to the applicant's loss and loss adjustment expense reserves for all lines of business written by the applicant which meets the requirements of N.J.A.C. 11:1–21, on or before June 30 (for foreign applicants) or on or before September 1 (for alien applicants) of each year;

(2) Except insurance exchanges, submit a nonrefundable, one time payment of $25,000 to the New Jersey Surplus Lines Insurance Guaranty Fund, pursuant to N.J.S.A. 17:22–6.75;

(3) Maintain a net premiums to surplus ratio for all jurisdictions of 3:1 or lower; and a gross premiums to surplus ratio for all jurisdictions of 6:1 or lower. Where the surplus lines insurer cedes 100 percent of its premium to an intercompany reinsurance pool within the same holding company as the insurer, the gross premiums to surplus ratio requirement set forth in this subchapter shall apply to the pool, provided that the Commissioner may evaluate the results of the individual participating insurer as necessary to determine whether its condition and methods of operation are such as would render its operation hazardous to the public or policyholders in this State;

(4) Advise the Department within 30 days of any changes in the applicant's chief administrative officers, including the president, senior vice president, secretary or treasurer; methods of operation, including the information set forth in (a)13 and (a)14 above; or assumed or ceded reinsurance agreements; and

(5) Deposit securities, or increase the amount of any existing deposit required pursuant to N.J.A.C. 11:1-31.5, if the Commissioner finds that such deposit is necessary for the eligible surplus lines insurer to establish evidence of financial integrity, as required by N.J.S.A. 17:22-6.45(d), and to ensure that the condition or methods of operation of the insurer are not such as would render its operation hazardous to the public or its policyholders in this State. In determining whether a deposit, or increase in the amount of an existing deposit, is required, and the amount of such deposit or increase, the Commissioner shall consider:

(A) Any adverse change in the financial condition of the insurer as determined through a review of the information submitted pursuant to this subchapter;

(B) Any change in the amount of business written in this State;

(C) Any change in the lines of business written in this State;

(D) The extent to which the lines of business currently written by the insurer and amount thereof are covered under the Surplus Lines Insurance Guaranty Fund, pursuant to N.J.S.A. 17:22-6.70 et seq.; and

(E) Such other factors as the Commissioner deems relevant to determine whether a particular insurer has established satisfactory evidence of financial integrity and that the insurer's condition and methods of operation are not such as would render its operation hazardous to the public or its policyholders in this State.

ii. For foreign applicants only:

(1) Annually file with the Department on or before March 1, a copy of its NAIC Annual Statement filed with its state of domicile for the year ended immediately preceding, and a copy of the report of any examination of the insurer during the year covered by the Annual Statement;

(2) File NAIC quarterly financial statements within 45 days after the end of each calendar quarter;

(3) Issue an insurance policy not later than 90 days after the effective date of the corresponding insurance placement; and

(4) Annually file with the Department on or before June 1 of each year, a copy of its annual audited financial report conforming to the requirements of N.J.A.C. 11:2-26 or a certified copy of the applicant's most recent audited financial report required by its domiciliary jurisdiction which is substantially similar to the report required by N.J.A.C. 11:2-26; and

iii. For alien applicants only:

(1) Annually file with the Department on or before September 1, a copy of its audited financial statement; a report of its independent auditor, if any; and the Standard NAIIO Financial Reporting Format filed with the NAIC Non-admitted Insurers Information Office for the year ended December 31 immediately preceding;

16. A written request, signed by a licensed surplus lines agent, that the Commissioner issue a Certificate of Eligibility to the applicant;

17. The nonrefundable application fee set forth in N.J.A.C. 11:1-32.7(a)1; and

18. Any additional information deemed necessary by the Commissioner to evaluate the applicant including, but not limited to, updated financial statements.

(b) Foreign applicants shall submit the following to the Commissioner in addition to the requirements in (a) above:

1. A certificate of compliance from its state of domicile;

2. Statements of the applicant's financial condition as of and for the two immediately preceding calendar years;

i. The annual statements shall be submitted on NAIC annual statement blanks, including fully completed and executed jurat pages subscribed and sworn to by the applicant's president, secretary and treasurer;

ii. The statement submitted for the most recent year shall be for a calendar year ending not more than nine months prior to the date of submission of the application; and

3. The applicant's quarterly financial statements for the current year in the NAIC format.

(c) Alien applicants shall submit the following to the Commissioner in addition to the requirements in (a) above:

1. Two duly authenticated copies of its current annual financial statement; one in the language and monetary value of its country of domicile and one in the English language with all monetary values expressed in United States dollars at the current exchange rate shown in the statement;

i. The statement shall be for a calendar year ending not more than nine months prior to the date the filing

of such statement in the applicant's country of domicile is due.

2. If the applicant is registered with the NAIC Non–Admitted Insurers Information Office, a copy of the Standard Financial Reporting Format submitted to the NAIC Non–Admitted Insurers Information Office;

3. A description of the deposits and amounts thereof for the benefit of all United States policyholders for all United States jurisdictions in which the applicant is currently transacting business; and

4. A copy of a duly executed trust fund agreement for the benefit of the applicant's United States policyholders in the amount of not less than $2,500,000 or in the amount of $50,000,000, as applicable, as required by N.J.S.A. 17:22–6.45(d)(1).

(d) The Commissioner shall notify the applicant within 60 days whether the application is complete. If the application is incomplete, the notice shall specify the items or information necessary to cure the deficiency.

11:1–31.5 Certificate of eligibility; issuance

(a) If the applicant demonstrates that it fulfills the requirements for eligibility in N.J.S.A. 17:22–6.45 and this subchapter, the Commissioner shall issue a Certificate of Eligibility to the applicant.

1. The Commissioner may condition approval of an application for surplus lines eligibility on the applicant depositing securities, as that term is defined in N.J.S.A. 17:20–1 and N.J.A.C. 11:2–32, in an amount determined by the Commissioner, if the Commissioner finds that such deposit is necessary for the applicant to establish satisfactory evidence of financial integrity, as required by N.J.S.A. 17:22–6.45(d), and to ensure that the condition or methods of operation of the applicant are not such as would render its operation hazardous to the public or its policyholders in this State. In determining whether a deposit is required, and the amount of such deposit, the Commissioner shall consider:

i. The financial condition of the applicant as determined through a review of the information submitted pursuant to this subchapter;

ii. The amount of business to be written in this State;

iii. The lines of business to be written in this State;

iv. The extent to which the lines of business to be written by the applicant and the amount thereof are covered under the Surplus Lines Insurance Guaranty Fund, pursuant to N.J.S.A. 17:22–6.70 et seq.; and

v. Such other factors as the Commissioner deems relevant to determine whether the particular applicant has established satisfactory evidence of financial integrity and the applicant's condition or methods of operation are not such as would render its operation hazardous to the public or policyholders in this State.

(b) The Certificate of Eligibility shall remain continuously in effect unless the Commissioner withdraws eligibility as set forth in N.J.A.C. 11:1–31.6.

11:1–31.6 Withdrawal of eligibility

(a) The Commissioner may withdraw the eligibility of an insurer to insure surplus lines risks in this State if:

1. The insurer fails to file the data required or otherwise comply with the requirements for continued surplus lines eligibility as certified by the insurer in its application for eligibility pursuant to N.J.A.C. 11:1–31.4(a)15;

2. The Commissioner has reason to believe that the eligible surplus lines insurer is insolvent, in an unsound financial condition or no longer in compliance with N.J.S.A. 17:22–6.40 et seq. or this subchapter; or

3. The Commissioner finds, after a hearing thereon in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B–1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, of which notice was given to all licensed surplus lines agents, that an eligible surplus lines insurer has willfully violated the laws of this State or does not make reasonably prompt payment of just losses and claims in this State.

(b) The Commissioner shall notify all licensed surplus lines agents in this State of withdrawals of eligibility made pursuant to this section.

(c) Except as otherwise specified by the Commissioner, an insurer whose eligibility has been withdrawn pursuant to (a) above shall be prohibited from writing any new business or renewing existing business, but shall continue to service existing business through expiration of each policy.

11:1–31.7 Failure to comply with subchapter; denial of certificate of eligibility

Failure to submit the information required by this subchapter completely and accurately may result in the denial of a certificate of eligibility to transact business as an eligible surplus lines insurer in this State.

SUBCHAPTER 32. FEES

Authority

N.J.S.A. 17:1–8, 17:1–8.1 and 17:1C–6(e).

Source and Effective Date

R.1991 d.303, effective June 17, 1991 (operative July 1, 1991).
See: 23 N.J.R. 825(a), 23 N.J.R. 1948(a).

11:1–32.1 Purpose and scope

(a) This subchapter sets forth specific fees charged for various services provided by the Department. For services not included in this subchapter, the Department shall charge such other fees as may be provided by applicable statute or rule.

(b) This subchapter applies to insurers licensed to transact business in this State, eligible surplus lines insurers, dental plan organizations, dental service corporations, fraternal benefit societies, reciprocal insurance exchanges, risk retention groups, purchasing groups, and to any other person to whom a service is provided as set forth in this subchapter.

11:1–32.2 Definitions

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

"Annuity" is as defined in N.J.S.A. 17B:17–5.

"Certificate of eligibility" means a certificate issued to an unauthorized insurer by the Commissioner pursuant to N.J.S.A. 17:22–6.45 evidencing that it is an eligible surplus lines insurer in this State.

"Commissioner" means the Commissioner of the Department of Insurance.

"Complaint" means a written expression by an interested party submitted to the Department expressing a specific grievance with respect to specific conduct or action by an individual insurer.

"Contract on a variable basis" is as defined in N.J.S.A. 17B:28–1.

"Credit health insurance" means insurance on a debtor to provide indemnity for payments becoming due on a specified loan or other credit transaction while the debtor is disabled.

"Credit life insurance" means insurance on the life of a debtor pursuant to or in connection with a specific loan or other transaction.

"Dental plan organization" means any person who undertakes to provide directly or to arrange for or administer one or more dental plans providing dental services pursuant to N.J.S.A. 17:48D–1 et seq.

"Dental service corporation" is as defined in N.J.S.A. 17:48C–2(a).

"Department" means the New Jersey Department of Insurance.

"Domestic insurer" means an insurer formed under the laws of this State pursuant to N.J.S.A. 17:17–1 et seq., 17:46A–1 et seq., 17:46B–1 et seq. and 17B:18–1 et seq.

"Fraternal benefit society" is as defined in N.J.S.A. 17:44A–1.

"Form A filing" means a statement filed by every person who is directly or indirectly the beneficial owner of more than 10 percent of any class of any equity security of a New Jersey stock insurance company or who is a director or officer of such a company, in the acquisition of control of or merger with a domestic insurer pursuant to N.J.S.A. 17:27A–1 et seq.

"Health insurance" is as defined in N.J.S.A. 17B:17–4.

"Life and health insurer" means an insurer authorized or admitted pursuant to the provisions in Title 17B of the Revised Statutes to transact solely the business of life insurance, health insurance or annuities in this State.

"Life insurance" is as defined in N.J.S.A. 17B:17–3.

"Private passenger automobile insurance" means direct insurance on private passenger automobiles as defined in N.J.S.A. 39:6A–2.

"Property and casualty insurer" means an insurer authorized or admitted to transact the kinds of insurance specified in N.J.S.A. 17:17–1, 17:46A–2 and 17:46B–1.

"Purchasing group" is as defined in 15 U.S.C. 3901(a)(5).

"Reciprocal insurance exchange" means an individual, partnership, trustee, or corporation authorized to exchange reciprocal or interinsurance contracts pursuant to N.J.S.A. 17:50–1 et seq.

"Risk retention group" is as defined in 15 U.S.C. 3901(a)(4).

"Special risks" is as defined in N.J.S.A. 17:29AA–3.

"Surplus lines insurer" means an unauthorized insurer in which an insurance coverage is placed or may be placed pursuant to N.J.S.A. 17:22–6.40.

11:1–32.3 General procedures

(a) All fees set forth in this subchapter, excluding the fees set forth in N.J.A.C. 11:1–32.9, shall be paid at the time of the filing or application or the request for service.

(b) All fees set forth in this subchapter shall be paid by check and made payable to the State Treasurer of New Jersey.

11:1–32.4 Fees; general

(a) On filing with the Department any certificate specified in this section by an insurer, fraternal benefit society or dental plan organization authorized to transact business in this State, there shall be paid to the Commissioner fees as follows:

1. Filing a certificate of incorporation of a domestic insurer—$1,500;

2. Filing a certificate of an increase of capital stock of a domestic insurer—$250.00;

3. Filing a certificate of consolidation and merger of insurers—$2,500;

4. For each Form A filing in connection with the acquisition or control of a domestic insurer—$2,500;

5. Upon the scheduling of a hearing in connection with a Form A filing—$2,500;

6. Filing a certificate of dissolution of insurer, change of name, change of nature of business, amended certificate of incorporation (other than those authorizing increase in capital stock), decrease of capital stock, or increase or decrease of par value of shares—$250.00;

7. Processing application and renewal of certificate of authority to transact business as a dental plan organization—$1,000; and

8. All certificates not otherwise provided for—$50.00.

(b) The following fees shall be paid for services provided by the Commissioner in addition to those set forth in (a) above as follows:

1. Filing each annual statement of an insurer—$100.00;

2. Providing certificate of valuation of policies (life and health insurers only)—$25.00;

3. Providing certificate of the condition or qualification of an insurer—$25.00; each additional copy for same company—$5.00;

4. Filing service of lawful process upon the Commissioner as attorney—$30.00;

5. Providing copy of Statutory Annual Statement pages (11–21)—$2.00 per page;

6. Certifying copy of any paper filed with the Department—$5.00; certifying a company document—$50.00;

7. Providing copy of any paper filed with the Department (except Statutory Annual Statements)—$0.50 each for the first 10 pages; $0.25 each for the next 10 pages; $0.10 per page thereafter;

8. Filing each annual statement of a fraternal benefit society formed pursuant to N.J.S.A. 17:44A–1 et seq.—$100.00;

9. Filing each annual statement of a dental plan organization—$100.00;

10. Filing each annual statement of a dental service corporation—$100.00;

11. Filing an application for a certificate of authority to transact business as a dental service corporation—$25.00;

12. Processing an application for the issuance of a Certificate of Registration pursuant to N.J.A.C. 11:3–3—$1,000; processing an application of renewal of Certificate of Registration—$250.00; and

13. Processing an application for issuance or renewal of a Certificate of Order Granting Exemption from Insuring Liability for Compensation pursuant to N.J.A.C. 11:2–33—$1,000.

14. Each submission or resubmission for review of payment of an extraordinary dividend or distribution pursuant to N.J.S.A. 17:27A–4—$1,000; each submission or resubmission for review of payment of an ordinary dividend or distribution pursuant to N.J.S.A. 17:27A–4—$500.00.

Amended by R.1992 d.371, effective September 21, 1992.
See: 24 N.J.R. 519(a), 24 N.J.R. 3414(a).
Fee for LAD registration added at (b)12.
Amended by R.1993 d.157, effective April 5, 1993.
See: 24 N.J.R. 1944(a), 24 N.J.R. 2708(b), 25 N.J.R. 1526(a).
Added (b)13.
Emergency Amendment, R.1993 d.445, effective August 16, 1993 (expired October 15, 1993).
See: 25 N.J.R. 4275(a).
Adopted Concurrent Proposal, R.1993 d.554, effective October 15, 1993.
See: 25 N.J.R. 4275(a), 25 N.J.R. 5170(b).

11:1–32.5 Fees; life and health insurers

(a) The following fees shall be paid for services provided by the Commissioner regarding submissions by or on behalf of life and health insurers in addition to any other applicable fees imposed by this subchapter:

1. Processing application for a certificate of authority to transact business in this State—$5,000; application to extend existing authority to other lines of business—$2,500;

2. Reviewing policies, except for contracts on a variable basis and credit life or health insurance—$200.00;

3. Reviewing policies for contracts on a variable basis and credit life or health insurance—$300.00;

4. Reviewing all riders, endorsements and applications, except for contracts on a variable basis and credit life or health insurance—$50.00;

5. Reviewing riders, endorsements and applications for contracts on a variable basis and credit life or health insurance—$75.00; and

6. Reviewing rate revisions for health insurance and credit life or health insurance—$200.00.

11:1–32.6 Fees; property and casualty insurers

(a) The following fees shall be paid for services provided by the Commissioner regarding submissions by or on behalf of property and casualty insurers in addition to any other applicable fees imposed by this subchapter as follows:

1. Processing application to extend existing certificate of authority to other lines of business—$500.00. The Commissioner may waive this fee if the extension of authority is required by statute to permit an insurer to continue to transact a line of business previously authorized;

2. Processing personal lines and commercial lines filings, excluding private passenger automobile insurance filings, as follows:

i. Each policy forms filing submission—$250.00;

ii. Each rate filing submission—$250.00;

iii. Each underwriting rules filing submission—$250.00;

iv. Each combined forms and rate filing submission—$500.00;

v. Each combined rules and rate filing submission—$500.00;

vi. Each combined rules and forms filing submission—$500.00;

vii. Each combined forms, rules and rate filing submission—$500.00.

3. Reviewing consent to higher rate filings submitted pursuant to N.J.A.C. 11:4–7 and 11:13–5—$250.00; and

4. Reviewing all submissions and filings relating to special risks—$250.00.

(b) Error corrections, amendments and additional information which is submitted with respect to a pending filing, shall not be considered a submission for the purposes of (a)2 above.

11:1–32.7 Fees; surplus lines insurers, risk retention groups and purchasing groups

(a) The following fees are imposed for services provided by the Commissioner regarding submissions by or on behalf of surplus lines insurers, risk retention groups and purchasing groups:

1. Processing application for a Certificate of Eligibility—$1,000;

2. Filing each Annual Statement filed by an eligible surplus lines insurer—$100.00;

3. Filing each Annual Statement filed by a risk retention group—$100.00; and

4. Registration of new risk retention group or new purchasing group—$100.00.

11:1–32.8 Fees; withdrawals, transfer of business

(a) Upon application of an insurer to withdraw or transfer its business the following fees to be paid:

1. Processing a plan of orderly withdrawal required to be submitted pursuant to N.J.A.C. 11:2–29.4 by an insurer with 1,000 or more policies currently in force—$10,000;

2. Processing a plan of orderly withdrawal required to be submitted pursuant to N.J.A.C. 11:2–29.4 by an insurer with at least one but no more than 999 policies currently in force—$5,000;

3. Processing application to transfer business from an insurer in the amount of 1,000 policies or more—$5,000;

4. Processing application to transfer business from an insurer in an amount of less than 1,000 policies—$2,500;

5. Processing a plan of orderly withdrawal required to be submitted pursuant to N.J.A.C. 11:2–29.4 by an insurer that has had no policies in force during the three years immediately preceding the date of its application—$1,000; and

6. Processing application to eliminate a rating system by an insurer that is not required to submit a plan of orderly withdrawal pursuant to N.J.A.C. 11:2–29.4—$500.00.

11:1–32.9 Miscellaneous fees

(a) In addition to any other fees imposed by this subchapter, Subtitle 3 of Title 17 and Title 17B of the Revised Statutes or Title 11 of the New Jersey Administrative Code, all insurers shall pay a maintenance fee within 30 days of receipt of notice that such fee is due calculated as follows:

1. Any insurer which has direct written premiums in this State in an amount less than $100,000 as of the end of the calendar year immediately preceding the date the fee is due shall pay a fee of $1,000.

2. Any insurer which has no direct written premiums in this State, but has direct written premiums in one or more jurisdictions as of the end of the calendar year immediately preceding shall pay a fee of $2,500.

3. Notwithstanding the provisions of (a)1 and 2 above to the contrary, any insurer which is licensed or authorized to transact business in this State on or after January 1, 1991 shall not pay any fee imposed by (a)1 and 2 above for a period of two years from the date of the issuance of a certificate of authority to transact business in this State.

4. Any insurer which has no direct written premiums in this State and all other jurisdictions in which it is authorized to transact business as of the end of the

calendar year immediately preceding shall not pay a fee pursuant to (a)1 and 2 above.

(b) In addition to any other fees imposed by this subchapter, Subtitle 3 of Title 17 and Title 17B of the Revised Statutes, and Title 11 of the New Jersey Administrative Code, all insurers shall pay a complaint processing fee within 30 days of the receipt of notice that the fee is due as follows:

1. For an insurer that has less than $25,000,000 of direct written premiums in this State for the calendar year immediately preceding, a fee of $50.00 for each consumer complaint submitted to the Department and assigned to that insurer which is in excess of 50 as of the end of the calendar year immediately preceding.

2. For an insurer that has at least $25,000,000, but not greater than $250,000,000 of direct written premiums in this State for the calendar year immediately preceding, a fee of $50.00 for each consumer complaint submitted to the Department and assigned to that insurer which is in excess of 250 as of the end of the calendar year immediately preceding.

3. For an insurer that has in excess of $250,000,000 of direct written premiums in this State for the calendar year immediately preceding, a fee of $50.00 for each consumer complaint submitted to the Department and assigned to that insurer which is in excess of 500 as of the end of the calendar year immediately preceding.

11:1–32.10 Applicability of fees imposed by insurance laws of this State

(a) The fees set forth in this subchapter supersede fees set forth in N.J.S.A. 17:33–1, 17B:21–7, 17:48–14, 17:44A–34, 17:48C–23, 17:48D–5 and 17:50–4, to the extent such fees are inconsistent with the fees set forth herein. The fees set forth in this subchapter are in addition to the following fees imposed by the laws and regulations of this State:

1. Admission application for foreign or alien insurers (N.J.A.C. 11:1–10.6);

2. Application for formation of a domestic insurer (N.J.A.C. 11:1–28.5);

3. Application and renewal for certificate of self-insurance of motor vehicles (N.J.S.A. 39:6–52, N.J.A.C. 11:3–30);

4. Application for hospital workers' compensation group self-insurance (N.J.A.C. 11:15–1.3);

5. Producer licensing and insurance education program fees (N.J.A.C. 11:17);

6. Custodial deposit fees (N.J.S.A. 17:20–3.1 and 17B:18–39.1, and N.J.A.C. 11:2–32);

7. Health service corporation fees (N.J.S.A. 17:48E–38);

8. Hospital service corporation fees (N.J.S.A. 17:48–14);

9. Medical service corporation fees (N.J.S.A. 17:48A–21);

10. General supervisory fee for dental service corporations (N.J.S.A. 17:48A–23);

11. All fees set forth in N.J.S.A. 17:33–1 and 17B:21–7 to the extent such fees are not inconsistent with the fees set forth in this subchapter; and

12. Any and all fees which may be imposed by the laws and regulations of this State in the future.

(b) Notwithstanding anything in (a) above to the contrary, to the extent that the laws of any other State or foreign country impose fees for services specified in this subchapter upon domestic insurers or reciprocal insurance exchanges which are in excess of the fees set forth in this subchapter, such fee shall be imposed upon the insurer or reciprocal exchange of such other state or foreign country doing business in New Jersey, pursuant to N.J.S.A. 17:32–15 and 17B:23–5, as applicable.

11:1–32.11 Penalties

(a) Failure to pay an applicable filing or application fee at the time of filing or application may result in the filing or application being rejected as incomplete.

(b) Failure to pay the applicable fee at the time of making a request for service may result in the Department's refusal to provide such service.

(c) Failure to pay the fees set forth in N.J.A.C. 11:1–32.9 within 30 days of receipt of notice that the fee is due may result in the imposition of penalties as authorized by law.

SUBCHAPTER 33. PUBLIC ADVOCATE REIMBURSEMENT DISPUTES

Authority

N.J.S.A. 17:1–8.1; 17:1C–6(e); State Farm Mutual Automobile Insurance Company v. Department of the Public Advocate, 118 N.J. 336 (1990).

Source and Effective Date

R.1993 d.179, effective April 19, 1993.
See: 24 N.J.R. 2706(a), 25 N.J.R. 1764(c).

11:1–33.1 Purpose and scope

(a) This subchapter sets forth the procedures used by the Department to review and resolve disputes concerning statements rendered by the Public Advocate for reimbursement of expenses incurred in connection with insurance rate change matters. These rules are intended to carry out the mandate of the New Jersey Supreme Court set forth in its decision of State Farm Mutual Automobile Insurance Company v. Department of the Public Advocate, 118 N.J. 336 (1990).

(b) This subchapter applies to all insurance companies, rating organizations and non-profit service plans required to reimburse the Public Advocate for expenses in connection with insurance rate matters pursuant to N.J.S.A. 52:27E–19.

11:1–33.2 Definitions

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

"Flex rate proceeding" means a challenge by the Public Advocate to a Statewide rate change filed by a private passenger automobile insurer pursuant to N.J.S.A. 17:29A–44 which results in a reduction or rescission of the rate change.

"Commissioner" means the New Jersey Commissioner of Insurance.

"Department" means the New Jersey Department of Insurance.

"Insurer" means any person authorized or admitted to transact the business of insurance in this State which files rates and rating systems pursuant to N.J.S.A. 17:29A–1 et. seq. and N.J.S.A. 17:29AA–1 et seq.; and any non-profit service plan as defined herein.

"Non-profit service plan" means a hospital service corporation as defined in N.J.S.A. 17:48–1; a medical service corporation as defined in 17:48A–1; a dental service corporation as defined in N.J.S.A. 17:48C–2(a); or a health service corporation as defined in N.J.S.A. 17:48E–1(e).

"Public Advocate" means the Division of Rate Counsel, Office of the Public Advocate, established pursuant to N.J.S.A. 52:27E–16.

"Public Advocate's Statement" means the statement of the compensation and expenses of counsel, experts and assistants employed by the Public Advocate which is issued by the Director of the Division of Rate Counsel pursuant to N.J.S.A. 52:E–19b.

"Rate change proceeding" means any process initiated by an insurance company, rating organization or non-profit service plan to increase or change the rates or charges for insurance, including, but not limited to, a filing to amend rates pursuant to N.J.S.A. 17:29A–14; a filing of rates or supplementary rate information pursuant to N.J.S.A. 17:29AA–5; a flex rate proceeding as defined herein; the filing of rates by any non-profit service plan pursuant to N.J.S.A. 17:45–9; N.J.S.A. 17:48A–10; N.J.S.A. 17:48C–14 and N.J.S.A. 17:48E–27 and 27.1; or any change in a rating system accomplished by filing policy forms or rating rules that effect a change in rates.

"Rating organization" means every person or persons, corporation, partnership, company, society or association engaged in the business of ratemaking for two or more insurers, licensed in accordance with N.J.S.A. 17:29A–2.

11:1–33.3 Procedural provisions

(a) Any insurer, rating organization or non-profit service plan that desires to challenge or dispute a Public Advocate's Statement shall, within 30 days of receiving the Public Advocate's Statement, file a petition with the Commissioner that includes at minimum the information set forth in N.J.A.C. 11:1–33.4, except that any insurer, rating organization or non-profit service plan which notified the Department of a pending reimbursement dispute no later than March 20, 1993 shall file a petition pursuant to the provisions herein by May 19, 1993.

1. The petitioner shall serve a copy of the petition on the Public Advocate simultaneously with filing the petition with the Department.

(b) The Public Advocate may file a response not later than 30 days after receipt of the petition.

1. The response by the Public Advocate, if filed, may identify any errors on the disputed Public Advocate's Statement, or set forth any revisions or amendments to the Public Advocate Statement as sent to the petitioner.

2. In the absence of a timely response by the Public Advocate, the Commissioner shall deem that the Public Advocate confirms the original Public Advocate's Statement as sent.

(c) The Commissioner shall, within 60 days of receipt of the petition, determine whether the petition satisfies the requirements of N.J.A.C. 11:1–33.4 and whether the matter is a contested case. The Commissioner shall notify the petitioner and the Public Advocate of the determination.

1. If the Commissioner finds that the petition does not meet the requirements of N.J.A.C. 11:1–33.4, the Commissioner may dismiss the petition with prejudice.

2. If the Commissioner finds that the matter is a contested case, the Commissioner shall transmit the matter to the Office of Administrative Law for a hearing to be conducted pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B–1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(d) Nothing in this subchapter shall prohibit the resolution of any disputed issue at any time between the petitioner and the Public Advocate.

11:1–33.4 Contents of petition

(a) A petitioner requesting review of a disputed Public Advocate's Statement shall set forth at minimum the following information in the petition:

1. The name and address of the petitioner;

2. The name, address and telephone number of the attorney for the petitioner, including the name of the attorney personally handling the matter;

3. The date the Public Advocate's Statement was received by the petitioner;

4. The petitioner's request that the Commissioner review the Public Advocate statement to resolve one or more of the following issues:

i. Whether the Public Advocate's Statement violates expressed or implied legislative policies, which includes, but is not limited to, consideration of whether the Public Advocate exceeded its statutory authority in seeking compensation for intervention and/or whether the insurer, or rating organization, etc. initiated a proceeding for the purpose of a rate change;

ii. Whether there is an adequate factual basis to sustain the Public Advocate's Statement. This standard includes, but is not limited to, such items as whether the bills are for proceedings that never occurred, whether they are false or duplicative and whether the charges meet the statutory standards of N.J.S.A. 52:27E–19.6; or

iii. Whether the Public Advocate's Statement charges are unreasonable under the circumstances of the rate change proceeding, and such circumstances shall include, but not be limited to, the petitioner's expenses for counsel, experts, and assistants in the rate change proceeding;

5. Factual and legal contentions that the petitioner wishes to advance in support of its objections; and

6. Those portions of the Public Advocate's Statement, if any, which are not disputed and the date and manner of payment of those undisputed amounts.

(b) A copy of the disputed Public Advocate's Statement shall be appended to the petition.

11:1–33.5 Payment of undisputed amounts

The petitioner shall, as a condition of filing a petition to request review of a disputed Public Advocate's Statement, pay any portion of the charges set forth on the Public Advocate's Statement which are not in dispute.

11:1–33.6 Failure to comply with rules; failure to file

(a) Failure of the petitioner to comply with the rules set forth in this subchapter shall result in the dismissal of the petition with prejudice.

(b) Failure to timely file a petition entitles the Public Advocate to summary judgment in its favor in the Law Division for the full amount charged.

SUBCHAPTER 34. SURPLUS LINES: EXPORTABLE LIST

Authority

N.J.S.A. 17:1–8.1, 17:1C–6(e), 17:22–6.40 et seq., 17B:17–1 et seq., and 17:29AA–1 et seq.

Source and Effective Date

R.1994 d.7, effective January 3, 1994.
See: 24 N.J.R. 4331(a), 26 N.J.R. 236(b).

11:1–34.1 Purpose and scope

(a) The purpose of this subchapter is to identify the procedures concerning the creation and modification of an exportable list of certain classes of insurance coverages or risks and to promulgate the list as a rule, in implementation of N.J.S.A. 17:22–6.43.

(b) This subchapter shall apply to all surplus lines insurers and producers. Pursuant to N.J.S.A. 17:22–6.40, this subchapter shall not apply to life insurance companies, which may not become eligible surplus lines insurers.

11:1–34.2 Definitions

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

"Annuity" means a contract not coming within the definition of life insurance as set forth in N.J.S.A. 17B:17–3, or health insurance as set forth in N.J.S.A. 17B:17–4, under which an insurer obligates itself to make periodic payments for a specified period of time, such as for a number of years, or until the happening of an event, or for life, or for a period of time determined by any combination thereof. Such a contract which includes extra benefits of the kinds set forth in N.J.S.A. 17B:17–3 or 17B:17–4 shall nevertheless be deemed to be an annuity if such extra benefits constitute a subsidiary or incidental part of the entire contract.

"Authorized insurer" means a domestic or foreign insurer duly authorized by a Certificate of Authority issued by the Commission to transact the business of insurance in this State.

"Commissioner" means the Commissioner of the Department of Insurance of the State of New Jersey.

"Department" means the Department of Insurance of the State of New Jersey.

"Exportable list" means a list of any class or classes of insurance coverages or risks declared and promulgated by the Commissioner for which there is no reasonable or adequate market among authorized insurers in this State.

"Health insurance" means a contract or agreement whereby an insurer is obligated to pay or allow a benefit of pecuniary value with respect to the bodily injury, disablement, sickness, death by accident or accidental means of a human being, or because of any expense relating thereto, or because of any expense incurred in prevention of sickness, and includes every risk pertaining to any of the enumerated risks. Health insurance does not include workers' compensation coverages.

"Life insurance" means a policy or contract whereby an insurer is obligated to pay or allow a benefit of pecuniary value with respect to the cessation of human life. Life insurance includes also the granting of endowment benefits and optional modes of settlement of proceeds of life insurance as well as provisions for additional benefits in event of death by accident or accidental means or in event of dismemberment or loss of sight, or safeguarding such insurance against lapse or giving a special surrender value or special benefit or an annuity in the event that the insured shall become totally and permanently disabled, whether such provisions are incorporated in a policy or contract of life insurance or in a policy or contract supplemental thereto. Life insurance does not include workers' compensation coverages.

"State" means the State of New Jersey.

"Surplus lines insurer" means an eligible, unauthorized insurer with which an insurance coverage is placed or may be placed pursuant to N.J.S.A. 17:22–6.40 et seq. (see Appendix A to this subchapter, incorporated herein by reference).

11:1–34.3 Exportable list hearing

(a) In the month of November or December of each year, the Department shall hold a hearing, pursuant to N.J.S.A. 17:22–6.43, for the purpose of determining the extent of the existence of a reasonable or adequate market among authorized insurers for certain classes of insurance coverages and risks.

1. This hearing shall be preceded by a notice of hearing published in the New Jersey Register at least 30 days prior to the date of the hearing, which notice shall include information concerning the date by which, and the person to whom, written public comment may be made. Notice shall also be provided to persons who have previously requested receipt of such notice.

2. The notice published in the New Jersey Register and as otherwise provided pursuant to (a)1 above shall also request that persons who wish to testify at the hearing provide the Department with timely notice of this intention, including a brief summary of the subject matter of their testimony.

3. The notice shall indicate whether the hearing shall address the merits of maintaining all items currently on the list, or whether the hearing will consider only specific additions, deletions or clarifications regarding the list.

(b) The hearing shall be conducted by a hearing officer designated by the Commissioner. The length of testimony permitted at the hearing and the receipt of questions from the floor shall be within the discretion of the hearing officer.

(c) Interested parties may present evidence to the Commissioner that the conditions of non-procurability have changed. Evidence of non-procurability should demonstrate that there exists no reasonable or adequate market among authorized insurers.

(d) A transcript of the hearing shall be made and a copy thereof shall be made available to any interested person upon request and payment of an appropriate fee.

11:1–34.4 Exportable list hearing record

(a) The record of the hearing shall include the following:

1. Timely-received written public comments;

2. The transcript of the hearing; and

3. Any other information which the hearing officer may deem relevant.

11:1–34.5 Promulgation and modification of exportable list

(a) Upon review of the exportable list hearing record, the Commissioner shall, by rule, declare eligible for export generally, and notwithstanding the provisions of N.J.S.A. 17:22–6.43(a), (b) and (c), any class or classes of insurance coverage or risk for which he or she finds there exists no reasonable or adequate market among authorized insurers; provided, however, that if adequate documentary evidence has been presented which satisfies the Commissioner that a reasonable or adequate market does exist among authorized insurers, he or she may, by rule, strike any class or classes of insurance coverage or risks from the exportable list.

(b) The Commissioner may, by rule amending this subchapter, specifically declare ineligible for export any class or classes of insurance coverage or risk which he or she determines to be generally procurable through diligent effort among authorized insurers pursuant to N.J.S.A. 17:22–6.43(a).

(c) When, during the term of a duly promulgated exportable list, the Commissioner determines that changed conditions require a modification of the exportable list, he or she may, after a hearing, by rule, amend the list.

1. Notice of the Commissioner's action shall be provided to all surplus lines agents, eligible surplus lines insurers, authorized insurers and others who have previously requested receipt of such information.

11:1–34.6 Exportable list

(a) The exportable list is as follows:

1. Amusement Devices, Parks and Carnivals;

2. Animal Mortality;

3. Armored Cars;

4. Auto Racing and Race Tracks;

5. Day Care Center Liability;

6. Difference In Condition;

7. Environmental Impairment Liability Insurance;

8. Excess and Buffer Liability;

9. Excess Loss and Excess Aggregate for Self–Insurers; Public Liability and Workers' Compensation;

10. Golf Driving Range;

11. Fine Arts Dealers;

12. First Loss and Excess of First Loss Insurance;

13. House Movers and Building Demolition;

14. Kidnapping, Ransom and Extortion Insurance;

15. Manufacturers and Contractors Liability for Floor Waxers, Building Maintenance People, Window Washers and Exterminators;

16. "Large Risks" which means any insured:

i. Which procures insurance for any property casualty risk by use of the services of either an employee who is a full-time insurance manager or buyer, or a regularly and continuously retained qualified insurance consultant; and

ii. Whose aggregate commercial premiums for insurance (excluding, Life, Health and Accident, Annuities and Workers' Compensation insurance) total at least $500,000;

17. Motor vehicle coverage as follows:

i. Physical Damage Coverage for Limousines; and

ii. Physical Damage Coverage for Trucks, including trailers and trailer interchange (over 10,000 pounds) for Non–Fleet (one to five) risks, and commercial fleet (over five) risks irrespective of gross vehicle weight;

18. Mortgage Impairment;

19. Pony Rides/Riding Academies;

20. Physical Damage Coverage for Private Passenger and Commercial Vehicles with an original cost new of $40,000 or above;

21. Product Liability Products or Products Recall Coverage;

22. Professional Liability insurance as follows:

i. Errors and Omissions; and

ii. Professional Liability except:

(1) Legal malpractice liability;

(2) Medical malpractice liability

(A) Hospitals Professional Liability

(B) Physicians and Surgeons Professional Liability

(C) Dentist Professional Liability

(D) Employees Professional Liability

(E) Nurses Professional Liability

(F) Optometrists Professional Liability

(G) Physiotherapists Professional Liability

(H) Chiropodists Professional Liability

23. Short Term Events;

24. Skating Rinks (Roller and Ice) and Skate Board Parks;

25. Swim Clubs/Swim Pools;

26. Vacant and Unoccupied Building;

27. Warehouseman's Legal Liability;

28. Automobile Personal Injury Protection (PIP) coverage in excess of $250,000.

29. Commercial auto liability for taxicabs;

30. Commercial auto liability for intermediate and long-haul trucking.

(b) The following kinds of insurance, if sold by eligible surplus lines insurers, are specifically not eligible for export, since the Department has determined that they are procurable from authorized or admitted insurers after a diligent effort:

1. Health insurance, including specific excess or aggregate excess purchased by self-funded health benefit plans, as defined by N.J.S.A. 17B:17–4; and

2. Annuities including Funding Agreements or Guaranteed Investment Contracts (GIC's) as defined by N.J.S.A. 17B:17–5.

(c) Life insurance is specifically not eligible for export pursuant to N.J.S.A. 17:22–6.40 et seq.

APPENDIX A

LIST OF UNAUTHORIZED INSURERS WHICH QUALIFY AS ELIGIBLE SURPLUS LINES INSURERS

The following is a list of unauthorized insurers which qualify as eligible surplus lines insurers in New Jersey as of December 1, 1993.

Companies of other States	Domicile
Agricultural Excess and Surplus Insurance Co.	Wilmington, DE
Allianz Underwriters Insurance Co.	Los Angeles, CA
American Empire Surplus Lines Insurance Co.	Wilmington, DE
Appalachian Insurance Co.	Johnston, RI
Associated International Insurance Co.	Los Angeles, CA
California Union Insurance Co.	Los Angeles, CA
Columbia Casualty Insurance Co.	Chicago, IL
Evanston Insurance Co.	Evanston, IL
Empire Indemnity Insurance Co.	Oklahoma, OK
Essex Insurance Co.	Wilmington, DE
First Specialty Insurance Co.	Jefferson City, MO
First State Insurance Co.	Wilmington, DE
General Agents Insurance Co.	Oklahoma City, OK
General Star Indemnity Co.	Stamford, CT
Gibraltar Casualty Co.	Dover, DE
Great Central Insurance Co.	Peoria, IL
The Home Insurance Co. of Illinois	Chicago, IL
Interstate Fire and Casualty Co.	Chicago, IL
Investors Special Risk Insurance Co.	Phoenix, AZ
Landmark Insurance Company	Los Angeles, CA
Lexington Insurance Co.	Wilmington, DE
Lincoln Insurance Co.	Dover, DE
Monticello Insurance Co.	Wilmington, DE
Mt. Hawley Insurance Co.	Peoria, IL
Mt. Vernon Fire Insurance Co.	King of Prussia, PA
National Indemnity Co.	Omaha, NE
Nautilus Insurance Co.	Scottsdale, AZ
Pacific Insurance Co.	Los Angeles, CA
Penn–America Insurance Co.	Hatboro, PA
Preferred Physicians Insurance Co.	Omaha, NE
Reliance Insurance Company	Chicago, IL
Royal Surplus Lines Insurance Co.	Glastonbury, CT
Savers Property–Casualty Insurance Co.	Overland Park, KS
Scottsdale Insurance Co.	Wilmington, DE
Scottsdale Insurance Co.	Columbus, OH
Steadfast Insurance Co.	Dover, DE
St. Paul Surplus Lines Insurance Co.	St. Paul, MN
T.H.E. Insurance Co.	Metairie, LA
Tudor Insurance Co.	Keene, NH
United Capital Insurance Co.	Stevens Point, WI
United Coastal Insurance Co.	Phoenix, AZ
United National Insurance Co.	Phila., PA
Vanguard Underwriters Insurance Co.	Oklahoma, OK
Western Alliance Insurance Co.	Austin, TX
Western Indemnity Insurance Co.	Houston, TX
Western World Insurance Co.	Keene, NH

Companies of other Countries	
Aegon Insurance Co. (U.K.) Ltd.	London, England
Anglo–American Insurance Co., Ltd.	London, England
Associated Electric and Gas Insurance Services, Ltd.	Hamilton, Bermuda
Lloyds of London	London, England
Riunione Adriatica Di Sicurta, s.p.a.	Trieste, Italy
Sphere Drake Insurance Co., p.l.c.	London, England
Terra Nova Insurance Co., Ltd.	London, England

SUBCHAPTER 35. INSURANCE HOLDING COMPANY SYSTEMS

Authority

N.J.S.A. 17:1C–6(e), 17:1–8.1, 17:27A–1 et seq. and P.L. 1993, c.241.

Source and Effective Date

R.1993 d.554, effective October 15, 1993.
See: 25 N.J.R. 4275(a), 25 N.J.R. 5170(b).

Subchapter Historical Note

Subchapter 35, Insurance Holding Company Systems, was adopted as emergency new rules R.1993 d.445, effective August 16, 1993 (to expire October 15, 1993). See: 25 N.J.R. 4275(a). The provisions of R.1993 d.445 were readopted as R.1993 d.554. See: Source and Effective Date.

11:1–35.1 Purpose and scope

(a) The purpose of this subchapter is to set forth filing and procedural requirements governing the filing of required information with respect to the acquisition of control of, or merger with, a domestic insurer, and registration and notification requirements for insurers which are members of an insurance holding company system, pursuant to N.J.S.A. 17:27A–1 et seq.

(b) This subchapter shall apply to any person, insurer, subsidiary or insurance holding company system subject to the requirements set forth in N.J.S.A. 17:27A–1 et seq.

11:1–35.2 Definitions

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

"Acquisition" means any agreement, arrangement or activity, the consummation of which results in a person acquiring directly or indirectly the control of another person, and includes, but is not limited to, the acquisition of voting securities, and assets, and bulk reinsurance and mergers.

"Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

"Alien insurer" means an insurer formed under the laws of any country other than the United States, its states, districts, territories, commonwealth and possessions.

"Authorized insurer" means a foreign or alien insurer, duly authorized by a certificate of authority issued by the Commissioner to transact insurance in this State pursuant to N.J.S.A. 17:32–1 et seq. or 17B:23–1 et seq.

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

"Control" is as defined at N.J.S.A. 17:27A–1c.

"Department" means the New Jersey Department of Insurance.

"Domestic insurer" means an insurer formed under the laws of this State.

"Executive officer" means chief executive officer, chief operating officer, chief financial officer, treasurer, secretary, controller, and any other individual performing functions

corresponding to those performed by the foregoing officers under whatever title.

"Foreign insurer" means an insurer formed under the laws of a jurisdiction of the United States other than this State, and shall include an alien insurer except where clearly noted otherwise.

"Insurance holding company system" means two or more affiliated persons, one or more of which is an insurer.

"Insurer" means any person or persons, corporation, partnership, or company authorized by the laws of this State to transact the business of insurance in this State, except that it shall not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or a political subdivision of a state.

"Person" means an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert.

"Principal insurer" means the insurer with the largest amount of direct written premium within the holding company system as shown by the last filed annual statement.

"Subsidiary" of a specified person is an affiliate controlled by such person directly, or indirectly through one or more intermediaries.

"Ultimate controlling person" means that person which is not controlled by any other person.

"Unauthorized insurer" means an insurer that is not an authorized insurer.

"Voting security" includes any security convertible into or evidencing a right to acquire a voting security.

11:1–35.3 Forms; general requirements

(a) All statements required to be filed pursuant to N.J.S.A. 17:27A–2, 17:27A–3 and 17:27A–4 shall be submitted in accordance with the forms set forth at Exhibits A, B, C, and D, in the Appendix incorporated herein by reference, as applicable. The forms shall be considered blank forms which are to be filled in. The statements filed shall contain the numbers and captions of all items, but the text of the items may be omitted provided the answers thereto are prepared in such a manner as to indicate clearly the scope and coverage of the items. All instructions, whether appearing under the items of the form or elsewhere therein, are to be omitted. Unless expressly provided otherwise, if any item is inapplicable or the answer thereto is in the negative, an appropriate statement to that effect shall be made.

(b) Seven complete copies of each Exhibit A statement, and one copy of each Exhibit B, C and D, including exhibits and all other papers and documents filed as a part thereof, shall be filed with the Commissioner by personal delivery or mail addressed to:

Holding Company Submissions
Division of Financial Examinations
New Jersey Department of Insurance
20 West State Street
CN–325
Trenton, NJ 08625

1. A copy of Exhibit C shall be filed in each state in which an insurer is authorized to do business, if the commissioner or other regulatory official of that state has notified the insurer of its request in writing, in which case the insurer shall file such forms within 30 days of receipt of the notice.

2. At least one of the copies shall be manually signed in the manner prescribed on the form. Unsigned copies shall be conformed. If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of the power of attorney or other authority shall also be filed with the statement.

(c) Statements and information required pursuant to Exhibit A shall be in loose-leaf form inserted into standard two-ring or three-ring binders. The loose-leaf sheets used shall be eight and one-half inches wide and 11 inches long and punched for two-ring and three-ring binders as appropriate. In the case of information required pursuant Exhibits A, B, C or D, exhibits and financial statements, unless specifically prepared for the filing, may be submitted in their original size. All copies of any statement, financial statements, or exhibits shall be clear, easily readable and suitable for photocopying. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on photocopies. Statements shall be in the English language and monetary values shall be stated in United States currency. If any exhibit or other paper or document filed with the statement is in a foreign language, it shall be accompanied by a translation into the English language and any monetary value shown in a foreign currency shall be converted into United States currency.

Amended by R.1993 d.554, effective November 15, 1993.
See: 25 N.J.R. 4275(a), 25 N.J.R. 5170(b).

11:1–35.4 Forms; incorporation by reference, summaries and omissions

(a) Information required pursuant to any item set forth in Exhibit A, B or D may be incorporated by reference in an answer or partial answer to any other item. Information contained in any financial statement, annual report, proxy statement, statement filed with a governmental authority, or any other document may be incorporated by reference in the answer or partial answer to any item of Exhibit A, B or D provided such document or paper is filed as an appendix or exhibit to the appropriate Exhibit A, B or D. Matter shall not be incorporated by reference in any case where such incorporation would render the statement incomplete, unclear or confusing.

(b) Where an item requires a summary or outline of the provisions of any document, only a brief statement shall be made as to the pertinent provisions of the document. In addition to such statement, the summary or outline may incorporate by reference particular parts of any exhibit or document currently on file with the Commissioner which was filed within three years and may be qualified in its entirety by such reference.

11:1–35.5 Forms, additional information and exhibits

(a) In addition to the information expressly required to be included in Exhibits A, B, C and D, the person making the filing shall include such further material information, if any, as may be necessary to make the information contained therein not misleading, as well as any additional information the Commissioner may specifically request from a particular filer.

(b) The person making the filing may also file such exhibits as it may desire in addition to those expressly required by the statement. Such exhibits shall be so marked as to indicate clearly the subject matters to which they refer. Changes to Exhibits A, B, C and D shall include on the top of the cover page the phrase: "Change No. (insert number) to" and shall indicate the date of the change rather than the date of the original filing.

11:1–35.6 Acquisition of control; statement filing; procedures

(a) A person required to file a statement pursuant to N.J.S.A. 17:27A–2 shall furnish the required information set forth in Exhibit A.

(b) The applicant shall advise the Commissioner within two business days of any changes in the facts or information submitted pursuant to (a) above arising subsequent to the date such information was furnished.

(c) If the person being acquired is deemed to be a "domestic insurer" solely because of the provisions of N.J.S.A. 17:27A–2a, the name of the domestic insurer on the cover page shall be indicated as follows:

1. "ABC Insurance Company, a subsidiary of XYZ Holding Company."

(d) Where a domestic insurer, as defined in N.J.S.A. 17:27A–2a, is being acquired, references to "the insurer" contained in Exhibit A shall refer to both the domestic subsidiary insurer and the person being acquired.

(e) The time frames for the scheduling of the public hearing on the proposed acquisition as set forth in N.J.S.A. 17:27A–2d(2) shall not commence until all of the information required to be contained in an acquisition statement as set forth in N.J.S.A. 17:27A–2 and this subchapter has been received by the Commissioner.

(f) Upon the scheduling of the hearing, the acquiring party shall cause notice of the hearing to be published in not less than two newspapers of general circulation in this State. Such notice shall include, but not be limited to, the name of the acquiring party, the name of the insurer proposed to be acquired, and the time and place for the hearing. Such notice shall be published not later than seven days, nor earlier than 14 days, prior to the scheduled date of the hearing.

(g) A verbatim transcript of a hearing held pursuant to N.J.S.A. 17:27A–2d shall be made, and the costs thereof shall be borne by the acquiring party.

(h) Until the day of the hearing, any information received pursuant to N.J.S.A. 17:27A–2b or this subchapter as part of an acquisition of control statement filing shall be confidential and shall not be subject to public inspection or copying pursuant to the "Right to Know" law, N.J.S.A. 47:1A–1 et seq.

11:1–35.7 Annual registration of insurers

(a) An insurer required to file an annual registration statement pursuant to N.J.S.A. 17:27A–3 shall furnish the information set forth in Exhibit B within the time frames set forth in N.J.S.A. 17:27A–3a.

(b) An insurer required to file an annual registration statement pursuant to N.J.S.A. 17:27A–3 also shall furnish information set forth on Exhibit C. The insurer shall file a copy of Exhibit C in each state in which the insurer is authorized to do business, if requested by the Commissioner or other regulatory official of that state.

(c) The insurer shall file an amendment to Exhibit B within 15 days after the end of any month in which there is a material change to the information provided in the annual registration statement. Amendments shall be filed in the format of Exhibit B. Only items which are being amended shall be reported. Each such amendment shall include at the top of the cover page "Amendment No. (insert number) to Form B for (insert year)" and shall indicate the date of the change rather than the date of the original filing.

11:1–35.8 Alternative and consolidated registrations

(a) Any authorized insurer may file a registration statement on behalf of any affiliated insurer or insurers which are required to register pursuant to N.J.S.A. 17:27A–3. The registration statement may include information not required by N.J.S.A. 17:27A–1 et seq. regarding any insurer in the insurance holding company system even if such insurer is not authorized to do business in this State. In lieu of filing a registration statement in the format of Exhibit B, the authorized insurer may file a copy of the registration or similar report which it is required to file in its state of domicile, provided that:

1. The statement or report contains substantially similar information required to be furnished on Exhibit B; and

2. The filing insurer is the principal insurer in the insurance holding company system.

(b) An insurer filing a registration statement or report in lieu of Exhibit B on behalf of an affiliated insurer shall provide a brief statement of facts to substantiate the filing insurer's claims that it, in fact, is the principal insurer in the insurance holding company system.

(c) With the prior approval of the Commissioner, an unauthorized insurer may follow any of the procedures which could be done by an authorized insurer under paragraph (a) above.

(d) Except as provided at (c) above, any insurer may make consolidated or alternate filings as set forth in this section without the prior approval of the Commissioner. The Commissioner, however, may require individual filings at any time if he or she deems such filings necessary in the interest of clarity, ease of administration or the public good.

11:1–35.9 Disclaimers and termination of registration

(a) A disclaimer of affiliation or a request for termination of registration claiming that a person does not, or will not upon the taking of some proposed action, control another person (hereinafter referred to as the "subject") shall contain the following information:

1. The number of authorized, issued and outstanding voting securities of the subject;

2. With respect to the person whose control is denied and all affiliates of such person, the number and percentage of shares of the subject's voting securities which are held of record or known to be beneficially owned, and the number of such shares concerning which there is a right to acquire, directly or indirectly;

3. All material relationships and bases for affiliation between the subject and the person whose control is denied and all affiliates of such person; and

4. A statement explaining why such person should not be considered to control the subject.

(b) A request for termination of registration shall be deemed to have been granted unless the Commissioner, within 30 days after receipt of the request, notifies the registrant otherwise.

11:1–35.10 Transactions subject to prior notice

(a) An insurer required to give notice of a proposed transaction pursuant to N.J.S.A. 17:27A–4 shall furnish the required information as set forth in Exhibit D within the applicable time frames set forth in N.J.S.A. 17:27A–4.

(b) Notification of extraordinary dividends and any other ordinary dividend distribution to shareholders shall include the following information:

1. The amount of the proposed dividend;

2. The date established for payment of the dividend;

3. A statement as to whether the dividend is to be in cash or other property. If the dividend is in property, a description thereof shall be provided, as well as a description of its cost, fair market value, and an explanation of the basis for valuation;

4. A copy of the work paper calculations determining whether the proposed dividend is an extraordinary dividend as defined in N.J.S.A. 17:27A–4c(2)(b). The work paper shall include the following information:

i. The amounts, dates and form of payment of all dividends or distributions (including regular dividends but excluding distributions of the insurer's own securities) paid within the period of 12 consecutive months ending on the date fixed for payment of the proposed dividend for which approval is sought and commencing on the day after the same day of the same month in the last preceding year;

ii. The insurer's surplus as regards policyholders (total capital and surplus) as of the 31st of December next preceding;

iii. If the insurer is a life insurer, the net gain from operations less realized capital gains for the 12–month period ending the 31st day of December next preceding; and

iv. If the insurer is not a life insurer, the net income less realized capital gains for the 12–month period ending the 31st day of December next preceding;

5. A balance sheet and statement of income for the period intervening from the last annual statement filed with the Commissioner and the end of the month preceding the month in which the request for dividend approval is submitted;

6. A brief statement as to the effect of the proposed dividend upon the insurer's surplus and the reasonableness of surplus in relation to the insurer's outstanding liabilities and the adequacy of surplus relative to the insurer's financial needs; and

7. The non-refundable filing fee as set forth at N.J.A.C. 11:1–32.4(b)14.

11:1–35.11 Adequacy of surplus

In determining the adequacy and reasonableness of an insurer's surplus, the Commissioner shall consider the factors set forth in N.J.S.A. 17:27A–4b, among others, and need not consider any single factor as necessarily controlling. The Commissioner may consider the net effect of all of these factors plus other factors bearing on the financial condition of the insurer. In comparing the surplus maintained by other insurers, the Commissioner shall consider the extent to which each of these factors varies from company to company and in determining the quality and liquidity of investments in subsidiaries, the Commissioner shall consider the individual subsidiary and may discount or disallow its valuation to the extent that, in his or her judgment, the individual investment so warrants.

11:1–35.12 Penalties

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

APPENDIX

EXHIBIT A

FORM A

STATEMENT REGARDING THE ACQUISITION OF CONTROL OF OR MERGER WITH A DOMESTIC INSURER

____

Name of Domestic Insurer

BY

____

Name of Acquiring Person (Applicant)

filed with the Insurance Department of the State of

NEW JERSEY

Dated: __________ , 19__

Name, title, address and telephone number of Individual to Whom Notices and Correspondence Concerning this Statement Should be Addressed:

____

____

____

____

ITEM 1. INSURER AND METHOD OF ACQUISITION

State the name and address of the domestic insurer to which this application relates and a brief description of how control is to be acquired.

ITEM 2. IDENTITY AND BACKGROUND OF THE APPLICANT

(a) State the name and address of the applicant seeking to acquire control over the insurer.

(b) If the applicant is not an individual, state the nature of its business operations for the past five years or for such lesser period as such person and any predecessors thereof shall have been in existence. Briefly describe the business intended to be done by the applicant and the applicant's subsidiaries.

(c) Furnish a chart or listing clearly presenting the identities of the inter-relationships among the applicant and all affiliates of the applicant, regardless of the amount of the affiliate's total assets. Indicate in such chart or listing the percentage of voting securities of each such person which is owned or controlled by the applicant or by any other such person. If control of any person is maintained other than by the ownership or control of voting securities, indicate the basis of such control. As to each person specified in such chart or listing indicate the type of organization (for example, corporation, trust, partnership) and the state or other jurisdiction of domicile. If court proceedings involving a reorganization or liquidation are pending with respect to any such person, indicate which person, and set forth the title of the court, nature of proceedings and the date when commenced.

ITEM 3. IDENTITY AND BACKGROUND OF INDIVIDUALS ASSOCIATED WITH THE APPLICANT

State the following with respect to (1) the applicant if (s)he is an individual or (2) all persons who are directors, executive officers or owners of 10 percent or more of the voting securities of the applicant is not an individual.

(a) Name and business address;

(b) Present principal business activity, occupation or employment including position and office held and the name, principal business and address of any corporation or other organization in which such employment is carried on;

(c) Material occupation, positions, offices or employment during the last five years, giving the starting and ending dates of each and the name, principal business and address of any business, corporation or other organization in which each such occupation, position, office or employment was carried on; if any such occupation, position, office or employment required licensing by or registration with any federal, state or municipal governmental agency, indicate such fact, the current status of such licensing or registration, and an explanation of any surrender, revocation, suspension or disciplinary proceedings in connection therewith.

(d) Whether or not such person has ever been convicted in a criminal proceeding (excluding minor traffic violations) during the last ten years and, if so, give the date, nature of conviction, name and location of court, and penalty or other disposition of the case.

ITEM 4. NATURE, SOURCE AND AMOUNT OF CONSIDERATION

(a) Describe the nature, source and amount of funds or other consideration used or to be used in effecting the merger or other acquisition of control. If any part of the same is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding or trading securities, furnish a description of the transaction, the names of the parties thereto, the relationship, if any, between the borrower and the lender, the amounts borrowed or to be borrowed, and copies of all agreements, promissory notes and security arrangements relating thereto.

(b) Explain the criteria used in determining the nature and amount of such consideration.

(c) If the source of the consideration is a loan made in the lender's ordinary course of business and if the applicant wishes the identity of the lender to remain confidential, he must specifically request that the identity be kept confidential.

ITEM 5. FUTURE PLANS OF INSURER

Describe any plans or proposals which the applicant may have to declare an extraordinary dividend, to liquidate such insurer, to sell its assets to or merge it with any person or persons or to make any other material change in its business operations or corporate structure or management.

ITEM 6. VOTING SECURITIES TO BE ACQUIRED

State the number of shares of the insurer's voting securities which the applicant, its affiliates and any person listed in Item 3 plan to acquire, and the terms of the offer, request, invitation, agreement or acquisition, and a statement as to the method by which the fairness of the proposal was determined. A copy of the final executed purchase agreement shall also be attached to this statement, unless the insurer being acquired is in rehabilitation. In such a case, a copy of the draft purchase agreement shall nevertheless be attached, which shall reflect the general terms for the purchase as agreed to by the parties as of the date of the filing.

ITEM 7. OWNERSHIP OF VOTING SECURITIES

State the amount of each class of any voting security of the insurer which is beneficially owned or concerning which there is a right to acquire beneficial ownership by the applicant, its affiliates or any person listed in Item 3.

ITEM 8. CONTRACTS, ARRANGEMENTS OR UNDERSTANDINGS WITH RESPECT TO VOTING SECURITIES OF THE INSURER

Give a full description of any contracts, arrangements or understandings with respect to any voting security of the insurer in which the applicant, its affiliates or any person listed in Item 3 is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements or understandings have been entered into.

ITEM 9. RECENT PURCHASES OF VOTING SECURITIES

Describe any purchase of any voting securities of the insurer by the applicant, its affiliates or any person listed in Item 3 during the 12 calendar months preceding the filing of this Statement. Include in such description the dates of purchase, the names of the purchasers, and the consideration paid or agreed to be paid therefor. State whether any such shares so purchased are hypothecated.

ITEM 10. RECENT RECOMMENDATIONS TO PURCHASE

Describe any recommendations to purchase any voting security of the insurer made by the applicant, its affiliates or any person listed in Item 3, or by anyone based upon interviews or at the suggestion of the applicant, its affiliates or any person listed in Item 3 during the 12 calendar months preceding the filing of this statement.

ITEM 11. AGREEMENTS WITH BROKER–DEALERS

Describe the terms of any agreement, contract or understanding made with any broker-dealer as to solicitation of voting securities of the insurer for tender and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto.

ITEM 12. FINANCIAL STATEMENTS AND EXHIBITS

(a) Financial statements and exhibits shall be attached to this statement as an appendix, but list under this item the financial statements and exhibits so attached.

(b) The financial statements shall include the annual financial statements of the persons identified in Item 2(c) (including trusts, partnerships or corporations) for the preceding five fiscal years (or for such lesser period as such applicant and its affiliates and any predecessors thereof shall have been in existence), and similar information covering the period from the end of such person's last fiscal year, if such information is available. Such statements may be prepared on either an individual basis, or, unless the Commissioner otherwise requires, on a consolidated basis if such consolidated statements are prepared in the usual course of business.

The annual financial statements of the applicant shall be accompanied by the certificate of an independent public accountant to the effect that such statements present fairly the financial position of the applicant and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. In the case of annual statements for individuals, in lieu of an annual statement certified by an independent certified public accountant, the Commissioner may accept annual statements for individuals that conform with the Institute of Certified Public Accountants Guidelines for Financial Compilation, or such similar guidelines acceptable to the Commissioner. If the applicant is an insurer which is actively engaged in the business of insurance, the financial statements need not be certified, provided they are based on the Annual Statement of such person filed with the insurance department of the person's domiciliary state and are in accordance with the requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of such state.

(c) File as exhibits copies of all tender offers for, requests or invitations for, tenders of, exchange offers for, and agreements to acquire or exchange any voting securities of the insurer and (if distributed) of additional soliciting material relating thereto, any proposed employment, consultation, advisory or management contracts concerning the insurer, annual reports to the stockholders of the insurer and the applicant for the last two fiscal years, and any additional documents or papers required by Form A or N.J.A.C. 11:1–35.3.

ITEM 13. SIGNATURE AND CERTIFICATION

Signature and certification required as follows:

SIGNATURE

Pursuant to the requirements of N.J.S.A. 17:27A–2

_________ has caused this application to be duly signed on its behalf in the City of _________ and State of _________ on the _________ day of _________, 19___.

(SEAL) ____________________
Name of Applicant

BY ____________________
(Name) (Title)

Attest:

____
(Signature of Officer)

____
(Title)

CERTIFICATION

The undersigned deposes and says that (s)he has duly executed the attached application dated ______, 19___, for and on behalf of ____________ (Name of Applicant); that (s)he is the ____________ (Title of Officer) of such company and that (s)he is authorized to execute and file such instrument. Deponent further says that (s)he is familiar with such instrument and the contents thereof, and that the facts set forth are true to the best of his/her knowledge, information and belief.

(Signature) ____________________

(Type or print name beneath) ____________________

EXHIBIT B

FORM B

INSURANCE HOLDING COMPANY SYSTEM ANNUAL REGISTRATION STATEMENT

Filed with the Insurance Department of the State of NEW JERSEY

By

____
Name of Registrant

On Behalf of Following Insurance Companies

Name Address

____

____

____

____

Date: _________, 19___

Name, Title, Address and Telephone Number of Individual to Whom Notices and Correspondence Concerning this Statement Should be Addressed:

____

____

____

ITEM 1. IDENTITY AND CONTROL OF REGISTRANT

Furnish the exact name of each insurer registering or being registered (hereinafter called "the Registrant"), the home office address and principal executive offices of each; the date on which each Registrant became part of the insurance company system; and the method(s) by which control of each Registrant was acquired and is maintained.

ITEM 2. ORGANIZATIONAL CHART

Furnish a chart or listing clearly presenting the identities of and interrelationships among all affiliated persons within the insurance holding company system, regardless of the amount of the affiliate's total assets. The chart or listing should show the percentage of each class of voting securities of each affiliate which is owned, directly or indirectly, by another affiliate. If control of any person within the system is maintained other than by the ownership or control of voting securities, indicate the basis of such control. As to each person specified in such chart or listing indicate the type of organization (for example, corporation, trust, partnership) and the state or other jurisdiction of domicile.

ITEM 3. THE ULTIMATE CONTROLLING PERSON

As to the ultimate controlling person in the insurance holding company system, furnish the following information:

(a) Name.

(b) Home office address.

(c) Principal executive office address.

(d) The organizational structure of the person, that is, corporation, partnership, individual, trust, etc.

(e) The principal business of the person.

(f) The name and address of any person who holds or owns 10 percent or more of any class of voting security, the class of such security, the number of shares held of record or known to be beneficially owned, and the percentage of class so held or owned.

(g) If court proceedings involving a reorganization or liquidation are pending, indicate the title and location of the court, the nature of proceedings and the date when commenced.

ITEM 4. BIOGRAPHICAL INFORMATION

Furnish the following information for the directors and executive officers of the ultimate controlling person: the individual's name and address, his or her principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past ten years.

ITEM 5. TRANSACTIONS AND AGREEMENTS

Briefly describe the following agreements in force, and transactions currently outstanding or which have occurred during the last calendar year between the Registrant and its affiliates:

(1) Loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the Registrant or of the Registrant by its affiliates;

(2) Purchases, sales or exchanges of assets;

(3) Transactions not in the ordinary course of business;

(4) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the Registrant's assets to liability, other than insurance contracts entered into in the ordinary course of the Registrant's business;

(5) All management agreements, service contracts and all cost-sharing arrangements;

(6) Reinsurance agreements;

(7) Dividends and other distributions to shareholders, including the declarations and authorizations thereof;

(8) Consolidated tax allocation agreements; and

(9) Any pledge of the Registrant's stock and/or of the stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system.

No information need be disclosed if such information is not material.

Sales, purchases, exchanges, loans or extensions of credit, investments, guarantees or other contingent obligations involving 0.5 percent or less of the Registrant's admitted assets as of the 31st day of December next preceding shall not be deemed material.

The description shall be in a manner as to permit the proper evaluation thereof by the Commissioner, and shall include at least the following: the nature and purpose of the transaction, the nature and amounts of any payments or transfers of assets between the parties, the identity of all parties to such transaction, and relationship of the affiliated parties to the Registrant.

ITEM 6. LITIGATION OR ADMINISTRATIVE PROCEEDINGS

A brief description of any litigation or administrative proceedings of the following types either then pending or concluded within the preceding fiscal year, to which the ultimate controlling person or any of its directors or executive officers was a party or of which the property of any such person is or was the subject; give the names of the parties and the court or agency in which such litigation or proceedings is or was pending:

(a) Criminal prosecutions or administrative proceedings by any government agency or authority which may be relevant to the trustworthiness of any party thereto; and

(b) Proceedings which may have a material effect upon the solvency or capital structure of the ultimate controlling person including, but not necessarily limited to, bankruptcy, receivership or other corporate reorganizations.

ITEM 7. STATEMENT REGARDING PLAN OR SERIES OF TRANSACTIONS

The insurer shall furnish a statement that transactions entered into since the filing of the prior year's annual registration statement are not part of a plan or series of like transactions, the purpose of which is to avoid statutory threshold amounts and the review that might otherwise occur.

ITEM 8. FINANCIAL STATEMENTS AND EXHIBITS

(a) Financial statements and exhibits should be attached to this statement as an appendix, but list under this item the financial statements and exhibits so attached.

(b) The financial statements shall include the annual financial statements of the ultimate controlling person in the insurance holding company system as of the end of the person's latest fiscal year.

If at the time of the initial registration, the annual financial statements for the latest fiscal year are not available, annual statements for the previous fiscal year may be filed and similar financial information shall be filed for any subsequent period to the extent such information is available. Such financial statements may be prepared on either an individual basis, or unless the Commissioner otherwise requires, on a consolidated basis if such consolidated statements are prepared in the usual course of business.

Unless the Commissioner otherwise permits, the annual financial statements shall be accompanied by the certificate of an independent public accountant to the effect that such statements present fairly the financial position of the ultimate controlling person and the results of its operations for the year ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the ultimate controlling person is an insurer which is actively engaged in the business of insurance, the annual financial statements need not be certified, provided they are based on the Annual Statement of such insurer filed with the insurance department of the insurer's domiciliary State and are in accordance with requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of such state.

(c) Exhibits shall include copies of the latest annual reports to shareholders of the ultimate controlling person and proxy material used by the ultimate controlling person, and any additional documents or papers required by Form B or N.J.A.C. 11:1–35.3.

ITEM 9. FORM C REQUIRED

A Form C, Summary of Registration Statement, must be prepared and filed with this Form B.

ITEM 10. SIGNATURE AND CERTIFICATION

Signature and certification required as follows:

SIGNATURE

Pursuant to the requirements of N.J.S.A. 17:27A–3, the Registrant has caused this annual registration statement to be duly signed on its behalf in the City of ________ and State of ________ on the ________ day of ________, 19___.

(SEAL) ____________________
Name of Registrant

BY ____________________
(Name) (Title)

Attest:

____
(Signature of Officer)

____
(Title)

CERTIFICATION

The undersigned deposes and says that (s)he has duly executed the attached annual registration statement dated ______, 19__, for and on behalf of ____________ (Name of Company); that (s)he is the ____________ (Title of Officer) of such company and that (s)he is authorized to execute and file such instrument. Deponent further says that (s)he is familiar with such instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information and belief.

(Signature) ____________________
(Type or print name beneath) ____________________

EXHIBIT C
FORM C
SUMMARY OF REGISTRATION STATEMENT

Filed with the Insurance Department of the State of NEW JERSEY

By

____
Name of Registrant

On Behalf of Following Insurance Companies

Name Address

____
____
____
____

Date: ________, 19___

Name, Title, Address and Telephone Number of Individual to Whom Notices and Correspondence Concerning This Statement Should be Addressed:

____
____
____

Furnish a brief description of all items in the current annual registration statement which represent changes from the prior year's annual registration statement. The description shall be in a manner as to permit the proper evaluation thereof by the Commissioner, and shall include specific reference to Item numbers in the annual registration statement and to the terms contained therein.

Changes occurring under Item 2 of Form B insofar as changes in the percentage of each class of voting securities held by each affiliate is concerned, need only be included where such changes are ones which result in ownership of holdings of 10 percent or more of voting securities, loss or transfer of control, or acquisition or loss of partnership interest.

Changes occurring under Item 4 of Form B need only be included where: an individual is, for the first time, made a director or executive officer of the ultimate controlling person; a director or executive officer terminates his or her responsibilities with the ultimate controlling person; or in the event an individual is named president of the ultimate controlling person.

If a transaction disclosed on the prior year's annual registration statement has been changed, the nature of such change shall be included. If a transaction disclosed on the prior year's annual registration statement has been effectuated, furnish the mode of completion and any flow of funds between affiliates resulting from the transaction.

The insurer shall furnish a statement that transactions entered into since the filing of the prior year's annual registration statement are not part of a plan or series of like transactions whose purpose it is to avoid statutory threshold amounts and the review that might otherwise occur.

SIGNATURE AND CERTIFICATION

Signature and certification required as follows:

SIGNATURE

Pursuant to the requirements of N.J.S.A. 17:27A-3, the Registrant has caused this summary of registration statement to be duly signed on its behalf in the City of ________ and State of ________ on the ________ day of ________, 19___.

(SEAL) ____________________
Name of Registrant

BY ____________________
(Name) (Title)

Attest:

____
(Signature of Officer)

____
(Title)

CERTIFICATION

The undersigned deposes and says that (s)he has duly executed the attached summary of registration statement dated ______, 19__, for and on behalf of ____________; (Name of Company) that (s)he is the ____________ (Title of Officer) of such company and that (s)he is authorized to execute and file such instrument. Deponent further says that (s)he is familiar with such instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information and belief.

(Signature) ____________________
(Type or print name beneath) ____________________

EXHIBIT D
FORM D
PRIOR NOTICE OF A TRANSACTION
Filed with the Insurance Department
of the State of NEW JERSEY
By

____
Name of Registrant

On Behalf of Following Insurance Companies

Name Address

____
____
____
____

Date: ________, 19___

Name, Title, Address and Telephone Number of Individual to Whom Notices and Correspondence Concerning This Statement Should be Addressed:

____

____

____

ITEM 1. IDENTITY OF PARTIES TO TRANSACTION

Furnish the following information for each of the parties to the transaction:

(a) Name.

(b) Home office address.

(c) Principal executive office address.

(d) The organizational structure, that is, corporation, partnership, individual, trust, etc.

(e) A description of the nature of the parties' business operations.

(f) Relationship, if any, of other parties to the transaction to the insurer filing the notice, including any ownership or debtor/creditor interest by any other parties to the transaction in the insurer seeking approval, or by the insurer filing the notice in the affiliated parties.

(g) Where the transaction is with a non-affiliate, the name(s) of the affiliate(s) which will receive, in whole or in substantial part, the proceeds of the transaction.

ITEM 2. DESCRIPTION OF THE TRANSACTION

Furnish the following information for each transaction for which notice is being given:

(a) A statement as to whether notice is being given pursuant to N.J.S.A. 17:27A–4a(2)(a), a(2)(b), a(2)(c), a(2)(d) or a(2)(e).

(b) A statement of the nature of the transaction.

(c) The proposed effective date of the transaction.

ITEM 3. SALES, PURCHASES, EXCHANGES, LOANS, EXTENSIONS OF CREDIT, GUARANTEES OR OTHER CONTINGENT OBLIGATIONS, INVESTMENTS OR LOANS COLLATERALIZED BY THE STOCK OF A SUBSIDIARY OR AFFILIATE

Furnish a brief description of the amount and source of funds, securities, property or other consideration for the sale, purchase, exchange, loan, extension of credit, guarantee or other contingent obligation, investment, or loan collateralized by the stock of a subsidiary or affiliate; whether any provision exists for purchase by the insurer filing notice, by any party to the transaction, or by any affiliate of the insurer filing notice; a description of the terms of any securities being received, if any; and a description of any other agreements relating to the transaction such as contracts or agreements for services, consulting agreements and the like. If the transaction involves other than cash, furnish a description of the consideration, its cost and its fair market value, together with an explanation of the basis for evaluation.

If the transaction involves a loan, extension of credit or a guarantee, furnish a description of the maximum amount which the insurer will be obligated to make available under such loan, extension of credit or guarantee, the date on which the credit or guarantee will terminate, and any provisions for the accrual of or deferral of interest.

If the transaction involves an investment, guarantee or other arrangement, state the time period during which the investment, guarantee or other arrangement will remain in effect, together with any provisions for extensions or renewals of such investments, guarantees or arrangements. Furnish a brief statement as to the effect of the transaction upon the insurer's surplus.

No notice need be given if the maximum amount which can at any time be outstanding or for which the insurer can be legally obligated under the loan, extension of credit or guarantee is less than (a) in the case of non-life insurers, the lesser of 3 percent of the insurer's admitted assets or 25 percent of surplus as regards policyholders or, (b) in the case of life insurers, 3 percent of the insurer's admitted assets, each as of the 31st day of December next preceding.

ITEM 4. LOANS OR EXTENSIONS OF CREDIT TO A NONAFFILIATE

If the transaction involves a loan or extension of credit to any person who is not an affiliate, furnish a brief description of the agreement or understanding whereby the proceeds of the proposed transaction, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase the assets of, or to make investments in, any affiliate of the insurer making such loans or extensions of credit, and specify in what manner the proceeds are to be used to loan to, extend credit to, purchase assets of, or make investments in, any affiliate. Describe the amount and source of duns, securities, property or other consideration for the loan or extension of credit and, if the transaction is one involving consideration other than cash, a description of its cost and its fair market value together with an explanation of the basis for evaluation. Furnish a brief statement as to the effect of the transaction upon the insurer's surplus.

No notice need be given if the loan or extension of credit is one which equals less than, in the case of non-life insurers, the lesser of 3 percent of the insurer's admitted assets or 25 percent of surplus as regards policyholders or, with respect to life insurers, 3 percent of the insurer's admitted assets, each as of the 31st day of December next preceding.

ITEM 5. REINSURANCE

If the transaction is a reinsurance agreement or modification thereto, as described in N.J.S.A. 17:27A-4a(2)(c), furnish a description of the known and/or estimated amount of liability to be ceded and/or assumed in each calendar year, the period of time during which the agreement will be in effect, and a statement whether an agreement or understanding exists between the insurer and non-affiliate to the effect that any portion of the assets constituting the consideration for the agreement will be transferred to one or more of the insurer's affiliates. Furnish a brief description of the consideration involved in the transaction, and a brief statement as to the effect of the transaction upon the insurer's surplus.

No notice need be given for reinsurance agreements or modifications thereto if the reinsurance premium or a change in the insurer's liabilities in connection with the reinsurance agreement or modification thereto is less than 5 percent of the insurer's surplus as regards policyholders, as of the 31st day of December next preceding.

ITEM 6. MANAGEMENT AGREEMENTS, SERVICE AGREEMENTS AND COST-SHARING ARRANGEMENTS

For management and service agreements, furnish:

(a) A brief description of the managerial responsibilities, or services to be performed.

(b) A brief description of the agreement, including a statement of its duration, together with brief descriptions of the basis for compensation and the terms under which payment or compensation is to be made.

For cost-sharing arrangements, furnish:

(a) A brief description of the purpose of the agreement.

(b) A description of the period of time during which the agreement is to be in effect.

(c) A brief description of each party's expenses or costs covered by the agreement.

(d) A brief description of the accounting basis to be used in calculating each party's costs under the agreement.

ITEM 7. SIGNATURE AND CERTIFICATION

Signature and certification required as follows:

SIGNATURE

Pursuant to the requirements of N.J.S.A. 17:27A–4, _________ has caused this notice to be duly signed on its behalf in the City of _________ and State of _________ on the _________ day of _________, 19___.

(SEAL) ____________________
Name of Applicant

BY ____________________
(Name) (Title)

Attest:

____
(Signature of Officer)

____
(Title)

CERTIFICATION

The undersigned deposes and says that (s)he has duly executed the attached notice dated _______, 19___, for and on behalf of ________________ (Name of Company); that (s)he is the _____________ (Title of Officer) of such company and that (s)he is authorized to execute and file such instrument. Deponent further says that (s)he is familiar with such instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information and belief.

(Signature) ____________________
(Type or print name beneath) ____________________
____

SUBCHAPTER 36. EXAMINATION OF INSURERS

Authority

N.J.S.A. 17:1–8.1, 17:1C–6(e) and P.L. 1993, c.236.

Source and Effective Date

R.1993 d.555, effective October 15, 1993.
See: 25 N.J.R. 4284(a), 25 N.J.R. 5180(a).

Subchapter Historical Note

Subchapter 36, Examination of Insurers, was adopted as emergency new rules R.1993 d.446, effective August 16, 1993 (to expire October 15, 1993). See: 25 N.J.R. 4284(a). The provisions of R.1993 d.446 were readopted as R.1993 d.555. See: Source and Effective Date.

11:1–36.1 Purpose and scope

(a) This subchapter sets forth certain procedures and processes for the examination of the financial condition of a company and for the payment of expenses of any examination conducted pursuant to P.L.1993, c.236.

(b) This subchapter applies to all insurers licensed to transact insurance in this State and to any company or person subject to examination by the Commissioner pursuant to P.L.1993, c.236.

11:1–36.2 Definitions

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

"Alien insurer" means an insurer formed under the laws of any country other than the United States, its states, districts, territories, commonwealths and possessions.

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

"Company" means any insurer or other person engaging in or proposing or attempting to engage in any transaction or kind of insurance or surety business and any person or group of persons who may otherwise be subject to the administrative, regulatory or taxing authority of the Commissioner.

"Department" means the New Jersey Department of Insurance.

"Domestic insurer" means an insurer formed under the laws of this State.

"Examiner" means any individual or firm authorized by the Commissioner to conduct an examination pursuant to P.L.1993, c.236.

"Financial condition examination" means a comprehensive examination of the assets and liabilities, method of conducting business and all other affairs of any company which is the subject matter of the examination report filed pursuant to the procedures set forth in P.L.1993, c.236 and this subchapter.

"Foreign insurer" means an insurer formed under the laws of a jurisdiction of the United States other than this State.

"Insurer" means any corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer or other person engaged in the business of insurance pursuant to Subtitle 3 of the Title 17 of the Revised Statutes or Subtitle 3 of the Title 17B of the New Jersey Statutes.

"Joint examination" means the examination of affiliated insurers that have any type of interinsurance, reinsurance, or other business dealings, and of insurers that have, through reinsurance affiliations, provided 35 percent or more of the existing surplus support at the as-of-date of the examination.

"Lead state" means the state where the parent insurer is domiciled or, if there is no insurer parent, the state where the largest (by direct written premium volume as shown by the last filed annual statement) insurer subsidiary is domiciled.

"NAIC" means the National Association of Insurance Commissioners.

11:1–36.3 Examination; when deemed complete

(a) For purposes of P.L.1993, c.236, section 5b, an examination of the financial condition of a company shall be deemed complete not later than 90 days after the date the examiner leaves the site of the company, or not later than 90 days after the date the company responds to the last written request from the examiner(s) for additional information, but in no event later than 180 days after the date the examiner leaves the site of the company provided that the company has responded to any written request for additional information made 90 days or more prior to that date. For good cause, the Chief Insurance Examiner of the Department may extend these time frames for an additional period of time not to exceed 90 days.

(b) A company shall provide any additional information, documentation or other data requested by an examiner not later than 30 days after such request.

(c) In the case of joint examinations, the time frames set forth in (a) above shall apply where this State is the lead state conducting such joint examination. Where this State is not the lead state, the time frames set forth in (a) above may apply with the agreement of the lead State.

11:1–36.4 Foreign and alien insurers; filing of examination reports with this State

(a) A foreign or alien insurer licensed to transact business in this State shall file with the Department a copy of the financial condition examination report prepared by the insurance department or other regulatory agency for the insurer's state of domicile or port-of-entry state.

1. The copy of the examination report shall be filed not later than 180 days after the report is adopted by the insurance department or regulatory agency of the insurer's state of domicile or port-of-entry state, and shall be certified by such department or agency as representing a true and accurate report of the examination conducted by its duly appointed examiner in charge who satisfies the minimum qualifications to be the examiner in charge of such examination as set forth in the Examiners' Handbook adopted by the NAIC as in effect at the time such examination was conducted.

2. After January 1, 1994, in addition to the requirements set forth in (a) and (a)1 above, the insurer shall provide a certification from the insurance department or regulatory agency that:

i. The insurance department or regulatory agency was at the time of the examination accredited under the NAIC's Financial Regulation Standards and Accreditation Program; or

ii. The examination was performed under the supervision of an accredited insurance department or other regulatory agency or with the participation of one or more examiners who are employed by such an accredited state insurance department or other regulatory agency who satisfy the minimum qualifications to be an examiner as set forth in the Examiners' Handbook adopted by the NAIC as in effect at the time the examination was conducted and who, after a review of the examination work papers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department or other regulatory agency.

11:1–36.5 Payment of expenses

(a) Pursuant to P.L.1993, c.236, section 3d, the reasonable expenses of any examination and proceedings conducted under that statute shall be fixed and determined by the Commissioner, and he or she shall collect them from the company examined, which shall pay them on a presentation of an account of expenses. Any and all such receipts shall be appropriated to the Department for use in defraying the expenses of such examination. If any company, after examination, is adjudged insolvent by a court of competent jurisdiction, the expense of the examination, if unpaid, shall be ordered out of the assets of the company.

(b) Pursuant to P.L.1993, c.236, section 4d, the Commissioner may, in making an examination under that statute, retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals as examiners, the cost of which shall be borne by the company being examined. Upon presentation of a detailed invoice for such fees and expenses, and upon review and approval by the Commissioner of the adequacy and reasonableness of such fees and expenses, the Commissioner shall authorize and direct that the company pay such amount directly to the third party retained by the Commissioner to assist in the examination. The company shall make such payment within 30 days of the Commissioner's approval of the adequacy and reasonableness of such fees and expenses.

11:1–36.6 Penalties

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

SUBCHAPTER 37. LICENSING OF PUBLIC ADJUSTERS

Authority

N.J.S.A. 17:1C-6(e) and 17:22B-20.

Source and Effective Date

R.1994 d.207, effective April 18, 1994.
See: 25 N.J.R. 5432(a), 26 N.J.R. 327(a), 26 N.J.R. 1711(a).

11:1-37.1 Purpose and scope

(a) The purpose of this subchapter is to establish procedures for the examination, licensing and conduct of persons acting as public adjusters in this State.

(b) This subchapter applies to any person, who for money, a commission or anything of value, acts or aids in any manner on behalf of an insured in negotiating for or effecting, the settlement of claims; or for money, a commission or anything of value, solicits or adjusts claims, in whole or in part, on behalf of any public adjuster.

(c) This subchapter shall not apply to:

1. Any employee, agent or other representative of any authorized insurer who acts in that capacity in the adjustment of claims, nor to any licensed insurance producer who is designated by the insurer to act as an adjuster for a client of the producer without any compensation for those services as adjuster. Insurance representatives and licensed insurance producers shall not advertise or publicly solicit the adjustment of claims in a manner likely to mislead the public into believing that he or she is offering services as a public adjuster;

2. Any licensed attorney of this State who acts or aids in adjusting insurance claims as an incident to the practice of his or her profession and who does not advertise him or herself as a public adjuster;

3. Any licensed insurance producer who acts as an adjuster with respect to any loss involving insurance contracts under which he or she was the broker of record in placing the insurance, whether or not designated in writing to act for the insured;

4. Any other duly licensed producer who has been designated to act for the insured in writing before a loss occurs; or

5. An auto body repair facility licensed pursuant to N.J.S.A. 39:13-1 et seq. that acts or aids in adjusting a motor vehicle insurance claim as an incident to the performance of duties for which it is licensed.

11:1-37.2 Definitions

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

"Catastrophic loss occurrence" means an occurrence designated by the President of the United States, the Federal Emergency Management Agency, the Governor of New Jersey, the State Office of Emergency Management in the Division of Law and Public Safety, or any other authorized Federal, State or local agency, as an emergency or a disaster and includes, but is not limited to, a flood, hurricane, storm or earthquake.

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

"Department" means the New Jersey Department of Insurance.

"Financial institution" means a Federal or State chartered bank, savings bank or savings and loan institution which is a member of the Federal Deposit Insurance Corporation (FDIC) or is otherwise insured by an agency of the Federal government.

"First time applicant" means a person who has not been licensed as a public adjuster within the 12-month period prior to application.

"Person" means any individual, corporation, organization, firm, association, partnership or other legal entity.

"Public adjuster" or "adjuster" means any individual, firm, association or corporation, except as excluded at N.J.A.C. 11:1-37.1(c), who, or which, for money, commission or any other thing of value, acts or aids in any manner on behalf of an insured in negotiating for, or effecting, the settlement of claims for loss or damage caused by, or resulting from, any accident, incident or occurrence covered under a property insurance policy, including but not limited to, a flood, transit, inland marine or ocean marine policy; or who, or which, advertises for, or solicits employment as an adjuster of those claims. It shall also mean any individual, who, for money, commission or any other thing of value, solicits or adjusts those claims, in whole or in part, on behalf of any public adjuster.

"Resident (of New Jersey)" means a person who either resides in New Jersey or maintains an office in New Jersey where business is transacted.

"Statutory trust" means a trust in accordance with the provisions of N.J.S.A. 17:22B-13.

"Sublicensee" means an individual who is licensed as a public adjuster and is an officer or director of a corporation which is a licensed public adjuster or who is a member of a firm, association or partnership which is a licensed public adjuster.

"Temporary sublicensee" means an individual who, as the result of a catastrophic loss occurrence, is acting as a public adjuster and is sponsored by and works directly under the supervision of a licensed public adjuster in accordance with a temporary sublicense issued by the Commissioner pursuant to N.J.A.C. 11:1–37.7.

11:1–37.3 General licensing requirements

(a) No person shall act as a public adjuster in this State on behalf of an insured unless licensed pursuant to this subchapter.

(b) The Commissioner may issue or renew a public adjuster's license to any individual, firm, association or corporation who complies with the requirements of this subchapter and is competent to act as a public adjuster in a manner so as to safeguard the interests of the people of this State.

(c) A license issued by the Commissioner shall only be valid until the expiration date indicated on the license.

1. For applications filed on or before March 7, 1995, the initial license term shall expire January 31, 1999.

2. For applications filed after March 7, 1995, the standard term of initial and renewal public adjusters licenses shall be 16 licensing quarters. Licensing quarters shall begin on the first day of February, May, August and November of each year. Licenses shall expire in the fourth year on the last day of the quarter before the quarter in which the license was effective.

11:1–37.4 Licensing applications and renewals

(a) A first time applicant for an individual public adjuster license shall submit the following:

1. A properly executed and dated application requesting issuance of a public adjuster license which shall contain the applicant's legal name; trade name, if any; home address; date of birth; business mailing address and location address; home and business telephone numbers; the applicant's State tax identification number; and responses to questions concerning the applicant's character and fitness for licensing. This information together with all requested attachments shall be certified as being accurate by the applicant;

2. Proof that the applicant has taken and passed the State licensing examination within the 12 months preceding the date of application.

i. For applications received on or before March 7, 1995, the licensing examination shall be waived if the applicant provides proof that he or she has been employed or has acted as a public adjuster as his or her principal business for a period of at least five years prior to March 8, 1994. Persons applying for a waiver as provided in this subsection shall submit the information on a form prescribed by the Commissioner together with supporting documentation. The information shall include:

(1) An affidavit which states that the applicant has been employed as or has acted as a public adjuster as his or her principal business for the last five years and shall also include the applicant's:

(A) Educational background;

(B) Information on other related licenses held (certifications of current license status);

(C) Employment record for, at minimum, the past five years;

(D) Membership in associations or other professional organizations and any specific designations held by the applicant; and

(E) State tax identification number;

(2) State tax returns for the past five years; and

(3) Any additional information which the applicant chooses to provide or which the Commissioner may find relevant to clarify any of the above information.

(4) Where an applicant is unable to provide copies of State tax returns for the last five years, the applicant shall state the reasons therefore and may submit the following documentation in the form of affidavits or letters, for consideration by the Department:

(A) Verification of employment from prior or current employer(s) of the past five years;

(B) Verification from clients of work performed for the past five years;

(C) Verification from licensed New Jersey insurance agents or brokers of work performed;

(D) Verification of work performed from New Jersey licensed insurance companies; and

(E) Any other information which the applicant chooses to provide or which the Commissioner may find relevant to clarify any of the above information.

(5) The information submitted in accordance with (4) above shall be reviewed by the Department for sufficiency on a case-by-case basis.

ii. For applications requesting issuance of a license to an individual who is not a resident, the licensing examination may be waived if the applicant provides proof that he or she is currently licensed in his or her home state in which the licensing provisions for public adjusters are substantially similar to the laws of this State;

3. Any documents or statements required to verify or explain responses to questions concerning the applicant's character, fitness or financial responsibility;

4. Fingerprint impressions taken on New Jersey State Police and Federal Bureau of Investigation fingerprint cards, together with the fees required for processing;

5. A bond conforming to the requirements of N.J.A.C. 11:1–37.9, unless the applicant is applying as a sublicensee.

i. If applying as a sublicensee, proof of coverage under the existing bond of the licensed public adjuster for whom the applicant is or shall be a sublicensee;

6. Two passport-size photographs; and

7. A check or money order made payable to State of New Jersey—General Treasury for the license fee, application processing fee and fingerprint form processing fee in accordance with the fees set forth at N.J.A.C. 11:1–37.18.

(b) A first time applicant for a public adjuster license which is a corporation, firm, association or partnership, shall submit the following:

1. A properly executed and dated application requesting issuance of a public adjuster license which shall contain the applicant's legal name; trade name, if any; business mailing address and location address; business telephone number; State tax identification number; and all requested attachments, all of which shall be certified as being accurate;

2. A resident New Jersey corporation, partnership, association or firm shall file with the Commissioner a copy of its Certificate of Incorporation or of the partnership or association documents, stamped "filed" by the Office of the Secretary of State, County Clerk or other applicable authority, confirming that the business name has been properly recorded;

3. A foreign corporation, partnership or association applying for a resident license to open an office in New Jersey shall file with the Commissioner a certificate filed by the Office of the New Jersey Secretary of State authorizing the applicant to transact business in New Jersey;

4. Fingerprint impressions on New Jersey State Police and Federal Bureau of Investigation fingerprint cards, together with required processing fees for all sublicensees; officers, directors and/or partners which are not sublicensees and all owners of five percent or more of the business;

5. A bond in accordance with N.J.A.C. 11:1–37.9 in an amount sufficient to cover the applicant and all sublicensees; and

6. A check or money order made payable to Treasurer of New Jersey for all licensing, application and processing fees.

(c) The application and applicable fees in accordance with N.J.A.C. 11:1–37.18 shall be sent to:

Attention: Public Adjuster Licensing
License Processing Unit
New Jersey Department of Insurance
20 West State Street
CN 327
Trenton, NJ 08625–0325

(d) A public adjuster license, with an effective date of March 8, 1994, shall be issued to an applicant who was in the business as a public adjuster on March 7, 1994 and:

1. Files an application for a license no later than June 17, 1994; and

2. Complies with the requirements of this subchapter and otherwise qualifies for the issuance of a license.

(e) All licenses shall at all times be the property of the State of New Jersey and upon any suspension, revocation, nonrenewal, expiration or other termination shall no longer be in force and effect.

1. Upon any suspension, revocation or other termination of a license, the licensee or any other person having custody of the license shall immediately deliver it to the Commissioner by personal delivery or by registered or certified mail.

2. Where a license is lost, stolen or destroyed, the Commissioner may accept in lieu of the return of the license, an affidavit of the licensee or other person responsible for the license, setting forth the facts which prevent the return of the license.

3. Failure to pay any requested fee for any reason including, but not limited to, a check being dishonored, shall render a license null and void.

4. A license which was voluntarily cancelled by a licensee may be reinstated for the balance of the license term upon written request of the licensee and payment of the processing fee.

(f) Where a current licensee seeks to renew a license, the licensee shall, at least 15 days before the license expiration date, submit a properly completed renewal application together with a check or money order for the license fee in accordance with N.J.A.C. 11:1–37.18. The renewal application shall be signed, dated and certified to be correct by the licensee or a licensed officer, partner or member of a licensed organization. The licensee shall certify that he, she or it continues to be qualified in accordance with the Act and this subchapter.

1. Failure to submit the renewal application for receipt by the Department by the date of expiration of the license shall be deemed to establish that the license expired on the date shown on the license and that the licensee was not thereafter authorized to engage in any activities for which the license is required.

2. Any licensee who does not desire renewal shall notify the Department by submitting the renewal application marked "Do Not Renew."

3. An application for renewal may be submitted within 12 months of the date of the expiration of the license.

i. Nothing in this section shall be construed to permit a person to engage in the business of public adjuster without a valid license.

11:1–37.5 Denial of license

(a) Where it appears from an application, the attached documents or Department records that an applicant has not demonstrated the qualifications prescribed in the Act or this subchapter, the Department shall advise the applicant in writing that the license request is denied; shall specify the reasons for the denial; and shall advise the applicant of the right to request a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B–1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, and of the procedures for filing the request.

1. A request for a hearing shall be filed within 20 days of receipt of the letter denying the request for a license.

2. The request for a hearing shall be forwarded to:

Director of Licensing and Insurance Education
New Jersey Department of Insurance
20 West State Street
CN 325
Trenton, NJ 08625–0325

3. The request for a hearing shall include a statement of the legal and factual basis upon which the applicant disagrees with the denial of a license and all documentation in support thereof.

(b) Upon receipt of a request for a hearing on a license denial, the Department shall review the application and attachments, the Department's records and any additional information submitted and shall determine whether the license will be issued or the matter transmitted to the Office of Administrative Law as a contested case.

11:1–37.6 Sublicensees

(a) Any applicant for a public adjuster license which is a corporation, partnership, firm or association shall have at least one officer, director, partner, or member licensed as a public adjuster.

(b) Only the officers or directors of a corporation or the members of a firm, association or partnership shall be sublicensees.

(c) A licensed public adjuster which is a corporation, firm or association may employ persons as public adjusters who are not sublicensees only where the persons are individually licensed public adjusters or temporary sublicensees and are bonded in accordance with this subchapter.

(d) Each sublicensee shall obtain and maintain an individual public adjuster license in accordance with N.J.A.C. 11:1–37.4.

i. The license document shall indicate that the individual is a sublicensee. The license shall authorize the sublicensee to transact business only for the public adjuster named in the license, that is, the licensee for whom the individual is a sublicensee.

(e) A licensed public adjuster shall file a notice with the Commissioner, which sets forth any change in its sublicensees within 20 days of the change.

1. The notice shall include the name and New Jersey reference number of the sublicensee and the reason for the change, for example, whether an individual was hired, terminated, retired or moved from the State.

i. Where an additional sublicensee is added, the notice shall be signed by an existing sublicensee and the new sublicensee.

ii. Where a sublicensee has been terminated because he or she has violated any of the provisions of this subchapter the reason for the termination shall be described in the notice.

2. The licensed public adjuster shall return a terminated sublicensee's license document together with the notice.

3. The licensed public adjuster shall include a new bond or endorsement whenever the change requires an increase in the principal amount of its bond.

11:1–37.7 Temporary sublicensee

(a) In the event of a catastrophic loss occurrence, a licensed public adjuster may apply to the Commissioner for the issuance of a temporary sublicense for an individual temporarily hired or retained to act as a public adjuster.

1. The licensed public adjuster shall sponsor the temporary sublicensee who shall be its agent and work under its direct supervision.

2. The sponsoring public adjuster shall bear the full responsibility for the actions of its temporary sublicensee undertaken in the course of acting as a public adjuster.

3. The sponsoring public adjuster shall ensure that the temporary sublicensee complies with the Act and this subchapter.

(b) Upon the submission of a properly executed application and the fee required in accordance with N.J.A.C. 11:1–37.18, the Commissioner may issue a temporary sublicense which may be valid for an initial period not to exceed 90 days from the date of the declaration of the catastrophic loss occurrence. In order to evaluate the adequacy and

competency of the temporary sublicensee, the following information shall be filed with the Commissioner:

1. Proof of licensing in another state or proof of five years employment experience as a public adjuster in any state; and

2. Evidence that the individual is covered by a bond in accordance with N.J.A.C. 11:1–37.9.

(c) At the discretion of the Commissioner, a temporary sublicense may be renewed for one additional 90–day period upon the submission to the Commissioner of the fee required in accordance with N.J.A.C. 11:1–37.18. The Commissioner shall consider:

1. The nature, duration and/or continuation of the catastrophic loss occurrence;

2. The continued need for temporary sublicensees; and

3. The conduct of the particular temporary sublicensee.

(d) A temporary sublicense shall only be valid for the duration required by the specific catastrophic loss occurrence for which the temporary sublicensee has been issued or as determined by the Commissioner, but in no event for a period longer than that designated in the license.

11:1–37.8 Licensing examination

(a) Except as expressly provided by N.J.A.C. 11:1–37.4(a)2i and ii, all individual applicants, including sublicensee applicants, seeking a public adjuster license shall take and pass the State licensing examination, which may be administered by the Department or by a vendor under contract to the Department.

(b) Examinations shall be administered at such times and places as may be designated by the Commissioner. If a contract vendor is utilized it shall provide the Commissioner with at least 60 days prior notice of the dates and times of the scheduled examinations.

(c) As determined by the Commissioner, at least one examination administration center may be located in the geographical areas comprising North, South and Central New Jersey.

(d) Whenever a contract vendor is utilized it shall:

1. Establish at least one examination administration center within each geographical area designated by the Commissioner;

2. Provide sufficient examination center personnel for the administration of the examination;

3. Collect from applicants taking the examination a fee approved by the Commissioner which covers the costs of developing and administering the examination;

4. Score examinations promptly and provide scored reports to all candidates within 60 days after the test date; and

5. Provide to the Department:

i. Alphabetically arranged lists containing the candidates' names, addresses, identification numbers and scores of passing and failing candidates; and

ii. Summary statistics for each test, indicating the number of candidates registered, tested and absent, and passing or failing.

(e) The Department shall have the sole responsibility for establishing minimum qualification and passing requirements for candidates taking the licensing examination. The qualification and passing requirements shall be on file at the offices of the Department and shall be made available for public inspection.

(f) For good cause shown the Commissioner may, by order, require an applicant for licensure or a licensee to retake the State licensing examination. The order shall specify the factual circumstances upon which it is based. In the case of a licensee, a license shall remain effective pending the results of the new examination unless the license is otherwise subject to revocation or suspension.

1. A licensee or applicant for licensure may appeal the decision of the Commissioner within 10 days of receipt of the order, by filing with the Commissioner a written statement and supporting documentation, if any, disputing with specificity the allegations in the order.

2. Upon a review of the record, the Commissioner shall either rescind the order or require the licensee or applicant for licensure to retake the examination within a prescribed period of time.

i. If a licensee fails to retake the examination within the prescribed period of time, the Commissioner shall issue an Order to Show Cause why the license should not be revoked and shall advise the licensee of his or her right to a hearing pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B–1 et seq., as implemented by the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

ii. If an applicant for licensure fails to retake the examination within the prescribed period of time, the Commissioner shall refuse to issue the license for which application is made and shall advise the applicant for licensure of his or her right to a hearing pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B–1 et seq., as implemented by the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

11:1–37.9 Bond; alternative security

(a) An applicant for a public adjuster's license, renewal license or temporary license shall file with the Commissioner a bond, executed by the applicant and by an A rated insurer approved to transact the business of sureties in New Jersey, in the penal sum of $10,000 per licensee. The bond shall be filed with the License Processing Unit at the address set forth at N.J.A.C. 11:1–37.4(c). Where a license names sublicensees, a $10,000 bond shall be required for the licensee and for each sublicensee.

(b) The bond shall be made to the State of New Jersey for the use and benefit of any person injured by a willful, malicious or wrongful act by a public adjuster in connection with the transaction of its business.

(c) The bond shall be in the form set forth in Appendix A to this subchapter which is incorporated herein by reference.

(d) If a bond is cancelled or withdrawn, the licensee shall immediately return its license to the Commissioner. Upon the filing of a new bond and payment of the required fees in accordance with N.J.A.C. 11:1–37.18, the license shall be returned to the licensee. No person shall engage in the business of a public adjuster in New Jersey after its bond is cancelled or withdrawn, until the person is properly relicensed in accordance with this subchapter.

(e) Where an applicant has been unable to procure a bond after contacting at least three approved sureties, the applicant may deposit with the Commissioner, as alternative security, $10,000 in the form of either:

1. Cash;

2. Certificates of deposit; or

3. Irrevocable letters of credit.

(f) Any security listed in (e) above shall be deposited in accordance with the provisions of N.J.A.C. 11:2–32.3 and the applicant shall:

1. File evidence of compliance with this provision in accordance with (a) above;

2. File an affidavit that he or she was unable to obtain a bond from at least three approved sureties (which shall be identified in the affidavit) in this State; and

3. Within one year from the effective date of the applicant's license, obtain a replacement bond which conforms to the requirements of this subchapter.

11:1–37.10 Administrative reporting requirements

(a) Licensed public adjusters shall file with the License Processing Unit of the Department:

1. Complete and accurate business and home addresses, and notice of any change thereto within 20 days;

2. Upon a form prescribed by the Commissioner, notice of the opening or closing of any office in this State within 20 days of the action;

3. Notice of a change of business name within 20 days; and

4. Notice of change in ownership of a company or of the officers, directors, partners or sublicensees within 20 days.

(b) An organization licensed as a public adjuster shall maintain copies of all licenses of its sublicensees in at least one office with an address on file with the Department.

11:1–37.11 Escrow or trust accounts

(a) Any public adjuster who receives, accepts or holds any moneys, on behalf of an insured, towards the settlement of a claim for loss or damage, shall deposit such moneys in an interest bearing escrow or trust account in a financial institution in this State which is insured by an agency of the Federal government.

(b) Any funds held in an escrow or trust account and interest accruing thereon shall be the property of the insured.

1. Such moneys shall be held pursuant to a written agreement signed by the insured and by the public adjuster which shall clearly specify:

i. The services rendered or to be rendered; and

ii. The amount of any services to be paid from the escrowed funds.

(c) In the event of the insolvency and/or bankruptcy of a public adjuster, the claim of an insured for any settlement moneys received, accepted or held by a public adjuster shall constitute a statutory trust as provided at N.J.S.A. 17:22B–13e.

11:1–37.12 Minimum recordkeeping requirements

(a) Each licensee shall maintain accurate files, books and records reflecting all insurance-related transactions in which the licensee or his or her employees take part in accordance with the standards set forth in this subchapter. These records shall be maintained by either separate books of record or by one or more consolidated books of record for a period of five years from the date of the closing of the claim.

1. All books and records shall consist of sequentially numbered pages and shall be maintained in such a manner that they can be produced for examination at any time.

2. Appropriate and required entries shall be made at least once every 30 days.

(b) Each licensee shall maintain a register of all monies received, deposited, disbursed or withdrawn in connection with a transaction with an insured, including, but not limited to: fees, transfers and disbursements from a trust account; and all transactions concerning, including the balance of, all interest bearing accounts. The minimum information required to be maintained in the register includes the following:

1. The name and location of the financial institution in which the funds are deposited;

2. The account number of the trust or escrow account;

3. The date monies are received, deposited, disbursed or withdrawn;

4. The amount of money received, deposited, disbursed or withdrawn;

5. An itemized record of the allocation of the funds;

6. The name of the insured, insurance producer, insurer or other account to or from whom monies are disbursed or received;

7. The claim number;

8. The receipt number, when available; and

9. The method of payment, such as, cash, check, money order or draft.

(c) For each disbursement, the number of the check shall be recorded in the register.

(d) All entries for receipts and disbursements shall be supported by evidential matter as provided in (b) and (c) above. The evidential matter shall be referenced in the entry so that it may be traced for verification.

(e) Each licensee shall prepare and maintain a monthly reconciliation of the trust account.

(f) Each licensee shall maintain a file for each claimant with whom a contractual relationship has been established. The minimum items required to be maintained in the file include:

1. Correspondence received or sent with respect to any insurance or insurance related transaction;

2. All of the client's contracts; and

3. All claim files.

(g) The licensee shall also maintain the following records for a period of five years:

1. Escrow or trust account statements;

2. Names and addresses of all licensees and sublicensees;

3. Copies of all new and renewal applications submitted to the Department by an individual, the company, all sublicensees and temporary sublicensees;

4. All fees received, if not deposited in a trust or escrow account; and

5. All records of transactions with persons or entities owned by the licensee or by one or more of its officers or directors or an owner of 10 percent or more of the licensee that are construction firms, salvage firms or appraisal firms.

(h) Failure to keep, maintain or make available for inspection by the Commissioner, those records which the Commissioner shall require to be maintained in accordance with this subchapter, or any other violations by a licensee, shall result in the imposition of administrative fines comparable to the fines set forth at N.J.A.C. 11:17D–2.4.

11:1–37.13 Right to compensation

(a) No individual, firm, partnership, association or corporation licensed under this subchapter shall have any right to compensation from any insured for or on account of services rendered to an insured as a public adjuster unless the right to compensation is based upon a written contract or memorandum between the adjuster and the insured and specifying or clearly defining the services to be rendered and the amount or extent of the compensation.

(b) The written memorandum or contract between a licensed public adjuster and an insured:

1. Shall be executed in duplicate and a fully executed copy shall be provided to the insured upon execution;

2. Shall be kept on file by the public adjuster, available at all times for inspection without notice by the Commissioner; and

3. Shall contain the following:

i. The signatures of the insured and the public adjuster;

ii. A list of services to be rendered and the maximum fees to be charged, which fees shall be reasonably related to services rendered; and

iii. The time and date of execution of the contract (day, month, year) by each party;

4. Shall conform to the requirements of the Consumer Contracts Act at N.J.S.A. 56:12–1 et seq. and, as applicable, the Federal Trade Commission Act as set forth at 15 U.S.C. 41, and 16 C.F.R. subsection 429.1 (1993).

5. Shall prominently include a section which specifies:

i. The procedures to be followed by the insured if he or she seeks to cancel the contract, including any requirement for a written notice;

ii. The rights and obligations of the parties if the contract is cancelled at any time; and

iii. The costs to the insured or the formula for the calculation of costs to the insured for services rendered in whole or in part.

(c) No public adjuster shall enter into any contract or agreement, oral or written, with an insured, to negotiate or settle claims for loss or damage occurring in this State between the hours of 6:00 P.M. and 8:00 A.M. during the 24 hours after the loss has occurred.

11:1–37.14 Violations and penalties

(a) The Commissioner may deny, suspend, revoke or refuse to renew a public adjuster's license based on any violation of the Act or this subchapter, or for the commission or omission of any act by a public adjuster which demonstrates that the applicant or licensee is not competent or trustworthy to act as a public adjuster, or where the person has:

1. Violated any provision of this State's insurance laws, including any rules promulgated thereunder;

2. Violated any law in the course of acting as a public adjuster;

3. Committed a fraudulent or dishonest act;

4. Demonstrated the licensee's lack of integrity, incompetency, bad faith, dishonesty, financial irresponsibility or untrustworthiness to act as a public adjuster;

5. Aided, abetted or assisted another person in violating any insurance law of this or any other State;

6. Withheld material information or made a material misstatement in the application for the license;

7. Failed to pay any fine or restitution imposed by an order of the Commissioner;

8. Collected from any client any fee other than that agreed to in the employment contract in a form required by N.J.A.C. 11:1–37.13;

9. Misappropriated, converted or illegally withheld, money which was received in the conduct of business that belonged to insurers, clients or others;

10. Failed to notify the Commissioner within 30 days of a conviction for any crime, indictment or the filing of any formal criminal charges, or the suspension or revocation of any insurance license or authority by a state, other than this State, or failed to supply any documentation that the Commissioner may request in connection therewith;

11. Failed to appear in response to any subpoena issued by the Commissioner or his authorized designee; failed to produce any documents or other material requested in a subpoena; or refused or failed to cooperate with an investigation by the Commissioner of the activities of the person or any other licensee;

12. Induced the cancellation of a duly executed written memorandum between an insured and a public adjuster;

13. Made any misrepresentation of facts or advised any person on questions of law in conjunction with the business as a public adjuster;

14. Had any professional license suspended or revoked in this or any other state;

15. Engaged in the business of a public adjuster in New Jersey with an invalid or expired license; or

16. Committed any other act, or omission which the Commissioner determines to be inappropriate conduct by a licensee of this State.

(b) Any person which violates any provision of this subchapter shall, in addition to any other penalties provided by law, be liable for a civil penalty of not more than $2,500 for a first offense and not more than $5,000 for the second and each subsequent offense. Each transaction or statutory violation shall constitute a separate offense.

(c) The procedures for the imposition of administrative penalties shall be governed by N.J.A.C. 11:17D–2.1.

11:1–37.15 Effect of suspension or revocation of public adjuster license

(a) Upon service of any final order suspending or revoking a public adjuster license, the public adjuster shall immediately return to the Commissioner for cancellation any license in the public adjuster's possession.

(b) No other licensed individual or organization shall advertise, display or conduct any business as a public adjuster using the legal or business name of any person whose license has been suspended or revoked.

(c) No person whose public adjuster license has been suspended or revoked shall be entitled to any refund of license fees for the unexpired term of any license issued.

11:1–37.16 Reinstatement after suspension or revocation of a public adjuster license

(a) No individual, firm, association or corporation whose license has been revoked and no firm or association of which the individual is an officer or director, shall be entitled to any license or renewal license under this subchapter for a period of one year after the revocation.

(b) A person whose license has been suspended or revoked may, after one year from the effective date of any order revoking a public adjuster license or upon completion of the period of suspension, apply for reinstatement of the license on the form of application used for initial public adjuster license applicants and shall fulfill all of the requirements set forth therein.

(c) The applicant shall submit with the application a copy of the order of suspension or revocation and an executed affidavit that states:

1. That the period of suspension or revocation has been completed or in the case of a revocation one year has elapsed from the date of the revocation;

2. That all required conditions for reinstatement as described in the order of suspension or revocation have been met;

3. That documents confirming that all conditions have been met, such as receipts for fines or restitution, satisfactions of judgment, etc., are attached to the affidavit;

4. That the applicant has complied with all restrictions imposed by the order of suspension or revocation.

5. The applicant shall also include with the application an affidavit containing the following information concerning the applicant's activities since suspension or revocation:

i. An employment history;

ii. A statement concerning the other business interests, if any, of the applicant;

iii. The manner of disposition of the applicant public adjuster's business upon suspension or revocation of his or her public adjuster license;

iv. Whether restitution has been made as a result of the activities that led to the suspension or revocation, including the names and addresses of the persons or entities to whom restitution was made and amounts of restitution made;

v. Whether the applicant currently holds any other business, professional or occupational licenses in this or any other state;

vi. Whether the applicant, or any business in which he or she owns five percent or more, is or has been a party to any legal or administrative proceedings in this or any other state and, if so, a statement concerning the nature of the proceedings, the parties and the result or current status; and

vii. A written statement by the applicant describing the manner in which he or she has improved, during the period of suspension or revocation, his or her reputation, character, trustworthiness, competency and worthiness to be a public adjuster.

(d) If any license held by a firm, association or corporation is suspended or revoked, no member or partner of the firm, association or partnership and no officer or director of the corporation shall be entitled to a license or to be named as a sublicensee in a license for the same period of time unless it is demonstrated to the Commissioner that the member or officer or director was not personally responsible in the matter for which the license was suspended or revoked.

(e) If the suspension or revocation was based upon the conviction of a crime or if the applicant was convicted of a crime since the suspension or revocation, the applicant shall submit with his or her application for licensing, a certificate in accordance with N.J.S.A. 2A:168A–3, of the Federal or state parole board or of the chief probation officer of a United States district court or a county who has supervised the applicant's probation, certifying that the applicant has achieved a degree of rehabilitation which indicates that the granting of a license is not incompatible with the welfare of society.

(f) The Commissioner, or his or her designee, shall review the application to determine whether reinstatement is warranted, based on the information provided in (c) through (e) above, and that the applicant has proven that he or she is trustworthy and competent to act as a public adjuster in a manner so as to safeguard the interests of the people in this State. The review of the application may include further investigation or inquiry, may require the applicant to provide additional information, and may further include a conference with Department personnel.

(g) If the Department is satisfied that reinstatement is warranted, the Department shall issue the license. If the Department is not satisfied that reinstatement is warranted, the Department shall deny the license and the applicant shall be given notice and opportunity for a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B–1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

11:1–37.17 Public records

(a) The following licensee records maintained by the Department shall be public records in accordance with N.J.S.A. 47:1A–1 et seq.:

1. For an individual licensee, his or her name; license reference number; business mailing and location address; date of birth; license authorities; date first licensed; date last licensed or current license expiration date; names and reference numbers of licensed organizations for which the public adjuster is a sublicensee, date became a sublicensee and date terminated, if any; names and reference numbers of employers, date relationship began and terminated; the institution of formal administrative proceedings; and the disposition of any final action taken against the licensee by the Department.

2. For a licensed organization, the legal name of the public adjuster; license reference number; other business name, if any; business mailing and location address; license authorities; date first licensed; date last licensed or current expiration date; names and reference numbers of sublicensees, and reference numbers of employees, date relationship began and terminated; the institution of formal administrative proceedings; and the disposition of any final action taken against licensed organization by the Department.

(b) The following licensee records are specifically determined to be nonpublic records in accordance with N.J.S.A. 47:1A–1 et seq.;

1. Criminal complaints, indictments, judgments of conviction and other separate documents submitted in connection with a license application concerning whether an applicant is disqualified by reason of conviction of a crime;

2. Criminal history records obtained as the result of any fingerprint check;

3. Copies of judgments, orders or pending actions of any civil penalty or fine or order of restitution, pursuant to any unfair trade practice statute, insurance fraud statute, consumer fraud or consumer protection statute, or any similar statute in this or any other state or by the Federal government submitted in connection with a license application;

4. Copies of orders of suspension or revocation issued by professional or occupational licensing authorities, and other separate documents submitted in connection with a license application;

5. Records concerning the medical disability of any licensee;

6. Investigative files in any matter pending investigation, or in any completed investigation in which no administrative action was instituted or taken; and

7. Records concerning the contents of the licensing examination questions.

(c) Upon request by any person, the Department may issue a certification of the license status of any currently licensed public adjuster licensed within the preceding four years. Such certification shall contain the licensee's name, date of birth, license reference number, whether currently licensed or expired, whether qualified by examination or the equivalent, and whether any formal disciplinary action was taken during the last four years.

(d) Nothing in this section shall compel the Department to maintain licensee records beyond normal retirement or destruction schedules as approved by the Division of State Library, or to retrieve and provide a copy of any written record required to be filed with the Department when the information requested is available as a certified abstract of information contained in the Department's electronic data processing system.

11:1–37.18 Fees

(a) The following nonrefundable fees shall apply:

1. License fee: $300.00.

2. Temporary sublicense fee: $150.00.

3. Renewal temporary sublicense fee: $150.00.

4. Processing fee: $20.00.

5. Fingerprint processing fees: as currently established by State or Federal jurisdictions.

(b) The examination fee shall be the amount authorized by the Commissioner to be charged by the contract vendor administering the examination on behalf of the Department.

(c) Disabled war veterans of the United States military service may apply to the Commissioner for a waiver of the above licensing and processing fees by submitting proof of a service related disability. Fees for fingerprint processing shall not be waived.

(d) Amendments to the fee schedule set forth in (a) and (b) above may be promulgated subsequent to March 7, 1995.

(e) All checks or money orders shall be made to: State of New Jersey—General Treasury.

APPENDIX

BOND NO. ________

PUBLIC ADJUSTER BOND

We, ____________________ [licensee], of ____________________ [street address], city of ________, State of ________, as principal, and ________, a corporation incorporated under the laws of the State of New Jersey, and duly licensed to transact a surety business in the State of New Jersey, as surety, are indebted to the State of New Jersey, obligee, in the penal sum of $_____, for which payment we bind ourselves and our respective heirs, legal representatives, successors, and assigns, jointly and severally.

The principal has applied to the Commissioner of Insurance of the State of New Jersey for issuance of a license under the provisions of the Public Adjusters' Licensing Act, P.L. 1993, c.66, (N.J.S.A. 17:22B–1 et seq.), as a public adjuster.

Pursuant to the Public Adjusters' Licensing Act, P.L. 1993, c.66, (N.J.S.A. 17:22B–1 et seq.), every licensee shall file with the Commissioner of Insurance a surety bond in the penal sum of $_____ applicable to the licensee, and each of the sublicensees named in the license, and any temporary sublicensee sponsored by the licensee, if any, said bond to be issued by an approved surety, conditioned on faithful and honest conduct as a public adjuster, before the license will be issued. The bond must be maintained during the term of the license.

The condition of this bond is that if the principal, licensee, or any sublicensees of the licensee, if any, conducts her, his or its business as a public adjuster faithfully, honestly, and in accordance with law, and if the principal, licensee, or any sublicensees of the licensee, if any, faithfully complies with and abides by the provisions of N.J.S.A. 17:22B–1 et

seq., and all rules and regulations promulgated pursuant thereto, and any amendments thereto, and will commit no willful, malicious or wrongful act, and perform all obligations and undertakings when engaging as a public adjuster in this State, and will pay to the State any and all money that may become due and owing to the State under and by virtue of the provisions of N.J.S.A. 17:22B–1 et seq., then this obligation will be null and void; otherwise it shall remain in full force and effect.

This bond is issued subject to the following express conditions, fulfillment of which shall be precedent to all rights of recovery hereunder.

1. This bond shall be deemed continuous in form and shall remain in full force and effect and shall run concurrently with the term for which the license is granted and each and every succeeding term or terms during which the license may be renewed, after which liability shall cease except as to any liability of indebtedness incurred or accrued hereunder, subject however, to cancellation. If the surety herein shall so elect, this bond may be cancelled at any time, by filing with the Commissioner and principal a 30–days written notice of such cancellation. However, surety shall not be discharged from any liability already accrued under this bond or which shall accrue before the expiration of the 30–day period.

2. Every person damaged as a result of any willful, malicious or wrongful act of the principal, licensee, or any sublicensees of the licensee, if any, in the conduct as a public adjuster, may bring an action in a proper court on this bond for the amount of such damage.

3. The aggregate liability of the surety shall not exceed the sum set forth above.

4. The State of New Jersey, acting through the Commissioner of Insurance, reserves the right, at any time, to terminate this bond, except as to any liability already incurred or accrued hereunder, by written notice of such termination to surety delivered or mailed by certified or registered mail. On expiration of the period designated in such notice, which period shall not be less than 3 days from the time the notice was mailed, this bond shall terminate and be of no further force or effect except as to any liability incurred or accrued prior to the termination.

5. In the event that the principal and the surety, or either of them, is served by the notice of any action brought against the principal or the surety under this bond, written notice of the filing of such action shall be immediately given by the principal or the surety, as each is served with notice to the action, to the Commissioner of Insurance.

The premium for which this bond is written is $_____.

Executed on this __________________ day of __________, 19__, effective immediately.

____
[Name of Licensee]

signed, sealed this
_____ day of _____,
19__, in the presence of

____
[______ President—if corp.]

____
[Individual or Partner]

attest _______________
[______ Secretary—if corp.]

[Witness—if individual or partnership]

____
[Surety company]

By: _______________
[Attorney in Fact]

to

The State of New Jersey

Under the Public Adjusters' Licensing Act

P.L. 1993, c.66 (N.J.S.A. 17:22B–1 et seq.)

Filed ________, 19__

Commissioner of Insurance

SUBCHAPTER 38. (RESERVED)

SUBCHAPTER 39. DISCLOSURE OF MATERIAL TRANSACTIONS

Authority

N.J.S.A. 17:1C–6, 17:1–8.1, 17:17–10, 17:23–1, 17:23–20 et seq., 17:44A–1 et seq., 17:48–1 et seq., 17:48A–1 et seq., 17:48C–1 et seq., 17:48D–1 et seq., 17:48E–1 et seq., 17B:18–42, 17B:21–1, and 17:51A–1 et seq.

Source and Effective Date

R.1995 d.234, effective May 1, 1995.
See: 27 N.J.R. 816(a), 27 N.J.R. 1802(a).

11:1–39.1 Purpose and scope

(a) This subchapter requires that information be filed with the Commissioner by domestic insurers, fraternal benefit societies, dental plan organizations, hospital service corporations, medical service corporations, dental service corporations, and health service corporations regarding certain acquisitions and dispositions of assets, and nonrenewals, cancellations or revisions of ceded reinsurance agreements, and sets forth the specific information to be filed.

(b) This subchapter shall apply to all of the entities set forth in (a) above domiciled in this State.

11:1–39.2 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 Insurance.

"Department" means the New Jersey Department of Insurance.

"Insurer" means: any corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit society, or other person engaged in the business of insurance pursuant to subtitle 3 of Title 17 of the Revised Statutes or subtitle 3 of Title 17B of the Revised Statutes; any hospital service corporation operating pursuant to N.J.S.A. 17:48–1 et seq.; any medical service corporation operating pursuant to N.J.S.A. 17:48A–1 et seq.; any dental service corporation operating pursuant to N.J.S.A. 17:48C–1 et seq.; any dental plan organization operating pursuant to N.J.S.A. 17:48D–1 et seq.; and any health service corporation operating pursuant to N.J.S.A. 17:48E–1 et seq.

"NAIC" means the National Association of Insurance Commissioners.

11:1–39.3 Disclosure of transactions

(a) Every insurer domiciled in this State shall file a report with the Commissioner disclosing material acquisitions and dispositions of assets, or material nonrenewals, cancellations or revisions of ceded reinsurance agreements, unless such acquisitions and dispositions of assets or material nonrenewals, cancellations or revisions of ceded reinsurance agreements have been submitted to the Commissioner for review, approval or information purposes pursuant to other provisions of the Title 17 or Title 17B of the Revised Statutes, Title 11 of the New Jersey Administrative Code, or other requirements.

(b) The report required in (a) above shall be filed within 15 days after the end of the calendar month in which any of the transactions set forth in (a) above occur.

(c) One complete copy of the report, including any exhibits or other attachments filed as part thereof, shall be separately filed with the Department and the NAIC.

1. Filings with the Department shall be mailed to the following address:

New Jersey Department of Insurance
Division of Financial Examinations
Attention: Disclosure of Transactions
20 West State Street
CN 325
Trenton, NJ 08625

2. Filings with the NAIC shall be made in the same manner as filings of financial statements with the NAIC.

(d) All reports obtained by or disclosed to the Commissioner pursuant to this subchapter shall be given confidential treatment and shall not be subject to subpoena and shall not be made public by the Commissioner, the NAIC, or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the Commissioner, after giving the insurer who would be affected thereby, notice and an opportunity to be heard, determines that the interest of policyholders, shareholders or the public will be served by the publication thereof, in which event the Commissioner may publish all or any part thereof in such manner as he or she may deem appropriate.

(e) This subchapter shall not be construed as limiting the Commissioner's authority to require any insurer to file any specific information or documents pursuant to law, including, but not limited to, copies of any reinsurance agreements.

11:1–39.4 Acquisitions and dispositions of assets; reporting requirements

(a) Acquisitions or dispositions of assets are not required to be reported, as otherwise required pursuant to N.J.A.C. 11:1–39.3, if the acquisitions or dispositions are not material.

1. For purposes of this subchapter, a material acquisition (or the aggregate of any series of related acquisitions during any 30 day period) or disposition (or the aggregate of any series of related dispositions during any 30 day period) is one that is non-recurring and not in the ordinary course of business and involves more than five percent of the reporting insurer's total admitted assets as reported in its most recent statutory annual statement filed with the Department.

(b) Asset acquisitions subject to this subchapter include every purchase, lease, exchange, merger, consolidation, succession, or other acquisition other than the construction or development of real property by or for the reporting insurer or the acquisition of materials for such purpose.

(c) Asset dispositions subject to this subchapter include every sale, lease, exchange, merger, consolidation, mortgage, hypothecation, assignment (whether for the benefit of creditors or otherwise), abandonment, destruction, or other disposition.

(d) The following shall be disclosed and provided in any report of a material acquisition or disposition of assets required to be filed pursuant to this subchapter:

1. The date of transaction;

2. The manner of acquisition or disposition;

3. A description of the assets involved;

4. The nature and amount of the consideration given or received;

5. The purpose of, or reason for, the transaction;

6. The manner by which the amount of consideration was determined;

7. The gain or loss recognized or realized as a result of the transaction;

8. The name(s) of the person(s) from whom the assets were acquired or to whom they were disposed; and

9. A copy of all documents related to the acquisition or disposition (for example, purchase agreement, lease agreement, etc.).

(e) Insurers shall report material acquisitions and dispositions on a non-consolidated basis unless the insurer is part of a consolidated group of insurers which utilizes a pooling arrangement or 100 percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and such insurer ceded substantially all of its direct and assumed business to the pool. An insurer is deemed to have ceded substantially all of its direct and assumed business to a pool if the insurer has less than $1,000,000 total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent of the insurer's capital and surplus.

11:1–39.5 Nonrenewals, cancellations or revisions of ceded reinsurance agreements; reporting requirements

(a) Nonrenewals, cancellations or revisions of ceded reinsurance agreements are not required to be reported, as otherwise required pursuant to N.J.A.C. 11:1–39.3, if the nonrenewals, cancellations or revisions are not material.

1. For purposes of this subchapter, a material nonrenewal, cancellation or revision is one that affects:

i. As respects property and casualty business, including accident and health business written by a property and casualty insurer:

(1) More than 50 percent of the insurer's total ceded written premiums; or

(2) More than 50 percent of the insurer's total ceded indemnity and loss adjustment reserves;

ii. As respects life, annuity and accident and health business, more than 50 percent of the total reserve credit taken for business ceded, on an annualized basis, as indicated in the insurer's most recent annual statement; and

iii. As respects both property and casualty, and life, annuity, and accident and health business, either of the following events:

(1) An authorized reinsurer representing more than 10 percent of a total cession is replaced by one or more unauthorized reinsurers; or

(2) Previously established collateral requirements have been reduced or waived as respects one or more unauthorized reinsurers representing collectively more than 10 percent of a total cession.

(b) No filing pursuant to (a) above shall be required if:

1. As respects property and casualty business, including accident and health business written by a property and casualty insurer, the insurer's total ceded written premium represents, on an annualized basis, less than 10 percent of its total written premium for direct and assumed business; or

2. As respects life, annuity, and accident and health business, the total reserve credit taken for business ceded represents, on an annualized basis, less than 10 percent of the statutory reserve requirement prior to any cession.

(c) The following shall be disclosed and provided in any report of a material nonrenewal, cancellation or revision of ceded reinsurance agreements required to be filed pursuant to this subchapter:

1. The effective date of the nonrenewal, cancellation or revision;

2. A description of the transaction with an identification of the initiator thereof;

3. The purpose of, or reason for, the transactions;

4. If applicable, the identity of the replacement reinsurers; and

5. A copy of the revised provisions of the reinsurance agreement.

(d) Insurers shall report all material nonrenewals, cancellations or revisions of ceded reinsurance agreements on a non-consolidated basis unless the insurer is part of a consolidated group of insurers which utilizes a pooling arrangement or 100 percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer ceded substantially all of its direct and assumed business to the pool. An insurer is deemed to have ceded substantially all of its direct and assumed business to a pool if the insurer has less than $1,000,000 total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent of the insurer's capital and surplus.

11:1–39.6 Penalties

Failure to comply with the requirements of this subchapter shall result in the imposition of penalties as authorized by law.