

CHAPTER 2

INSURANCE GROUP

Authority

N.J.S.A. 17:1-8.1, 17:1-15e, 17:17-1 et seq., 17B:17-1 et seq.,
34:15-77, and 54:18A-1 et seq.

Source and Effective Date

R.2005 d.350, effective September 21, 2005.
See: 37 N.J.R. 2285(a), 37 N.J.R. 4026(a).

Chapter Expiration Date

Chapter 2, Insurance Group, expires on September 21, 2010.

Chapter Historical Note

Chapter 2, Insurance Group, was adopted and became effective prior to September 1, 1969.

Subchapter 10, Casualty Insurers, Personal Lines Insurance, was adopted as new rules by R.1970 d.71, effective June 26, 1970.

Subchapter 11, Rules Governing Advertisement of Health Insurance, was adopted as new rules by R.1972 d.95, effective May 16, 1972. See: 4 N.J.R. 69(b), 4 N.J.R. 128(d).

Subchapter 12, Mass Marketing of Property and Liability Insurance, was adopted as new rules by R.1974 d.271, effective September 25, 1974. See: 6 N.J.R. 313(d), 6 N.J.R. 408(a).

Subchapter 13, Group Coverage Discontinuance and Replacement, was adopted as new rules by R.1974 d.272, effective February 1, 1975. See: 5 N.J.R. 342(c), 6 N.J.R. 409(a).

Subchapter 17, Unfair Claims Settlement Practices, was adopted as new rules by R.1981 d.407, effective November 2, 1981, operative January 15, 1982. See: 12 N.J.R. 600(f), 13 N.J.R. 774(c), 13 N.J.R. 894(a).

Subchapter 18, Readable Policies, was adopted as new rules by R.1982 d.410, effective November 15, 1982. See: 14 N.J.R. 967(a), 14 N.J.R. 1307(c).

Subchapter 10, Casualty Insurers, Personal Lines Insurance, was repealed by R.1985 d.71, effective February 19, 1985. See: 16 N.J.R. 2920(a), 17 N.J.R. 458(b).

Subchapter 23, Advertisement of Life Insurance and Annuities, was adopted as new rules by R.1985 d.600, effective November 18, 1985. See: 16 N.J.R. 2626(a), 17 N.J.R. 2776(a).

Subchapter 19, Approval of Insurance Schools and Company Training Programs, was adopted as new rules by R.1985 d.608, effective December 2, 1985. See: 16 N.J.R. 2920(b), 17 N.J.R. 2901(b).

Subchapter 1, Educational Requirements for Licensing, was repealed, and Subchapter 19, Approval of Insurance Schools and Company Training Programs, was repealed by R.1989 d.192, effective April 3, 1989. See: 20 N.J.R. 1152(a), 21 N.J.R. 899(b).

Subchapter 26, Annual Audited Financial Reports, was adopted as new rules by R.1989 d.612, effective December 18, 1989. See: 21 N.J.R. 3054(a), 21 N.J.R. 3919(b).

Pursuant to Executive Order No. 66(1978), Chapter 2, Insurance Group, was readopted as R.1991 d.4, effective November 30, 1990, and Subchapter 8, Mid-Term Substitution by Mortgagor of Insurance Policies, was repealed, effective January 7, 1991, by R.1991 d.4. See: 22 N.J.R. 1673(a), 23 N.J.R. 103(a).

Subchapter 32, Custodial Deposits, was adopted as new rules by R.1991 d.14, effective January 7, 1991. See: 22 N.J.R. 2640(a), 23 N.J.R. 105(a).

Subchapter 31, Manner of Determining Premium for Perpetual Homeowners Insurance, was adopted as new rules by R.1991 d.139, effective March 18, 1991. See: 22 N.J.R. 601(a), 23 N.J.R. 860(b).

Subchapter 29, Orderly Withdrawal of Insurance Business, was adopted as new rules by R.1991 d.262, effective May 20, 1991. See: 23 N.J.R. 15(b), 23 N.J.R. 1673(a).

Subchapter 35, Relief from Insurer Obligations Under the Fair Automobile Insurance Reform Act of 1990, was adopted as new rules by R.1991 d.519, effective October 21, 1991. See: 23 N.J.R. 660(a), 23 N.J.R. 3166(a).

Subchapter 27, Determination of Insurers in a Hazardous Financial Condition, was adopted as new rules by R.1992 d.292, effective July 6, 1992. See: 23 N.J.R. 3197(a), 24 N.J.R. 2456(a).

Subchapter 33, Workers' Compensation Self-Insurance, was adopted as new rules 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).

Subchapter 28, Credit for Reinsurance, was adopted as emergency new rules by R.1993 d.448, effective August 16, 1993, expires October 15, 1993. See: 25 N.J.R. 4289(a). The provisions of R.1993 d.448 were readopted as R.1993 d.557, effective October 15, 1993. See: 25 N.J.R. 4289(a), 25 N.J.R. 5184(a).

Subchapter 36, Risk Retention Groups and Purchasing Groups, was adopted as emergency new rules by R.1993 d.449, effective August 16, 1993, expires October 15, 1993. See: 25 N.J.R. 4298(a). The provisions of R.1993 d.449 were readopted as R.1993 d.558, effective October 15, 1993. See: 25 N.J.R. 4298(a), 25 N.J.R. 5197(a).

Subchapter 37, Producer-Controlled Insurers, was adopted as emergency new rules by R.1993 d.450, effective August 16, 1993, expires October 15, 1993. See: 25 N.J.R. 4304(a). The provisions of R.1993 d.450 were readopted as R.1993 d.559, effective October 15, 1993. See: 25 N.J.R. 4304(a), 25 N.J.R. 5202(a).

Subchapter 38, Increase in Property and Casualty Capital and Surplus Requirements, was adopted as emergency new rules by R.1993 d.451, effective August 16, 1993, expires October 15, 1993. See: 25 N.J.R. 4306(a). The provisions of R.1993 d.451 were readopted as R.1993 d.560, effective October 15, 1993. See: 25 N.J.R. 4306(a), 25 N.J.R. 5204(a).

Subchapter 39, Increase in Capital and Surplus Requirements for Life and Health Insurers, was adopted as emergency new rules by R.1993 d.452, effective August 16, 1993, expires October 15, 1993. See: 25 N.J.R. 4309(a). The provisions of R.1993 d.452 were readopted as R.1993 d.561, effective October 15, 1993. See: 25 N.J.R. 4309(a), 25 N.J.R. 5208(a).

Subchapter 40, Life, Health and Annuity Reinsurance Agreements, was adopted as emergency new rules by R.1993 d.453, effective August 16, 1993, expires October 15, 1993. See: 25 N.J.R. 4314(a). The provisions of R.1993 d.453 were readopted as R.1993 d.562, effective October 15, 1993. See: 25 N.J.R. 4314(a), 25 N.J.R. 5212(a).

Subchapter 34, Surplus Lines Insurance: Allocation of Premium Tax and Surcharge, was adopted as new rules by R.1993 d.582, effective November 15, 1993. See: 25 N.J.R. 1826(a), 25 N.J.R. 5194(a).

Petition for Rulemaking. See: 26 N.J.R. 2487(b).

Subchapter 41, Windstorm Market Assistance Program, was adopted as new rules by R.1995 d.53, effective January 17, 1995. See: 26 N.J.R. 4304(a), 27 N.J.R. 364(a).

Subchapter 1, Admission Requirements for Foreign and Alien Life and Health Insurers, was adopted as new rules by R.1995 d.80, effective February 6, 1995. See: 26 N.J.R. 4586(a), 27 N.J.R. 559(a).

Pursuant to Executive Order No. 66(1978), Chapter 2, Insurance Group, was readopted as R.1996 d.3, effective November 30, 1995, with amendments effective January 2, 1996. See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).

Subchapter 39, Increase in Capital and Surplus Requirements For Life and Health Insurers, was renamed Increase in Capital and Surplus

Requirements for Insurers by R.1997 d.186, effective May 5, 1997. See: 29 N.J.R. 404(a), 29 N.J.R. 2175(b).

Pursuant to Executive Order No. 66(1978), Chapter 2, Insurance Group, was readopted as R.2001 d.6, effective November 30, 2000. See: 32 N.J.R. 3530(a), 33 N.J.R. 85(a).

Subchapter 14, Procedures for the Conduct of Voting on a Plan of Reorganization of a Domestic Mutual Life Insurer, was adopted as new rules by R.2001 d.84, effective March 5, 2001. See 32 N.J.R. 4330(a), 33 N.J.R. 802(a).

Subchapter 19, Designation of Third Party for Certain Notifications by Senior Citizen Insureds, was adopted as new rules by R.2002 d.210, effective July 1, 2002. See: 34 N.J.R. 366(a), 34 N.J.R. 2315(a).

Subchapter 42, Homeowners' Insurance: Standard Hurricane Deductibles And Expedited Process for Homeowners' Insurance Changes, was adopted as new rules by R.2003 d.450, effective November 17, 2003. See: 35 N.J.R. 1189(a), 35 N.J.R. 5280(b).

Subchapter 43, Treatment of Allocated Deposit-Type Deferred Contract Funds for Purposes of Calculating the Special Purpose Apportionment and the Fraud Assessment, was adopted as new rules by R. 2004, d.407, effective November 1, 2004. See: 36 N.J.R. 2976(a), 36 N.J.R. 4929(a).

Chapter 2, Insurance Group, was readopted by R.2005 d.350, effective September 21, 2005. As part of R.2005, d.350, Subchapter 38, Temporary Waiver from Increase in Property and Casualty Capital and Surplus Requirements, was repealed, effective October 17, 2005. See: Source and Effective Date. See, also, section annotations.

Subchapter 39, Increase in Capital and Surplus Requirements for Insurers, was renamed Increase in Capital and Surplus Requirements for Insurers and Health Maintenance Organizations by R.2005 d.421, effective December 5, 2005. See: 37 N.J.R. 2992(a), 37 N.J.R. 4556(b).

Subchapter 23A, Military Sales Practices, was adopted as new rules by R.2008 d.67, effective March 17, 2008. See: 39 N.J.R. 4053(a), 40 N.J.R. 1663(b).

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. ADMISSION REQUIREMENTS FOR FOREIGN AND ALIEN LIFE AND HEALTH INSURERS

- 11:2-1.1 Purpose
- 11:2-1.2 Scope
- 11:2-1.3 Definitions
- 11:2-1.4 General eligibility requirements
- 11:2-1.5 Letter of intent
- 11:2-1.6 Final application
- 11:2-1.7 Review procedures; appeals
- 11:2-1.8 Severability

SUBCHAPTER 2. INSURANCE ON FINANCED AUTOMOBILES

- 11:2-2.1 Return of unearned premiums

SUBCHAPTER 3. CREDIT LIFE INSURANCE AND CREDIT ACCIDENT AND HEALTH INSURANCE

- 11:2-3.1 Scope
- 11:2-3.2 Definitions
- 11:2-3.3 Forms
- 11:2-3.4 Amount
- 11:2-3.5 Term
- 11:2-3.6 Policy provisions, disclosure to debtors
- 11:2-3.7 Credit life insurance in connection with leases of personal property
- 11:2-3.8 Credit accident and health insurance in connection with leases of personal property
- 11:2-3.9 Open-end credit coverage
- 11:2-3.10 Balloon coverage
- 11:2-3.11 Prohibited provisions of credit insurance policies
- 11:2-3.12 Delivery of policy; procedures
- 11:2-3.13 Application or notice of proposed insurance

- 11:2-3.14 Filing
- 11:2-3.15 Group policy; delivery
- 11:2-3.16 Disapproval by Commissioner
- 11:2-3.17 Standards for premium rates
- 11:2-3.18 Joint credit accident and health insurance
- 11:2-3.19 Maximum payments by debtors
- 11:2-3.20 Refunds
- 11:2-3.21 Maintenance of statistics
- 11:2-3.22 Issuance of policies
- 11:2-3.23 Payment of claims
- 11:2-3.24 Existing insurance; choice of insurer
- 11:2-3.25 Separability
- 11:2-3.26 Effect on previously filed forms and rates

APPENDIX. CREDIT ACCIDENT AND HEALTH INSURANCE

SUBCHAPTER 4. ELECTRONIC DATA PROCESSING EQUIPMENT

- 11:2-4.1 Cost of equipment as admitted asset

SUBCHAPTER 5. PROXIES, CONSENTS AND AUTHORIZATIONS

- 11:2-5.1 Applicability
- 11:2-5.2 Solicitation; prohibition
- 11:2-5.3 Disclosure of equivalent information
- 11:2-5.4 Definitions
- 11:2-5.5 Information to be furnished to stockholders
- 11:2-5.6 Proxy requirements
- 11:2-5.7 Material required to be filed
- 11:2-5.8 False or misleading statements
- 11:2-5.9 Undated or postdated proxy; prohibition
- 11:2-5.10 Election contests; special provisions

SUBCHAPTER 6. INFORMATION REQUIRED IN PROXY STATEMENT, GENERALLY

- 11:2-6.1 Revocability of proxy
- 11:2-6.2 Dissenters' rights of appraisal
- 11:2-6.3 Solicitation by management
- 11:2-6.4 Solicitation by nonmanagement
- 11:2-6.5 Solicitation by specially engaged employees or paid solicitors
- 11:2-6.6 Disclosure of interests of solicitors
- 11:2-6.7 Stocks and principal stockholders
- 11:2-6.8 Nominees and directors
- 11:2-6.9 Remuneration and other transactions with management and others
- 11:2-6.10 Bonus, profit sharing and other remuneration plans
- 11:2-6.11 Pension and retirement plan
- 11:2-6.12 Options, warrants or rights
- 11:2-6.13 Authorization or issuance of stock
- 11:2-6.14 Mergers, consolidations, acquisitions and similar matters
- 11:2-6.15 Restatement of accounts
- 11:2-6.16 Matters not required to be submitted
- 11:2-6.17 Amendment of charter, bylaws or other documents

SUBCHAPTER 7. INFORMATION REQUIRED BY PARTICIPANTS IN PROXY SOLICITATION IN ELECTION CONTESTS

- 11:2-7.1 Required information

SUBCHAPTER 8. (RESERVED)

SUBCHAPTER 9. INSIDER TRADING OF DOMESTIC STOCK INSURANCE COMPANY EQUITY SECURITIES

- 11:2-9.1 Definitions
- 11:2-9.2 Transactions exempted from the operation of N.J.S.A. 17:17B-2
- 11:2-9.3 Filing of statements under N.J.S.A. 17:17B-1
- 11:2-9.4 Ownership of more than 10 percent of an equity security under N.J.S.A. 17:17B-1

INSURANCE GROUP

- 11:2-9.5 Disclaimer of beneficial ownership under N.J.S.A. 17:17B-1
- 11:2-9.6 Exemptions from N.J.S.A. 17:17B-1 and 2
- 11:2-9.7 Exemption from Act of securities purchased or sold by odd-lot dealers
- 11:2-9.8 Transferable options, puts, calls, spreads and straddles
- 11:2-9.9 Ownership of securities held in trust
- 11:2-9.10 Exemption from N.J.S.A. 17:17B-1; small transactions
- 11:2-9.11 Exemption from N.J.S.A. 17:17B-2 of transactions which need not be reported under N.J.S.A. 17:17B-1
- 11:2-9.12 Exemption from N.J.S.A. 17:17B-2—certain transactions effected in connection with a distribution
- 11:2-9.13 Exemption from N.J.S.A. 17:17B-2—acquisitions of shares of stock and stock options under certain stock bonus, stock option or similar plans
- 11:2-9.14 Exemption from N.J.S.A. 17:17B-2—certain transactions in which securities are received by redeeming other securities
- 11:2-9.15 Exemption of long-term profits incident to sales within six months of exercise of an option
- 11:2-9.16 Exemption from N.J.S.A. 17:17B-2—certain acquisitions and dispositions of securities pursuant to merger or consolidations
- 11:2-9.17 Exemption from N.J.S.A. 17:17B-2—certain securities received upon surrender of similar equity securities
- 11:2-9.18 Exemption from N.J.S.A. 17:17B-2—certain transactions involving exchange of similar securities
- 11:2-9.19 Exemption from N.J.S.A. 17:17B-3—certain securities
- 11:2-9.20 Exemption from N.J.S.A. 17:17B-3—certain transactions effected in connection with a distribution
- 11:2-9.21 Exemption from N.J.S.A. 17:17B-3—sales of securities to be acquired
- 11:2-9.22 Arbitrage transactions under N.J.S.A. 17:17B-5
- 11:2-9.23 Instructions for Form A
- 11:2-9.24 Form A
- 11:2-9.25 Instructions for Form B
- 11:2-9.26 Form B

SUBCHAPTER 10. (RESERVED)

SUBCHAPTER 11. RULES GOVERNING ADVERTISEMENT OF HEALTH INSURANCE

- 11:2-11.1 Purpose, general provisions and definitions
- 11:2-11.2 Advertisements in general
- 11:2-11.3 Advertisements of benefits payable, losses covered or premiums payable
- 11:2-11.4 Necessity for disclosing policy provisions relating to renewability, cancellability and termination
- 11:2-11.5 Method of disclosure of required information
- 11:2-11.6 Endorsements by third parties
- 11:2-11.7 Use of statistics
- 11:2-11.8 Inspection of policy
- 11:2-11.9 Identification of plan or number of policies
- 11:2-11.10 Disparaging comparisons and statements
- 11:2-11.11 Jurisdictional licensing
- 11:2-11.12 Identity of insurer
- 11:2-11.13 Group or quasi-group implications
- 11:2-11.14 Introductory, initial or special offers
- 11:2-11.15 (Reserved)
- 11:2-11.16 Service facilities
- 11:2-11.17 Statements about an insurer
- 11:2-11.18 Insurers' responsibility and control; advertising file; certificate of compliance
- 11:2-11.19 Penalties
- 11:2-11.20 Prior regulation superseded
- 11:2-11.21 Effective date
- 11:2-11.22 Severability

SUBCHAPTER 12. MASS MARKETING OF PROPERTY AND LIABILITY INSURANCE

- 11:2-12.1 Introduction
- 11:2-12.2 Definitions
- 11:2-12.3 Applicability
- 11:2-12.4 Fictitious arrangement prohibited

- 11:2-12.5 Premiums and policy forms
- 11:2-12.6 Statistics
- 11:2-12.7 Producers
- 11:2-12.8 Compulsory participation prohibited
- 11:2-12.9 Tie-in sales prohibited
- 11:2-12.10 Disclosure required
- 11:2-12.11 Underwriting standards
- 11:2-12.12 Cancellation and nonrenewal
- 11:2-12.13 Compulsory facilities
- 11:2-12.14 Eligibility
- 11:2-12.15 Severability

SUBCHAPTER 13. GROUP COVERAGE DISCONTINUANCE AND REPLACEMENT

- 11:2-13.1 Purpose and scope
- 11:2-13.2 Definitions
- 11:2-13.3 Effective date of discontinuance for nonpayment of premium or subscription charges
- 11:2-13.4 Requirements for notice of discontinuance
- 11:2-13.5 Extension of benefits
- 11:2-13.6 Replacement carrier coverage
- 11:2-13.7 Noncompliance
- 11:2-13.8 through 11:2-13.9 (Reserved)

SUBCHAPTER 14. PROCEDURES FOR THE CONDUCT OF VOTING ON A PLAN OF REORGANIZATION OF A DOMESTIC MUTUAL LIFE INSURER

- 11:2-14.1 Purpose and scope
- 11:2-14.2 Definitions
- 11:2-14.3 Policyholders entitled to notice and vote and manner of giving notice
- 11:2-14.4 Policyholder communication
- 11:2-14.5 Mailing, receipt, custody, and safeguarding of ballots
- 11:2-14.6 Presumptions as to ballot validity
- 11:2-14.7 Voting on the plan
- 11:2-14.8 Assistance with voting
- 11:2-14.9 Vote confirmation
- 11:2-14.10 Agents
- 11:2-14.11 Penalties

SUBCHAPTER 15. INSOLVENT INSURERS

- 11:2-15.1 Cancellation of property and liability policies

SUBCHAPTER 16. GUARANTEED ARREST BOND CERTIFICATES OF AUTOMOBILE CLUB UNDERTAKING

- 11:2-16.1 General provisions

SUBCHAPTER 17. UNFAIR CLAIMS SETTLEMENT PRACTICES

- 11:2-17.1 Purpose
- 11:2-17.2 Scope
- 11:2-17.3 Definitions
- 11:2-17.4 Miscellaneous rules
- 11:2-17.5 Misrepresentation of policy provisions
- 11:2-17.6 Rules for replying to pertinent communications
- 11:2-17.7 Rules for prompt investigation and settlement of claims
- 11:2-17.8 Rules for fair and equitable settlements and reasonable explanations applicable to all insurance
- 11:2-17.9 Rules for fair and equitable settlements applicable to life and health insurance
- 11:2-17.10 Rules for fair and equitable settlements applicable to property and liability insurance
- 11:2-17.11 Written notice by insurers of payment of claims
- 11:2-17.12 Examinations
- 11:2-17.13 Special claims reports
- 11:2-17.14 Separability
- 11:2-17.15 Penalties

SUBCHAPTER 18. READABLE POLICIES

- 11:2-18.1 Purpose
- 11:2-18.2 Scope

- 11:2-18.3 Definitions
- 11:2-18.4 Minimum readability standards
- 11:2-18.5 Procedures for requesting an opinion of compliance with the Plain Language Law
- 11:2-18.6 Enforcement
- 11:2-18.7 Separability

SUBCHAPTER 19. DESIGNATION OF THIRD PARTY FOR CERTAIN NOTIFICATIONS BY SENIOR CITIZEN INSUREDS

- 11:2-19.1 Purpose and scope
- 11:2-19.2 Definitions
- 11:2-19.3 Designation third party to receive copies of certain notices
- 11:2-19.4 Penalties

SUBCHAPTERS 20 THROUGH 22. (RESERVED)

SUBCHAPTER 23. ADVERTISEMENT OF LIFE INSURANCE AND ANNUITIES

- 11:2-23.1 Purpose
- 11:2-23.2 Applicability
- 11:2-23.3 Definitions
- 11:2-23.4 Form and content of advertisements in general
- 11:2-23.5 Disclosure requirements
- 11:2-23.6 Identification of insurer, plan and number of policies
- 11:2-23.7 Jurisdictional licensing and status of insurer; statements about the insurer
- 11:2-23.8 Insurer's responsibility and control; advertising file; certificate of compliance
- 11:2-23.9 Failure to comply
- 11:2-23.10 Severability

SUBCHAPTER 23A. MILITARY SALES PRACTICES

- 11:2-23A.1 Purpose
- 11:2-23A.2 Scope
- 11:2-23A.3 Exemptions
- 11:2-23A.4 Definitions
- 11:2-23A.5 Practices declared false, misleading, deceptive or unfair on a military installation
- 11:2-23A.6 Practices declared false, misleading, deceptive or unfair regardless of location
- 11:2-23A.7 Severability

SUBCHAPTERS 24 THROUGH 25. (RESERVED)

SUBCHAPTER 26. ANNUAL AUDITED FINANCIAL REPORTS

- 11:2-26.1 Purpose
- 11:2-26.2 Scope
- 11:2-26.3 Definitions
- 11:2-26.4 Filing of annual audited financial reports; extensions
- 11:2-26.5 Contents of annual audited financial report
- 11:2-26.6 Qualifications of independent certified public accountants
- 11:2-26.7 Certification by independent certified public accountant
- 11:2-26.8 Consolidated or combined audits
- 11:2-26.9 Scope of examination and report
- 11:2-26.10 Notification of adverse financial condition
- 11:2-26.11 Report on significant deficiencies in internal controls
- 11:2-26.12 Accountant's letter of qualifications
- 11:2-26.13 Availability and maintenance of workpapers
- 11:2-26.14 Exemptions
- 11:2-26.15 Alien insurers
- 11:2-26.16 Confidentiality of documents
- 11:2-26.17 Penalties
- 11:2-26.18 Severability

SUBCHAPTER 27. DETERMINATION OF INSURERS IN A HAZARDOUS FINANCIAL CONDITION

- 11:2-27.1 Purpose and scope

- 11:2-27.2 Definitions
- 11:2-27.3 Determination of hazardous financial conditions; factors
- 11:2-27.4 Determination of hazardous financial condition; corrective action

SUBCHAPTER 28. CREDIT FOR REINSURANCE

- 11:2-28.1 Purpose and scope
- 11:2-28.2 Definitions
- 11:2-28.3 Reinsurer licensed in New Jersey
- 11:2-28.4 Reinsurer accredited in New Jersey
- 11:2-28.5 Reinsurer domiciled and licensed in another state or jurisdiction which employs substantially similar standards to this subchapter
- 11:2-28.6 Reinsurer maintaining trust funds
- 11:2-28.7 Credit for reinsurance required by law
- 11:2-28.8 Reduction from liability for reinsurance ceded to an unauthorized assuming insurer
- 11:2-28.9 Trust agreements qualified pursuant to N.J.A.C. 11:2-28.8
- 11:2-28.10 Letters of credit qualified pursuant to N.J.A.C. 11:2-28.8 and 28.9
- 11:2-28.11 Other security
- 11:2-28.12 Reinsurance contract
- 11:2-28.13 Contracts affected

APPENDIX

SUBCHAPTER 29. ORDERLY WITHDRAWAL OF INSURANCE BUSINESS

- 11:2-29.1 Purpose and scope
- 11:2-29.2 Definitions
- 11:2-29.3 Informational filing withdrawals
- 11:2-29.4 Requests for waivers
- 11:2-29.5 Replacement carrier
- 11:2-29.6 Notifications to the Department
- 11:2-29.7 Confidentiality of informational filing withdrawal
- 11:2-29.8 Fines and penalties
- 11:2-29.9 Severability
- 11:2-29.10 (Reserved)

SUBCHAPTER 30. (RESERVED)

SUBCHAPTER 31. MANNER OF DETERMINING PREMIUM FOR PERPETUAL HOMEOWNERS INSURANCE

- 11:2-31.1 Purpose
- 11:2-31.2 Scope
- 11:2-31.3 Definitions
- 11:2-31.4 Determination of premium
- 11:2-31.5 Data filed; examination
- 11:2-31.6 Penalties

SUBCHAPTER 32. CUSTODIAL DEPOSITS

- 11:2-32.1 Purpose and scope
- 11:2-32.2 Definitions
- 11:2-32.3 Deposits with custodian; establishment of fees
- 11:2-32.4 Compliance dates
- 11:2-32.5 Penalties

SUBCHAPTER 33. WORKERS' COMPENSATION SELF-INSURANCE

- 11:2-33.1 Purpose and scope
- 11:2-33.2 Definitions
- 11:2-33.3 Exemption from insuring compensation liability; filing requirements
- 11:2-33.4 Renewals
- 11:2-33.5 Confidentiality
- 11:2-33.6 Cancellation of exemption
- 11:2-33.7 Failure to comply with subchapter; denial of exemption
- 11:2-33.8 Severability

2. Failing to disclose that a solicitation for the sale of life insurance will be made when establishing a specific appointment for an in-person, face-to-face meeting with a prospective purchaser;

3. Excluding individually issued annuities, failing to clearly and conspicuously disclose the fact that the product being sold is life insurance;

4. Failing to make, at the time of sale or offer to an individual known to be a service member, the written disclosures required by Section 10 of the "Military Personnel Financial Services Protection Act," Pub. L. 109-290; and

5. Excluding individually issued annuities, when the sale is conducted in-person face-to-face with an individual known to be a service member, failing to provide to the applicant at the time the application is taken:

i. An explanation of any free-look period with instructions on how to cancel if a policy is issued; and

ii. Either a copy of the application or a written disclosure. The copy of the application or the written disclosure shall clearly and concisely set out the type of life insurance, the death benefit applied for and its expected first-year cost. A basic illustration that meets the requirements of N.J.A.C. 11:4-11 shall be deemed sufficient to meet this requirement for a written disclosure.

(f) The following acts or practices by an insurer or insurance producer with respect to the sale of certain life insurance products are declared to be false, misleading, deceptive or unfair:

1. Excluding individually issued annuities, recommending the purchase of any life insurance product, which includes a side fund to a service member in pay grades E-4 and below unless the insurer or producer has reasonable grounds to believe that the life insurance death benefit, standing alone, is suitable;

2. Offering for sale or selling a life insurance product, which includes a side fund to a service member in pay grades E-4 and below who is currently enrolled in SGLI. Such offering or selling is presumed unsuitable unless, after the completion of a needs assessment, the insurer demonstrates that the applicant's SGLI death benefit, together with any other military survivor benefits, savings and investments, survivor income, and other life insurance are insufficient to meet the applicant's insurable needs for life insurance.

i. "Insurable needs" are the risks associated with premature death taking into consideration the financial obligations and immediate and future cash needs of the applicant's estate and/or survivors or dependents; and

ii. "Other military survivor benefits" include, but are not limited to, the death gratuity, funeral reimbursement, transition assistance, survivor and dependents' educational assistance, dependency and indemnity compensation, TRICARE healthcare benefits, survivor housing benefits and allowances, Federal income tax forgiveness, and Social Security survivor benefits;

3. Excluding individually issued annuities, offering for sale or selling any life insurance contract, which includes a side fund:

i. Unless interest credited accrues from the date of deposit to the date of withdrawal and permits withdrawals without limit or penalty;

ii. Unless the applicant has been provided with a schedule of effective rates of return based upon cash flows of the combined product. For this disclosure, the effective rate of return will consider all premiums and cash contributions made by the policyholder and all cash accumulations and cash surrender values available to the policyholder in addition to life insurance coverage. This schedule will be provided for at least each policy year from one to 10 and for every fifth policy year thereafter ending at age 100, policy maturity or final expiration; and

iii. Which by default diverts or transfers funds accumulated in the side fund to pay, reduce or offset any premiums due;

4. Excluding individually issued annuities, offering for sale or selling any life insurance contract, which after considering all policy benefits, including, but not limited to, endowment, return of premium or persistency, does not comply with standard nonforfeiture law for life insurance; and

5. Selling any life insurance product to an individual known to be a service member that excludes coverage if the insured's death is related to war, declared or undeclared, or any act related to military service except for an accidental death coverage, for example, double indemnity, which may be excluded.

11:2-23A.7 Severability

If any provision of this subchapter or the application thereof to any person or circumstance is held invalid for any reason, the invalidity shall not affect any other provisions or any other application of this subchapter which can be given effect without the invalid provisions or application. To this end, all provisions of this subchapter are declared to be severable.

SUBCHAPTERS 24 THROUGH 25. (RESERVED)

SUBCHAPTER 26. ANNUAL AUDITED FINANCIAL REPORTS

11:2-26.1 Purpose

(a) The purpose of this subchapter is to improve the Department's surveillance of the financial position of insurers by requiring an annual examination by independent certified public accountants of the financial statements reporting the financial position and the results of operations of insurers.

(b) This subchapter shall not be construed to prohibit, preclude or in any way limit the Commissioner from ordering, conducting or performing examinations of insurers pursuant to law.

Amended by R.1993 d.68, effective February 1, 1993.
See: 24 N.J.R. 1940(a), 24 N.J.R. 2708(a), 25 N.J.R. 588(a).
Financial "condition" changed to financial "position".
Amended by R.1996 d.3, effective January 2, 1996.
See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).
Added (b).

11:2-26.2 Scope

This subchapter shall apply to all insurers transacting business in the State of New Jersey except as provided at N.J.A.C. 11:2-26.14.

Amended by R.1993 d.68, effective February 1, 1993.
See: 24 N.J.R. 1940(a), 24 N.J.R. 2708(a), 25 N.J.R. 588(a).
Citation corrected.

11:2-26.3 Definitions

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

"Accountant" and "independent certified public accountant" means an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and in all states in which they are licensed to practice; for alien insurers, it means a chartered or similarly certified accountant.

"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.

"Audited financial report" means and includes those items specified in N.J.A.C. 11:2-26.5.

"Commissioner" means the Commissioner of the Department of Banking and Insurance.

"Department" means the Department of Banking and Insurance.

"Indemnification" means an agreement of indemnity or a release from liability where the intent or effect is to shift or limit in any manner the potential liability of the person or firm for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing or other misrepresentations made by the insurer or its representatives.

"Insurer" means any person, association, partnership or corporation licensed, authorized or eligible to transact the business of insurance in this State pursuant to Subtitle 3 of Title 17 or Subtitle 3 of Title 17B of the Revised Statutes of the State of New Jersey including, but not limited to, eligible surplus lines insurers, interinsurance exchanges and all risk retention groups as defined in 15 U.S.C. section 3901 doing business in New Jersey. Insurer does not include any statutory mechanism for providing insurance coverage in this State, including, but not limited to municipal joint insurance funds formed pursuant to N.J.S.A. 40A:10-36 et seq.

"Workpapers" means the records kept by the independent certified public accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to his or her examination of the financial statements of an insurer. Workpapers may include audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of his or her examination of the financial statements of an insurer and which support his or her opinion thereof.

Amended by R.1991 d.4, effective January 7, 1991.
See: 22 N.J.R. 1673(a), 23 N.J.R. 103(a).

Deleted reference to New Jersey Automobile Full Insurance Underwriting Association, in definition of "insurer".
Amended by R.1993 d.68, effective February 1, 1993.
See: 24 N.J.R. 1940(a), 24 N.J.R. 2708(a), 25 N.J.R. 588(a).

Added "certified" to accountant and "audit planning documentation" to workpapers.

Amended by R.2001 d.6, effective January 2, 2001.
See: 32 N.J.R. 3530(a), 33 N.J.R. 85(a).
Amended by R.2008 d.204, effective July 21, 2008.
See: 40 N.J.R. 1741(a), 40 N.J.R. 4327(a).

Added definition "Indemnification".

11:2-26.4 Filing of annual audited financial reports; extensions

(a) All insurers (unless exempted pursuant to N.J.A.C. 11:2-26.14) shall have an annual audit by an independent certified public accountant and shall file an audited financial report with the Commissioner on or before June 1 for the year ended December 31 immediately preceding. The Commissioner may require an insurer to file an audited financial report earlier than June 1 upon 90 days advance written notice to the insurer.

(b) Extensions of the June 1 filing date may be granted by the Commissioner for 30 day periods upon showing by the insurer and its independent certified public accountant the

reasons for requesting such extension and determination by the Commissioner of good cause for an extension. The request for an extension must be submitted in writing not less than 10 days prior to the due date of the financial report in sufficient detail to permit the Commissioner to make an informed decision with respect to the requested extension.

Amended by R.1993 d.68, effective February 1, 1993.
See: 24 N.J.R. 1940(a), 24 N.J.R. 2708(a), 25 N.J.R. 588(a).

Filing date changed to June 1, or earlier, if 90 day notice is given to the filer.

11:2-26.5 Contents of annual audited financial report

(a) The annual audited financial report shall reflect the financial position of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows and changes in capital and surplus for such calendar year in conformity with statutory accounting practices prescribed, or otherwise permitted, by the Department.

(b) The annual audited financial report shall include:

1. A report of an independent certified public accountant;
2. A balance sheet reporting admitted assets, liabilities, capital and surplus;
3. A statement of operations;
4. A statement of cash flows;
5. A statement of changes in capital and surplus; and
6. Notes to financial statements. These notes shall be those required by the appropriate NAIC Annual Statement Instructions and the NAIC Accounting Practices and Procedures Manual. The notes shall also include a reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed pursuant to N.J.S.A. 17:23-1 and 17B:21-1 with a written description of the nature of these differences.

(c) The financial statements included in the audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement filed with the Commissioner:

1. The financial statement shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. (However, in the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted.)

Amended by R.1993 d.68, effective February 1, 1993.
See: 24 N.J.R. 1940(a), 24 N.J.R. 2708(a), 25 N.J.R. 588(a).

NAIC requirements added to (b)6; rounding and combining provisions at (c)2 and 3 deleted.

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

Rewrote (b)6.

11:2-26.6 Qualifications of independent certified public accountants

(a) The Commissioner shall not recognize any person or firm as a qualified independent certified public accountant if the person or firm:

1. Is not in good standing with the American Institute of Certified Public Accountants and in all states in which the accountant is licensed to practice or, for alien insurers, if the person or firm is not a chartered or similarly certified accountant; or

2. Has either directly or indirectly entered into an agreement of indemnity or release from liability (collectively referred to as indemnification) with respect to the audit of the insurer.

(b) Except as otherwise provided herein, the Commissioner shall recognize an independent certified public accountant as qualified as long as he or she conforms to the standards of his or her profession, as contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants and Rules and Regulations, Code of Ethics and Rules of Professional Conduct of the New Jersey Board of Public Accountancy or similar code.

(c) A qualified independent certified public accountant may enter into an agreement with an insurer to have disputes relating to an audit of the insurer resolved by mediation or arbitration. However, in the event of a delinquency proceeding commenced against the insurer under N.J.S.A. 17:30C-1 et seq. or 17B:32-31 et seq., as applicable, the mediation or arbitration provisions shall operate at the option of the Commissioner.

(d) No partner or other person responsible for rendering a report may act in that capacity for more than seven consecutive years. Following any period of service such person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of two years. An insurer may make application to the Commissioner for relief from the above rotation requirement on the basis of unusual circumstances. The Commissioner may consider the following factors in determining if the relief should be granted:

1. The number of partners, expertise of the partners or the number of insurance clients in the currently registered firm;
2. The premium volume of the insurer; or
3. The number of jurisdictions in which the insurer transacts business.

(e) The Commissioner shall not recognize as a qualified independent certified public accountant, nor accept any annual Audited Financial Report, prepared in whole or in part by, any natural person who:

1. Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. Sections 1961-1968, or any dishonest conduct or practices under Federal or state law, or similar conduct under any foreign law;

2. Has been found to have violated the insurance laws of this State with respect to any previous reports submitted under this rule; or

3. Has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of this subchapter.

(f) Whenever it appears that the certified public accountant or accounting firm retained by the insurer to conduct the annual audit is not a qualified independent certified public accountant as provided under these rules, the Department shall notify the insurer that it does not recognize the certified public accountant or accounting firm as qualified, and the Department will not accept any annual audited Financial Report prepared by that accountant or accounting firm.

1. Upon receipt of such notice from the Department, the insurer may, within 20 days, request an administrative review on the issue of the qualifications of the independent certified public accountant or accounting firm retained by the insurer.

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

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

“Qualified” specified at (a) and (b); subsections (c)-(e) added to specify qualifications necessary.

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

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

Amended by R.2008 d.204, effective July 21, 2008.

See: 40 N.J.R. 1741(a), 40 N.J.R. 4327(a).

In the introductory paragraph of (a), substituted “if the person or firm:” for “unless they are”; inserted designation (a)1; in (a)1, inserted “Is not” and substituted “if the person or firm” for “that” and inserted “; or”; added (a)2; in (b), inserted “the Commissioner shall recognize” and deleted “shall be recognized” following “accountant”; added new (c); and recodified former (c) through (e) as (d) through (f).

11:2-26.7 Certification by independent certified public accountant

(a) Each insurer required by this subchapter to file an annual audited financial report shall within 60 days after becoming subject to such requirement, register with the Commissioner in writing the name and address of the independent certified public accountant or accounting firm retained to conduct the annual audit set forth in this subchapter. Insurers not retaining an independent certified public accountant on the effective date of this rule as amended shall register the name and address of their retained certified public accountant not less than six months before the date when the audited financial report is to be filed.

(b) The insurer shall also obtain a letter from the accountant, and file a copy with the Commissioner, stating that the accountant is aware of the provisions of the insurance statutes and administrative rules of this State that relate to accounting and financial matters. The accountant shall also certify that he or she will express his or her opinion on the financial statements in the terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by the Department and specify such exceptions as he or she may believe appropriate.

(c) In addition to the requirements in (a) and (b) above, if the accountant for the immediately preceding filed audited financial report is dismissed or resigns, the insurer shall within five business days notify the Department of this event. The insurer shall also furnish the Commissioner with a separate letter within 10 business days of the above notification stating whether in the 24 months preceding such event there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure; which disagreements, if not resolved to the satisfaction of the former accountant, would have caused him to make reference to the subject matter of the disagreement in connection with his opinion. The disagreements required to be reported in response to this subsection include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction. Disagreements contemplated by this subsection are those that occur at the decision-making level (that is, between personnel of the insurer responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report). The insurer shall also request in writing that such former accountant furnish a letter addressed to the insurer stating whether the accountant agrees with the statements contained in the insurer's letter and, if not, stating the reasons for which he does not agree; and the insurer shall furnish such responsive letter from the former accountant to the Commissioner together with its own.

Amended by R.1993 d.68, effective February 1, 1993.
See: 24 N.J.R. 1940(a), 24 N.J.R. 2708(a), 25 N.J.R. 588(a).
Requirements to register independent accountant added.

11:2-26.8 Consolidated or combined audits

(a) An insurer may make written application to the Commissioner for approval to file audited consolidated or combined financial statements in lieu of separate annual audited financial statements if the insurer is part of a group of insurance companies which utilizes a pooling or 100 percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and such insurer cedes all of its direct and assumed business to the pool. In such cases, a columnar consolidating or combining worksheet shall be filed with the report as follows:

1. Amounts shown on the consolidated or combined audited financial report shall be shown on the worksheet;

2. Amounts for each insurer subject to this section shall be stated separately;

3. Noninsurance operations may be shown on the worksheet on a combined or individual basis;

4. Explanations of consolidating and eliminating entries shall be included; and

5. A reconciliation shall be included of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the annual statements of the insurers.

Amended by R.1993 d.68, effective February 1, 1993.
See: 24 N.J.R. 1940(a), 24 N.J.R. 2708(a), 25 N.J.R. 588(a).
Pool requirement added for consolidated statements.

11:2-26.9 Scope of examination and report

Financial statements furnished pursuant to N.J.A.C. 11:2-26.5 shall be examined by an independent certified public accountant. The examination of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards. Consideration should also be given to such other procedures illustrated in the Financial Condition Examiner's Handbook promulgated by the National Association of Insurance Commissioners as the independent certified public accountant deems necessary.

Amended by R.1993 d.68, effective February 1, 1993.
See: 24 N.J.R. 1940(a), 24 N.J.R. 2708(a), 25 N.J.R. 588(a).
Stylistic changes.

11:2-26.10 Notification of adverse financial condition

(a) An insurer required to furnish the annual audited financial report shall require the independent certified public accountant to report in writing within five business days to the board of directors or its audit committee any determination by the independent certified public accountant that the insurer has materially misstated its financial condition as reported to the Commissioner as of the balance sheet date currently under examination or that the insurer does not meet the minimum capital and surplus requirements as of that date. An insurer who has received a report pursuant to this section shall forward a copy of the report to the Commissioner within five business days of receipt of such report and shall provide the independent certified public accountant making the report with evidence of the report being furnished to the Commissioner. If the independent certified public accountant fails to receive such evidence within the required five business day period, the independent certified public accountant shall furnish to the Commissioner a copy of its report within the next five business days. No independent public accountant shall be liable in any manner to any person for any statement made in connection with this subsection if such statement is made in good faith in compliance with this subsection.

(b) If the accountant, subsequent to the date of the audited financial report filed pursuant to this subchapter, becomes aware of facts which might have affected his or her

report, the accountant shall take such action as prescribed in Volume 1, Section AU 561 of the Professional Standards of the American Institute of Certified Public Accountants, incorporated herein by reference.

Amended by R.1993 d.68, effective February 1, 1993.
See: 24 N.J.R. 1940(a), 24 N.J.R. 2708(a), 25 N.J.R. 588(a).

Processing of notice of adverse condition specified further at (a).

11:2-26.11 Report on significant deficiencies in internal controls

(a) In addition to the annual audited financial report, each insurer shall file with the Commissioner a written report prepared by the accountant describing any significant deficiencies known as "reportable conditions" in the insurer's internal control structure noted by the accountant during the audit which an accountant is required to report to appropriate parties within an entity pursuant to SAS No. 60, Communication of Internal Control Structure Matters Noted in an Audit (AU Section 325 of the Professional Standards of the American Institute of Certified Public Accountants).

(b) No report should be issued if the accountant does not identify one or more significant deficiencies.

(c) If one or more significant deficiencies are noted, the written report shall be filed annually by the insurer with the Department within 60 days after the filing of the annual audited financial report. The insurer shall provide a description of remedial actions taken or proposed to correct significant deficiencies, if such actions are not described in the accountant's report.

Amended by R.1993 d.68, effective February 1, 1993.
See: 24 N.J.R. 1940(a), 24 N.J.R. 2708(a), 25 N.J.R. 588(a).

Rule on evaluation of accounting procedures and system of internal control deleted; new rule on report on significant deficiencies in internal controls added.

11:2-26.12 Accountant's letter of qualifications

(a) The accountant shall furnish the insurer in connection with, and for inclusion in, the filing of the annual audited financial report, a letter stating:

1. That the accountant is independent with respect to the insurer and conforms to the standards of the profession as contained in the Code of Professional Ethics and pronouncements of the American Institute of Certified Public Accountants and the Rules of Professional Conduct of the New Jersey Board of Public Accountancy, or similar code;

2. The background and experience in general, and the experience in audits of insurers of the staff assigned to the engagement and whether each is an independent certified public accountant. Nothing within this rule shall be construed as prohibiting the accountant from utilizing such staff as he or she deems appropriate where such use is consistent with the standards prescribed by generally accepted auditing standards;

3. That the accountant understands the annual audited financial report and the accountant's opinion thereon will be filed in compliance with this subchapter, and that the Commissioner will be relying on this information in the monitoring and regulation of the financial position of insurers;

4. That the accountant consents to the requirements of N.J.A.C. 11:2-26.13 and that the accountant consents and agrees to make available for review by the Commissioner, his or her designee or his or her appointed agent, the workpapers, as defined in N.J.A.C. 11:2-26.3;

5. A representation that the accountant is properly licensed by an appropriate state licensing authority and that he is a member in good standing in the American Institute of Certified Public Accountants; and

6. A representation that the accountant is in compliance with the requirements of N.J.A.C. 11:2-26.6.

New Rule, R.1993 d.68, effective February 1, 1993.
See: 24 N.J.R. 1940(a), 24 N.J.R. 2708(a), 25 N.J.R. 588(a).

Prior rule on availability and maintenance of workpapers recodified to 26.13.

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

In (a)2 substituted "audits of insurers" for "insurance audits."

11:2-26.13 Availability and maintenance of workpapers

(a) Every insurer required to file an audited financial report pursuant to this subchapter shall require the accountant to make available for review by the Commissioner, all the workpapers prepared in the conduct of his or her examination and any communications related to the audit between the accountant and the insurer, at the offices of the insurer, at the Department or at any other reasonable place designated by the Commissioner. The insurer shall require that the accountant retain the audit workpapers and communications until the Department has filed a Report on Examination covering the period of the audit and determined that the audit workpapers and communications need no longer be retained or for no longer than 10 years from the date the accountant submits the audit report to the insurer, whichever occurs first.

(b) In the conduct of the periodic review by the Commissioner, photocopies of pertinent audit workpapers may be made and retained by the Commissioner. Such reviews by the Commissioner shall be considered investigations and all working papers and communications obtained during the course of such investigations shall be afforded the same confidentiality as other examination workpapers generated by the Department.

Amended by R.1993 d.68, effective February 1, 1993.
See: 24 N.J.R. 1940(a), 24 N.J.R. 2708(a), 25 N.J.R. 588(a).

Rule on exemptions recodified to 26.14; rule on availability and maintenance of workpapers recodified from 26.12, with amendments added regarding all communications regarding the audit and confidentiality of all workpapers and communications.

11:2-26.14 Exemptions

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

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

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

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

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

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

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

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

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

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

11:2-26.15 Alien insurers

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

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

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

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

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

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

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

11:2-26.16 Confidentiality of documents

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

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

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

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

11:2-26.17 Penalties

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

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

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

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

11:2-26.18 Severability

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

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

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

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

SUBCHAPTER 27. DETERMINATION OF INSURERS IN A HAZARDOUS FINANCIAL CONDITION

11:2-27.1 Purpose and scope

(a) The purpose of this subchapter is to set forth the factors which the Commissioner shall consider in determining whether an insurer is in a hazardous financial condition as defined herein. A determination of hazardous financial condition provides one of the grounds upon which the Commissioner may seek an order from the Superior Court to rehabilitate, liquidate the business or conserve the assets within this State of domestic, foreign or alien insurers pursuant to N.J.S.A. 17:30C-1 et seq. and 17B:32-31 et seq., or upon which an insurer may become subject to administrative supervision pursuant to N.J.S.A. 17:51A-1 et seq., and provides one of the grounds upon which the Commissioner may take action to revoke or nonrenew an insurer's authority to transact insurance in this State, or withdraw the eligibility of an eligible surplus lines insurer to insure sur-

plus lines risks in the State pursuant to law, including but not limited to, N.J.S.A. 17:32-2, 17B:23-2, and 17:22-6.46.

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

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

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

Adopted Concurrent Proposal, R.1993 d.556, effective October 15, 1993.

See: 25 N.J.R. 4286(a), 25 N.J.R. 5182(a).

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

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

11:2-27.2 Definitions

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

AVR means the asset valuation reserve calculated for the purpose of completing the NAIC annual statement in accordance with its instructions and the Accounting Practices and Procedures Manual.

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

"Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the insurer as defined in N.J.S.A. 17:27A-1.

"Department" means the New Jersey Department of Banking and Insurance.

"Eligible 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 et seq.

"Hazardous financial condition" means that, based on its present or reasonably anticipated financial condition, an insurer, although not yet financially impaired or insolvent, is unlikely to be able:

1. To meet obligations to policyholders, certificate holders and other insureds with respect to known claims and reasonably anticipated claims; or
2. To pay other obligations in the normal course of business.

"Insurer" means a person subject to the insurance supervisory authority of, or to liquidation, rehabilitation, reorganization, or conservation by, the Commissioner pursuant to N.J.S.A. 17:30C-1 et seq., 17B:32-31 et seq. or N.J.S.A. 17:51A-1 et seq., or by the equivalent insurance supervisory official of another state. "Insurer" includes all persons purporting to be engaged in the business of insurance as an insurer in this State and all persons in the process of organization to become insurers.

"Life and health insurer" means an insurer authorized or admitted pursuant to the provisions of Title 17B of the Revised Statutes to solely transact the business of life insurance, health insurance or annuities in this State as those terms are defined in N.J.S.A. 17B:17-3, 17B:17-4 and 17B:17-5, respectively.

"NAIC" means the National Association of Insurance Commissioners.

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

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

Adopted Concurrent Proposal, R.1993 d.556, effective October 15, 1993.

See: 25 N.J.R. 4286(a), 25 N.J.R. 5182(a).

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

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

Amended by R.2001 d.6, effective January 2, 2001.

See: 32 N.J.R. 3530(a), 33 N.J.R. 85(a).

11:2-27.3 Determination of hazardous financial conditions; factors

(a) The Commissioner shall consider the following factors, either singly or in a combination of two or more, in determining whether an insurer is in a hazardous financial condition:

1. Adverse findings reported in financial condition and market conduct examination reports and/or failure to comply with recommendations contained therein;
2. Adverse findings from the NAIC Insurance Regulatory Information System and its related reports;
3. The ratios of commission expense, general insurance expense, policy benefits and reserve increases as to annualized premium and net investment income which could lead to an impairment of capital and surplus;
4. A finding that the insurer's asset portfolio, when viewed in light of current economic conditions, is not of sufficient value, liquidity, or diversity to assure the company's ability to meet its outstanding obligations as they mature;
5. A finding that an assuming reinsurer is not able to meet the obligations being assumed or that the insurer's reinsurance program does not provide 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;
6. A finding that the insurer's operating loss in the last 12 month period or any shorter period of time, including, but not limited to, net capital gain or loss, change in non-admitted assets and cash dividends paid to shareholders, is greater than 50 percent of such insurer's remaining surplus as regards policyholders in excess of the minimum required;