

## TITLE 11

## DEPARTMENT OF BANKING AND INSURANCE

## DIVISION OF INSURANCE

## CHAPTER 1

## ADMINISTRATION

## Authority

N.J.S.A. 17:1-8.1 and 17:1-15e.

## Source and Effective Date

R.2001 d.75, effective January 31, 2001.  
See: 32 N.J.R. 4184(a), 33 N.J.R. 794(a), 33 N.J.R. 1920(a).

## Executive Order No. 66(1978) Expiration Date

Chapter 1, Administration, expires on January 31, 2006.

## Chapter Historical Note

Chapter 1, Plan of Organization of the Department of Insurance, was adopted as R.1971 d.11, effective January 20, 1971, and codified at N.J.A.C. 11:1 Subchapter 1. Notice was not published in the New Jersey Register.

Subchapter 3, 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 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 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).

Subchapter 4, Unfair Discrimination, was adopted as R.1975 d.128, effective September 1, 1975. See: 7 N.J.R. 168(a), 7 N.J.R. 276(b).

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

Subchapter 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 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 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 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).

Subchapter 12, Corporate and Partnership Licensee Requirements, was adopted as R.1976 d.412, effective December 16, 1976, operative 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 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 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).

The Executive Order No. 66(1978) 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).

Pursuant to Executive Order No. 66(1978), Subchapter 5, Administrative Orders and Declarations, 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 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 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).

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). 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).

Pursuant to Executive Order No. 66(1978), Subchapter 20, Cancellation and Nonrenewal of Property and Casualty/Liability Insurance Policies, was readopted as R.1985 d.627, effective November 16, 1985. See: 17 N.J.R. 2978(b).

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 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 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 20, Cancellation and Nonrenewal of Property and Casualty/Liability Insurance Policies, was repealed, and Subchapter 20, Cancellation and Nonrenewal of Commercial and Homeowners' Insurance Policies, was adopted as new rules, effective July 7, 1986, with portions operative July 28, 1986, and 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).

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 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 9, Agents for Life Insurance, Health Insurance and Annuity Contracts-Temporary Licensing, Subchapter 14, Insurance Licensees, Subchapter 18, Approval of Business Names, and Subchapter 19, Branch Offices, were repealed by R.1988 d.186, effective April 18, 1988. See: 20 N.J.R. 225(c), 20 N.J.R. 904(b).

Pursuant to Executive Order No. 66(1978), Subchapter 20, Cancellation and Nonrenewal of Commercial and Homeowners' Insurance Policies, and Subchapter 22, Prohibition of Certain Cancellation and

Nonrenewal Activity, were readopted as R.1988 d.341, effective June 24, 1988. See: 20 N.J.R. 1061(a), 20 N.J.R. 1720(a).

Subchapter 10, Admission Requirements for Foreign and Alien Property and Casualty Insurers, was adopted as new rules by R.1989 d.329, effective June 19, 1989. See: 21 N.J.R. 426(a), 21 N.J.R. 1702(a).

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 3, Cancellation for Nonpayment of Premium Where Producer of Record Has Advanced Premium, Subchapter 7, Service and Placement Fees, Subchapter 8, Property-Casualty Agents, and Subchapter 13, Disclosure Agreements for Motor Club Service Contracts Sold in Connection with Automobile Insurance Policies, were repealed by R.1990 d.11, effective January 2, 1990. See: 21 N.J.R. 1317(a), 22 N.J.R. 30(b).

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

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

Pursuant to Executive Order No. 66(1978), Chapter 1, Administration, 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 32, Fees 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).

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 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 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 without change 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 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 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 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 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 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 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).

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 26, Annual Publication of Insurer Profitability Information, Subchapter 29, Temporary Certificate of Authority, and Subchapter 33, Public Advocate Reimbursement Disputes, were repealed by R.1996 d.116, effective March 4, 1996. See: 27 N.J.R. 4121(a), 28 N.J.R. 1382(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).

Pursuant to Executive Order No. 66(1978), Chapter 1, Administration, was readopted as R.1996 d.116, effective January 31, 1996. See: 27 N.J.R. 4121(a), 28 N.J.R. 1382(a).

Petition for Rulemaking. See: 29 N.J.R. 707(c), 29 N.J.R. 948(b).

Subchapter 41, Surety Bonds for Contracts Involving the State, Local Contracting Units, Boards of Education, State Colleges and County Colleges, was adopted as R.1996 d.496, effective October 21, 1996. See: 28 N.J.R. 3505(a), 28 N.J.R. 4582(a).

Subchapter 38, Oversight of Firemen's Relief Associations, was adopted as R.1996 d.125, effective March 4, 1996, operative March 4, 1996, except for N.J.A.C. 11:1-38.4 which became operative July 1, 1997. See: 27 N.J.R. 634(a), 28 N.J.R. 1384(a), 29 N.J.R. 425(a).

Subchapter 43, Unusual Hardship For Covered Claims Under The New Jersey Property-Liability Insurance Guaranty Association and New Jersey Surplus Lines Insurance Guaranty Fund, was adopted as R.1997 d.512, effective December 1, 1997. See: 29 N.J.R. 3765(a), 29 N.J.R. 5065(b).

Subchapter 24, Use of Credit Cards, Charge Cards, Debit Cards Or Direct Account Deduction (Alternative Payment Method) To Pay Insurance Premiums, was adopted as R.1998 d.276, effective June 1, 1998. See: 29 N.J.R. 3588(a), 30 N.J.R. 2003(a).

Pursuant to Executive Order No. 66(1978), Chapter 1, Administration, was readopted as R.2001 d.75, effective January 31, 2001. See: 32 N.J.R. 4184(a), 33 N.J.R. 794(a).

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. ORGANIZATION

- 11:1-1.1 Organization
- 11:1-1.2 Sharing of information with other insurance departments

SUBCHAPTER 2. FILINGS: PROPERTY AND CASUALTY

- 11:1-2.1 Purpose and scope
- 11:1-2.2 Filing of rates, manual rules, rating plans, policy forms and endorsements
- 11:1-2.3 Filing of changes
- 11:1-2.4 Adoption of rules and forms approved for other filers
- 11:1-2.5 New filings
- 11:1-2.6 Notification
- 11:1-2.7 Penalties

APPENDIX

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

## ADMINISTRATION

---

- 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
- 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; RULEMAKING NOTICE

- 11:1-15.1 Scope
- 11:1-15.2 Procedure for petitioner
- 11:1-15.3 Procedure of the Department
- 11:1-15.4 Rulemaking activity
- 11:1-15.5 Sufficient public interest for the purposes of extending the comment period or granting a public hearing

### 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 Foreign insurers—designation of individual for service of process through Commissioner
- 11:1-25.5 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. SURPLUS LINES INSURANCE: POLICY FORM APPROVAL PROCEDURES AND STANDARDS

- 11:1-33.1 Purpose and scope
- 11:1-33.2 Definitions
- 11:1-33.3 Policy form filings
- 11:1-33.4 Policy form standards
- 11:1-33.5 Exclusions
- 11:1-33.6 List of disapproved or withdrawn forms or contracts; exportable list hearing
- 11:1-33.7 Refiling policy forms
- 11:1-33.8 Surplus lines insurance coverage procurement requirements
- 11:1-33.9 Penalties

## APPENDIX

## 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 (RESERVED)

## 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 Confidentiality
- 11:1-36.7 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

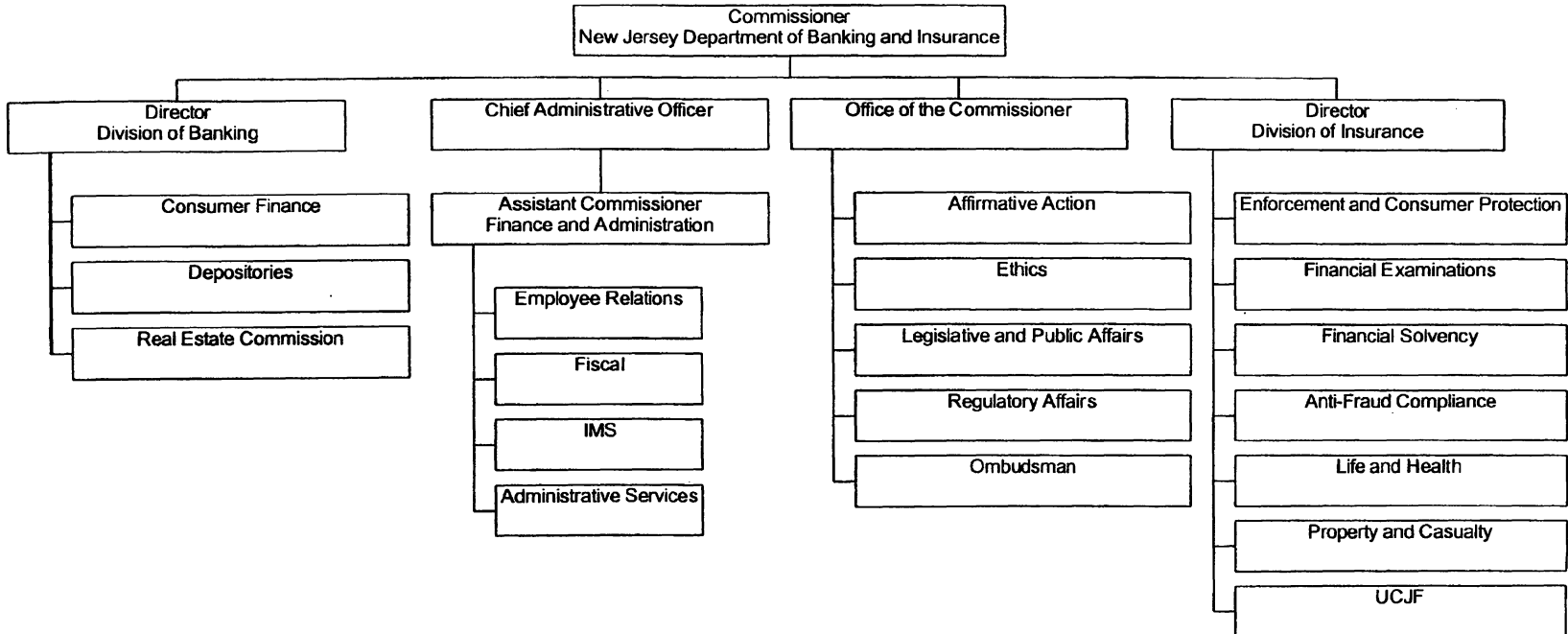
**SUBCHAPTER 1. ORGANIZATION**

**11:1-1.1 Organization**

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

(b) The mission of the Department of Banking and Insurance is to regulate the banking, insurance and real estate industries in a professional and timely manner that protects and educates consumers and promotes the growth, financial stability and efficiency of those industries.

### NEW JERSEY DEPARTMENT OF BANKING AND INSURANCE



Amended by R.1973 d.195, effective July 24, 1973.  
 Sec: 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.  
 Sec: 20 N.J.R. 99(a).

September 7, 2000

(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 settle-

ment, 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.

(f) Reports to the Medical Review Board shall be addressed to:

Medical Practitioner Review Panel  
PO Box 183  
Trenton, NJ 08625-0183

Amended by R.2001 d.75, effective March 5, 2001.  
See: 32 N.J.R. 4184(a), 33 N.J.R. 794(a).  
Added (f).

### 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 Commis-

sioner 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.

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## SUBCHAPTERS 8 THROUGH 9. (RESERVED)

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

### Law Review and Journal Commentaries

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

### 11:1-10.1 Purpose

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

### 11:1-10.2 Scope

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

### 11:1-10.3 Definitions

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

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

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

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

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

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

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

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

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

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

“Domicile” means:

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

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

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

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

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

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

“NAIC” means the National Association of Insurance Commissioners.

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

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

#### **11:1-10.4 General eligibility requirements**

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

addition to any other requirements in this subchapter or any other provision of law.

1. The insurer shall satisfy the Commissioner that it is not in a hazardous financial condition.

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. In determining whether a hazardous financial condition exists, the factors set forth in N.J.A.C. 11:2-27.3 shall be considered. A hazardous financial condition shall be deemed to exist when those factors 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 hazardous to the policyholders, stockholders or the general public.

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 have its application deferred if any one of the following conditions exist:
- i. An applicant company which 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, claimants, creditors and stockholders; or
  - ii. 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 Banking and 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 applica-

ble 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).

Amended by R.2001 d.75, effective March 5, 2001.  
See: 32 N.J.R. 4184(a), 33 N.J.R. 794(a).

Amended by R.2001 d.99, effective March 19, 2001.

See: 32 N.J.R. 4194(a), 33 N.J.R. 1004(a).

Rewrote (a).

### 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:

- (1) The geographical area in which business is intended to be done;
- (2) The types of insurance intended to be written;
- (3) Proposed marketing methods;
- (4) Proposed methods for the establishment of premium rates; and
- (5) A three year forecast of anticipated premiums in this State by line of business.

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

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

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

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

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

- i. A certificate of deposit from its insurance commissioner showing the amount in trust for policyholders;
- ii. A certified copy of power of attorney in favor of its United States manager; and
- iii. A certified copy of a deed of trust to the trustee of the funds of the company.

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

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

(c) Applicants who wish to write or have the authority to write health insurance in the State of New Jersey shall complete and submit a consumer suitability study on a form

prescribed and provided by the Department. This study shall be reviewed and approved by the Department.

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

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

#### 11:1-10.7 Review procedures; appeals

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

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

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

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

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

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

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

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

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

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

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

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

#### 11:1-10.8 Requirements upon admission

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

mental 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)**

Amended by R.2001 d.75, effective March 5, 2001.

See: 32 N.J.R. 4184(a), 33 N.J.R. 794(a).

Added (a)5.

Amended by R.2003 d.139, effective April 7, 2003.

See: 34 N.J.R. 4041(a), 35 N.J.R. 1546(a).

In (b), inserted "Legislative and" before "Regulatory Affairs".

**SUBCHAPTERS 13 THROUGH 14. (RESERVED)****SUBCHAPTER 15. PETITIONS FOR RULES;  
RULEMAKING NOTICE****11:1-15.1 Scope**

N.J.A.C. 11:1-15.2 and 15.3 shall apply to all petitions made by interested persons for the promulgation, amendment or repeal of any rule by the Department of Banking and Insurance, pursuant to N.J.S.A. 52:14B-4(f). N.J.A.C. 11:1-15.5 applies to requirements for extension of a public comment period, or holding a public hearing, on a proposal when sufficient public interest is established.

Amended by R.2001 d.75, effective March 5, 2001.

See: 32 N.J.R. 4184(a), 33 N.J.R. 794(a).

Amended by R.2003 d.139, effective April 7, 2003.

See: 34 N.J.R. 4041(a), 35 N.J.R. 1546(a).

Rewrote the section.

**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;
4. References to the statutory authority for the Department to take the requested action; and
5. A caption at the top of the document identifying it as a petition for rulemaking pursuant to N.J.S.A. 52:14B-4(f) and this subchapter.

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

New Jersey Department of Banking and Insurance  
Legislative and Regulatory Affairs  
Attn: Rulemaking Petitions  
PO Box 325  
Trenton, NJ 08625-0325

(c) Any document submitted to the Department of Banking and 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. 51:14B-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 60 days of receiving a 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 shall either:

1. Deny the petition and provide a written statement of the Department's reasons to the petitioner, and include such reasons in its notice of action;
2. Grant the petition and within 90 days file a notice of proposed rule or a notice of preproposal for a rule with the Office of Administrative Law; or
3. Refer the matter for further deliberations, the nature of which shall be specified to the petitioner and in the notice of action and which shall conclude within 90 days of such referral. Upon conclusion of such further deliberations, the Department shall either deny the petition or grant the petition and initiate a rulemaking proceeding within 90 days.

Amended by R.2003 d.139, effective April 7, 2003.

See: 34 N.J.R. 4041(a), 35 N.J.R. 1546(a).

Rewrote the section.

**11:1-15.4 Rulemaking activity**

(a) The Department shall provide notice of new rules, amendments, repeals or adoptions by posting these rules on its website at <http://www.state.nj.us/dobi/legsregs.htm> and to the news media maintaining a press office in the State House Complex.

(b) The Department shall post its proposals in the Department's Library, which is located on the 1st Floor, 20 West State Street, Trenton, NJ 08625. The Department shall also distribute its proposals to the Department's list of "interested persons" by e-mail or hard copy. Interested persons are those who have informed the Department in writing that they wish to receive notice of its proposed regulations.

New Rule, R.2003 d.139, effective April 7, 2003.  
See: 34 N.J.R. 4041(a), 35 N.J.R. 1546(a).

**11:1-15.5 Sufficient public interest for the purposes of extending the comment period or granting a public hearing**

(a) In determining whether sufficient public interest has been demonstrated for the purposes of extending the comment period pursuant to N.J.A.C. 1:30-5.4, the Commissioner shall consider the following criteria:

1. Whether comments received indicated a previously unrecognized impact on regulated entities or persons; or
2. Whether comments received raise unanticipated issues related to the notice of proposal.

(b) In determining whether sufficient public interest has been demonstrated for purposes of conducting a public hearing pursuant to N.J.A.C. 1:30-5.5, the Commissioner shall consider the application of an interested person that has been submitted on a form prescribed by the Commissioner. Such application shall be submitted within 60 days following the publication of the notice of proposal in the New Jersey Register.

1. A person interested in having a public hearing held on a notice of proposal shall submit an application on a form prescribed by the Commissioner, to Legislative and Regulatory Affairs, Department of Banking and Insurance, 20 West State Street, PO Box 325, Trenton, NJ 08625-0896. The application shall contain the following information:

- i. The person's name, address, telephone number, agency or association (if applicable);

ii. The citation and title of the proposed rule and the date the notice of proposal was published in the New Jersey Register; and

iii. The reasons a public hearing regarding the notice of proposal is considered necessary pursuant to (c) below.

(c) Sufficient public interest for the purpose of holding a public hearing, pursuant to N.J.A.C. 1:30-5.5, shall be demonstrated if upon reviewing the application the Commissioner determines that additional data, findings and/or analysis regarding the notice of proposal are necessary for the Department to review prior to adoption of the proposal in order to ensure that the notice of proposal does not violate the intent of the statutory authority.

(d) A public hearing on a notice of proposal shall be conducted in accordance with the provisions of N.J.A.C. 1:30-5.5.

(e) The recommendations of the hearing officer, and the Commissioner's decision to accept, reject or modify any recommendations shall be summarized and published in the New Jersey Register pursuant to N.J.A.C. 1:30-5.5(g).

New Rule, R.2003 d.139, effective April 7, 2003.  
See: 34 N.J.R. 4041(a), 35 N.J.R. 1546(a).

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**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.