

“special risks” as defined in N.J.S.A. 17:29AA-3k. These rules do not apply to policy forms issued by eligible surplus lines insurers in accordance with the Surplus Lines Law, N.J.S.A. 17:22-6.40 et seq. Nothing in these rules shall, however, authorize the acceptance or use, or prohibit the disapproval, of a policy form that is otherwise prohibited by another law or rule.

(c) These rules apply to all insurers which file policy forms pursuant to N.J.S.A. 17:29AA-6.

### 11:13-7.2 Definitions

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

“Commercial lines insurance” includes all property-casualty insurance policies except those excluded by N.J.S.A. 17:29AA-3a and N.J.A.C. 11:18-1.1.

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

“Cost of legal defense” or “defense costs” means allocated attorney and all other litigation expenses that can be separately identified as arising from the defense of a specific claim.

“Day” means calendar day.

“Insurer” means any person, corporation, association, joint underwriting association subject to N.J.S.A. 17:29AA-22, partnership or company licensed under the laws of this State to transact the business of insurance and rating organizations that file policy forms on behalf of their members and subscribers.

“Liability insurance policy” means any insurance policy that provides coverage for legal liability, even if it contains other types of coverage.

“Policy” or “insurance policy” includes all endorsements.

Amended by R.1997 d.521, effective December 15, 1997.

See: 29 N.J.R. 4248(a), 29 N.J.R. 5310(a).

Amended “Commissioner”.

### 11:13-7.3 Defense costs within policy limits

(a) No commercial insurance policy shall be issued or renewed on a form required to be filed pursuant to N.J.S.A. 17:29AA-6 which contains a provision that includes defense costs within policy limits, except as provided in this section.

1. No defense costs shall be charged against any deductible amount.

(b) Lawyers and medical malpractice professional liability insurance policies may contain a provision that includes defense costs within policy limits provided it conforms to the standards set forth in (c) below.

(c) Lawyers and medical malpractice professional liability insurance policy forms including the defense costs within policy limits shall contain policy provisions, which may be in the form of a mandatory endorsement, so as to incorporate the standards set forth below into the term of each policy:

1. The policy form shall provide a minimum limit of liability of \$1,000,000.

2. Defense costs shall not reduce the portion of the limit of liability that remains available to pay claims until defense costs have been incurred in an amount that equals or exceeds 50 percent of the policy limit of liability. The portion of the limit of liability that remains available to pay claims may be reduced only by the portion of incurred defense costs greater than 50 percent of the policy limit of liability.

3. The portion of the limit of liability available to pay claims shall not be reduced to an amount less than 50 percent of the policy limit of liability, regardless of the amount of defense costs incurred.

(d) Regardless of whether they include defense costs within policy limits, all medical malpractice professional liability insurance policies covering physicians issued by carriers authorized to write such policies in this State shall comply with the provisions of N.J.S.A. 45:9-19.17.1.a and any applicable rules of the State Board of Medical Examiners at N.J.A.C. 13:35.

Amended by R.2003 d.21, effective January 6, 2003.

See: 34 N.J.R. 2947(a), 35 N.J.R. 252(a).

Added (a)1; inserted “and medical malpractice” following “Lawyers” in (b) and (c); deleted (c)4.

Amended by R.2005 d.59, effective February 7, 2005.

See: 36 N.J.R. 4873(a), 37 N.J.R. 530(a).

Added (d).

### 11:13-7.4 Exclusions from coverage for lead liability

(a) The Department shall approve policy forms filings that include policy provisions or rating rules as follows:

1. That the lead liability exclusion applies only if the covered premises were constructed prior to 1978; and

2. That the insurer be required to offer liability coverage for lead paint or lead contamination if the premises covered by such policy has been certified as being free of existing lead hazards pursuant to standards to be established by the Department of Community Affairs.

(b) Insurers filing pursuant to (a) above shall provide insureds with written notice at least one year prior to renewal of a policy of the change in coverage resulting from the exclusion, which shall include the following statements:

1. That the exclusion applies only to premises constructed prior to 1978;

2. That the exclusion shall become part of the policy on renewal; and

3. That the insured may purchase liability coverage for lead paint or lead contamination if the premises covered by the policy has been certified as being free of existing lead hazards pursuant to standards to be established by the Department of Community Affairs.

New Rule, R.1998 d.44, effective January 20, 1998.

See: 28 N.J.R. 5137(b), 30 N.J.R. 367(a).

Former N.J.A.C. 11:13-7.4, "Refiling policy forms" recodified to N.J.A.C. 11:13-7.5.

Amended by R.2003 d.21, effective January 6, 2003.

See: 34 N.J.R. 2947(a), 35 N.J.R. 252(a).

Rewrote the section.

Amended by R.2008 d.74, effective April 7, 2008.

See: 39 N.J.R. 5176(a), 40 N.J.R. 1888(a).

Section was "Exclusions from coverage". In (a)1, inserted "lead liability".

### 11:13-7.5 Refiling policy forms

(a) Insurers with policy forms containing provisions that are inconsistent with the standards set forth in this subchapter shall amend those forms and refile them in accordance with N.J.S.A. 17:29AA-6 as follows:

1. For N.J.A.C. 11:13-7.4, by April 20, 1998, and the forms shall be effective no later than May 20, 1998.

(b) Policy forms refiled as set forth in (a) above shall comply with the standards set forth in this subchapter.

(c) Policy forms refiled in accordance with this rule shall be accompanied by a certification of an officer of the insurer that the policy form is being refiled in accordance with the standards set forth in this subchapter and that the refiling has been done within the time provided by (a) above.

Recodified from N.J.A.C. 11:13-7.4 and amended by R.1998 d.44, effective January 20, 1998.

See: 28 N.J.R. 5137(b), 30 N.J.R. 367(a).

In (a), substituted "as follows:" for "by February 1, 1992", and added 1.

#### Law Review and Journal Commentaries

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

#### Case Notes

Insurer's proposed absolute pollution exclusion endorsement would not be deemed approved under statutory automatic approval mechanism. Matter of Disapproval of Commercial Ins. Policy Forms of Ins. Co. of North America, 264 N.J.Super. 228, 624 A.2d 587 (A.D.1993).

Pronouncement by Commissioner of Department of Insurance that asbestos exclusions were not permitted constituted improper rule making. Matter of Disapproval of Commercial Ins. Policy Forms of Ins. Co. of North America, 264 N.J.Super. 228, 624 A.2d 587 (A.D.1993).

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

### 11:13-8.1 Purpose and scope

(a) This subchapter establishes data requirements and procedures for member/subscriber insurers in rating organiza-

tions or advisory organizations to adopt or modify a rating organization's or advisory organization's prospective loss cost filing for commercial lines insurance made pursuant to N.J.S.A. 17:29AA-1 et seq.

(b) This subchapter applies to all rating organizations or advisory organizations which filed prospective loss costs and all insurer filings which adopt or modify a rating organization's or advisory organization's prospective loss cost filing for commercial lines insurance made pursuant to N.J.S.A. 17:29AA-1 et seq.

(c) All filings made pursuant to this subchapter shall be made in accordance with N.J.A.C. 11:1-32.

Amended by R.2003 d.21, effective January 6, 2003.

See: 34 N.J.R. 2947(a), 35 N.J.R. 252(a).

Inserted "or advisory organization" following "rating organization" throughout.

### 11:13-8.2 Definitions

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

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

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

"Expenses" means that portion of a rate attributable to commissions and brokerage, other acquisition expenses, general expenses, taxes, licenses, and fees.

"Loss costs multiplier" means the adjustment reflecting expenses, profit loading and any modifications that the insurer uses on the loss cost to produce final rates.

"Minimum premium" means the smallest amount of premium for which an insurer will issue coverage under a given policy.

"Prospective loss costs" means that portion of a rate that does not include provisions for expenses (other than loss adjustment expenses) or profit, and are based on historical aggregate losses and loss adjustment expenses adjusted through development to their ultimate value and projected through trending to a future point in time.

"Rate" means the unit charge by which the measure of exposure or the amount of insurance specified in a policy of insurance or covered thereunder is multiplied to determine the premium.

"Rating organization" means every person or persons, corporation, partnership, company, society, or association engaged in the business of ratemaking for two or more insurers.

"Supplementary rate information" means any manual or plan of rates, statistical plan, classification, rating schedule, rating rule, and any other rule used by an insurer in making rates.

Amended by R.1997 d.521, effective December 15,1997.  
See: 29 N.J.R. 4248(a), 29 N.J.R. 5310(a).  
Amended "Commissioner" and "Department".

### 11:13-8.3 Prospective loss cost filing requirements for rating organizations

(a) A rating organization or advisory organization that desires to file prospective loss costs with the Commissioner shall develop a filing containing advisory prospective loss costs and supporting actuarial and statistical data.

(b) Rating organizations or advisory organizations that file advisory prospective loss cost filings with the Commissioner shall:

1. Submit a filing that contains the advisory prospective loss costs and the underlying loss data and other supporting actuarial information for any calculations or assumptions underlying those loss costs; and
2. No longer develop or file minimum premiums with the filing of prospective loss costs.

(c) A rating organization or advisory organization shall provide the Department with printed manuals of loss costs, as well as rules and other supplementary rating information pursuant to N.J.S.A. 17:29AA-1 et seq., and may provide this information to its member/subscribers insurers upon request.

(d) Rating organizations or advisory organizations shall continue to develop and file supplementary rating information on behalf of their member/subscriber insurers.

Amended by R.2003 d.21, effective January 6, 2003.  
See: 34 N.J.R. 2947(a), 35 N.J.R. 252(a).

Inserted "or advisory organization" following "rating organization" throughout.

### 11:13-8.4 Prospective loss costs filing requirements for insurers

(a) In order for an insurer to incorporate a rating organization's or advisory organization's filed prospective loss costs to establish its own rates, an insurer shall:

1. Be a member/subscriber insurer in the rating organization or advisory organization; and
2. File its loss costs multiplier using the Reference Filing Adoption Form (as set forth in Appendix A to this subchapter and incorporated herein by reference). An insurer's final rates shall be a combination of the prospective loss costs and the loss costs multiplier set forth in its filed Reference Filing Adoption Form.

i. An insurer may file modifications to the rating organization's or advisory organization's prospective loss costs filing based on its own anticipated experience by using the Reference Filing Adoption Form. Supporting documentation shall be filed for any modification (upwards or downwards) to the rating organization's or advisory organization's prospective loss costs filings.

ii. An insurer's filed loss costs multiplier shall remain in effect until the insurer withdraws the multiplier or files a revised Reference Filing Adoption Form.

(b) Insurers may vary expense loads by individual lines, sublines or classifications of insurance. Insurers may use variable or fixed expense loads or a combination of these to establish their expense loadings.

1. An insurer's loss cost multiplier based on its expenses plus any profit provision shall not include the surtax or the Property-Liability Insurance Guaranty Association's assessments on private passenger automobiles pursuant to N.J.S.A. 17:30A-8a(9) and 17:33B-49.

2. Insurers shall provide documentation to support its profit loading.

(c) Any participating insurer of a rating organization or advisory organization shall continue to use all rates and deviations currently in effect for its use until disapproved pursuant to N.J.S.A. 17:29AA-13, or until the insurer makes a filing to change its rates, either by making an independent filing or by submitting a Reference Filing Adoption Form.

(d) Once an insurer has filed a loss costs multiplier with the Department, such multiplier shall be deemed to be automatically applicable to subsequent rating organizations or advisory organizations prospective loss costs filings, subject to the following requirements:

1. An insurer which intends to use a subsequent revision of prospective loss cost and effective date as filed by the rating organization or advisory organization shall not file anything;

2. An insurer which intends to use prospective loss costs as filed but with a different effective date shall file with the Department its proposed effective date not more than 30 days after the effective date of the rating organization's or advisory organization's prospective loss costs;

3. An insurer which intends to use a subsequent revision of the prospective loss costs to change its loss costs multiplier, shall file a revised Reference Filing Adoption Form not more than 30 days after the effective date of the rating organization's or advisory organization's prospective loss costs reference filing; and

4. An insurer which does not intend to use a subsequent revision of the prospective loss costs shall notify the Department not more than 30 days after the effective date of the rating organization's or advisory organization's prospective loss costs reference filing. The insurer shall file a Non Adoption of Prospective Lost Cost Form (as set forth in Appendix and incorporated herein by reference) with the Department.

(e) An insurer which has failed to adopt a rating organization's or advisory organization's prospective loss cost shall file with the Department, within 30 days of the effective date of the insurer's rates.

1. A final printed manual page indicating the loss cost modification to be applied to the rating organization's or advisory organization's prospective loss costs, including its effective date; or

2. Final printed manual pages indicating the final rates developed by application of the loss cost multiplier to the rating organization's or advisory organization's loss costs, including the effective date.

Amended by R.2003 d.21, effective January 6, 2003.  
See: 34 N.J.R. 2947(a), 35 N.J.R. 252(a).

Inserted "or advisory organization" following "rating organization" throughout.

#### 11:13-8.5 Penalties

Rating organizations or advisory organizations and insurers which fail to comply with the filing submission requirements of this subchapter shall be subject to penalties pursuant to N.J.S.A. 17:29AA-26.

Amended by R.2003 d.21, effective January 6, 2003.  
See: 34 N.J.R. 2947(a), 35 N.J.R. 252(a).

Inserted "or advisory organization" following "rating organization".