

TITLE 11

DEPARTMENT OF INSURANCE

CHAPTER 1

ADMINISTRATION

Authority

N.J.S.A. 17:1-8.1 and 17:1C-6(e).

Source and Effective Date

R.1996 d.116, effective January 31, 1996.
See: 27 N.J.R. 4121(a), 28 N.J.R. 1382(a).

Executive Order No. 66(1978) Expiration Date

Chapter 1, Administration, expires on January 31, 2001.

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; Property—Liability, 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 Subchapter 3 was repealed by R.1990 d.11, effective January 2, 1990.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 3, Disability Discrimination Grievance Procedure, was adopted as new rules by R.1993 d.618, effective December 6, 1993. See: 25 N.J.R. 1327(a), 25 N.J.R. 5666(b). Subchapter 3 is exempt from expiration under 28 C.F.R. Part 35.

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, and the Motor Vehicle Liability Security Fund was declared exhausted, effective August 22, 1974. See: 6 N.J.R. 351(d). The expiration date of Subchapter 5, Administrative Orders and Declarations was extended by gubernatorial directive from June 6, 1984 to 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). 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). Subchapter 6, New Jersey Property—Liability Insurance Guaranty Association, was repealed and a new Subchapter 6, New Jersey Property—Liability Insurance Guaranty Association Assessment Premium Surcharge was adopted as new rules by R.1991 d.461, effective September 3, 1991. See: 23 N.J.R. 823(b), 23 N.J.R. 2638(a).

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, Service and Placement Fees, 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 7, Medical Malpractice Reporting Requirements, was adopted as new rules by R.1994 d.493, effective September 19, 1994. See: 26 N.J.R. 1433(a), 26 N.J.R. 3864(a).

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, Property—Casualty Agents, 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, Agents for Life Insurance, Health Insurance and Annuity Contracts—Temporary Licensing, 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, Insurance Licensing of Financial Institutions, 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, Disclosure Agreements for Motor Club Service Contracts Sold in Connection with Automobile Insurance Policies, 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, Insurance Licensees, 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, Approval of Business Names, 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, Branch Offices, 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 (to expire November 16, 1985). See: 17 N.J.R. 2460(a). An emergency amendment was filed as R.1985 d.626, effective November 15, 1985 (to expire 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). Subchapter 20, Cancellation and Nonrenewal of Property and Casualty/Liability Insurance Policies, was repealed by R.1986 d.272 and a new Subchapter 20, Cancellation and Nonrenewal of Commercial and Homeowners' Insurance Policies, was adopted 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).

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 21A, Actuarial Opinion and Memorandum for Life/Health Insurers, was adopted as new rules by R.1995 d.605, effective November 20, 1995. See: 27 N.J.R. 2998(a), 27 N.J.R. 4720(a).

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 26, Annual Publication of Insurer Profitability Information, was repealed by R.1996 d.116, effective March 4, 1996. See: 27 N.J.R. 4121(a), 28 N.J.R. 1382(a).

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). Subchapter 29, Temporary Certificate of Authority, was repealed by R.1996 d.116, effective March 4, 1996. See: 27 N.J.R. 4121(a), 28 N.J.R. 1382(a).

Subchapter 30 has had no rulemaking activity and remains "Reserved".

Subchapter 31, Surplus Lines Insurer Eligibility, was adopted as new rules by R.1994 d.102, effective February 22, 1994. See: 25 N.J.R. 1819(a), 26 N.J.R. 1096(a).

Subchapter 32, Fees and Special Purpose Apportionment, was adopted as new rules by 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). Originally entitled Fees, the heading for subchapter 32 was amended to read as it now appears by R.1996 d.484, effective October 7, 1996. See: 28 N.J.R. 3223(a), 28 N.J.R. 4482.

Subchapter 33, Public Advocate Reimbursement Disputes, was adopted as new rules by R.1993 d.179, effective April 19, 1993. See: 24 N.J.R. 2706(a), 25 N.J.R. 1764(c). Subchapter 33, Public Advocate Reimbursement Disputes, was repealed by R.1996 d.116, effective March 4, 1996. See: 27 N.J.R. 4121(a), 28 N.J.R. 1382(a).

Subchapter 34, Surplus Lines: Exportable List, was adopted as new rules by R.1994 d.7, effective January 3, 1994. See: 24 N.J.R. 4331(a), 26 N.J.R. 236(b).

Subchapter 35, Insurance Holding Company Systems, was adopted as emergency new rules by 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, effective October 15, 1993. See: 25 N.J.R. 4275(a), 25 N.J.R. 5170(b).

Subchapter 36, Examination of Insurers, was adopted as emergency new rules by 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, effective October 15, 1993. See: 25 N.J.R. 4284(a), 25 N.J.R. 5180(a).

Subchapter 37, Licensing of Public Adjusters, was adopted as new rules by 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).

Subchapter 38, Oversight of Fireman's Relief Associations, was adopted as new rules by R.1996 d.125, effective March 4, 1996 (operative March 4, 1996, except for N.J.A.C. 11:1-38.4 which shall be operative January 1, 1997). See: 27 N.J.R. 634(a), 28 N.J.R. 1384(a).

Subchapter 39, Disclosure of Material Transactions, was adopted as new rules by R.1995 d.234, effective May 1, 1995. See: 27 N.J.R. 816(a), 27 N.J.R. 1802(a).

Pursuant to Executive Order No. 66(1978), all subchapters within Chapter 1, Administration, were readopted as R.1991 d.101, effective January 31, 1991. See: 22 N.J.R. 3686(a), 23 N.J.R. 690(b).

Pursuant to Executive Order No. 66(1978), Chapter 1 was readopted as R.1996 d.116, effective January 31, 1996. See: Source and Effective Date. See, also, section annotations.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. ORGANIZATION

- 11:1-1.1 Organization of the Department
- 11:1-1.2 Public information
- 11:1-1.3 Sharing of information with other insurance departments

SUBCHAPTER 2. FILINGS; PROPERTY-LIABILITY

- 11:1-2.1 Filings of rates, manual rules, rating plans, policy forms and endorsements
- 11:1-2.2 Filings of changes
- 11:1-2.3 Adoption of rules and forms approved for other filers
- 11:1-2.4 New filings
- 11:1-2.5 Notification

SUBCHAPTER 3. DISABILITY DISCRIMINATION GRIEVANCE PROCEDURE

- 11:1-3.1 Definitions
- 11:1-3.2 Purpose
- 11:1-3.3 Required ADA notice
- 11:1-3.4 Designated ADA coordinator
- 11:1-3.5 Grievance procedure
- 11:1-3.6 Grievance contents
- 11:1-3.7 Grievance form
- 11:1-3.8 Investigation

SUBCHAPTER 4. UNFAIR DISCRIMINATION

- 11:1-4.1 (Reserved)
- 11:1-4.2 Sex and/or marital discrimination
- 11:1-4.3 Complications of pregnancy

SUBCHAPTER 5. FIRE AND CASUALTY INSURANCE

- 11:1-5.1 FAIR Plan Surcharge
- 11:1-5.2 Notice of cancellation and nonrenewal of fire and casualty coverage

ADMINISTRATION

- 11:1-5.3 FAIR Plan short notice cancellation procedures
- 11:1-5.4 Distribution of fire insurance premium tax
- 11:1-5.5 Notice regarding flood damage coverage
- 11:1-5.6 FAIR plan retention level

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

- 11:1-6.1 Purpose and scope
- 11:1-6.2 Definitions
- 11:1-6.3 Establishment of Association assessment premium surcharge
- 11:1-6.4 Reporting requirements
- 11:1-6.5 Penalties

SUBCHAPTER 7. MEDICAL MALPRACTICE REPORTING REQUIREMENTS

- 11:1-7.1 Purpose and scope
- 11:1-7.2 Definitions
- 11:1-7.3 Medical malpractice reporting requirements
- 11:1-7.4 Confidentiality
- 11:1-7.5 Penalties

SUBCHAPTERS 8 THROUGH 9. (RESERVED)

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

- 11:1-10.1 Purpose
- 11:1-10.2 Scope
- 11:1-10.3 Definitions
- 11:1-10.4 General eligibility requirements
- 11:1-10.5 Letter of intent
- 11:1-10.6 Final application
- 11:1-10.7 Review procedures; appeals
- 11:1-10.8 Requirements upon admission
- 11:1-10.9 Compliance
- 11:1-10.10 Severability

SUBCHAPTER 11. CONDUCT CONSTITUTING VIOLATIONS BY BROKERS AND AGENTS

- 11:1-11.1 Scope
- 11:1-11.2 Unworthiness and bad faith under N.J.S.A. 17:22-6.16(h) and 17B:22-27(12)
- 11:1-11.3 Disciplinary action; restitution

SUBCHAPTER 12. CORPORATE AND PARTNERSHIP LICENSEE REQUIREMENTS

- 11:1-12.1 (Reserved)
- 11:1-12.2 Responsibility of active officers of corporate licensees
- 11:1-12.3 through 11:1-12.4 (Reserved)
- 11:1-12.5 Responsibility of active members of partnership licensee
- 11:1-12.6 (Reserved)

SUBCHAPTERS 13 THROUGH 14. (RESERVED)

SUBCHAPTER 15. PETITIONS FOR RULES

- 11:1-15.1 Scope
- 11:1-15.2 Procedure for petitioner
- 11:1-15.3 Procedure of the Department

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

- 11:1-16.1 Purpose and scope
- 11:1-16.2 Filing requirements

SUBCHAPTERS 17 THROUGH 19. (RESERVED)

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

- 11:1-20.1 Scope
- 11:1-20.2 Nonrenewal and cancellation notice requirements
- 11:1-20.3 Policy provisions relating to cancellation or nonrenewal
- 11:1-20.4 Cancellation and nonrenewal underwriting guidelines
- 11:1-20.5 Cancellation or nonrenewal based on loss of or reduction in available insurance capacity
- 11:1-20.6 Cancellation and nonrenewal based on changes in statutory or case law
- 11:1-20.7 Cancellation or nonrenewal based on loss of or substantial changes in applicable reinsurance
- 11:1-20.8 Cancellation and nonrenewal based on agency termination
- 11:1-20.9 Policy provisions
- 11:1-20.10 Separability
- 11:1-20.11 Penalties
- 11:1-20.12 (Reserved)

SUBCHAPTER 21. LOSS RESERVE OPINIONS

- 11:1-21.1 General requirements
- 11:1-21.2 Identification paragraph
- 11:1-21.3 Scope paragraph
- 11:1-21.4 Opinion paragraph
- 11:1-21.5 Exemptions

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

- 11:1-21A.1 Purpose and scope
- 11:1-21A.2 Definitions
- 11:1-21A.3 General requirements
- 11:1-21A.4 Required opinions
- 11:1-21A.5 Statement of actuarial opinion not including an asset adequacy analysis
- 11:1-21A.6 Statement of actuarial opinion based on an asset adequacy analysis
- 11:1-21A.7 Description of actuarial memorandum including an asset adequacy analysis
- 11:1-21A.8 Additional considerations for analysis
- 11:1-21A.9 Penalties

APPENDIX

SUBCHAPTER 22. PROHIBITION OF CERTAIN CANCELLATION AND NONRENEWAL ACTIVITY

- 11:1-22.1 Scope; definitions
- 11:1-22.2 Prohibitions
- 11:1-22.3 Penalties
- 11:1-22.4 (Reserved)

SUBCHAPTER 23. (RESERVED)

SUBCHAPTER 24. USE OF CREDIT CARDS, CHARGE CARDS, DEBIT CARDS OR DIRECT ACCOUNT DEDUCTION (ALTERNATIVE PAYMENT METHOD) TO PAY INSURANCE PREMIUMS

- 11:1-24.1 Purpose and scope
- 11:1-24.2 Definitions
- 11:1-24.3 Use of credit cards, charge cards, debit cards, and direct account deduction (alternative payment method) for payment of premiums
- 11:1-24.4 Ratemaking
- 11:1-24.5 Cancellation of policy
- 11:1-24.6 Payment of premiums
- 11:1-24.7 Disclosure of optional methods of payment
- 11:1-24.8 Penalties

SUBCHAPTER 25. OFFICIAL DEPARTMENT MAILING LIST: ADDRESS INFORMATION

- 11:1-25.1 Purpose
- 11:1-25.2 Scope
- 11:1-25.3 Official mailing list; change in address information
- 11:1-25.4 Penalties

SUBCHAPTERS 26 THROUGH 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
- 11:1-28.2 Scope
- 11:1-28.3 Definitions
- 11:1-28.4 Types of insurance
- 11:1-28.5 Feasibility study
- 11:1-28.6 Additional information requirements
- 11:1-28.7 Criminal history record check
- 11:1-28.8 Permit to solicit
- 11:1-28.9 Organization examination
- 11:1-28.10 Certificate of authority
- 11:1-28.11 Failure to comply with subchapter; denial of certificate of authority
- 11:1-28.12 Severability

APPENDIX A FORMAT FOR THE PREPARATION OF A DOMESTIC PROPERTY/LIABILITY INSURANCE COMPANY'S CERTIFICATE OF INCORPORATION

APPENDIX B BIOGRAPHICAL AFFIDAVIT

APPENDIX C AFFIDAVIT OF OFFICERS AND DIRECTORS

SUBCHAPTERS 29 THROUGH 30. (RESERVED)

SUBCHAPTER 31. SURPLUS LINES INSURER ELIGIBILITY

- 11:1-31.1 Purpose and scope
- 11:1-31.2 Definitions
- 11:1-31.3 General requirements
- 11:1-31.4 Certificate of eligibility; filing requirements
- 11:1-31.5 Certificate of eligibility; issuance
- 11:1-31.6 Withdrawal of eligibility
- 11:1-31.7 Failure to comply with subchapter; denial of certificate of eligibility

SUBCHAPTER 32. FEES AND SPECIAL PURPOSE APPORTIONMENT

- 11:1-32.1 Purpose and scope
- 11:1-32.2 Definitions
- 11:1-32.3 General procedures
- 11:1-32.4 Fees; general
- 11:1-32.5 Fees; life and health insurance; legal insurance
- 11:1-32.6 Fees; property and casualty insurance
- 11:1-32.7 Fees; surplus lines insurers, risk retention groups and purchasing groups
- 11:1-32.8 Applicability of fees imposed by insurance laws of this State
- 11:1-32.9 Special purpose apportionment; de minimis amounts
- 11:1-32.10 Penalties
- 11:1-32.11 (Reserved)

SUBCHAPTER 33. (RESERVED)

SUBCHAPTER 34. SURPLUS LINES: EXPORTABLE LIST

- 11:1-34.1 Purpose and scope
- 11:1-34.2 Definitions

- 11:1-34.3 Exportable list hearing
- 11:1-34.4 Exportable list hearing record
- 11:1-34.5 Promulgation and modification of exportable list
- 11:1-34.6 Exportable list

APPENDIX A LIST OF UNAUTHORIZED INSURERS WHICH QUALIFY AS ELIGIBLE SURPLUS LINES INSURERS

SUBCHAPTER 35. INSURANCE HOLDING COMPANY SYSTEMS

- 11:1-35.1 Purpose and scope
- 11:1-35.2 Definitions
- 11:1-35.3 Forms; general requirements
- 11:1-35.4 Forms; incorporation by reference, summaries and omissions
- 11:1-35.5 Forms; additional information and exhibits
- 11:1-35.6 Acquisition of control; statement filing; procedures
- 11:1-35.7 Annual registration of insurers
- 11:1-35.8 Alternative and consolidated registrations
- 11:1-35.9 Disclaimers and termination of registration
- 11:1-35.10 Transactions subject to prior notice
- 11:1-35.11 Adequacy of surplus
- 11:1-35.12 Penalties

APPENDIX

SUBCHAPTER 36. EXAMINATION OF INSURERS

- 11:1-36.1 Purpose and scope
- 11:1-36.2 Definitions
- 11:1-36.3 Examination; when deemed complete
- 11:1-36.4 Foreign and alien insurers; filing of examination reports with this State
- 11:1-36.5 Payment of expenses
- 11:1-36.6 Penalties

SUBCHAPTER 37. LICENSING OF PUBLIC ADJUSTERS

- 11:1-37.1 Purpose and scope
- 11:1-37.2 Definitions
- 11:1-37.3 General licensing requirements
- 11:1-37.4 Licensing applications and renewals
- 11:1-37.5 Denial of license
- 11:1-37.6 Sublicensees
- 11:1-37.7 Temporary sublicensee
- 11:1-37.8 Licensing examination
- 11:1-37.9 Bond; alternative security
- 11:1-37.10 Administrative reporting requirements
- 11:1-37.11 Escrow or trust accounts
- 11:1-37.12 Minimum recordkeeping requirements
- 11:1-37.13 Right to compensation
- 11:1-37.14 Violations and penalties
- 11:1-37.15 Effect of suspension or revocation of public adjuster license
- 11:1-37.16 Reinstatement after suspension or revocation of a public adjuster license
- 11:1-37.17 Public records
- 11:1-37.18 Fees
- 11:1-37.19 Requests for disclosure of social security numbers

APPENDIX

SUBCHAPTER 38. OVERSIGHT OF FIREMEN'S RELIEF ASSOCIATIONS

- 11:1-38.1 Purpose and scope
- 11:1-38.2 Definitions
- 11:1-38.3 Filing requirements
- 11:1-38.4 (Reserved)
- 11:1-38.5 Payments by insurers to local relief associations
- 11:1-38.6 Penalties

SUBCHAPTER 39. DISCLOSURE OF MATERIAL
TRANSACTIONS

- 11:1-39.1 Purpose and scope
- 11:1-39.2 Definitions
- 11:1-39.3 Disclosure of transactions
- 11:1-39.4 Acquisitions and dispositions of assets; reporting requirements
- 11:1-39.5 Nonrenewals, cancellations or revisions of ceded reinsurance agreements; reporting requirements
- 11:1-39.6 Penalties

SUBCHAPTER 40. (RESERVED)

SUBCHAPTER 41. SURETY BONDS FOR CONTRACTS
INVOLVING THE STATE, LOCAL CONTRACTING
UNITS, BOARDS OF EDUCATION, STATE
COLLEGES AND COUNTY COLLEGES

- 11:1-41.1 Purpose and scope
- 11:1-41.2 Definitions
- 11:1-41.3 Rating company
- 11:1-41.4 Treasury listed surety companies and alternative requirements to Treasury listing
- 11:1-41.5 Penalties

APPENDIX A

APPENDIX B

SUBCHAPTER 42. (RESERVED)

SUBCHAPTER 43. UNUSUAL HARDSHIP FOR
COVERED CLAIMS UNDER THE NEW JERSEY
PROPERTY-LIABILITY INSURANCE GUARANTY
ASSOCIATION AND NEW JERSEY SURPLUS
LINES INSURANCE GUARANTY FUND

- 11:1-43.1 Purpose and scope
- 11:1-43.2 Definitions
- 11:1-43.3 Unusual hardship
- 11:1-43.4 Request for review by the Commissioner

11:1-43.5 Confidentiality

SUBCHAPTER 1. ORGANIZATION

11:1-1.1 Organization of the Department

(a) The organization of the Department of Banking and Insurance appears below.

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).

Amended by R.1996 d.124, effective February 8, 1996.

See: 28 N.J.R. 1382(b).

Amended by R.1996 d.385, effective July 15, 1996.

See: 28 N.J.R. 3797(a).

Amended by R.1997 d.395, effective August 25, 1997.

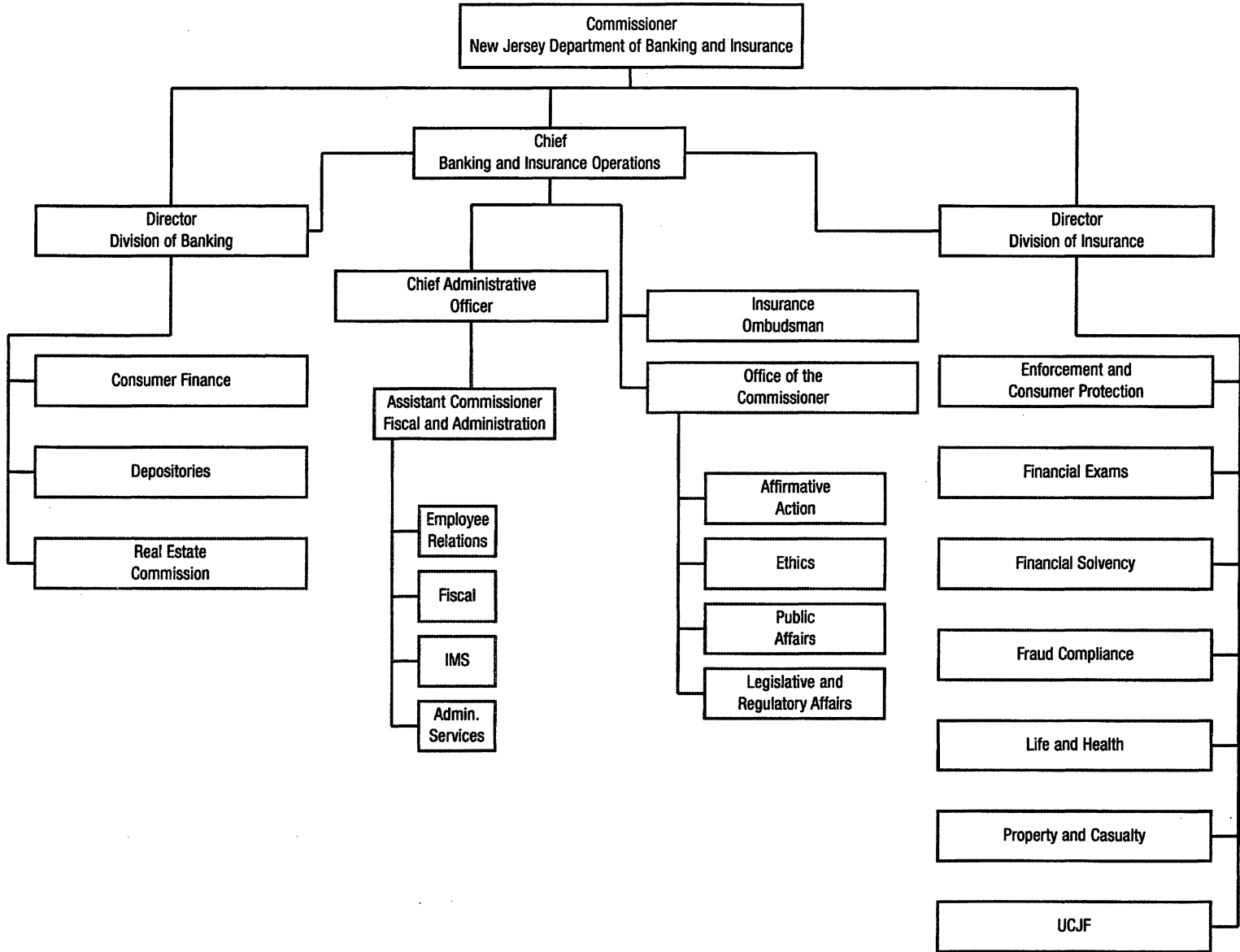
See: 29 N.J.R. 4137(b).

Replaced existing organizational chart with new chart.

Amended by R.2000 d.54, effective January 11, 2000.

See: 32 N.J.R. 475(a).

NEW JERSEY DEPARTMENT OF BANKING AND INSURANCE



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 (Λ) 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

The filing with a covering letter shall be submitted to the Department of Insurance. The filing shall be accompanied by a transmittal form (copies of which can be obtained from the Department of Insurance 20 West 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).

Amended by R.1996 d.116, effective March 4, 1996.
See: 27 N.J.R. 4121(a), 28 N.J.R. 1382(a).

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**

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.

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.

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. FIRE AND CASUALTY INSURANCE

Subchapter Historical Note

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

11:1-5.1 FAIR Plan Surcharge

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

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

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

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

ii. All burglary and theft policies.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Case Notes

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

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

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

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

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

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

1. Provisions for cancellations for nonpayment of premium or for "moral hazard" (such as insurance fraud) under N.J.S.A. 17:29C-2;

2. Provisions for cancellations and nonrenewal notice which are controlled by N.J.S.A. 17:29C-6 et seq., (Automobile insurance), 39:6A-3 and rules promulgated thereunder (No-fault insurance).

3. Provisions in New Jersey FAIR Plan policies for five day notice to the insured and 10 days notice to the mortgagee with respect to any of the following properties or in any of the following circumstances:

- i. Buildings which are unoccupied and accessible to unauthorized persons.

- ii. Buildings which have been subject to damage by a peril insured against and the damage is not repaired or remedied within a reasonable time after the damage occurred.

- iii. Buildings which are in danger of collapse because of serious structural conditions.

- iv. The insured has been indicted for or convicted of arson or burning with intent to defraud, or there is evidence of incendiarism or attempt threat by the insured or representative of the insured.

- v. Buildings which have an exceptional degree of hazard, such as fire ruins or dilapidated condition.

- vi. Buildings which have any of the following conditions existing:

- (1) Repeated failure to furnish heat, water, sewer or public lighting;

- (2) Failure to correct conditions dangerous to life, health or safety;

- (3) Failure to maintain the building in accordance with applicable law;

- (4) Failure to pay property taxes for two quarters.

vii. Building with any of the rental units in the building unoccupied and left unprotected against trespass. A rental unit will be deemed to be unprotected against trespass when an entrance door to such unit or an exterior door to a hall, stairway, or other common passage leading to such unit is missing, unlocked, not capable of being locked, or otherwise unsecured, or when a door or window in such unit which is accessible to entry has not been replaced or boarded up. If the owner remedies the condition that left the unit or units unprotected against trespass and so notifies the association within the 15-day time period for appeal to the association as provided by N.J.A.C. 11:1-5.3(c), then the association shall grant the appeal and the insurance shall continue without lapse.

viii. Buildings from which fixed and salvageable items have been or are being removed and the insured can give no reasonable explanation for such removal.

ix. Buildings which have been condemned.

x. When there is reasonable knowledge and belief that the property is endangered and is not reasonably protected from possible arson for profit.

Emergency New Rule, R.1974 d.259, effective September 20, 1974.
See: 6 N.J.R. 407(a).

"New Jersey Special Joint Underwriting Association."
Emergency Amendment, R.1974 d.274, effective October 2, 1974.
See: 6 N.J.R. 436(b).

New Rule, R.1977 d.185, effective July 1, 1977.
See: 9 N.J.R. 177(c), 9 N.J.R. 282(b).

Originally designated 11:2-17.1; codified at 11:1-5.5.

Amended by R.1979 d.219, effective June 6, 1979.

See: 11 N.J.R. 249(e), 11 N.J.R. 348(b).

Recertification of 11:1-5.5.

See: 15 N.J.R. 810(a).

Recertification of 11:1-5.5.

See: 16 N.J.R. 2018(a).

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

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

Recodified from 11:1-5.5.

Public Notice: Recertification to Legislature of the need for continuance of the Notice of cancellation and nonrenewal of fire and casualty coverage.

See: 18 N.J.R. 1623(a).

Amended by R.1990 d.107, effective February 5, 1990.

See: 21 N.J.R. 3240(b), 22 N.J.R. 391(a).

Changes at (b)3 regarding the provisions of fire and casualty insurance policies issued by the FAIR Plan.

Public Notice: Recertification to Legislature.

See: 22 N.J.R. 3057(b).

Public Notice: Recertification to Legislature.

See: 23 N.J.R. 2883(b).

Public Notice: Recertification to the Legislature of need for notice of cancellation and nonrenewal of fire and casualty insurance.

See: 24 N.J.R. 3181(a).

Public Notice: Recertification to Legislature.

See: 26 N.J.R. 4452(c).

Public Notice: Recertification to Legislature.

See: 27 N.J.R. 3492(a).
 Public Notice: Recertification to Legislature.
 See: 28 N.J.R. 3834(c).
 Public Notice: Recertification to Legislature.
 See: 29 N.J.R. 3368(a).
 Public Notice: Recertification to Legislature.
 See: 31 N.J.R. 2007(a).
 Public Notice: Recertification to Legislature.
 See: 32 N.J.R. 2959(b).

Case Notes

Regulation governing insurer's giving of notice of policy cancellation and nonrenewal did not obligate insurer to provide notice of nonrenewal of multiperil policy to mortgagee. *Howard Sav. Bank v. Liberty Mut. Ins. Co.*, 285 N.J.Super. 491, 667 A.2d 390 (A.D.1995).

Cancellation of homeowners' policy was governed by statute and regulation on notice of cancellation and nonrenewal of fire and casualty coverage. *DiGiacomo v. Saladino*, 279 N.J.Super. 96, 652 A.2d 223 (A.D.1995).

Insurer was required to demonstrate objective reason for exercising rights under clause allowing cancellation for any reason other than nonpayment of premium. *Harvester Chemical Corp. v. Aetna Cas. & Sur. Co.*, 277 N.J.Super. 421, 649 A.2d 1296 (A.D.1994), certification denied 139 N.J. 441, 655 A.2d 443.

Insurer had to give insured written notice when it did not to renew from any source other than insured. *Echevarias v. Lopez*, 240 N.J.Super. 104, 572 A.2d 671 (A.D.1990).

Statutory obligation to provide written notice of nonrenewal exists despite broker's assurance that insured does not intend to renew. *Echevarias v. Lopez*, 240 N.J.Super. 104, 572 A.2d 671 (A.D.1990).

Casualty policy for trailer park had expired where broker had sent timely and proper notice and insured chose not to renew. *Insinga v. Hegedus*, 231 N.J.Super. 562, 555 A.2d 1183 (A.D.1989).

Insurer could not claim broker was primarily responsible for nonrenewal notices. *Insinga v. Hegedus*, 231 N.J.Super. 562, 555 A.2d 1183 (A.D.1989).

Insurer held liable for fire loss where it failed to give notice of policy expiration as required by rule (citing former N.J.A.C. 11:1-5.5). *Barbara Corp. v. Bob Maneely Insurance Agency*, 197 N.J.Super. 339, 484 A.2d 1292 (App.Div.1984).

11:1-5.3 FAIR Plan short notice cancellation procedures

(a) When a notice of cancellation is served by mail, three days from the date of mailing shall be added to the otherwise applicable notice period.

(b) The association shall submit to the Commissioner, no later than three days after the last day of each month, a copy of all short notice cancellations issued during that month.

(c) The association shall notify the insured of any cancellation in a writing setting forth the reason or reasons for cancellation and the effective date. The writing shall advise the insured of a right to appeal the cancellation to the association within 15 days of the date of mailing, and if the appeal is denied, to the Department of Insurance. Nothing herein shall imply a right to hearing procedures described in the Administrative Procedure Act, particularly "contested case" procedures. The appeal shall be processed in the following manner:

1. Upon issuance of a short notice cancellation, the file will be placed into special suspense, for a period of 15 days from the date of mailing of notice. If no written notice of appeal is received from the insured or his representative within that period, cancellation will be processed and return premium (if any) forwarded to the producer of record.

2. If timely written request for appeal is received, the following steps will be taken:

i. The N.J.I.U.A. appeals committee will review and determine the appeal within five working days from receipt of request for appeal. If the result of the appeal is favorable, a letter advising the insured or his representative, the producer and the mortgagee (if any) of favorable action will be sent together with reinstatement notice stating that no lapse in coverage has occurred.

ii. If the appeals committee denies the appeal for reinstatement, a letter advising the insured or his representative, the producer or mortgagee (if any) of this action and a right to appeal to the Commissioner will be sent; a copy will be forwarded to the Department of Insurance.

(1) The file will remain in suspense for 30 days awaiting notice of appeal to the Commissioner.

(2) Upon receipt of the appeal request, the Department of Insurance will notify N.J.I.U.A. and advise that the file should be held in suspense for an additional period.

(3) If, after 35 days have elapsed from the association's decision to deny appeal and no notification has been received from the Department of Insurance of a pending appeal, cancellation will be processed and return premium (if any) forwarded to the producer of record.

(4) The Department of Insurance will advise N.J.I.U.A. of its decision. If the appeal is granted, the policy will be reinstated without lapse. If the appeal is denied, cancellation will be processed and return premium (if any) will be forwarded to the producer of record.

New Rule, R.1975 d.210, effective July 23, 1975.

See: 7 N.J.R. 273(a), 7 N.J.R. 369(b).

"New Jersey Special Joint Underwriting Association charge".

Amended by R.1976 d.134, effective May 5, 1976.

See: 8 N.J.R. 197(a), 8 N.J.R. 300(a).

Repealed by R.1977 d.17, effective January 26, 1977.

See: 8 N.J.R. 559(a), 9 N.J.R. 93(a).

New Rule, R.1979 d.219, effective June 6, 1979.

See: 11 N.J.R. 249(e), 11 N.J.R. 348(b).

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

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

Recodified from 11:1-5.6.

11:1-5.4 Distribution of fire insurance premium tax

(a) Fire insurance premium taxes paid by insurers not domiciled in the State of New Jersey are required to be distributed to the respective Firemen's Relief Association in which the property is situated.

(b) A three digit Firemen's Relief Association Code, published in the ISO New Jersey Public Fire Protection Classifications Manual, has been promulgated by the Insurance Services Office (ISO) for the purpose of coding the policies to properly allocate the premium taxes.

(c) The following steps shall be taken to assure correct tax distribution:

1. All agents, surplus lines agents and brokers producing fire insurance on any risks located in New Jersey are required to properly describe the risk and its location on the Policy Declaration Sheet.

2. The description of the property shall contain the complete address at which the property is located including the legal name of the municipality and the Firemen's Relief Association Code as promulgated by the Insurance Services Office.

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

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

New Rule, R.1979 d.356, effective September 10, 1979.
See: 11 N.J.R. 347(b), 11 N.J.R. 520(c).
Amended by R.1984 d.426, effective October 1, 1984.
See: 16 N.J.R. 1689(a), 16 N.J.R. 2677(a).
Recodified from 11:1-5.8.

11:1-5.5 Notice regarding flood damage coverage

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

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

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

i. The overflow of inland or tidal waters;

ii. The unusual and rapid accumulation or runoff of surface waters from any source;

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

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

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

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

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

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

11:1-5.6 FAIR plan retention level

The retention level for the FAIR plan established pursuant to N.J.S.A. 17:37A-18 shall be \$35 million.

New Rule, R.1997 d.471, effective November 3, 1997.
See: 29 N.J.R. 1009(a), 29 N.J.R. 4688(a).

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

11:1-6.1 Purpose and scope

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

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

Case Notes

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

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

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

11:1-6.2 Definitions

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

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

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

"Department" means the New Jersey Department of Insurance.

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

11:1-6.3 Establishment of Association assessment premium surcharge

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

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

1. The amount of any assessment on member insurers imposed by the Association pursuant to N.J.S.A. 17:30A-8a(3);

2. The surcharge amount necessary in the Commissioner's opinion to permit member insurers to recoup any assessment paid to the Association pursuant to N.J.S.A. 17:30A-8a(3) over a reasonable time which shall not be less than one year; and

3. The net direct written premiums for all lines of insurance to which N.J.S.A. 17:30A-1 et seq. applies.

(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.

Public Notice: Imposition of surcharge.
See: 29 N.J.R. 265(a).
Public Notice: Imposition of surcharge.
See: 30 N.J.R. 244(b).
Public Notice: Imposition of surcharge.
See: 31 N.J.R. 77(b).
Public Notice: Imposition of surcharge.
See: 32 N.J.R. 327(b).

11:1-6.4 Reporting requirements

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. This information shall be forwarded to:

New Jersey Department of Insurance
Division of Financial Examinations
20 West State Street
PO Box 325
Trenton, NJ 08625-0325

Amended by R.1996 d.116, effective March 4, 1996.
See: 27 N.J.R. 4121(a), 28 N.J.R. 1382(a).

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

Subchapter Historical Note

Petition for Rulemaking: Notice of Receipt of and Action on a Petition for Rulemaking. See: 29 N.J.R. 707(c), 29 N.J.R. 948(b).

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 consid-

ered 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 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 by the Department, including payment of a non-refundable application fee in the amount set forth in N.J.A.C. 11:1-32.6(a)1;
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:

(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).
Administrative Correction.
See: 27 N.J.R. 4894(a).

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.

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

SUBCHAPTER 12. CORPORATE AND PARTNERSHIP LICENSEE REQUIREMENTS

11:1-12.1 (Reserved)

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 through 11:1-12.4 (Reserved)

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)

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 pre-proposal 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.

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).
Amended by R.1996 d.116, effective March 4, 1996.
See: 27 N.J.R. 4121(a), 28 N.J.R. 1382(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).

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. 11:1-20.3 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

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 of nonrenewal with the New Jersey Department of Insurance, Division of Enforcement and Consumer Protection, PO Box 325, Trenton, New Jersey 08625-0325. 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 or renewal 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).

Amended by R.1996 d.116, effective March 4, 1996.

See: 27 N.J.R. 4121(a), 28 N.J.R. 1382(a).

Administrative correction.

See: 29 N.J.R. 1324(a).

In (j), inserted "or renewal" following "... insurer shall send appropriate notice of termination".

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, through subsequent actions or conduct, could waive right to cancel coverage for non-payment of premiums. *Iafelice ex rel. Wright v. Arpino*, 319 N.J.Super. 581, 726 A.2d 275 (N.J.Super.A.D. 1999).

Insurer could not claim indemnification against broker in failing to notify insured of lapse in coverage. *Merit 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. *Merit 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 obli-

gations. 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 multi-state 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).
Petition for Rulemaking.
See: 30 N.J.R. 1330(b), 1637(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).

ii. An associate in good standing of the Casualty Actuarial Society with five years recent experience in loss reserving; or

iii. A member in good standing of the American Academy of Actuaries who has been approved as qualified for signing casualty loss reserve opinions by the Casualty Practice Council of the American Academy of Actuaries and who has seven 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.

Amended by R.1996 d.80, effective February 20, 1996.
See: 27 N.J.R. 3556(a), 28 N.J.R. 1212(a).

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) and meet the requirements of a qualified actuary as set forth in N.J.A.C. 11:1-21.1(a)."

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."

Amended by R.1996 d.80, effective February 20, 1996.
See: 27 N.J.R. 3556(a), 28 N.J.R. 1212(a).

11:1-21.3 Scope paragraph

(a) The scope paragraph must contain a sentence such as the following: "I have examined the assumptions and meth-

ods 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.

11:1-21.5 Exemptions

(a) The Commissioner will only consider two circumstances under which an exemption from the requirements of this subchapter may be granted. An exemption request is only appropriate for small companies or due to the nature of the business. An insurer which intends to file for exemption shall submit a letter of intent to the Commissioner no later than December 1 of the calendar year for which the exemption is to be claimed. The Commissioner may deny the exemption in writing prior to December 31 of the same year if the exemption does not meet the requirements set forth below. A certified copy of the approved exemption shall be filed with the Annual Statement in all jurisdictions in which the company is authorized. Unless the Commissioner finds that an insurer is or may be in a hazardous financial condition pursuant to N.J.A.C. 11:2-27.3, an exemption may be granted in accordance with the following requirements:

1. An insurer otherwise subject to these rules has less than \$1,000,000 total direct plus assumed written premiums during a calendar year. In lieu of the opinion required for that calendar year for which the exemption is to be claimed, the insurer may submit an affidavit under oath of an officer of the insurer that specifies that amount of direct plus assumed premiums written.

2. An exemption based on the nature of the business may be granted upon application to the Commissioner from an insurer otherwise subject to this subchapter and not eligible for the exemption in (a)1 above, if the nature of business written by the insurer includes only the following lines:

- i. Fires;
- ii. Allied lines;
- iii. Automobile physical damage;
- iv. Glass;
- v. Burglary and theft; and
- vi. Boiler and machinery.

New Rule, R.1996 d.80, effective February 20, 1996.
See: 27 N.J.R. 3556(a), 28 N.J.R. 1212(a).

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

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. 11:1-21A.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.

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)

SUBCHAPTER 23. (RESERVED)

SUBCHAPTER 24. USE OF CREDIT CARDS, CHARGE CARDS, DEBIT CARDS OR DIRECT ACCOUNT DEDUCTION (ALTERNATIVE PAYMENT METHOD) TO PAY INSURANCE PREMIUMS

Authority

N.J.S.A. 17:1-8.1, 17:1-15c, 17:22A-1 et seq., 17:29B-1 et seq., and 17B:30-1 et seq.

Source and Effective Date

R.1998 d.276, effective June 1, 1998.
See: 29 N.J.R. 3588(a), 30 N.J.R. 2003(a).

11:1-24.1 Purpose and scope

(a) The purpose of this subchapter is to regulate the use of credit cards, charge cards, debit cards or direct account deduction by insurers, insurance producers and limited insurance representatives and to provide standards concerning the use of such means to pay for insurance premiums when an insurer, insurance producer or limited insurance representative has entered into a contract with a bank, credit card company, or financial institution to accept credit cards, charge cards, debit cards or direct account deduction to facilitate the payment of insurance premiums. This subchapter implements the provisions of N.J.S.A. 17:29B-1 et seq. and 17B:30-1 et seq. to prevent unfair and deceptive practices in the use of these means to pay insurance premiums.

(b) This subchapter shall apply to any insurer, insurance producer or limited insurance representative that enters into a contract with a bank, credit card company, or other financial institution to accept credit cards, charge cards, debit cards, or direct account deduction as a method of payment of an insurance premium. This subchapter shall apply to all kinds of insurance.

(c) The provisions of this subchapter are in addition to any other applicable requirements of Federal and State law and apply to the extent that they are not inconsistent therewith.

11:1-24.2 Definitions

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

“Alternative payment method” means the payment of insurance premiums by credit card, charge card, debit card or direct account deduction.

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

“Credit card” or “charge card” means those cards issued by or through banks, other financial entities or nonfinancial entities, that enable holders of the card to purchase goods or services on credit from entities that agree with the issuer to honor that card.

“Credit card company” means such entities that enter into contractual arrangements with vendors, including providers of services, whereby the vendor agrees to accept as a method for payment of goods purchased or services rendered a credit card issued by the entity to the purchaser of such goods or services.

“Debit card” means those cards issued by or through banks, other financial entities, or nonfinancial entities, that enable holders of the card to purchase goods or services by automatic deductions from a holder’s account from entities that agree with the issuer to honor that card.

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

“Direct account deduction” means an arrangement whereby the insurer, insurance producer or limited insurance representative has entered into an agreement for processing services involving a bank or financial institution for the automatic deduction of insurance premiums from an account of the insured designated by the insured for that purpose.

“Insurance producer” means any person engaged in the business of an insurance agent, insurance broker or insurance consultant as these terms are defined in N.J.S.A. 17:22A-2.

“Insurer” means a corporation, association, partnership, company, fraternal benefit society, eligible surplus lines insurer, reciprocal exchange, interinsurer, Lloyd’s insurer, risk retention group, purchasing group, any corporation or organization authorized pursuant to Part 9 of Subtitle 3 of Title 17 of the New Jersey Statutes, and any other person or legal entity engaged in business pursuant to Title 17 or 17B of the New Jersey Statutes.

“Limited insurance representative” is as defined in N.J.S.A. 17:22A-2m.

11:1-24.3 Use of credit cards, charge cards, debit cards, and direct account deduction (alternative payment method) for payment of premiums

(a) The use of an alternative payment method by an insurer, insurance producer or limited insurance representative shall be optional and shall be permitted as long as the insurance laws of this State and other applicable provisions of law are not violated.

(b) Any insurer, insurance producer or limited insurance representative that agrees to allow the use of any one alternative payment method, or a combination of them, in the payment of insurance premiums for a particular product or products of insurance shall make that service available to all existing and prospective insureds who are invited to purchase the product being offered, and shall not limit the use of such payment option only to certain entities or persons among those being offered the same product.

(c) Insurers, insurance producers and limited insurance representatives that offer the use of an alternative payment method as an option for payment of premium for a product or products shall make this option available for the payment of all subsequent installments of the premium; provided, however, that an insurer, insurance producer or limited insurance representative may discontinue the use of payment by that alternative method generally as a means of the payment of premiums, or for a particular credit card, charge card or debit card, if the insurer, insurance producer or limited insurance representative notifies the insured of the discontinuation at least 60 days prior thereto, or in individual cases in accordance with the insurer’s rating system established pursuant to applicable law.

(d) An insurer, insurance producer or limited insurance representative shall not be permitted to require payment of insurance premiums by an alternative payment method only, except where such payment is part of the insurance marketing plan for that line or program (for example, offering life or health insurance to cardholders of a particular credit card or charge card with payments charged to that card).

11:1-24.4 Ratemaking

No premium shall differentiate in rates on the basis of payment by one of the alternative methods set forth in this subchapter or payment by means other than one of these methods, except in accordance with the insurer’s rating system, or as otherwise authorized pursuant to N.J.S.A. 17B:30-14d and e.

11:1-24.5 Cancellation of policy

The insurance policy that is the subject of an alternative payment method transaction shall not be cancelled or non-renewed by any person other than the named insured, the policyholder (including the owner of the policy where the policyholder is not the named insured) or the insurer, in accordance with the provisions of Title 17 and 17B of the New Jersey Statutes, any implementing administrative rules, and the insurance policy or contract.

11:1-24.6 Payment of premiums

Premium payments shall be considered collected by and paid to the insurer, insurance producer or limited insurance representative, as applicable, when the charge is authorized or debited, as applicable.

11:1-24.7 Disclosure of optional methods of payment

An insurer, insurance producer or limited insurance representative allowing alternative payment methods of insurance premiums shall fully disclose to the insured or prospective insured, upon request, the availability of all optional methods of payment offered by that insurer, insurance producer or limited insurance representative, and the differences, including cost, between these methods and the alternative payment methods.

11:1-24.8 Penalties

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

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 insurer's most recent 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 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 annual financial statement or report filed shall be deemed the official mailing address 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 annual financial statement then the insurer or other regulated entity shall notify the Department in writing within 10 days of the address change, 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
PO Box 325
Trenton, New Jersey 08625-0325

(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.

Amended by R.1996 d.116, effective March 4, 1996.
See: 27 N.J.R. 4121(a), 28 N.J.R. 1382(a).

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.

SUBCHAPTERS 26 THROUGH 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;
 - 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 non-refundable filing fee in the amount set forth in N.J.A.C. 11:1-32.6(a)1 with the filing of the information required by (b) above to cover 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.

Amended by R.1996 d.484, effective October 7, 1996.
See: 28 N.J.R. 3223(a), 28 N.J.R. 4482(a).

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;
 - 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.

SUBCHAPTERS 29 THROUGH 30. (RESERVED)

SUBCHAPTER 31. SURPLUS LINES INSURER
ELIGIBILITY**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 fi-

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 NAIO 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 AND SPECIAL PURPOSE APPORTIONMENT

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. This subchapter also sets forth procedures for the collection of the special purpose apportionment imposed pursuant to N.J.S.A. 17:1C-19 et seq.

(b) This subchapter applies to insurers licensed to transact business in this State, eligible surplus lines insurers, dental plan organizations, dental service corporations, medical service corporations, hospital service corporations, health service corporations, fraternal benefit societies, reciprocal insurance exchanges, risk retention groups, purchasing groups, health maintenance organizations, and to any other person to whom a service is provided as set forth in this subchapter.

(c) Any insurance company, as that term is defined in N.J.S.A. 17:33A-3, or health maintenance organization (HMO) doing business pursuant to N.J.S.A. 26:2J-1 et seq., that has net written premium and thus is subject to payment of a special purpose apportionment pursuant to N.J.A.C. 17:1C-19 et seq., shall not be subject to payment of fees imposed pursuant to this subchapter or any other statute or rule, except as follows:

1. All entities shall pay amounts for copying and mailing of public records set forth in N.J.A.C. 11:1-32.4(b)5 and (b)7 when the request exceeds an amount expected for the normal course of business;

2. Domestic insurers shall continue to pay fees assessed by the Department for the periodic examination of such insurers pursuant to N.J.S.A. 17:23-22;

3. All entities shall continue to pay assessments for the costs of experts to analyze rate applications and to appear as witnesses at hearings, pursuant to N.J.S.A. 52:27E-60; and

4. All entities shall continue to pay fees required for an insurance company or HMO to commence business, including, but not limited to, fees for application for a certificate of authority, certificate of eligibility, or registration.

Amended by R.1996 d.484, effective October 7, 1996.
See: 28 N.J.R. 3223(a), 28 N.J.R. 4482(a).

Case Notes

Taxing surplus lines insurers by imposing special purpose assessment or apportionment on them to cover the cost of regulation constitutional. In re Markel Insurance Companies, 319 N.J.Super. 23, 724 A.2d 848 (N.J.Super.A.D. 1999)

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.

“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 or reciprocal insurance exchange 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., 17:50-1 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.

“Health service corporation” is as defined in N.J.S.A. 17:48E-1e.

“Hospital service corporation” is as defined in N.J.S.A. 17:48-1.

“Joint insurance fund” means a joint fund formed by two or more entities to insure against specified coverages and which organization or operations are subject to review and approval by the Department pursuant to N.J.S.A. 17:49A-1 et seq., 40A:10-36 et seq., 18A:18B-1 et seq., 18A:64A-25.33 et seq., or any other similar law.

“Legal insurance” is as defined in N.J.S.A. 17:46C-3c.

“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.

“Medical service corporation” is as defined in N.J.S.A. 17:48A-1.

“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 or reciprocal insurance exchange authorized or admitted to transact the kinds of insurance specified in N.J.S.A. 17:17-1, 17:46A-2 and 17:50-1 et seq.

“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.

“Title insurer” means any domestic company organized pursuant to N.J.S.A. 17:46B-1 et seq. for the purpose of insuring title to real estate, and any title insurer organized under the laws of another state or foreign government and licensed to insure titles to real estate within this State pursuant to N.J.S.A. 17:46B-25.

Amended by R.1996 d.484, effective October 7, 1996.
See: 28 N.J.R. 3223(a), 28 N.J.R. 4482(a).

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.

11:1-32.9 Special purpose apportionment; de minimis amounts

For purposes of collecting the special purpose apportionment pursuant to N.J.S.A. 17:1C-19 et seq., the Commissioner shall not collect de minimis amounts less than \$20.00. Amounts not so collected pursuant to this section shall be reallocated among the remaining companies in accordance with N.J.S.A. 17:1C-20.

Repeal and New Rule, R.1996 d.484, effective October 7, 1996.
See: 28 N.J.R. 3223(a), 28 N.J.R. 4482(a).

Former section, "Miscellaneous fees", repealed.

11:1-32.10 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 a special purpose apportionment when due pursuant to N.J.S.A. 17:1C-19 et seq., shall result in the imposition of penalties as authorized by law.

Recodified from 11:1-32.11 and amended by R.1996 d.484, effective October 7, 1996.

See: 28 N.J.R. 3223(a), 28 N.J.R. 4482(a).

Former section, "Applicability of fees imposed by insurance laws of this State", recodified as 11:1-32.8.

11:1-32.11 (Reserved)

Recodified to 11:1-32.10 by R.1996 d.484, effective October 7, 1996.

See: 28 N.J.R. 3223(a), 28 N.J.R. 4482(a).

Section was "Penalties".

SUBCHAPTER 33. (RESERVED)

**SUBCHAPTER 34. SURPLUS LINES:
EXPORTABLE LIST****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.

Public Notice: Public hearing on the Exportable List.
See: 28 N.J.R. 4680(b).

Public Notice: Public hearing on the Exportable List.
See: 29 N.J.R. 5028(b).

Public Notice: Public hearing on the Exportable List.
See: 30 N.J.R. 4291(b).

Public Notice: Public hearing on the Exportable List.
See: 31 N.J.R. 3860(a).

Public Notice: Public hearing on the Exportable List.
See: 32 N.J.R. 4019(a).

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 taxi cabs;
- 30. Commercial auto liability for intermediate and long-haul trucking;
- 31. Liquor Liability; and
- 32. Employment Practices Liability.

(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.

Amended by R.1997 d.488, effective November 17, 1997.
 See: 29 N.J.R. 1009(b), 29 N.J.R. 5023(a).
 Added (a)31 and (a)32.

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

Companies of other States	Domicile
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
Steadfast Insurance Co.	Columbus, OH
St. Paul Surplus Lines Insurance Co.	Dover, DE
T.H.E. Insurance Co.	St. Paul, MN
Tudor Insurance Co.	Metairie, LA
United Capital Insurance Co.	Keene, NH
United Coastal Insurance Co.	Stevens Point, WI
United National Insurance Co.	Phoenix, AZ
Vanguard Underwriters Insurance Co.	Phila., PA
Western Alliance Insurance Co.	Oklahoma, OK
Western Indemnity Insurance Co.	Austin, TX
Western World Insurance Co.	Houston, TX
	Keene, NH

Companies of other Countries	Domicile
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 Sicurtà, 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

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 Banking and Insurance.

“Control” is as defined at N.J.S.A. 17:27A-1c.

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

Amended by R.1997 d.12, effective January 6, 1997.
See: 28 N.J.R. 4700(a), 29 N.J.R. 129(b).

Amended “Commissioner” and “Department”.

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, 17:27A-4 and 17:27A-4.1 shall be submitted in accordance with the forms set forth at Exhibits A, B, C, D and E, 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, D and E, 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 Banking and 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, D or E, 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).

Amended by R.1997 d.12, effective January 6, 1997.

See: 28 N.J.R. 4700(a), 29 N.J.R. 129(b).

Amended N.J.S.A. and Exhibit references.

11:1-35.4 Forms; incorporation by reference, summaries and omissions

(a) Information required pursuant to any item set forth in Exhibits A, B, D or E 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 Exhibits A, B, D or E provided such document or paper is filed as an appendix or exhibit to the appropriate Exhibit A, B, D or E. 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.

Amended by R.1997 d.12, effective January 6, 1997.
See: 28 N.J.R. 4700(a), 29 N.J.R. 129(b).
Amended Exhibit references.

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, D and E, 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, D and E 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.

Amended by R.1997 d.12, effective January 6, 1997.
See: 28 N.J.R. 4700(a), 28 N.J.R. 129(b).
Amended Exhibit references.

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:

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 funds, 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 _____; that (s)he is the _____ 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 E
FORM E

PRE-ACQUISITION NOTIFICATION FORM REGARD-
ING THE POTENTIAL COMPETITIVE IMPACT OF
A PROPOSED MERGER OR ACQUISITION BY A
NON-DOMICILIARY INSURER DOING BUSINESS
IN THIS STATE OR BY A DOMESTIC INSURER

Name of Applicant

Name of Other Person
Involved in Merger or Acquisition

Filed with the Insurance Department of

Dated: _____, 19____

Name, title, address and telephone number of person com-
pleting this statement:

ITEM 1. NAME AND ADDRESS

State the names and addresses of the persons who hereby
provide notice of their involvement in a pending acquisition
or change in corporate control.

**ITEM 2. NAMES AND ADDRESSES OF AFFILIATED
COMPANIES**

State the names and addresses of the persons affiliated
with those listed in Item 1. Describe their affiliations.

**ITEM 3. NATURE AND PURPOSE OF THE PROPOSED
MERGER OR ACQUISITION**

State the nature and purpose of the proposed merger or
acquisition.

ITEM 4. NATURE OF BUSINESS

State the nature of the business performed by each of the
persons identified in response to Item 1 and Item 2.

ITEM 5. MARKET AND MARKET SHARE

State specifically what market and market share in each
relevant insurance market the persons identified in Item 1
and Item 2 currently enjoy in this State. Provide historical
market and market share data for each person identified in
Item 1 and Item 2 for the past five years and identify the
source of such data.

For purpose of this question, market means direct written
insurance premium in this State for a line of business as
contained in the annual statement required to be filed by
insurers licensed to do business in this State.

New Rule, R.1997 d.12, effective January 6, 1997.
See: 28 N.J.R. 4700(a), 29 N.J.R. 129(b).

SUBCHAPTER 36. EXAMINATION OF INSURERS

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 examina-
tion 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 pursu-
ant to P.L.1993, c.236.

11:1-36.2 Definitions

The following words and terms, as used in this subchap-
ter, 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 Com-
missioner.

“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 comprehen-
sive 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

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

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.

signed, sealed this _____ day of _____, 19___, in the presence of _____
 [Name of Licensee]

 [____ 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. OVERSIGHT OF FIREMEN'S RELIEF ASSOCIATIONS

Authority

N.J.S.A. 17:1C-6e, 17:1-8.11, 43:17-1 et seq., 54:17-4, 54:17-5 and 54:18-1 et seq.

Source and Effective Date

R.1996 d.125, effective March 4, 1996 (operative March 4, 1996, except for N.J.A.C. 11:1-38.4 which shall be operative July 1, 1997).
 See: 27 N.J.R. 634(a), 28 N.J.R. 1384(a), 29 N.J.R. 425(a).

Subchapter Historical Note

N.J.A.C. 11:1-38.4 was originally operative January 1, 1997. The Department of Banking and Insurance extended the operative date to July 1, 1997, pursuant to Legislation enacted as P.L. 1996, c.151, effective December 27, 1996.

11:1-38.1 Purpose and scope

(a) This subchapter sets forth the filing requirements for the New Jersey State Firemen's Association and each local firemen's relief association, the auditing procedures to be utilized by any relief association, and the manner in which payments are to be made by foreign or alien insurers to local relief associations pursuant to N.J.S.A. 54:17-4 and

54:18-1 et seq. and by surplus lines producers pursuant to N.J.S.A. 17:22-6.59.

(b) This subchapter shall apply to the New Jersey State Firemen's Association, all local firemen's relief associations, all foreign and alien insurers transacting fire insurance business in this State, and all licensed producers with surplus lines authority.

11:1-38.2 Definitions

The following words and terms, when 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 a country other than the United States, its states, districts, territories, commonwealth and possessions.

"Association" means the New Jersey State Firemen's Association established pursuant to N.J.S.A. 43:17-40 et seq. or any local firemen's relief association established pursuant to N.J.S.A. 43:17-1 et seq.

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

"Department" means the New Jersey Department of Insurance.

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

"Independent certified public accountant" means an independent certified public account or accounting firm in good standing both with the American Institute of Certified Public Accountants and in all states in which they are licensed to practice.

"Local relief association" means a local firemen's relief association established pursuant to N.J.S.A. 43:17-1 et seq.

"State Association" means the New Jersey State Firemen's Association established pursuant to N.J.S.A. 43:17-40 et seq.

11:1-38.3 Filing requirements

(a) All local relief associations shall file with the Commissioner, the Secretary of State, and the secretary of the State Association, no later than April 1 of each year, a sworn statement, which shall contain the following information:

1. The names of its representatives, visitors or trustees and other officers, with the amount of their respective fees or salaries, if any;
2. The names of its beneficiaries during or within the year next preceding the statement;
3. The amount of money paid to each beneficiary;

4. The receipts and, in detail, the expenditures during that year;

5. The amount of money and other property in its possession at the date of mailing the statement; and

6. How its money is invested or secured, or where it is deposited.

(b) The information filed pursuant to (a) above shall be subject to audit in accordance with N.J.A.C. 11:1-38.4.

(c) The State Association shall file with the Commissioner and the Secretary of State not later than June 1 of each year, a list of all local associations which have complied with N.J.S.A. 47:17-1 et seq.

11:1-38.4 (Reserved)

Repealed by R.1997 d.245, effective June 16, 1997.
See: 29 N.J.R. 1010(a), 29 N.J.R. 2665(a).
Section was "Audit and filing requirements".

11:1-38.5 Payments by insurers to local relief associations

(a) Payment of the appropriate amount of funds to local relief associations by foreign and alien insurers transacting fire insurance in this State pursuant to N.J.S.A. 54:17-4 and 54:18-1 et seq. and by licensed surplus lines producers pursuant to N.J.S.A. 17:22-6.59, shall be made as follows:

1. Each foreign and alien insurer transacting fire insurance in this State shall annually notify the State Association with payment of the appropriate amounts due pursuant to (a)2 below of every locality in this State in which the insurer has fire insurance premium and the premium volume for each locality for the year immediately preceding.

2. The insurer shall, by March 1 of each year, pay to the State Association the total amount due for the year immediately preceding for all localities calculated at the rate set forth in N.J.S.A. 54:17-4 and 54:18-1 et seq.

3. The State Association shall then distribute the monies received from each insurer in the manner prescribed by N.J.S.A. 54:18-1 et seq. to each local relief association, based on each association's share based on the premium volume of each such insurer.

(b) In lieu of the procedures set forth in (a) above, an insurer may pay its obligation pursuant to N.J.S.A. 54:18-1 et seq. directly to each local association. Where an insurer utilizes the method of payment set forth in this subsection, in order to receive credit for such payment against its applicable premium tax for payments made, the insurer shall file with the Department a copy of the front and back of each cancelled check.

(c) Every licensed surplus lines producer shall follow the procedures for the remittance of premium taxes and funds to local associations set forth in N.J.A.C. 11:19-3.

11:1-38.6 Penalties

Failure to comply with this subchapter may result in the imposition of penalties as authorized or required by law, including, but not limited to, withholding of monies otherwise distributable from the State Association or any local relief association pursuant to N.J.S.A. 54:17-5.

SUBCHAPTER 39. DISCLOSURE OF MATERIAL TRANSACTIONS
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.

SUBCHAPTER 40. (RESERVED)

SUBCHAPTER 41. SURETY BONDS FOR
 CONTRACTS INVOLVING THE STATE,
 LOCAL CONTRACTING UNITS, BOARDS OF
 EDUCATION, STATE COLLEGES AND
 COUNTY COLLEGES

Authority

N.J.S.A. 17:1-8.1, 17:1-15e, and P.L. 1995, c.384.

Source and Effective Date

R.1996 d.496, effective October 21, 1996.
 See: 28 N.J.R. 3505(a), 28 N.J.R. 4582(a).

11:1-41.1 Purpose and scope

(a) This subchapter implements the Commissioner's responsibilities pursuant to P.L. 1995, c.384, which statute provides standards for acceptable sureties providing payment and performance bonds for contractors on public works projects. This subchapter sets forth the rating companies that may be considered by contracting officers for purposes of determining whether a surety company may be utilized to provide payment and performance bonds for a

public works project pursuant to P.L. 1995, c.384. This subchapter also sets forth the standards for a surety company which does not hold a certificate of authority issued by the United States Secretary of the Treasury to be deemed acceptable by contracting officers to provide payment and performance bonds for a public works project pursuant to P.L. 1995, c.384.

(b) This subchapter shall apply to all surety companies seeking to provide payment and performance bond coverage on a public works project at the expense of the State, contracting unit (as defined in N.J.S.A. 40A:11-2), school district, State college or county college, subject to P.L. 1995, c.384.

11:1-41.2 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.

"NAIC" means the National Association of Insurance Commissioners.

"Treasury listed" means a surety that holds a current certificate of authority issued by the United States Secretary of the Treasury pursuant to 31 U.S.C. § 9305, that is valid in New Jersey as listed annually in the United States Treasury Circular 570.

"Surety" means an insurer authorized or admitted to transact fidelity and surety business in this State pursuant to N.J.S.A. 17:17-10 or 17:32-1 et seq., as applicable.

11:1-41.3 Rating company

(a) The following rating companies are nationally recognized as providing ratings regarding the claims paying ability of insurers and may be used to determine whether a surety company is acceptable to provide payment and performance bonds pursuant to P.L. 1995, c.384:

1. A.M. Best Company;
2. Standard and Poor's Insurance Rating Services;
3. Moody's Investors Service, Inc.;
4. Duff and Phelps Credit Rating Company;
5. Weiss Ratings, Inc.; and
6. Fitch Investors Service, L.P.

(b) The three highest rating categories for each of the rating companies in (a) above are set forth in Appendix A to this subchapter incorporated herein by reference.

11:1-41.4 Treasury listed surety companies and alternative requirements to Treasury listing

(a) A surety company which is Treasury listed seeking to provide payment or performance bonds as required by P.L. 1995, c.384 may request to be listed by the Department as an acceptable surety for provision of bonds on public works contracts by filing a certification to that effect in the format of Appendix B to this subchapter incorporated herein by reference.

(b) A surety company that is not Treasury listed seeking to provide payment or performance bonds as required pursuant to P.L. 1995, c.384 may request to be listed by the Department as an acceptable surety for provision of bonds on public works contracts by filing a certification in the format of Appendix B to this subchapter incorporated herein by reference, that the surety satisfies the following requirements:

1. The surety shall be authorized or admitted to transact fidelity and surety in this State pursuant to N.J.S.A. 17:17-10 or 17:32-1 et seq., as applicable;

2. The surety shall not have been found to be in a hazardous financial condition by the Commissioner, its domiciliary jurisdiction, and all jurisdictions in which it is licensed, as determined pursuant to N.J.A.C. 11:2-27 or such equivalent requirements in other jurisdictions in which the surety is domicile and admitted;

3. The surety's net premium written to surplus as to policyholders shall not exceed a 3:1 premium to surplus ratio, and loss and loss adjustment expense reserve liability to surplus shall not exceed a 4:1 ratio as of the date of its most recently filed annual statement;

4. The surety shall satisfy, at a minimum, the statutorily prescribed minimum capital and surplus or net cash asset requirements for all lines of insurance that it is authorized to write pursuant to the certificate of authority issued by its domiciliary jurisdiction and all states in which it is licensed to transact business;

5. The surety shall not have received from the NAIC a "first priority" designation for the calendar year ending December 31 immediately preceding its application date;

6. If the surety is a member of an insurance holding company system, its parent or subsidiary shall not have received from the NAIC a "first priority" designation; and

7. The surety shall not have been identified as "second or third priority" and/or failed four or more Insurance Regulatory Information System (IRIS) tests, unless the applicant demonstrates to the Commissioner and its domiciliary jurisdiction that these IRIS test results and/or "priority" identification are not indicative of the applicant being in a hazardous financial condition.

(c) The Department shall publish in the New Jersey Register a list of surety companies that satisfy the requirements set forth in (a) and (b) above in or about September of each year.

(d) A surety seeking to continue to be listed by the Department as having satisfied the requirements set forth in (b) above shall file with the Department a certification in the format of Appendix B to this subchapter no later than August 1 of each year.

(e) Applications and renewal applications to be listed by the Department shall be sent to:

New Jersey Department of Banking and Insurance
 Attention: Surety Company List
 20 West State Street
 PO Box 325
 Trenton, NJ 08625-0325

Public Notice: List of surety companies acceptable to provide payment or performance bonds.

See: 29 N.J.R. 4199(a) 29 N.J.R. 4574(a).

Public Notice: List of surety companies acceptable to provide payment or performance bonds.

See: 30 N.J.R. 3554(a).

Public Notice: List of surety companies acceptable to provide payment or performance bonds.

See: 32 N.J.R. 121(a).

Public Notice: List of surety companies acceptable to provide payment or performance bonds.

See: 32 N.J.R. 3343(a).

11:1-41.5 Penalties

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

APPENDIX A

	Three Highest Rating	Ratings Within Three Highest
<u>Rating Company</u>	<u>Categories</u>	<u>Categories</u>
A.M. Best Company	Best's Ratings:	
	1. Superior	A + +, A +
	2. Excellent	A, A-
	3. Very Good	B + +, B +
	----OR----	
	Financial Performance Rating:	
	1. Strong	9, 8
	2. Above average	7, 6
	3. Average	5
Standard & Poor's	1. Superior	AAA
	2. Excellent Financial Security	AA+, AA, AA-
	3. Good Financial Security	A+, A, A-
Moody's	1. Exceptional	Aaa
	2. Excellent	Aa1, Aa2, Aa3

Rating Company	Three Highest Rating Categories	Ratings Within Three Highest Categories	Jurisdiction	Line
			_____	_____
	3. Good	A1, A2, A3	(Attach additional sheets if necessary)	
Duff and Phelps Credit Rating Company	1. Highest claims paying ability 2. Very high claims paying ability 3. High claims paying ability	AAA AA+, AA, AA- A+, A, A-	2. The above-referenced surety's capital and surplus or net cash assets, as of December 31 immediately preceding is \$_____, as reported in the statutory annual statement for that year. This amount satisfies the statutorily prescribed minimum capital and surplus or net cash asset requirements for all lines of insurance that the surety is authorized to write pursuant to the certificate of authority issued by its domiciliary jurisdiction and all states in which it is licensed to transact business. Yes ___ No ___	
Weiss	1. Excellent 2. Good 3. Fair	A+, A, A- B+, B, B- C+, C, C- (also includes the above ratings with "s" prefix)	3. The above-referenced surety been found to be in a hazardous financial condition by the Commissioner, its domiciliary jurisdiction, or any jurisdiction in which it is licensed, as determined pursuant to N.J.A.C. 11:2-27 or such other equivalent requirements in other jurisdictions in which the surety is licensed. Yes ___ No ___	
Fitch	1. Extremely strong 2. Very strong 3. Strong	AAA AA A	If yes, indicate jurisdiction(s) and details regarding such finding below. _____ _____ _____	

APPENDIX B

REQUEST FOR LISTING BY NEW JERSEY DEPARTMENT OF INSURANCE AS ACCEPTABLE SURETY FOR PROVISION OF BONDS ON PUBLIC CONTRACTS PURSUANT TO P.L. 1995, C.384

COMPANY NAME _____
 ADDRESS _____
 TELEPHONE NO. _____
 COMPANY NAIC NUMBER _____
 GROUP NAME _____
 GROUP NAIC NUMBER _____

I, _____, hereby file this certification on behalf of _____ in connection with this company's application to be listed by New Jersey Department of Insurance for purposes of providing payment and performance bonds pursuant to P.L. 1995, c.384. I further certify that I am authorized to execute this certified statement on behalf of _____

PART I

1. The above-referenced surety is listed in the most recent United States Treasury Circular 570 issued July 1 of each year. Yes ___ No ___

If yes, go to Part III; if no, complete Part II.

PART II

1. The above-referenced surety is currently licensed to transact business in the following jurisdictions for the following lines:

4. The above-referenced surety's premium to surplus ratio as of December 31 immediately preceding is _____ and loss and loss adjustment expense reserve liability to surplus ratio for that period is _____, as reported in the statutory annual statement for that period.

5. The above-referenced surety received from the NAIC a "first priority" designation for the calendar year ending December 31 immediately preceding its application date. Yes ___ No ___

6. If the above-referenced surety is a member of an insurance holding company system, its parent or subsidiary has received from the NAIC a "first priority" designation. Yes ___ No ___

7. The above-referenced surety has been identified as "second or third priority" and/or has failed four or more IRIS tests. Yes ___ No ___

If yes, provide an explanation that demonstrates that such results are not indicative that the surety is in a hazardous financial condition.

PART III

Dated and signed this ___ day of _____. I hereby certify that the foregoing statements are true and correct to the best of my knowledge and belief. I further certify that I am aware that the New Jersey Department of Insurance will rely on this certification in connection with its determination whether the surety satisfies the requirements set forth in N.J.A.C. 11:1-41 for purposes of providing payment and performance bonds pursuant to P.L. 1995, c.384.

I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

(Signature of Affiant)

Administrative correction.
See: 29 N.J.R. 425(b).

SUBCHAPTER 42. (RESERVED)

SUBCHAPTER 43. UNUSUAL HARDSHIP FOR COVERED CLAIMS UNDER THE NEW JERSEY PROPERTY-LIABILITY INSURANCE GUARANTY ASSOCIATION AND NEW JERSEY SURPLUS LINES INSURANCE GUARANTY FUND

Authority

N.J.S.A. 17:1-8.1, 17:1-15e, 17:22-6.70 et seq., and 17:30A-1 et seq.

Source and Effective Date

R.1997 d.512, effective December 1, 1997.
See: 29 N.J.R. 3765(a), 29 N.J.R. 5065(b).

11:1-43.1 Purpose and scope

(a) The purpose of this subchapter is to set forth the circumstances that shall constitute an “unusual hardship” for the purpose of filing a claim by a claimant with the Association or Fund pursuant to N.J.S.A. 17:30A-1 et seq. or N.J.S.A. 17:22-6.70 et seq., as applicable.

(b) This subchapter shall apply with respect to all claims filed with the Association or Fund after the final date set by the court for filing of claims against the liquidator or receiver of an insolvent insurer.

11:1-43.2 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 Banking and Insurance.

“Covered claim” is as defined in N.J.S.A. 17:30A-5 or 17:22-6.72, as applicable.

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

“Due date” means the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer.”

“Fund” means the New Jersey Surplus Lines Insurance Guaranty Fund established pursuant to N.J.S.A. 17:22-6.70 et seq.

“Insolvent insurer” is as defined at N.J.S.A. 17:30A-5 or 17:22-6.72, as applicable.

11:1-43.3 Unusual hardship

(a) Pursuant to N.J.S.A. 17:30A-5 and 17:22-6.72, as applicable, a covered claim by the Association or Fund shall not include a claim filed with the Association or Fund, as applicable, after the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer, unless the claimant demonstrates unusual hardship, as determined pursuant to this subchapter, and the Commissioner approves of the treatment of the claim as a covered claim.

(b) For purposes of (a) above, a claimant may show unusual hardship by filing information that demonstrates any of the following:

1. The claimant never received notice of the due date for filing claims;
 - i. The claimant shall be presumed to have received notice if the notice was timely mailed to the claimant’s address currently on file with insurer;
2. The mailing address of the claimant in the insurer’s records is erroneous, and the claimant demonstrates that he or she notified the insurer or its agent of a change in address;
3. The claimant was incapable of responding to the notice due to an emergent and extreme medical event or similar emergent and extreme circumstance; or
4. The claimant is deceased, and the claimant’s estate demonstrates that the death occurred within such a time period that the representative of the claimant’s estate did not have sufficient time to advise the insurer or its agent of such circumstance.

(c) Requests for treatment of a claim on the basis of unusual hardship shall contain the following information:

1. The name, address, social security number, telephone number, and date of birth of the claimant making the application;
2. The policy number;
3. The name of the insured, if different than the claimant;
4. A description of the particular reason(s) that constitute unusual hardship as set forth in (b) above; and
5. Copies of all documents required to support the request, including, but not limited to, as applicable:
 - i. Notice to the insurer or agent of change of address;
 - ii. Death certificate;
 - iii. Report from a physician that specifies the type of medical condition or injury that prevented the claimant from filing a timely claim, the date such condition or injury first occurred, the date treatment was initiated, and any other relevant information; and
 - iv. Any additional information or documentation the Association or Fund, as applicable, or the Commissioner may specifically request from a particular claimant.

(d) Completed requests shall be sent to the Association or Fund at:

New Jersey Property-Liability Insurance Guaranty Association
(or New Jersey Surplus Lines Insurance Guaranty Fund)
Unusual Hardship Request
PO Box 868
466 Southern Blvd.
Chatham, NJ 07928

(e) The Association or Fund, as applicable, shall notify the claimant, or his or her legal representative, by certified mail, return receipt requested, whether it has approved the request for a finding of unusual hardship. The Association or Fund shall concurrently file a copy of its determination

with the Department. No determination by the Association or Fund, as applicable, to approve a request for a finding of unusual hardship shall be deemed to constitute acceptance of the claim otherwise as a covered claim or approval of any payment of the claim.

11:1-43.4 Request for review by the Commissioner

(a) A claimant may request a review by the Commissioner of a determination of the Association or Fund, as applicable, denying a request for a finding of unusual hardship within 20 days of receipt of the Association's or Fund's written decision by submitting to the Commissioner a request for review addressed to:

Office of Financial Solvency
New Jersey Department of Banking and Insurance
20 West State Street
PO Box 325
Trenton, NJ 08625-0325

(b) A request for review shall include those items presented in the initial request, a written statement explaining why the determination of the Association or Fund denying the initial request was incorrect, and any additional documentation in support of the request for review.

1. A copy of the request for review shall be simultaneously filed by the claimant with the Association or Fund, as applicable.
2. The Association or Fund, upon receipt of the request for review, shall forward the claimant's file to the Commissioner for his or her review.

(c) The Commissioner's final decision shall be provided to the Association or Fund, as applicable, and shall be mailed to the claimant or his or her legal representative by certified mail, return receipt requested and by regular mail. The Commissioner's decision shall constitute a final agency decision.

11:1-43.5 Confidentiality

All documents provided by a claimant pursuant to N.J.A.C. 11:1-43.3 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.