

## CHAPTER 2

## INSURANCE GROUP

## Authority

N.J.S.A. 17:1C-6(e), 17:1-8.1, 17:17-1 et seq., 17B:17-1 et seq., 34:15-77, and 54:18A-1 et seq.

## Source and Effective Date

R.1996 d.3, effective November 30, 1995.  
See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).

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

Chapter 2, Insurance Group, expires on November 30, 2000.

## Chapter Historical Note

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

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

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

1974 Revisions: Subchapter 12, Mass Marketing of Property and Liability Insurance, was adopted as new rules by R.1974 d.271, effective September 25, 1974. See: 6 N.J.R. 313(d), 6 N.J.R. 408(a). Subchapter 13, Group Coverage Continuance and Replacement, was adopted as new rules by R.1974 d.272, effective February 1, 1975. See: 5 N.J.R. 342(c), 6 N.J.R. 409(a).

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

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

1985 Revisions: Subchapter 10, Casualty Insurers, Personal Lines Insurance, was repealed by R.1985 d.71, effective February 19, 1985. See: 16 N.J.R. 2920(a), 17 N.J.R. 458(b). Subchapter 23, Advertisement of Life Insurance and Annuities, was adopted as new rules by R.1985 d.600, effective November 18, 1985. See: 16 N.J.R. 2626(a), 17 N.J.R. 2776(a). Subchapter 19 was adopted as new rules by R.1985 d.608, effective December 2, 1985. See: 16 N.J.R. 2920(b), 17 N.J.R. 2901(b).

1989 Revisions: Subchapter 1, Educational Requirements for Licensing, and Subchapter 19 were repealed by R.1989 d.192, effective April 3, 1989. See: 20 N.J.R. 1152(a), 21 N.J.R. 899(b). Subchapter 26, Annual Audited Financial Reports, was adopted as new rules by R.1989 d.612, effective December 18, 1989. See: 21 N.J.R. 3054(a), 21 N.J.R. 3919(b).

1991 Revisions: Pursuant to Executive Order No. 66(1978), Chapter 2 was readopted as R.1991 d.4, effective November 30, 1990, with amendments effective January 7, 1991. As part of R.1991 d.4, Subchapter 8 was repealed effective January 7, 1991. See: 22 N.J.R. 1673(a), 23 N.J.R. 103(a). Subchapter 32, Custodial Deposits, was adopted as new rules by R.1991 d.14, effective January 7, 1991. See: 22 N.J.R. 2640(a), 23 N.J.R. 105(a). Subchapter 31, Manner of Determining Premium for Perpetual Homeowners Insurance, was adopted as new rules by R.1991 d.139, effective March 18, 1991. See: 22 N.J.R. 601(a), 23 N.J.R. 860(b). Subchapter 29, Orderly Withdrawal of Insurance Business, was adopted as new rules by R.1991 d.262,

effective May 20, 1991. See: 23 N.J.R. 15(b), 23 N.J.R. 1673(a). Subchapter 35, Relief from Insurer Obligations Under the Fair Automobile Insurance Reform Act of 1990, was adopted as new rules by R.1991 d.519, effective October 21, 1991. See: 23 N.J.R. 660(a), 23 N.J.R. 3166(a).

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

1993 Revisions: Subchapter 33, Workers' Compensation Self-Insurance, was adopted as new rules by R.1993 d.157, effective April 5, 1993. See: 24 N.J.R. 1944(a), 24 N.J.R. 2708(b), 25 N.J.R. 1526(a). Subchapter 28, Credit for Reinsurance, was adopted as emergency new rules by R.1993 d.448, effective August 16, 1993 (expires October 15, 1993). See: 25 N.J.R. 4289(a). The provisions of R.1993 d.448 were readopted as R.1993 d.557, effective October 15, 1993. See: 25 N.J.R. 4289(a), 25 N.J.R. 5184(a). Subchapter 36, Risk Retention Groups and Purchasing Groups, was adopted as emergency new rules by R.1993 d.449, effective August 16, 1993 (expires October 15, 1993). See: 25 N.J.R. 4298(a). The provisions of R.1993 d.449 were readopted as R.1993 d.558, effective October 15, 1993. See: 25 N.J.R. 4298(a), 25 N.J.R. 5197(a). Subchapter 37, Producer-Controlled Insurers, was adopted as emergency new rules by R.1993 d.450, effective August 16, 1993 (expires October 15, 1993). See: 25 N.J.R. 4304(a). The provisions of R.1993 d.450 were readopted as R.1993 d.559, effective October 15, 1993. See: 25 N.J.R. 4304(a), 25 N.J.R. 5202(a). Subchapter 38, Increase in Property and Casualty Capital and Surplus Requirements, was adopted as emergency new rules by R.1993 d.451, effective August 16, 1993 (expires October 15, 1993). See: 25 N.J.R. 4306(a). The provisions of R.1993 d.451 were readopted as R.1993 d.560, effective October 15, 1993. See: 25 N.J.R. 4306(a), 25 N.J.R. 5204(a). Subchapter 39, Increase in Capital and Surplus Requirements for Life and Health Insurers, was adopted as emergency new rules by R.1993 d.452, effective August 16, 1993 (expires October 15, 1993). See: 25 N.J.R. 4309(a). The provisions of R.1993 d.452 were readopted as R.1993 d.561, effective October 15, 1993. See: 25 N.J.R. 4309(a), 25 N.J.R. 5208(a). Subchapter 40, Life, Health and Annuity Reinsurance Agreements, was adopted as emergency new rules by R.1993 d.453, effective August 16, 1993 (expires October 15, 1993). See: 25 N.J.R. 4314(a). The provisions of R.1993 d.453 were readopted as R.1993 d.562, effective October 15, 1993. See: 25 N.J.R. 4314(a), 25 N.J.R. 5212(a). Subchapter 34, Surplus Lines Insurance: Allocation of Premium Tax and Surcharge, was adopted as new rules by R.1993 d.582, effective November 15, 1993. See: 25 N.J.R. 1826(a), 25 N.J.R. 5194(a).

1994 Revisions: Subchapter 17, Unfair Claims Settlement Practices, Petition for Rulemaking. See: 26 N.J.R. 2487(b).

1995 Revisions: Subchapter 41, Windstorm Market Assistance Program, was adopted as new rules by R.1995 d.53, effective January 17, 1995. See: 26 N.J.R. 4304(a), 27 N.J.R. 364(a). Subchapter 1, Admission Requirements for Foreign and Alien Life and Health Insurers, was adopted as new rules by R.1995 d.80, effective February 6, 1995. See: 26 N.J.R. 4586(a), 27 N.J.R. 559(a).

1996 Revisions: Pursuant to Executive Order No. 66(1978), Chapter 2 was readopted as R.1996 d.3, effective November 30, 1995, with amendments effective January 2, 1996. See: Source and Effective Date. See, also, section annotations.

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#### APPENDIX A

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

##### 11:2-1.1 Purpose

This subchapter establishes the procedures, requirements and standards which govern the application of foreign and alien insurers engaged in the business of life and health insurance for a certificate of authority to transact the business of insurance in this State.

##### 11:2-1.2 Scope

This subchapter applies to all foreign and alien insurers that apply for a certificate of authority to transact the business of life and health insurance in this State. 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 require.

##### 11:2-1.3 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 Department of Insurance of this State.

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

"Department" means the Department of Insurance of this State.

"IRIS" means the NAIC Insurance Regulatory Information System.

"NAIC" means National Association of Insurance Commissioners.

##### 11:2-1.4 General eligibility requirements

(a) In order for a foreign or alien insurer to be admitted as a life and health insurer in this State, 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 applicant shall satisfy the Commissioner that its condition or methods of operation are not such as would render its operation hazardous to the public or its policyholders in this State. In determining whether a hazardous financial condition exists, the factors identified in N.J.A.C. 11:2-27.3 shall be considered. A hazardous financial condition shall exist when those factors indicate, either singly or in combination of two or more, that the financial condition of any applicant which has applied to transact, or is already transacting the business of insurance in any jurisdiction, is considered by the Commissioner to be hazardous to the policyholders, stockholders, claimants, creditors, or the general public. The Commissioner shall further consider any other fact or circumstance that indicates that an insurer's operations may be hazardous.

2. The applicant shall satisfy at least the minimum capital and surplus requirements of a similar domestic insurer of this State for all lines of insurance that it is authorized to write pursuant to the certificate of authority issued by its place of domicile, whether or not the applicant desires to transact any of those lines of insurance in this State, subject to the following:

i. In determining whether an applicant meets the minimum capital and surplus requirements, the following shall be deducted from unassigned funds:

(1) The statement value of any and all special deposits not held for the protection of all policyholders;

(2) Reserves and losses reinsured with companies not authorized in New Jersey, accredited as reinsurers in New Jersey, or otherwise in compliance with N.J.S.A. 17:51B-1 et seq., net of any offsets;

(3) The statement value for the portion of assets held in excess of investment limitations for life and health insurers pursuant to N.J.S.A. 17B:20-1 et seq.;

(4) Reserve shortfalls caused by the company holding reserves weaker than those mandated by N.J.S.A. 17B:19, or such other standards provided by administrative rule, actuarial guidelines, or determined necessary by actuarial analysis;

(5) The excess of the statement value over the market value of bonds held by the applicant; and

(6) Off balance sheet guarantees and contingent liabilities for which the company has not previously established a liability in an appropriate amount.

ii. Capital and surplus requirements may be reduced to the level required for the kinds of insurance actually being marketed 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 country 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 or country of domicile.

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

i. An applicant 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 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; or

iii. An applicant which has total adjusted capital of less than its company action level risk-based capital or which has otherwise triggered a company action level event, as these terms are defined in N.J.A.C. 11:2-39, as of December 31 of the preceding calendar year, shall not be considered for admission until the applicant's status has improved.

4. The applicant shall be deemed to have its application deferred if any one of the following conditions exist:

i. An applicant which has been identified as "second or third priority" and/or has failed four or more IRIS tests shall have its application deferred until it has demonstrated to the Commissioner and its place of domicile that the IRIS test results are not indicative of a financial condition that may be hazardous to the policyholders, stockholders, claimants, creditors or the general public; or

ii. An applicant 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 applicant 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 this State unless the Commissioner has been furnished with evidence that the applicant has been authorized by its state or country 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, continuously and successfully engaged in such business, without a change in control, 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 qualified under (a)5i above shall demonstrate that:

(1) During any three of the last five years, including therein the two most recent years of business operations, it generated a net gain from operations, after Federal taxes, as reported in the annual statement;

(2) Surplus has not decreased over the five-year period in question except for dividends to policyholders, reserve strengthening and increases in the asset valuation reserve; and

(3) It has received either an evaluation acceptable to the Department from Dun and Bradstreet or one of the top three ratings from one of the following: Standard and Poor's, Duff and Phelps, Moody's, A.M. Best or other nationally recognized rating agency.

iii. The Commissioner may, upon request of an applicant, on a case by case basis, waive in the case of (a)5iii(1), (2) and (3) below, or reduce in the case of (a)5iii(1) below, the five-year seasoning requirements of (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 the requirements described in (a)5iii(1) through (4) below, if applicable, have been satisfied. These requirements relate, respectively, to the following circumstances:

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

#### 11:2-3.1 Scope

All life insurance and all accident and health insurance sold in connection with consumer loans or other consumer credit transactions shall be subject to the provisions of this subchapter except that such insurance sold in connection with first mortgage loans made to individual borrowers for the purpose of purchasing residential real estate shall not be subject to N.J.A.C. 11:2-3.17 and 3.20.

Amended by R.1990 d.44, effective January 16, 1990 (operative March 18, 1990).

See: 21 N.J.R. 3052(a), 22 N.J.R. 233(a), 22 N.J.R. 392(a).

Deleted text specifying a loan or other credit transaction of more than five years' duration and replaced with phrase: "first mortgage . . . real estate."

Amended by R.1996 d.206, effective May 20, 1996.

See: 27 N.J.R. 3676(a), 28 N.J.R. 2621(a).

Specified "consumer" loans and added exception for first mortgage loans.

#### 11:2-3.2 Definitions

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

"Commissioner" means Commissioner of Insurance.

"Credit accident and health insurance" means insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is disabled as defined in the policy.

"Credit life insurance" means insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction and may include disability benefits commonly described as "waiver of premiums" or "extended death benefit" if provided without a separate premium charge. This definition shall not prevent the inclusion in a life insurance contract of other disability benefits, but such other benefits shall be considered credit accident and health insurance for the purposes of this subchapter.

"Credit personal property insurance" means insurance covering direct or indirect damage or loss, by fire or other perils, including those of extended coverage, to the personal property of the debtor all or part of which is the security for the loan, which insurance shall be for an amount and term not to exceed the amount and term of the loan.

"Creditor" means the lender of money or vendor or lessor of goods, services, property, rights or privileges, for which payment is arranged through a credit transaction or any successor to the right, title or interest of any such lender, vendor or lessor, and an affiliate, associate or subsidiary of any of them or any director, officer or employee of any of

them or any other person in any way associated with any of them.

"Debtor" means a borrower of money or a purchaser or lessee of goods, services, property, rights or privileges for which payment is arranged through a credit transaction.

"Gross coverage" means a plan for credit insurance which insures the gross indebtedness of a loan.

"Indebtedness" means the total amount payable by a debtor to a creditor in connection with a loan or other credit transaction.

"Net coverage" means coverage for the amount sufficient to liquidate the remaining debt in a single payment, excluding unearned interest and finance charges.

"Open-end credit" means credit extended by a creditor under an agreement in which:

1. The creditor reasonably contemplates repeated transactions;
2. The creditor imposes a finance charge from time to time on an outstanding unpaid balance; and
3. The amount of credit that may be extended to the debtor during the term of the agreement (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid.

"Truncated credit life insurance and truncated credit accident and health insurance" means credit life insurance and credit accident and health insurance issued in connection with a fixed term debt where the term of insurance coverage is less than the term of the indebtedness, but does not include credit insurance which terminates on attainment of a specific age.

Amended by R.1996 d.206, effective May 20, 1996.

See: 27 N.J.R. 3676(a), 28 N.J.R. 2621(a).

Added "Net coverage", "Open-end credit" and "Truncated credit life insurance and truncated credit accident and health insurance".

Amended by R.1998 d.41, effective January 5, 1998 (operative July 7, 1998).

See: 29 N.J.R. 2777(a), 30 N.J.R. 235(a).

Inserted "Credit personal property insurance" and "Gross coverage".

#### 11:2-3.3 Forms

(a) Credit life insurance and credit accident and health insurance shall be issued only in the following forms:

1. Individual policies of life insurance issued to debtors on the term plan;
2. Individual policies of accident and health insurance issued to debtors on a term plan, or disability benefit provisions in individual policies of credit life insurance;
3. Group policies of life insurance issued to creditors providing insurance upon the lives of debtors on the term plan; or

4. Group policies of accident and health insurance issued to creditors on a term plan insuring debtors or disability benefit provisions in group credit life insurance policies to provide such coverage.

(b) The individual and group coverages permitted by (a) above may be offered in combination with credit involuntary unemployment insurance, credit personal property insurance, or both, under separate and distinct policies, subject to the provisions of N.J.A.C. 11:2-3.17(i).

(c) Notwithstanding the provisions of (a) above to the contrary, group life insurance coverage may be issued in combination with other coverages in accordance with this section.

(d) Insurers issuing insurance coverages combined in accordance with this section shall not be required to offer any of the coverages for separate purchase.

(e) The purchase of insurance coverages combined in accordance with this section shall be voluntary on the part of the debtor.

Amended by R.1998 d.41, effective January 5, 1998 (operative July 7, 1998).

See: 29 N.J.R. 2777(a), 30 N.J.R. 235(a).

In (a)2 and 4, substituted references to disability benefit provisions for references to disability provisions; and added (b) through (e).

#### 11:2-3.4 Amount

(a) The amount of credit life insurance issued in connection with a specific loan or other credit transaction shall not exceed the indebtedness.

(b) Where an indebtedness repayable in substantially equal installments is secured by an individual policy of credit life insurance, the amount of insurance shall at no time exceed the approximate unpaid indebtedness and, where secured by a group policy of credit life insurance shall at no time exceed the exact amount of unpaid indebtedness.

(c) The amount of indemnity payable in connection with a specific loan or other credit transaction by credit accident and health insurance in the event of disability, as defined in the policy, shall not exceed the aggregate of the periodic scheduled unpaid installments of indebtedness; and the amount of each periodic indemnity payment shall not exceed the original indebtedness divided by the number of periodic installments.

#### 11:2-3.5 Term

(a) The term of any credit life insurance or credit accident and health insurance shall, subject to acceptance by the insurer, commence on the date when the debtor becomes obligated to the creditor which may be deemed to be the date from which interest or finance charges on the indebtedness accrue, if later; except that, where a group policy provides coverage with respect to existing obligations, the insurance on a debtor with respect to such indebtedness shall commence on the effective date of the policy.

(b) Where evidence of insurability is required and such evidence is furnished more than 30 days after the date when the debtor becomes obligated to the creditor, then if such evidence is determined by the insurer to be satisfactory, the term of the insurance shall commence on the date on which such evidence is furnished, and in such event that there shall be an appropriate refund or adjustment of any charge to the debtor for the insurance.

(c) The term of such insurance shall not extend more than 15 days beyond the scheduled maturity date of the indebtedness except when extended without additional cost to the debtor.

(d) If the indebtedness is discharged due to prepayment, the insurance in force shall be terminated and, if the indebtedness is discharged due to renewal or refinancing prior to the scheduled maturity date, the insurance in force shall be terminated before any new insurance may be issued in connection with the renewed or refinanced indebtedness.

(e) In all cases of termination prior to scheduled maturity, a refund shall be paid or credited as provided in N.J.A.C. 11:2-3.20.

(f) Credit accident and health insurance which limits the length of monthly benefits to the lesser of a specified period or the remainder of the loan is permissible only if the specified period is 24 months or more.

(g) Truncated credit life insurance coverage may be offered only in connection with loans and credit transactions having a term of eight years or more and only on a form specifically filed for use with such loans and credit transactions. Truncated credit accident and health insurance may be offered only in connection with loans and credit transactions having a term of six years or more and only on a form specifically filed for use with such loans and credit transactions. Truncated credit insurance shall comply with the following requirements:

1. Insurers shall provide in boldface, 10 point type notice at the time of application that the insurance coverage is truncated, does not cover the entire length of the loan and that the debtor may have the opportunity to elect coverage for the full term of the indebtedness. Such notice shall contain a date and signature section to be completed by the applicant. The notice form together with a statement of the manner in which the notice will be provided to applicants, shall be submitted with the truncated credit forms to the Commissioner for approval.
2. Life insurance coverage shall be net coverage.
3. When offered through a group policy, the amount of the coverage shall not exceed \$75,000 when the coverage is offered in connection with a real estate mortgage and \$40,000 in all other cases.

**11:2-9.20 Exemption from N.J.S.A. 17:17B-3—certain transactions effected in connection with a distribution**

(a) Any security shall be exempt from the operation of N.J.S.A. 17:17B-3 to the extent necessary to render lawful under such section any sale made by or on behalf of a dealer in connection with a distribution of a substantial block of securities, upon the following conditions:

1. The sale is represented by an over-allotment in which the dealer is participating as a member of an underwriting group, or the dealer or a person acting on his behalf intends in good faith to offset such sale with a security to be acquired by or on behalf of the dealer as a participant in an underwriting, selling or soliciting-dealer group of which the dealer is a member at the time of the sale, whether or not the security to be so acquired is subject to a prior offering to existing security holders or some other class of persons; and

2. Other persons not within the purview of N.J.S.A. 17:17B-3 are participating in the distribution of such block of securities on terms at least as favorable as those on which such dealer is participating, and to an extent at least equal to the aggregate participation of all persons exempted from the provisions of N.J.S.A. 17:17B-3 by this section. However, the performance of the functions of manager of a distributing group and the receipt of a bona fide payment for performing such functions shall not preclude an exemption which would otherwise be available under this section.

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

**11:2-9.21 Exemption from N.J.S.A. 17:17B-3—sales of securities to be acquired**

(a) Whenever any person is entitled, as an incident to his ownership of an issued security and without the payment of consideration, to receive another security “when issued” or “when distributed”, the security to be acquired shall be exempt from the operation of N.J.S.A. 17:17B-3, provided that:

1. The sale is made subject to the same conditions as those attaching to the right of acquisition;

2. Such person exercises reasonable diligence to deliver such security to the purchaser promptly after his right of acquisition matures; and

3. Such person reports the sale on the appropriate form for reporting transactions by persons subject to N.J.S.A. 17:17B-1.

(b) This section shall not be construed as exempting transactions involving both a sale of a security “when issued” or “when distributed” and a sale of the security by virtue of which the seller expects to receive the “when-issued” or “when-distributed” security, if the two transactions when combined result in a sale of more units than the

aggregate of those owned by the seller plus those to be received by him pursuant to his right of acquisition.

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

**11:2-9.22 Arbitrage transactions under N.J.S.A. 17:17B-5**

It shall be unlawful for any director or officer of an insurer to effect any foreign or domestic arbitrage transaction in any equity security of such insurer, unless he shall include such transaction in the statements required by N.J.S.A. 17:17B-1, and shall account to such insurer for the profits arising from such transaction, as provided in N.J.S.A. 17:17B-2. The provisions of N.J.S.A. 17:17B-3 shall not apply to such arbitrage transactions. The provisions of the Act shall not apply to any bona fide foreign or domestic arbitrage transaction insofar as it is effected by any person other than such director or officer of the insurer.

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

**11:2-9.23 Instructions for Form A**

(a) A statement on this form is required to be filed by every person who is directly or indirectly the beneficial owner of more than ten per cent of any class of any equity security of a New Jersey stock insurance company, or who is a director or an officer of such a company.

(b) Persons who hold any of the relationships specified in (a) above are required to file a statement by January 31, 1966, or within 10 days after assuming such relationship, whichever date is later.

(c) Statements are not deemed to have been filed with the Commissioner until they have actually been received by him.

(d) One signed copy of each statement shall be filed with the Commissioner of Banking and Insurance, State House Annex, Trenton, New Jersey 08625.

(e) A separate statement shall be filed with respect to the securities of each company.

(f) Indicate clearly the relationship of the reporting person to the Company; for example, “Director”, “Director and Vice President”, “Beneficial owner of more than ten per cent of the company’s common stock”, and so forth.

(g) The information as to beneficial ownership of securities shall be given as of January 31, 1966, or, in the case of persons who subsequently assume any of the relationships specified in (a) above, as of the date that relationship was assumed.

(h) The statement of the title of a security shall be such as clearly to identify the security even though there may be only one class; for example, “Class A common stock”, “\$6

convertible preferred stock", "5 per cent debentures due 1965", and so forth.

(i) Under "Nature of ownership", state whether ownership of the securities is "direct" or "indirect". If the ownership is indirect, that is, through a partnership, corporation, trust or other entity, indicate, in a footnote or other appropriate manner, the name or identity of the medium through which the securities are indirectly owned. The fact that securities are held in the name of a broker or other nominee does not, of itself, constitute indirect ownership. Securities owned indirectly shall be reported on separate lines from those owned directly and also from those owned through a different type of indirect ownership.

(j) In stating the amount of securities beneficially owned, give the face amount of debt securities or the number of shares or other units of other securities. In the case of securities owned indirectly, the entire amount of securities owned by the partnership, corporation, trust or other entity shall be stated. The person whose ownership is reported may, if he so desires, also indicate in a footnote, or other appropriate manner, the extent of his interest in the partnership, corporation, trust or other entity.

(k) A statement may include any additional information or explanation deemed relevant by the person filing the statement.

(l) If the statement is filed for a corporation, partnership, trust, and so forth, the name of the organization shall appear over the signature of the officer or other person authorized to sign the statement. If the statement is filed for an individual, it shall be signed by him or specifically on his behalf by a person authorized to sign for him.

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

#### 11:2-9.24 Form A

For copies of Form A, write to the Department of Insurance, CN 325, Trenton, New Jersey 08625-0325.

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

#### 11:2-9.25 Instructions for Form B

(a) Statements on this form are required to be filed by every person who, at any time during any calendar month, was directly or indirectly the beneficial owner of more than ten per cent of any class of equity security of a New Jersey stock insurance company, or a director or officer of the company which is the issuer of such securities, and who during such month had any change in his beneficial ownership of any class of equity security of such company.

(b) Statements are required to be filed on or before the tenth day after the end of each month in which any change in beneficial ownership has occurred. Statements are not deemed to have been filed with the Commissioner until they have actually been received by him.

(c) One signed copy of each statement shall be filed with the Commissioner of Insurance, CN 325, Trenton, New Jersey 08625-0325.

(d) A separate statement shall be filed with respect to the securities of each company.

(e) Indicate clearly the relationship of the reporting person to the company; for example, "Director", "Director and Vice President", "Beneficial owner of more than ten per cent of the company's common stock", and so forth.

(f) Every transaction shall be reported even though purchases and sales during the month are equal or the change involves only the nature of ownership; for example, from direct to indirect ownership. Beneficial ownership at the end of the month of all classes of securities required to be reported shall be shown even though there has been no change during the month in the ownership of securities of one or more classes.

(g) The statement of the title of the security shall be such as clearly to identify the security even though there may be only one class; for example, "Class A common stock", "\$6 convertible preferred stock", "5 per cent debentures due 1965", and so forth.

(h) The exact date (month, day and year) of each transaction shall be stated opposite the amount involved in the transaction.

(i) In stating the amount of the securities acquired, disposed of, or beneficially owned, give the face amount of debt securities or the number of shares or other units of other securities. In the case of securities owned indirectly, such as through a partnership, corporation, trust or other entity, the entire amount of securities involved in the transaction or owned by the partnership, corporation, trust or other entity shall be stated. The person whose ownership is reported may, if he so desires, also indicate in a footnote, or other appropriate manner, the extent of his interest in the transaction or holdings of the partnership, corporation, trust or other entity.

(j) Under "Nature of ownership", state whether ownership of the securities is "direct" or "indirect". If the ownership is indirect, that is, through a partnership, corporation, trust or other entity, indicate in a footnote, or other appropriate manner, the name or identity of the medium through which the securities are indirectly owned. The fact that securities are held in the name of a broker or other nominee does not, of itself, constitute indirect ownership. Securities owned indirectly shall be reported on separate lines from those owned directly and from those owned through a different type of indirect ownership.

(k) If the transaction was with the issuer of the securities, so state. If it involved the purchase of securities through the exercise of options, so state and give the exercise price per share. If any other purchase or sale was effected otherwise than in the open market, that fact shall be indicated. If the transaction was not a purchase or sale, indicate its character; for example, gift, five per cent stock dividend, and so forth, as the case may be. The foregoing information may be appropriately set forth in the table or under "Remarks" at the end of the table.

(l) A statement may include any additional information or explanation deemed relevant by the person filing the statement.

(m) If the statement is filed for a corporation, partnership, trust, and so forth, the name of the organization shall appear over the signature of the officer or other person authorized to sign the statement. If the statement is filed for an individual, it shall be signed by him or specifically on his behalf by a person authorized to sign for him.

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

#### 11:2-9.26 Form B

For copies of Form B, write to the Department of Insurance, CN 325, Trenton, New Jersey 08625-0325.

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

#### SUBCHAPTER 10. (RESERVED)

### SUBCHAPTER 11. RULES GOVERNING ADVERTISEMENT OF HEALTH INSURANCE

#### 11:2-11.1 Purpose, general provisions and definitions

(a) The purpose of this subchapter is to formalize standards to be followed in order to avoid misleading and deceptive advertising in the health insurance business.

(b) The proper promotion, sale and expansion of health insurance are in the public interest, and these rules shall be construed in such a manner as not to unduly restrict, inhibit or retard such promotion, sale and expansion.

(c) The Department, in interpreting the meaning of the rules when applied to a specific advertisement, shall take into consideration the detail, character, purpose, use and

entire content of the advertisement. In all instances the basic test will be a rule of reason as to whether the advertisement has the capacity and tendency to mislead and deceive.

(d) Specific interpretations of the rules will be issued from time to time as circumstances warrant.

(e) An advertisement for the purpose of these rules shall include:

1. Printed and published material and descriptive literature of an insurer used in newspapers, magazines, radio, and TV (including CATV), billboards and similar displays;
2. Descriptive literature and sales aids of all kinds issued by an insurer for presentation to members of the public, including but not limited to circulars, leaflets, booklets, depictions, illustration, and form letters; and
3. Prepared sales talks, presentations and material for use by agents, brokers, and solicitors and representations made by agents, brokers, and solicitors in accordance therewith.

(f) Policy for the purpose of these rules shall include any policy of health insurance as defined in N.J.S.A. 17B:17-4, plan, certificate, contract, agreement, statement of coverage, rider or endorsement which provides accident or sickness benefits, or medical, surgical or hospital expense benefits, whether on a cash indemnity, reimbursement, or service basis, except when issued in connection with another kind of insurance other than life, and except disability and double indemnity benefits included in life insurance and annuity contracts.

(g) Insurer for the purpose of these rules shall include any individual corporation, association, partnership, reciprocal exchange, interinsurer, Lloyds, fraternal benefit society, and any other legal entity engaged in the advertisement of a policy as herein defined.

(h) "Endorsement" means any appraisal, analysis, testimonial or other public statement describing or expressing approval of any insurance product or of the terms, benefits or any other aspect of any insurance product.

(i) "Person" means any individual, insurer, company, association, organization, society, partnership, syndicate, trust, business trust, corporation and every legal entity.

(j) These rules shall also apply to agents and brokers to the extent that they are responsible for the advertisements of any policy.

Amended by R.1989 d.391, effective July 17, 1989.  
See: 21 N.J.R. 970(a), 21 N.J.R. 2039(a), 21 N.J.R. 2289(c).

New (d) and (e) added definitions of "endorsement" and "person"; old (d) recodified to (f).

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

**11:2-11.2 Advertisements in general**

Advertisements shall be truthful and not misleading in fact or in implication. Words or phrases the meaning of which is clear only by implication or by familiarity with insurance terminology shall not be used.

**11:2-11.3 Advertisements of benefits payable, losses covered or premiums payable**

(a) Words, phrases or illustrations shall not be used in a manner which misleads or has the capacity and tendency to deceive as to the extent of any policy benefit payable, loss covered or premium payable.

(b) An advertisement relating to any policy benefit payable, loss covered or premium payable shall be sufficiently complete and clear as to avoid deception or the capacity and tendency to deceive.

(c) When an advertisement refers to any dollar amount, period of time for which any benefit is payable, cost of policy, or specific policy benefit or the loss for which such benefit is payable, it shall also disclose those exceptions, reductions and limitations affecting the basic provisions of the policy without which the advertisement would have the capacity and tendency to mislead or deceive.

**11:2-11.4 Necessity for disclosing policy provisions relating to renewability, cancellability and termination**

An advertisement which refers to renewability, cancellability or termination of a policy, or which refers to a policy benefit, or which shows or illustrates time or age in connection with eligibility of applicants or continuation of the policy, shall disclose the provisions relating to renewability, cancellability and termination and any modification of benefits, losses covered or premiums because of age or for other reasons, in a manner which shall not minimize or render obscure the qualifying conditions.

**11:2-11.5 Method of disclosure of required information**

All information required to be disclosed by these rules shall be set out conspicuously and in close conjunction with the statements in which such information relates or under appropriate captions of such prominence that it shall not be minimized, rendered obscure or presented in an ambiguous fashion or intermingled with the context of the advertisements so as to be confusing or misleading.

**11:2-11.6 Endorsements by third parties**

(a) Endorsements used in advertisements shall be genuine, represent the current opinion of the author, be applicable to the policy advertised and be accurately reproduced. The insurer, in using an endorsement, adopts as its own all of the statements contained therein, and the advertisement, including such statements, shall be subject to all of the provisions of this subchapter.

(b) A person shall be a "spokesperson" if either his or her image, voice or words are used in making an endorsement and if the person:

1. Has a financial interest in the insurer or a related entity as a stockholder, director, officer, employee or otherwise;
2. Is an entity formed by the insurer, or is owned or controlled by the insurer, its employees, or the person or persons who own or control the insurer;
3. Is in a policymaking position and is affiliated with the insurer in any of the capacities in (b)1 or 2 above; or
4. Is in any way directly or indirectly compensated for making the endorsement.

(c) Any person acting as a spokesperson as defined in (b) above, who transacts the business of or holds himself or herself out to the public as being an insurance producer as defined at N.J.S.A. 17:22A-2, and who is required to have a license pursuant to N.J.S.A. 17:22A-3, shall be considered to be an insurance producer and shall be required to be licensed pursuant to and shall submit to the requirements of N.J.S.A. 17:22A-1 et seq. and any implementing rules.

(d) Where, pursuant to (c) above, a spokesperson required to be licensed as an insurance producer is not licensed as an insurance producer, the advertisement shall include, in the manner prescribed by (e) below, the following statement: "This offer is not available in New Jersey." The requirements of this subsection shall apply to cases where the advertisement originates in or emanates from another state but is received or appears in New Jersey, and to advertisements which originate in or emanate from New Jersey.

(e) The fact of a financial interest, or the proprietary or representative capacity of a spokesperson, shall be disclosed in an advertisement. In both television and radio advertising the disclosure shall be spoken by the spokesperson and, in the case of television, visually presented consistent with the requirements for print advertising in this subsection. In print advertising, the disclosure shall be presented in a type style and size that is at least equal to the largest type otherwise used in the advertisement. The disclosure required by this subsection shall be accomplished in the introductory portion of the endorsement and shall be given prominence.

(f) If a spokesperson is directly or indirectly compensated for making an endorsement, such fact shall be disclosed by use of the phrase "This is a Paid Endorsement" or by words of similar meaning, in the manner provided by (e) above. The requirements of this subsection do not apply where the spokesperson is a company officer, a company director or an employee who is paid generally, but not specifically, for making the advertisement.

(g) The disclosure requirements in (e) and (f) above shall not apply where the sole financial interest or compensation of a spokesperson, for all endorsements made on behalf of the insurer, consists of the payment of union "scale" wages required by union rules, and if the payment is actually for such "scale" for television or radio performances.

(h) An advertisement shall not state or imply that an insurer, a policy or contract, or any type or line of insurance has been approved or endorsed by any individual, group of individuals, society, association, organization, governmental agency or other entity, unless such is the fact and any proprietary relationship between such individual(s) or entity and the insurer is disclosed and the prior written approval of the individual, group of individuals, society, association, organization, governmental agency or other entity has been secured. Prior written approval shall not be required in cases where the endorsing individual is a company officer, company director or an employee.

(i) If the person making the endorsement in (h) above has been formed by the insurer or is owned or controlled by the insurer, or the person or persons who own or control the insurer, such fact shall be disclosed in the advertisement. If the insurer or an officer of the insurer formed or controls the association, or holds any policymaking position in the association, that fact shall also be disclosed.

(j) When an endorsement refers to benefits received under a policy for a specific claim, the claim date, including claim number, date of loss and other pertinent information shall be retained by the insurer for inspection until the completion by the Department of Insurance of the next market conduct examination of the insurer.

(k) Endorsements which do not correctly reflect the present practices of the insurer or which are not applicable to the policy or benefits being advertised shall not be used.

(l) Endorsements concerning Medicare supplement insurance shall be filed with the Division of Life and Health of the Department of Insurance at least 30 days prior to their first use. Radio and television endorsements shall be filed in transcribed form.

(m) An advertisement shall not state or imply that an insurer or a policy has been approved or an insurer's financial condition has been examined and found to be satisfactory by a governmental agency unless such is the fact and without prior written approval.

Repealed and replaced by R.1989 d.391, effective July 17, 1989. See: 21 N.J.R. 970(a), 21 N.J.R. 2039(a), 21 N.J.R. 2289(c).

Section formerly entitled "testimonials"; new rule greatly expanded the regulation of third party endorsements.

#### 11:2-11.7 Use of statistics

(a) An advertisement relating to the dollar amounts of claims paid, the number of persons insured, or similar statistical information relating to any insurer or policy shall

not be used unless it accurately reflects all of the relevant facts.

(b) Such an advertisement shall not imply that such statistics are derived from the policy advertised unless such is the fact.

#### 11:2-11.8 Inspection of policy

An offer in an advertisement of free inspection of policy or offer of a premium refund is not a cure for misleading or deceptive statements contained in such advertisement.

#### 11:2-11.9 Identification of plan or number of policies

(a) When a choice of the amount of benefits is referred to, an advertisement shall disclose that the amount of benefits provided depends upon the plan selected and that the premium will vary with the amount of the benefits.

(b) When an advertisement refers to various benefits which may be contained in two or more policies, other than group master policies, the advertisement shall disclose that such benefits are provided only through a combination of such policies.

#### 11:2-11.10 Disparaging comparisons and statements

An advertisement shall not directly or indirectly make unfair or incomplete comparisons of policies or benefits or otherwise falsely disparage competitors, their policies, services or business methods.

#### 11:2-11.11 Jurisdictional licensing

(a) An advertisement which is intended to be seen or heard beyond the limits of the jurisdiction in which the insurer is licensed shall not imply licensing beyond those limits.

(b) Such advertisements by direct mail insurers shall indicate that the insurer is licensed in a specified state or states only, or is not licensed in a specified state or states, by use of some language such as "This Company is licensed only in State A" or "This Company is not licensed in State B".

#### 11:2-11.12 Identity of insurer

(a) The identity of the insurer shall be made clear in all of its advertisements.

(b) An advertisement shall not use a trade name, service mark, slogan, symbol or other device which has the capacity and tendency to mislead or deceive as to the true identity of the insurer.

#### 11:2-11.13 Group or quasi-group implications

An advertisement of a particular policy shall not state or imply that prospective policyholders become group or quasi-group members and as such enjoy special rates or underwriting privileges, unless such is the fact.

**11:2-11.14 Introductory, initial or special offers**

An advertisement shall not state or imply that a particular policy or combination of policies is an introductory, initial or special offer and that the applicant will receive advantages by accepting the offer, unless such is the fact.

**11:2-11.15 (Reserved)****11:2-11.16 Service facilities**

An advertisement shall not contain untrue statements with respect to the time within which claims are paid or statements which imply that claim settlements will be liberal or generous beyond the terms of the policy.

**11:2-11.17 Statements about an insurer**

An advertisement shall not contain statements which are untrue in fact or by implication misleading with respect to the insurer's assets, corporate structure, financial standing, age or relative position in the insurance business.

**11:2-11.18 Insurers' responsibility and control; advertising file; certificate of compliance**

(a) All advertisements, regardless of by whom written, created or designed, shall be the responsibility of the insurer sponsoring the same.

(b) Every insurer shall at all times maintain complete control over the content, form and method of dissemination of all advertisements of its contracts.

(c) Each insurer shall maintain at its home or principal office a complete file containing every printed, published or prepared advertisement of individual policies and typical printed, published or prepared advertisements of blanket, franchise and group policies hereafter disseminated in this or any other state whether or not licensed in such other state, with a notation attached to each such advertisement which shall indicate the manner and extent of distribution and the form number of any policy advertised.

(d) Such file shall be subject to regular and periodical inspection by this department.

(e) All such advertisements shall be maintained in said file for a period of five years from their last use.

(f) Each insurer required to file an annual statement which is now or which hereafter becomes subject to the provisions of this regulation must file with this department together with its annual statement, a certificate executed by an authorized officer of the insurer where it is stated that to the best of his knowledge, information and belief the advertisements which were disseminated by the insurer during the preceding statement year complied or were made to comply in all respects with the provisions of the insurance laws of this State as implemented and interpreted by this regulation.

Amended by R.1989 d.391, effective July 17, 1989.

See: 21 N.J.R. 970(a), 21 N.J.R. 2039(a), 21 N.J.R. 2289(c).

At (e) deleted requirement to retain file for at least a four year period.

**11:2-11.19 Penalties**

Failure to comply with the provisions of this regulation shall constitute a violation of the Insurance Laws of this State and shall subject any individual or company so failing to comply to all the penalties provided by law.

**11:2-11.20 Prior regulation superseded**

This regulation supersedes in its entirety the Regulation which was previously issued by the Insurance Department on February 1, 1956.

**11:2-11.21 Effective date**

This regulation shall become effective upon the date of publication of its adoption in the New Jersey Register.

**11:2-11.22 Severability**

If any provision of clause of this regulation or the application thereof to any person or situation is held invalid, such invalidity shall not affect any other provision or application of the regulation which can be given effect without the invalid provision or application, and to this end the provisions of this regulation are declared to be severable.

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## SUBCHAPTER 12. MASS MARKETING OF PROPERTY AND LIABILITY INSURANCE

**11:2-12.1 Introduction**

The purpose of this regulation is to prescribe rules to prevent abuses in connection with the sale of personal property-liability insurance in this State pursuant to mass marketing plans, while preserving for consumers the potential benefits of this form of marketing.

**11:2-12.2 Definitions**

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

"Mass marketing plan" means a method of selling personal property-liability insurance wherein:

1. Such insurance is offered to employees of particular employers or to members of particular associations or organizations;
2. The employer, association or organization, if any, has agreed to or otherwise affiliated itself with the sale of such insurance to its employees or members;

(3) In the case of an individual who was totally disabled, and in the case of a type of coverage for which N.J.A.C. 11:2-13.5 requires an extension or accrued liability, the end of any period of extension or accrued liability which is required of the prior carrier by N.J.A.C. 11:2-13.5, or if the prior carrier's policy or contract is not subject to that section, would have been required of that carrier had its policy or contract been subject to N.J.A.C. 11:2-13.5 at the time the prior plan was discontinued and replaced by the succeeding carrier's plan.

3. Except with respect to policies and contracts providing group medical insurance, in the case of a preexisting conditions limitation included in the succeeding carrier's plan, the level of benefits or coverage applicable to preexisting conditions of persons becoming covered by the succeeding carrier's plan in accordance with this subsection during the period of time this limitation applies under the new plan shall be the lesser of:

- i. The benefits or coverage of the new plan determined without application of the preexisting conditions limitation; and
- ii. The benefits or coverage of the prior plan.

4. With respect to group medical insurance, any preexisting condition limitation or exclusion in the succeeding carrier's plan applicable to persons becoming covered by the succeeding carrier's plan shall be reduced or eliminated for each person separately on the basis of each person's creditable coverage pursuant to N.J.S.A. 17B:27A-54 et seq.

5. The succeeding carrier, in applying any deductibles or waiting periods in its plan, shall give credit for the satisfaction or partial satisfaction of the same or similar provisions under a prior plan providing similar benefits. Except as it relates to HMOs, the definition of waiting period includes, but is not limited to, the period of time required to be satisfied before maternity benefits or coverage becomes available. The aggregate period of time to be applied may be the greater of that required by either the prior plan or the succeeding plan. But in any event, the aggregate period of time will be satisfied by taking into consideration the full portion of the waiting period satisfied under the prior plan. In the case of deductible provisions, the credit shall apply for the same or overlapping benefit periods and shall be given for expenses actually incurred and applied against the deductible provisions of the prior carrier's plan during the 90 days preceding the effective date of the succeeding carrier's plan, but only to the extent these expenses are recognized under the terms of the succeeding carrier's plan and are subject to a similar deductible provision.

6. Notwithstanding (c) above, policies and contracts providing group medical insurance shall not contain a separate waiting period for maternity benefits, and pregnancy shall not be treated as a preexisting condition.

7. In any situation where a determination of the prior carrier's benefit or coverage is required by the succeeding carrier, at the succeeding carrier's request the prior carrier shall furnish a statement of the benefits or coverage available or pertinent information sufficient to permit verification of the benefit or coverage or the determination itself by the succeeding carrier. For the purpose of this section, benefits or coverage of the prior plan shall be determined in accordance with all the definitions, conditions, covered expenses and services and supplies provisions of the prior plan rather than those of the succeeding plan. The benefit or coverage determination shall be made as if coverage had not been replaced by the succeeding carrier.

As amended, R.1975 d.109, eff. April 24, 1975.

See: 7 N.J.R. 114(b), 7 N.J.R. 276(a).

Amended by R.1999 d.134, effective April 19, 1999.

See: 30 N.J.R. 3356(a), 31 N.J.R. 1101(a).

Rewrote (a) and (c); and in (b), inserted ", contractholder" following "policyholder", and substituted "self-funds" for "self-insures" following "carrier."

#### 11:2-13.7 Noncompliance

Noncomplying policy forms shall be deemed withdrawn on October 19, 1999.

Recodified from N.J.A.C. 11:2-13.9 and amended by R.1999 d.134, effective April 19, 1999.

See: 30 N.J.R. 3356(a), 31 N.J.R. 1101(a).

Rewrote the section. Former N.J.A.C. 11:2-13.7, Provisions as favorable, repealed.

#### 11:2-13.8 (Reserved)

Repealed by R.1999 d.134, effective April 19, 1999.

See: 30 N.J.R. 3356(a), 31 N.J.R. 1101(a).

Section was "Separability of provisions".

#### 11:2-13.9 (Reserved)

Recodified to N.J.A.C. 11:2-13.7 by R.1999 d.134, effective April 19, 1999.

See: 30 N.J.R. 3356(a), 31 N.J.R. 1101(a).

### SUBCHAPTER 14. (RESERVED)

### SUBCHAPTER 15. INSOLVENT INSURERS

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

Whenever an insurer is declared insolvent by a court of competent jurisdiction, or its business is suspended under the laws of its state of incorporation, or its certificate of authority is revoked by this State, the company's insurance policies shall be deemed cancelled by said insurer if the policy is terminated at the request of the policyholder. The insurer thereupon shall be obligated to return the unearned premiums including the unearned commissions to the policyholder.

R.1974 d.190, effective July 16, 1974.  
See: 6 N.J.R. 323(a).

#### Case Notes

Immunity provided to New Jersey Full Insurance Underwriting Association servicing carriers for judgments arising from policy claims does not extend to acts outside scope of duties under contract that rise to level of bad faith. *Miglicio v. HCM Claim Management Corp.*, 288 N.J.Super. 331, 672 A.2d 266 (L.1995).

## SUBCHAPTER 16. GUARANTEED ARREST BOND CERTIFICATES OF AUTOMOBILE CLUB UNDERTAKING

### 11:2-16.1 General provisions

(a) Whenever a domestic or foreign surety company which has qualified to transact surety business in this State, in any year, becomes surety in an amount not to exceed \$500.00 with respect to any guaranteed arrest bond certificates issued in such year by an automobile club or association by filing with the Commissioner of Insurance an undertaking thus to become surety, such undertaking shall state:

1. The name and address of the automobile club or clubs or automobile association or associations with respect to guaranteed arrest bond certificates of which the surety company undertakes to be surety;

2. The unqualified obligation of the surety company to pay the fine or forfeiture in an amount not to exceed \$500.00 of any person who, after posting a guaranteed arrest bond certificate with respect to which the surety company has undertaken to be surety, failed to make the appearance for which the guaranteed arrest bond certificate was posted.

(b) Such finding shall be filed with the Commissioner 10 days prior to its effective date. If such undertaking is terminated, the Commissioner of Insurance shall be notified as promptly as possible but not later than the effective date of such termination.

(c) Any undertakings to become surety that are in effect at this time shall be filed with the Commissioner of Insurance in accordance with the above within 30 days of the effective date of this regulation.

R.1974 d.282, effective October 11, 1974.  
See: 6 N.J.R. 322(a), 6 N.J.R. 437(a).  
Amended by R.1991 d.4, effective January 7, 1991.  
See: 22 N.J.R. 1673(a), 23 N.J.R. 103(a).  
Increased maximums in (a) from \$200.00 to \$500.00.

## SUBCHAPTER 17. UNFAIR CLAIMS SETTLEMENT PRACTICES

### 11:2-17.1 Purpose

N.J.S.A. 17:29B-4(9) and 17B:30-13.1 prohibit insurers from engaging in unfair claims settlement practices. The purpose of this subchapter is to promote the fair and equitable treatment of claimants by defining certain minimum standards for the settlement of claims which, if violated with such frequency as to indicate a general business practice, would constitute unfair claims settlement practices in the business of insurance.

### 11:2-17.2 Scope

This subchapter applies to all persons and all policies except the following: ocean marine, fidelity and surety, boiler and machinery and workers' compensation. It shall also not apply to commercial property and liability policies for which the annual premium is more than \$10,000 and where the claim is made by the commercial insured. This subchapter is not exclusive, and other acts, not herein specified, may also be found to constitute unfair claims settlement practices. This subchapter is not intended to supersede any other rule or regulation.

### 11:2-17.3 Definitions

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

"After market part" means sheet metal or plastic parts which constitute the exterior of an automobile, including inner and outer panels, manufactured by any manufacturer other than the original manufacturer of the part. Examples of after market parts include, but are not limited to, the following: doors, hoods, fenders, trunk lids, grills and bumper components.

"Catastrophe" means a calamity or other disastrous event that causes widespread losses resulting in excessive claims volume.

"Claimant" means either a first party claimant, a third party claimant, or both and includes such claimant's designated legal representative and includes a member of the claimant's immediate family designated by the claimant.

"Claims settlement" means all the activities of an insurer relating directly or indirectly to the determination of the extent of liabilities due or potentially due under coverages afforded by the policy, and which result in a claim payment or acceptance, compromise or rejection.

"First party claimant" means an individual, corporation, association, partnership, or other legal entity asserting a right to payment under an insurance policy or insurance contract arising out of the occurrence of the contingency or less covered by such policy or contract.

"Insurer" means any person, corporation, association, partnership, company, fraternal benefit society, eligible unauthorized surplus lines insurer and any other legal entity engaged as an indemnitor or contractor in the business of insurance. For the purposes of this subchapter, "insurer" shall include any individual, corporation, association, partnership or other legal entity authorized to represent an insurer with respect to a claim.

“Investigation” means all activities of an insurer related directly or indirectly to the determination of liabilities under coverages afforded by an insurance policy.

“Notification of claim” means any notification, whether in writing or other means acceptable under the terms of an insurance policy or insurance contract, to an insurer or its agent, by a claimant, which reasonably apprises the insurer of the facts pertinent to a claim.

“Pertinent communication” means all correspondence as well as conversations or other forms of communication that are materially related to the handling of a claim.

“Policy” means any contract of insurance and includes, but is not limited to, all policies, contracts, certificates, riders and endorsements which provide insurance coverage.

“Proof of loss” means the necessary documentation required from a claimant to establish entitlement to payment or benefits under a policy.

“Third party claimant” means any individual, corporation, association, partnership or other legal entity asserting a claim against any individual, corporation, association, partnership or other legal entity insured under an insurance policy or insurance contract of an insurer.

“Workers’ compensation” includes, but is not limited to, Longshoreman’s and Harbor Workers’ Compensation.

Amended by R.1988 d.480, effective October 17, 1988.

See: 20 N.J.R. 1159(a), 20 N.J.R. 2578(a).

Added definition “after market part”.

Petition for Rulemaking.

See: 25 N.J.R. 6065(a).

#### **11:2-17.4 Miscellaneous rules**

(a) Every insurer shall distribute copies of this subchapter to every person directly responsible for the handling and settlement of claims subject to this subchapter. Every insurer shall satisfy itself that all such responsible persons are thoroughly conversant with and are complying with this subchapter.

(b) All correspondence to a claimant required of an insurer pursuant to this subchapter shall be written in easy to read and understandable terms. This subsection shall not apply to correspondence to a claimant’s legal representative.

#### **11:2-17.5 Misrepresentation of policy provisions**

(a) No insurer shall fail to fully disclose to first party claimants all pertinent benefits, coverages or other provisions of an insurance policy or insurance contract under which a claim is presented.

(b) No agent, broker, or insurer shall conceal from first party claimants benefits, coverages or other provisions of any insurance policy or insurance contract when such benefits, coverages or other provisions are pertinent to a claim.

(c) No insurer shall, except where there is a time limit specified in the policy, make statements, written or otherwise, requiring a claimant to give written notice of loss or proof of loss within a specified time limit and which seek to relieve the company of its obligations if such time limit is not complied with unless the failure to comply with such time limit prejudices the insurer's rights.

(d) No insurer shall request a claimant to sign a release that extends beyond the subject matter that gave rise to the claim payment.

(e) No insurer shall issue checks or drafts in partial settlement of a loss or claim using language which releases the insurer or its insured from its total liability.

#### 11:2-17.6 Rules for replying to pertinent communications

(a) All claims must be reported to the designated insurer by a broker no later than three working days following receipt of notification of claim by the broker. For the purposes of this subsection, "broker" shall include a producer of record with respect to any residual market mechanism created by statute.

(b) Every insurer, upon receiving notification of claim shall, within 10 working days, acknowledge receipt of such notice unless payment is made within such period of time. This acknowledgement shall include the address and telephone number of the insurer claims office or authorized claims representative which will handle the claim. Notification given to an agent of an insurer shall be considered notice to the insurer.

(c) Every insurer, upon receiving notification of claim, shall promptly provide first party claimants with necessary claim forms, instructions, and reasonable assistance so that such claimants can comply with the policy conditions and the insurer's reasonable requirements. Compliance with this subsection (c) within 10 working days of notification of a claim shall constitute compliance with (b) above.

(d) Every insurer, upon receipt of any inquiry from the Insurance Department respecting a claim shall, within 15 working days of receipt of such inquiry furnish the Department with, based on the information available to the insurer, a complete and accurate written response to the inquiry.

(e) An appropriate reply shall be made within 10 working days on all other pertinent communications from a claimant which reasonably suggest that a response is expected.

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

Deleted references to "New Jersey Automobile Insurance Plan and the New Jersey Insurance Underwriting Association".

#### 11:2-17.7 Rules for prompt investigation and settlement of claims

(a) Every insurer shall commence an investigation on all claims other than auto physical damage within 10 working days of receipt of notification of claim.

(b) The maximum payment period for all personal injury protection (PIP) claims shall be 60 calendar days after the insurer is furnished written notice of the fact of a covered loss and of the amount of same; provided, however, that an insurer may secure a 45-day extension in accordance with N.J.S.A. 39:6A-5.

(c) Unless a clear justification exists, or unless otherwise provided by law, the maximum payment periods for property/liability claims shall be as follows:

1. For all first party claims other than personal injury protection (PIP) and auto physical damage (see N.J.A.C. 11:3-10.5(a)), 30 calendar days from receipt by the insurer of properly executed proofs of loss.

2. For all third party property damage claims, 45 calendar days from receipt by the insurer of notification of claim.

3. For all third party bodily injury claims, 90 calendar days from receipt by the insurer of notification of claim.

(d) Unless a clear justification exists, or unless otherwise provided by the policy, all life insurance claims shall be paid within a maximum payment period of 30 calendar days. The payment period is defined as the period between the date proof of loss is received by the insurer and the date of claims settlement.

(e) Except as provided in (e)1 below, all health insurance claims shall be paid no later than 60 calendar days after the insurer receives written notice of the claim.

1. The maximum payment period for health insurance claims may be extended under the following circumstances:

i. The health insurer contests a claim, and the insurer sends written notice of such fact to the insured or insured's assignee within 45 calendar days of the insurer's receipt of the claim. The notice that a claim is contested shall identify the contested portion of the claim and the reasons for contesting the claim. If only a portion of a claim is contested, the insurer shall remit payment for the uncontested portion in accordance with (e) above; or

ii. The health insurer requests additional information from the insured concerning a claim that the insurer is contesting. After the insurer receives the additional information requested, the insurer shall either pay or deny the claim within 90 calendar days of the insurer's receipt of the additional information.

2. Payment of a health insurance claim shall be considered to have been made either:

- i. On the date a draft or other valid instrument equivalent to payment was placed in the United States mail in a properly addressed, postpaid envelope; or
- ii. If not posted pursuant to (e)2i above, on the date of delivery of a draft or other valid instrument equivalent to payment.

3. If the health insurer fails to make payment on a claim within the time limits set forth in this subsection, the insurer shall pay simple interest on the amount of the overdue payment at the rate of 10 percent per year.

(f) If the insurer is unable to settle the claim within the time periods specified in (c) through (e) above, the insurer must send the claimant written notice by the end of the payment periods specified in (c) through (e) above. The written notice must state the reasons additional time is needed, and must include the address of the office responsible for handling the claim and the insured's policy number and claim number. This notice shall also include a telephone number which is toll free, or which can be called collect, or which is within the claimant's area code. This number shall provide direct access to the responsible claims office or shall enable the claimant to gain such access at no greater expense than the cost of a telephone call within his or her area code. An updated written notice setting forth the reasons additional time is needed shall be sent within 45 days after the initial notice and within every 45 days thereafter until all elements of the claim are either honored or rejected. The written notifications required under this subsection shall not continue to apply to that aspect of a claim for which the claimant has become represented by an attorney, as evidenced by a letter of representation.

(g) Unless otherwise provided by law, every insurer shall pay any amount finally agreed upon in settlement of all or part of any claim not later than 10 working days from either the receipt of such agreement by the insurer or the date of the performance by the claimant of any conditions set by such agreement, whichever is later.

(h) Where there is a reasonable basis supported by specific information available for review by the Department of Insurance that the first party claimant has fraudulently caused or contributed to the loss by arson, or other fraudulent schemes, the insurer shall be relieved from the requirements of (c) through (f) above. Provided, however, that the claimant shall be advised of the acceptance or denial of the claim within a reasonable time for full investigation after receipt by the insurer of a properly executed proof of loss.

Amended by R.1982 d.400, effective November 15, 1982.  
See: 14 N.J.R. 966(a), 14 N.J.R. 1307(b).  
Amended by R.1992 d.93, effective February 18, 1992.  
See: 23 N.J.R. 2830(a), 24 N.J.R. 622(a).

Maximum payment period for personal claims specified at (b).  
Amended by R.1992 d.493, effective December 7, 1992.

See: 23 N.J.R. 3196(c), 24 N.J.R. 4391(a).

Subsection (d) added to provide for payment of all health insurance claims within 60 days, with certain exceptions as specified. Petition for Rulemaking.

See: 25 N.J.R. 6065(a).

Amended by R.1996 d.497, effective October 21, 1996.

See: 28 N.J.R. 3703(a), 28 N.J.R. 4585(a).

Petition for Rulemaking: Notice of Receipt of and Action on a Petition for Rulemaking.

See: 28 N.J.R. 5509(a), 29 N.J.R. 264(c), 29 N.J.R. 2188(a), 29 N.J.R. 4722(b).

### 11:2-17.8 Rules for fair and equitable settlements and reasonable explanations applicable to all insurance

(a) No insurer shall deny or offer to compromise a claim because of a policy provision, including any concerning liability, a condition, or an exclusion without providing a specific reference to such language and a statement of the facts which make that language operative.

(b) Any denial or offers of compromise to the claimant shall be confirmed in writing and shall be kept in the appropriate claim file.

(c) In any case where a first party claim is denied or a compromise is offered, the insurer shall notify the first party claimant of any applicable policy provision limiting such claimant's right to sue the insurer.

(d) Insurer shall not fail to settle first party claims on the basis that responsibility for payment should be assumed by others except as may otherwise be provided by law or policy provisions such as Workers' Compensation exclusions, or coordination of benefits provisions.

(e) If a claimant is actively negotiating with an insurer for settlement of a claim, and the claimant's rights may be affected by a statute of limitations or a policy time limit, the insurer shall provide the claimant with written notice that the time limit may be expiring and may affect the claimant's rights. Such notice shall be given to claimants 60 calendar days before the date on which such time limit may expire. This rule shall only apply if the insurer is negotiating a claims settlement with a person who is neither an attorney nor represented by an attorney.

(f) No insurer shall make statements which indicate that the rights of a claimant may be impaired if a form or release is not completed within a given period of time unless the statement is given for the purpose of notifying the claimant of any applicable law or policy provision.

(g) Unless otherwise provided by law, in any case where there is no dispute as to one or more elements of a claim, payment for such element(s) shall be made notwithstanding the existence of disputes as to other elements of the claim where such payment can be made without prejudice to either party.

(h) An insurer shall not compel claimants to institute litigation to recover amounts due under an insurance policy by offering substantially less than amounts recovered in actions brought by such claimants.

(i) No insurer shall deny payment of a claim when it is reasonably clear that either full or partial benefits are payable.

(j) No claim shall be denied or compromised based on an exclusion, reduction or limitation in a policy unless documentation of facts rendering the exclusion, reduction or limitation operative can be obtained. If such documentation is not made a part of the claim file, the insurer shall place in the claim file a written notation explaining how documentation may be obtained.

(k) With respect to first party claims, insurers shall make claim payments by check or draft with a statement setting forth the coverage under which payment is made and in sufficient detail so that first party claimants can reasonably understand the benefits included within the claim payment. The details should include an explanation of how the benefit payment was calculated. This subsection shall not apply to claims in which the claim payment figure was arrived at through negotiations between the insurer and the first party claimant.

(l) If a first party claimant or a third party claimant not represented by an attorney does not submit sufficient information to establish his or her entitlement to the benefits claimed, then the insurer shall provide the claimant with a general description of the information and documentation needed to establish such entitlement.

#### Law Reviews and Journal Commentaries

Proving Bad Faith in Environmental Coverage Actions. Patrick Nucciarone, Jeffrey A. Cohen, Alexa Richman-La Londe, 149 N.J.L.J. 468 (1997).

#### Case Notes

Deviation by insurer from standards imposed by unfair claim settlement practices statute and regulations; evidence of bad faith. *Miglioc v. HCM Claim Management Corp.*, 288 N.J.Super. 331, 672 A.2d 266 (L.1995).

### 11:2-17.9 Rules for fair and equitable settlements applicable to life and health insurance

(a) No insurer shall indicate on a payment draft, check or in any accompanying cover letter that said payment is "final" if additional benefits relating to the claim for which benefits are being paid are payable under the policy.

(b) When it is apparent to the insurer that additional benefits would be payable under a policy upon receipt of additional proofs of loss from the claimant, the insurer shall explain to the claimant in writing or by telephone the additional proofs or information needed to establish entitlement to additional benefits.

(c) No insurer shall undertake any activity that has the effect of coercing the insured to settle a disability claim on a lump sum basis.

(d) No insurer shall pay a claim involving both a covered and noncovered condition on a percentage basis of contributing loss, unless said percentage is reasonable.

(e) Settlement of claims for a fraction of an indemnity period shall be on a pro rata basis unless the policy specifically excludes pro-rata payments.

(f) If it is found that an insured's age is overstated on an individual life or health policy or understated on an annuity, benefits shall be adjusted upward under a policy which contains a misstatement of age provision specified in N.J.S.A. 17B:25-6 and N.J.S.A. 17B:26-18.

(g) No insurer shall request a claimant to sign an agreement which releases the insurer from all future claims under an insurance policy unless no other benefits are payable under it.

(h) Unless otherwise provided by the policy, no insurer may terminate disability benefits based solely on lack of regular medical attendance when the disability has been verified by a physician and can reasonably be expected to continue beyond the date through which benefits have been paid.

(i) No policy shall be rescinded and claim denied for loss incurred during the contestable period based on material misrepresentation by the applicant unless the application is a part of the contract.

(j) No policy shall be rescinded and claim denied for loss incurred during the contestable period based on omission of material information when such information is not specifically requested on the application.

(k) When an application for a life/health policy contains only one medical question or declaration as to general status of the insured's health, such as, "Are you now in good health?", an insurer shall not rescind a policy or deny a claim for loss incurred during the contestable period on the basis of material misrepresentation, if based on the totality of circumstances, the insured responded to the best of his/her knowledge and belief that the general status of his/her health was satisfactory.

Petition for Rulemaking.  
See: 25 N.J.R. 6065(a).

### 11:2-17.10 Rules for fair and equitable settlements applicable to property and liability insurance

(a) This section, unless otherwise noted in this subchapter, is applicable to claims arising under all property/liability coverages. This section is organized so that the requirements for all lines of property/liability insurance are found

in (a)1 through 6 below; for automobile insurance only, in (a)7 through 13 below; and for other than automobile insurance only, in (a)14 and 15 below. The requirements of this section with respect to motor vehicle claims are in addition to the requirements of N.J.A.C. 11:3-10. In addition to the provisions of this section, the requirements for auto physical damage first party claims found in N.J.A.C. 11:3-10.1 through 10.4 shall also be construed to apply to automobile property damage third party claims from the time that liability becomes reasonably clear. The requirements are as follows:

1. Where liability and damages are reasonably clear, insurers shall not recommend that third party claimants make claim under their own policies solely to avoid paying claims under such insurer's policy.
2. When the amount claimed is reduced because of betterment or depreciation, all information and calculations for such deduction shall be contained in the claim file. Such deductions shall be itemized and specified as to dollar amounts and shall be fair and equitable.
3. Unless the question has been specifically negotiated, the insurer remains liable for hidden damage directly related to the loss giving rise to the claim subject to policy terms, conditions and limits.
4. No insurer shall refuse to grant advance payments on a claim primarily because the claimant has retained an attorney for the purpose of facilitating recovery on his/her behalf.
5. No insurer shall deny a claim for failure to exhibit the property without proof of demand and unfounded refusal by a claimant to do so.
6. Unless the insurer is exercising a right under the policy to repair damaged property, it shall not require as a condition to payment of claims that repairs be made by a particular contractor or repair shop.
7. In all automobile physical damage claims, the first party claimant shall be notified at the time of the insurer's acknowledgement of the claim, or sooner if inquiry is made, whether coverage exists for the rental of an automobile subject to policy terms and conditions.
8. When an insurer acknowledges receipt of an automobile property damage liability claim, or sooner if the claimant inquires, it shall inform the claimant whether and to what extent he or she will be entitled, if the insurer's liability later becomes reasonably clear, to payment for the rental of an automobile or other substitute transportation. Such payment will ordinarily be for the rental of an automobile at a reasonable price until the damaged vehicle is repaired or, in the event of a total loss, until the claim is settled. When an insurer uses the doctrine of comparative negligence to determine its responsibility for the cost of substitute transportation, it shall, as soon as is practicable, advise the claimant of the extent of its liability.
9. An insurer shall provide notice to a claimant three working days prior to the termination of payment for automobile storage charges and place a copy of such notice in a claim file.
10. All after market parts manufactured after October 17, 1988 used in the repair of an automobile where insurance proceeds provide the basis of payment therefor shall carry sufficient permanent identification so as to identify the manufacturer thereof. Such identification shall be accessible after installation to the extent possible.
11. No insurer shall require the use of after market parts in the repair of an automobile unless the after market part is warranted by the manufacturer in a reasonable manner as to duration and coverage and at least equal in like kind and quality to replacement parts available from the original manufacturer of the part in terms of fit, quality and performance. Use of after market parts which have been certified by an independent testing laboratory as being of like kind and quality to the original manufactured part will be deemed to be in compliance with the requirements of this paragraph.
12. Insurers specifying the use of after market parts shall pay for any modifications which may become necessary in making the repair.
13. Where the insurer specifies the use of after market parts, the insurer shall disclose to the claimant, in writing, either on the estimate or on a separate document attached to the estimate, the following information, which shall appear in print no smaller than 10 point type:
 

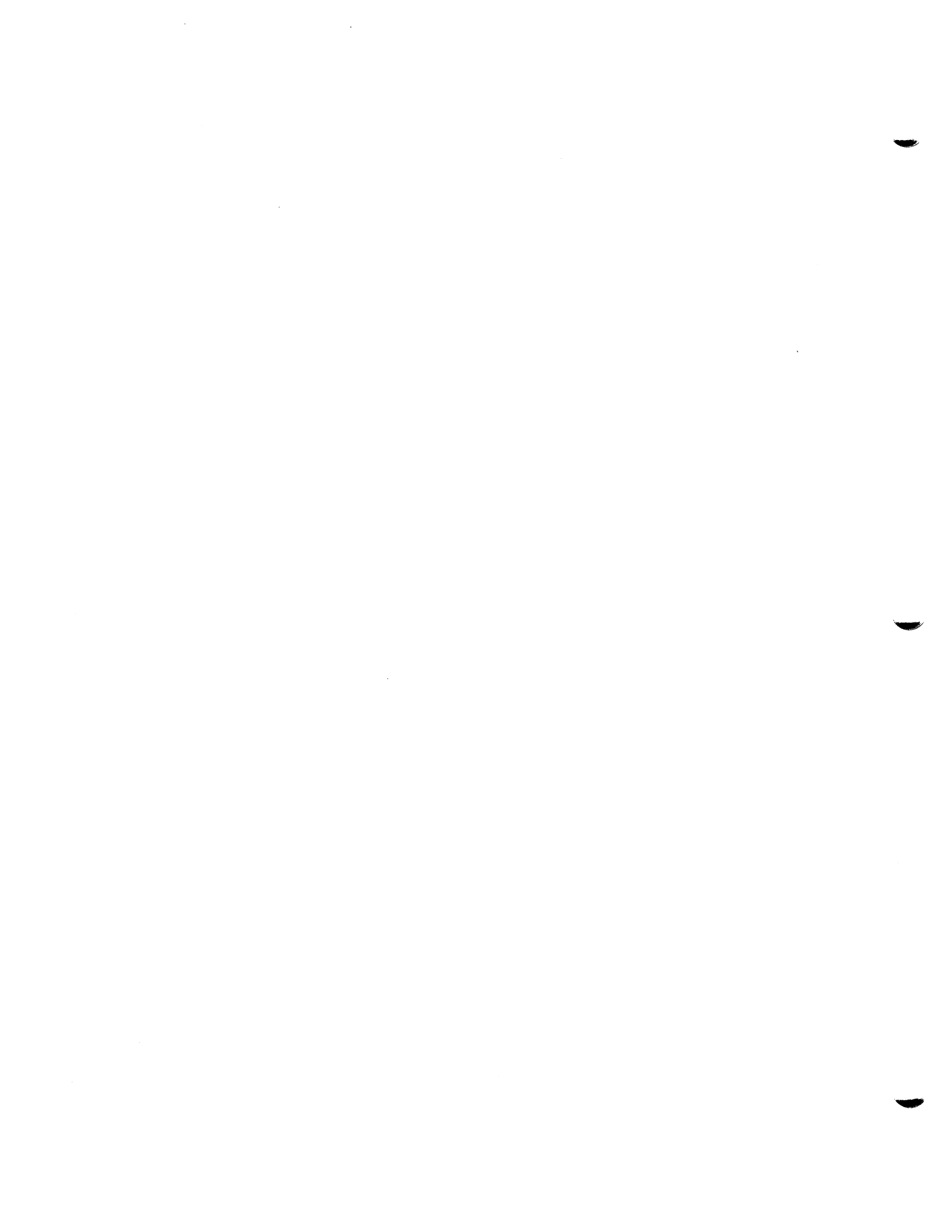
**THIS ESTIMATE HAS BEEN PREPARED BASED ON THE USE OF AUTOMOBILE PARTS NOT MADE BY THE ORIGINAL MANUFACTURER. PARTS USED IN THE REPAIR OF YOUR VEHICLE BY OTHER THAN THE ORIGINAL MANUFACTURER ARE REQUIRED TO BE AT LEAST EQUAL IN LIKE KIND AND QUALITY IN TERMS OF FIT, QUALITY AND PERFORMANCE TO REPLACEMENT PARTS AVAILABLE FROM THE ORIGINAL MANUFACTURER.**

The insurer shall clearly identify on the estimate of such repair all after market parts installed on the vehicle.

14. If the insurer intends to exercise its right to inspect, or cause to be inspected by an independent appraiser, damages prior to repair, it shall have 10 working days following receipt of notification of claim to inspect the claimant's damaged property at a place and time reasonably convenient to the claimant, provided that the claimant has not refused to make the property available for inspection. For third-party property damage claims, this paragraph shall apply once the insured's liability is reasonably clear. This paragraph does not apply to losses caused by a catastrophe.

15. If any loss other than a motor vehicle loss subject to N.J.A.C. 11:3-10 is to be settled on the basis of a written estimate prepared by or for the insurer, the insurer shall supply to the claimant before beginning negotiations a copy of the estimate upon which the settlement is to be based.

i. Such estimate prepared by or for the insurer shall be reasonable, and of an amount which will allow for repairs to be made in accordance with generally accepted standards for safe and proper repairs, subject to policy conditions, such as limits, deductible, depreciation, and prior damage.



ii. If the claimant subsequently claims, based upon a written estimate which he/she obtains, that necessary repairs will exceed the written estimate prepared by or for the insurer, the company shall review the written estimate and respond to the claimant within 10 working days, and may provide or, if requested, must provide the claimant with the name of the repair shop or contractor that will make the repairs in accordance with generally accepted standards for safe and proper repairs.

Amended by R.1988 d.480, effective October 17, 1988.

See: 20 N.J.R. 1159(a), 20 N.J.R. 2578(a).

Added new 10-13; renumbered old 10-11 as 14-15.

Administrative Correction to (a)13.

See: 21 N.J.R. 3666(a).

#### 11:2-17.11 Written notice by insurers of payment of third-party claims

(a) Upon payment of \$5,000 or more in settlement of any third-party liability claim, where the claimant is a natural person, the insurer or its representative (including the insurer's attorney) shall mail to the third-party claimant written notice of payment at the same time payment is made to the third-party claimant's attorney or other representative.

(b) The written notice referred to in (a) above shall be mailed to the claimant by regular mail at the claimant's last known address, and shall include at least the following information:

1. The amount of the payment;
2. The party or parties to whom the check is made payable;
3. The party to whom the check was mailed; and
4. The address of the party to whom the check was mailed.

(c) Nothing in (a) above shall create, or be construed to create, a cause of action for any person or entity, other than the Department of Insurance, against the insurer or its representative based upon a failure to serve such notice, or the defective service of such notice. Nothing in (a) above shall establish, or be construed to establish, a defense for any party to any cause of action based upon a failure by the insurer or its representative to serve such notice, or the defective service of such notice.

New Rule, R.1993 d.681, effective December 20, 1993.

See: 25 N.J.R. 3921(a), 25 N.J.R. 5929(b).

#### Case Notes

Lawyer concentrating in debt collections may, at request of institutional client-creditor, use power of attorney in endorsing client-creditor's name to drafts from debtors without violating ethical rule that lawyer property separate until there is accounting and severance of interests. Matter of Advisory Committee on Professional Ethics Docket No. 22-95, 144 N.J. 590, 677 A.2d 1100 (1996).

#### 11:2-17.12 Examinations

(a) Each insurer's claim files are subject to examination and inspection by the Commissioner or by his duly appointed designees pursuant to N.J.S.A. 17:23-4, 17:29B-5, 17B:21-3 and 17B:30-16.

(b) Detailed documentation and/or evidence shall be contained in each claim file in order to permit the Commissioner or his designated examiners or investigators to reconstruct the company's activities relative to the claims settlement. Such documentation shall include but is not necessarily limited to all investigative reports, payment vouchers, transactions, notices, memoranda and work papers. With respect to automobile damage claims, file documentation also shall include the name, address, telephone number and license number of any auto body repair facility that has been utilized by the insurer in the adjustment of the loss or repair of the automobile. All such documentation shall be properly dated and, for investigative reports, notes, memoranda and work papers, the parties preparing such documents shall be identified.

(c) Every insurer shall maintain records of all pertinent communications relating to a claim. The records must identify the date of the communication and the parties, and describe the substance of the communication.

Amended by R.1987 d.249, effective June 15, 1987.

See: 18 N.J.R. 2415(a), 19 N.J.R. 1096(a).

Inserted new text in (b) "With respect to . . . of the automobile."

Recodified from 11:2-17.11 by R.1993 d.681, effective December 20, 1993.

See: 25 N.J.R. 3921(a), 25 N.J.R. 5929(b).

#### 11:2-17.13 Special claims reports

(a) If the Department of Insurance observes that an insurer's claims settlement practices are not meeting the standards established by statute or by this subchapter, the Department may require such insurer to file periodic reports. Depending on the nature and extent of an insurer's deviations from such standards and with due consideration of the insurer's data capabilities, the Commissioner in his discretion may require the report to include some or all of the statistics listed below:

1. The total number of claims submitted;
2. The original amount claimed;
3. The classification by line or insurance of each individual claim;
4. The total number of claims denied;
5. The total number of claims paid;
6. The total number of claims compromised;
7. The amount of each settlement;
8. The total number of claims for which lawsuits are instituted against the insurer, the reason for the lawsuit, and the amount of the final adjudication; and
9. An individual listing showing the disposition and other information for each claim.

Recodified from 11:2-17.12 by R.1993 d.681, effective December 20, 1993.  
See: 25 N.J.R. 3921(a), 25 N.J.R. 5929(b).

#### 11:2-17.14 Separability

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

Recodified from 11:2-17.13 by R.1993 d.681, effective December 20, 1993.  
See: 25 N.J.R. 3921(a), 25 N.J.R. 5929(b).

#### 11:2-17.15 Penalties

(a) If, after notice and hearing, the Commissioner finds that a person has violated this subchapter, he shall make his findings in writing and shall issue and cause to be served upon the person charged with the violation an order requiring such person to cease and desist from engaging in such violation. The Commissioner may order payment of a penalty not to exceed \$1,000 for each and every violation unless the person knew or reasonably should have known he was in violation of this subchapter, in which case the penalty shall not be more than \$5,000 for every violation. The Commissioner shall collect the penalty in the name of the State in a summary proceeding in accordance with "the penalty enforcement law" (N.J.S.A. 2A:58-1 et seq.).

(b) Any person who violates a cease and desist order of the Commissioner under (a) above, after it has become final, and while such order is in effect, shall be liable to a penalty not exceeding \$5,000 for each violation, which may be recovered in a civil action. In determining the amount of the penalty the question of whether the violation was willful shall be taken into consideration.

(c) The penalties provided herein shall be in addition to any other penalties authorized by law.

Repeal and New Rule, R.1987 d.249, effective June 15, 1987.  
See: 18 N.J.R. 2415(a), 19 N.J.R. 1096(a).  
Petition for Rulemaking.  
See: 25 N.J.R. 6065(a).

Recodified from 11:2-17.14 by R.1993 d.681, effective December 20, 1993.  
See: 25 N.J.R. 3921(a), 25 N.J.R. 5929(b).

### SUBCHAPTER 18. READABLE POLICIES

#### 11:2-18.1 Purpose

The Plain Language Law (N.J.S.A. 56:12-1 et seq., as amended) requires certain insurance policies to be written in a "simple, clear, understandable and easily readable way." N.J.S.A. 39:6A-23 requires that each buyer's guide and coverage selection form required by that section to be issued to insureds and prospective insureds for automobile insurance be written in plain language. This subchapter provides rules for the implementation of these provisions.

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

Added statutory cite and requirements for buyer's guide and coverage selection form.

#### 11:2-18.2 Scope

(a) This subchapter applies to all insurance policies which are issued to individuals to provide coverage for personal, family, or household purposes except life, health and annuity policies defined in N.J.S.A. 17B:17-19a, the "Life and Health Policy Language Simplification Act." Examples of coverage for personal, family or household purposes are:

1. Policies used solely to provide homeowners insurance, dwelling fire insurance on one to four family units, or individual fire insurance on dwelling contents;
2. Policies principally used to provide primary insurance on private passenger automobiles which are individually owned and used for personal or family needs; and
3. Policies of personal inland marine, personal theft, residence glass, and personal liability insurance.

(b) Coverage for personal, family or household purposes does not include policies or contracts of commercial lines insurance subject to N.J.S.A. 17:29AA-1 et seq. and N.J.A.C. 11:13.

(c) This subchapter does not supersede any other law, regulation or filing procedure.

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

#### 11:2-18.3 Definitions

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

"Buyer's Guide" means part of a written notice required to be given to insureds and prospective insureds for automobile insurance, pursuant to N.J.S.A. 39:6A-23, which provides a brief description of all available policy coverages and benefit limits, identifies which coverages are optional and mandatory, and identifies all options offered by the insurer.

"Commissioner" means the Commissioner of Insurance.

"Coverage Selection Form" means part of a written notice required to be given to insureds and prospective insureds for automobile insurance, pursuant to N.J.S.A. 39:6A-23, which provides information required by the Commissioner pursuant to N.J.A.C. 11:3-15.7.

"Insurer" means any person, corporation, company, association, partnership, title insurance company, eligible authorized surplus lines insurer, or any other legal entity issuing a contract of insurance subject to this subchapter. In this subchapter, "insurer" also includes rating organizations.

“Policy” means any contract of insurance subject to this subchapter and includes, but is not limited to, all policies, contracts, certificates, riders and endorsements that provide insurance coverage to individuals. “Policy” also includes applications to be signed by the applicant and all other writings required to complete the insurance transaction.

“Text” means all printed matter in a policy, except the name and address of the insurer; the name, number and title of the policy; the table of contents or index, captions or subcaptions; applications; specification or declarations pages; and schedules or tables. “Text” does not include the Coverage Selection Form or specific language required, permitted or approved by a law, regulation, rule or published interpretation of a State or Federal agency.

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

Added definitions for “Buyer’s Guide” and “coverage selection form”; modified “text”.

#### 11:2-18.4 Minimum readability standards

(a) The Plain Language Law provides, at N.J.S.A. 56:12-10, certain “examples of guidelines” that the Commissioner may consider in determining whether a contract complies with the Act. The readability standards in this section are in addition to the standards enumerated in the Act.

(b) A policy, Buyer’s Guide and Coverage Selection Form shall be printed in legible type style with adequate contract between paper and ink. Captions, headings and spacing shall be used to increase overall readability.

(c) A policy and Buyer’s Guide shall be printed in not less than 10 point type, one point leading. This rule shall not apply to schedules and tables; specification or declaration pages; or applications.

(d) Applications to be signed by the applicant shall be printed in not less than 8 point type, one point leading. Provided, however, that conditions or exceptions to the main promise of the agreement contained in an application shall be printed in at least 10 point type. (See N.J.S.A. 56:12b.(1).)

1. The 8 point type, one point leading standard set forth in (d) above shall become operative on July 1, 1983.

(e) Policies and Buyer’s Guides with 3,000 or more words, or with four or more pages, shall contain a table of contents or alphabetical index.

(f) The style, arrangement and overall appearance of the policy shall give no undue prominence to any portion of the text or to any endorsements or riders.

(g) Each section of a policy, Buyer’s Guide and Coverage Selection Form shall be self-contained and independent.

However, general provisions applicable to more than one section may be included in a common section.

(h) Policies shall contain only essential provisions.

(i) Policies, the Buyer’s Guide and the Coverage Selection Form shall be written in everyday, conversational language with a personal style, and technical terms or words with a special meaning shall be avoided wherever possible.

(j) The text of a policy and Buyer’s Guide shall achieve a score of at least 40 on the Flesch reading ease test or an equivalent score on a comparable test authorized for use by the Commissioner.

1. For the purpose of this subsection, a Flesch reading ease test score shall be measured by the following method:

i. For policy forms and Buyer’s Guides containing 10,000 words or less of text, the entire form shall be analyzed. For policy forms and Buyer’s Guides containing more than 10,000 words, the readability of two 200 word samples per page may be analyzed instead of the entire form. The samples shall be separated by at least 20 printed lines.

ii. The number of words and sentences in the text or sample shall be counted and the total number of words divided by the total number of sentences. The figure obtained shall be multiplied by a factor of 1.015.

iii. The total number of syllables shall be counted and divided by the total number of words. The figure obtained shall be multiplied by a factor of 84.6.

iv. The sum of the figures computed under ii and iii above subtracted from 206.835 equals the Flesch reading ease score for the policy form or Buyer’s Guide.

v. In measuring the Flesch test score, the following special rules shall be observed when counting syllables, words and sentences:

(1) A syllable means a unit of spoken language consisting of one or more letters of a word as divided by an accepted dictionary. Where the dictionary shows two or more equally acceptable pronunciations of a word, the pronunciation containing fewer syllables shall be used;

(2) A contraction, hyphenated word, or numbers and letters, when separated by spaces, shall be counted as one word; and

(3) A unit of words ending with a period, semicolon, or colon, but excluding headings and captions, shall be counted as a sentence.

2. At the option of the insurer, riders, endorsements, and other forms made a part of the policy may be scored as separate forms or as part of the policy.

3. A score lower than 40 on a Flesch reading ease test may be permitted whenever the Commissioner finds a lower score is warranted by the nature of a particular policy form or type or class of policy forms.

As amended, R.1982 d.410, effective November 15, 1982.

See: 14 N.J.R. 967(a), 14 N.J.R. 1307(c), 14 N.J.R. 1398(b).

(c) deleted "not required . . . the applicant."

(d) added. Old (d) through (i) changed to (e) through (j).

Amended by R.1991 d.4, effective January 7, 1991.

See: 22 N.J.R. 1673(a), 23 N.J.R. 103(a).

Added references throughout to Buyer's Guide and Coverage Selection Form.

### 11:2-18.5 Procedures for requesting an opinion of compliance with the Plain Language Law

(a) An insurer may request an opinion from the Commissioner as to whether an insurance policy and related "writings required to complete the consumer transaction", a Buyer's Guide and a Coverage Selection Form are in compliance with the Plain Language Law. The Commissioner shall consider the Law's provisions and the implementing provisions of this subchapter in responding to such requests.

(b) For each policy form and related writings, Buyer's Guide and Coverage Selection Form for which an opinion is desired, an insurer shall prepare the Request for Opinion shown in Exhibit A of the Appendix to this subchapter. For related writings (including riders and endorsements) submitted separately from a basic contract to which they will apply, one Request for Opinion Form shall be prepared for each writing or group of writings applicable to one policy form. The insurer shall also provide two copies (where possible, "specimen" or "proof" copies) of the policy and related writings, Buyer's Guide and Coverage Selection Form to be reviewed.

(c) An officer of the insurer shall complete and submit the Affidavit of Compliance shown in Exhibit B of the Appendix to this subchapter for each policy and related writings, or for each separately submitted writing or group of writings applicable to one policy form. An officer of a rating organization which requests an opinion as to compliance may complete and sign the affidavit on behalf of the member companies of the rating organizations.

(d) An opinion as to compliance should not be requested for a policy form to be issued on a nationwide basis unless the policy form will be issued in New Jersey.

(e) Pursuant to N.J.S.A. 56:12-5, an insurer need not request an opinion as to compliance with the Plain Language Law for policy forms identical to those which have already been certified for some other insurer or rating organization.

(f) Any insurance policy, Buyer's Guide and Coverage Selection Form whose language is revised for any reason, including compliance with the Plain Language Law, must be approved by the Commissioner pursuant to insurance laws and regulations before it can be issued:

1. The Commissioner's opinion as to compliance with the Plain Language Law is distinct from his or her approval of a policy, Buyer's Guide and Coverage Selection Form pursuant to insurance laws and regulations.

2. Filings for review and approval of policies, Buyer's Guides and Coverage Selection Forms pursuant to insurance laws and regulations should be prepared in accordance with existing filing procedures.

3. Ordinarily, a request for an opinion as to a policy's, Buyer's Guide's or Coverage Selection Form's compliance with the Plain Language Law and a filing for approval pursuant to insurance laws and regulations should be submitted to the Commissioner at the same time and in the same package.

4. If an insurer has already received approval of a policy, Buyer's Guide and Coverage Selection Form pursuant to insurance laws and regulations, and believes that the policy, Buyer's Guide and Coverage Selection Form complies with the Plain Language Law without further revision, it may resubmit it for the sole purpose of requesting an opinion as to compliance with the Plain Language Law. In completing the Request for Opinion Form (Exhibit A), an insurer should provide information necessary to confirm the previous approval of the policy, Buyer's Guide and Coverage Selection Form pursuant to insurance laws and regulations.

Amended by R.1991 d.4, effective January 7, 1991.

See: 22 N.J.R. 1673(a), 23 N.J.R. 103(a).

Added references to Buyer's Guide and Coverage Selection Form.

#### Case Notes

Homeowners' policy did not have to be submitted to commissioner for approval; insurer used approved policy form that had received plain language certification. *Bromfeld v. Harleysville Ins. Companies*, 298 N.J.Super. 62, 688 A.2d 1114 (A.D.1997).

### 11:2-18.6 Enforcement

The Commissioner may seek injunctive relief to enforce this subchapter. The court may authorize reasonable attorney's fees and costs in such a proceeding.

### 11:2-18.7 Separability

If any provision of this subchapter, or its application to any person or circumstances, is held invalid, the remainder of this subchapter and its application to other persons or circumstances shall be affected.

## APPENDIX

### EXHIBIT A

#### REQUEST FOR OPINION AS TO COMPLIANCE WITH PLAIN LANGUAGE LAW

(N.J.S.A. 56:12-1 et seq., as amended)

NAME OF INSURER: \_\_\_\_\_ FORM NUMBER: \_\_\_\_\_  
 ADDRESS: \_\_\_\_\_ DATE OF SUBMITTAL: \_\_\_\_\_  
 TELEPHONE: \_\_\_\_\_

**I. PURPOSE OF SUBMISSION**

1. Is an opinion as to whether the form, Buyer's Guide or Coverage Selection Form complies with the Plain Language Law being requested pursuant to N.J.S.A. 56:12-8?

YES NO

2. Is filing and approval pursuant to insurance laws and regulations by the Department of Insurance also being requested?

YES NO

Note: Filings for approval of policies pursuant to insurance laws and regulations should be prepared in accordance with the Department's existing procedures. Requests for readability certification should include Exhibits A and B; two copies of the policy (including related writings), Buyer's Guide or Coverage Selection Form to be reviewed; and any appropriate attachments.

3. If the form, Buyer's Guide or Coverage Selection Form you are submitting has already been approved by the Department of Insurance pursuant to insurance laws and regulations, please indicate the following information:

DEPARTMENT FILE NUMBER: \_\_\_\_\_

DATE OF DEPARTMENT OF INSURANCE APPROVAL: \_\_\_\_\_

II. REFERENCE TO OTHER FORMS

Pursuant to N.J.S.A. 56:12-5, an insurer need not request an opinion as to compliance with the Plain Language Law for policy forms identical to those which have already been certified for some other insurers or rating organization or if, in the case of a Buyer's Guide and Coverage Selection Form, the language does not differ from N.J.A.C. 11:3-15.6 or N.J.A.C. 11:3-15.7.

1. If a policy, Buyer's Guide or Coverage Selection Form, is similar but not identical to a previously certified policy, Buyer's Guide or Coverage Selection Form, please identify the previously certified policy, Buyer's Guide or Coverage Selection Form, as specifically as possible. Include the following information if available.

FILER: \_\_\_\_\_

FORM NUMBER: \_\_\_\_\_

DEPARTMENT FILING NUMBER: \_\_\_\_\_

DATE OF CERTIFICATION: \_\_\_\_\_

2. Indicate how the material now submitted for review differs from the previously certified materials by the use of brackets for deleted material and underlining for new material.

III. FLESCH READING EASE TEST

1. Identify any language not considered "text" as defined in N.J.A.C. 11:2-18.3 of the regulation on policy readability. This language may be identified by reference to the policy section numbers.

2. If any of the language identified in item 1 is required, permitted or approved by a law, regulation, rule or published interpretation of a State or Federal agency, identifying both the language and the law, rule or interpretation.

3. If the text of the policy or Buyer's Guide does not score at least 40 on the Flesch reading ease test, provide an explanation to enable the Commissioner to determine whether the lower score is warranted by the nature of the policy form (N.J.A.C. 11:2-18.4(i)3 of the regulation). A lower score will be accepted only in exceptional circumstances.

\_\_\_\_\_  
Name and Title of Person  
Completing Form

\_\_\_\_\_  
Signature

Amended by R.1991 d.4, effective January 7, 1991.  
See: 22 N.J.R. 1673(a), 23 N.J.R. 103(a).  
Recodified as an appendix to Subchapter 18.

EXHIBIT B  
AFFIDAVIT OF COMPLIANCE

NAME OF INSURER: \_\_\_\_\_ FORM NUMBER: \_\_\_\_\_

I certify that this contract and related writings comply with the Plain Language Law (N.J.S.A. 56:12-1 et seq.) and with N.J.A.C. 11:2-18.

I certify that the score of the text of the form on the Flesch reading ease test is \_\_\_\_\_ and that the test score has been accurately calculated as required by N.J.A.C. 11:2-18.

I also certify that the form(s) or Buyer's Guide is printed in not less than 10 point type, one point leading and/or the application is not less than 8 point type, one point leading as required by N.J.A.C. 11:2-18.4 and N.J.A.C. 11:3-15.6.

I also certify that any Coverage Selection Form submitted is not less than 12 point type, as required by N.J.A.C. 11:3-15.7.

Date: \_\_\_\_\_

\_\_\_\_\_  
Name and Title of Insurer's  
Officer

\_\_\_\_\_  
Signature

Amended by R.1984 d.514, effective November 5, 1984.  
See: 16 N.J.R. 1945(a), 16 N.J.R. 3037(a).  
Added "I also certify . . . N.J.A.C. 11:2-18.4."  
Amended by R.1991 d.4, effective January 7, 1991.

See: 22 N.J.R. 1673(a), 23 N.J.R. 103(a).  
Recodified as an appendix to Subchapter 18.

SUBCHAPTERS 19 THROUGH 22. (RESERVED)

SUBCHAPTER 23. ADVERTISEMENT OF LIFE INSURANCE AND ANNUITIES

11:2-23.1 Purpose

The purpose of this subchapter is to implement N.J.S.A. 17B:30-1 et seq. through guidelines intended to assure a full and truthful disclosure to the public of all material and relevant information in the advertising of life insurance policies and annuity contracts.

11:2-23.2 Applicability

(a) This subchapter shall apply to any life insurance or annuity advertisement distributed in this State.

(b) Every insurer shall establish and at all times maintain a system of control over the content, form and method of dissemination of all advertisements of its policies. All such advertisements, regardless of by whom written, created, designed, or presented, shall be the responsibility of the insurer.

(c) This subchapter shall also apply to agents and brokers to the extent that they are responsible for the advertisements of any policy.

11:2-23.3 Definitions

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

“Advertisement” means material designed to create public interest in life insurance or annuities or in an insurer, or to induce the public to purchase, increase, modify, reinstate or retain a policy, and for the purpose of this subchapter, includes:

1. Printed and published material, audiovisual material, and descriptive literature of an insurer used in direct mail, newspapers, magazines, radio and television scripts, billboards and similar displays;
2. Descriptive literature and sales aids of all kinds issued by an insurer or agent, including but not limited to circulars, leaflets, booklets, depictions, illustrations, and form letters;

3. Material used for the recruitment, training and education of an insurer’s sales personnel, agents, solicitors, and brokers which is designed to be used or is used to induce the public to purchase, increase, modify, reinstate, or retain a policy; or

4. Prepared sales talks, presentations, and material for use by sales personnel, agents, solicitors, and brokers.

“Advertisement” for the purpose of this subchapter shall not mean:

1. Communications or materials used within an insurer’s own organization and not intended for dissemination to the public;
2. Communications with policyholders other than material urging policyholders to purchase, increase, modify, reinstate, or retain a policy;
3. A general announcement from a group or blanket policyholder to eligible individuals who are currently employees or members of the group that a policy or program has been written or arranged; provided that the announcement clearly indicates that it is preliminary to the issuance of a booklet explaining the proposed coverage; or
4. Any disclosure required under any rules currently in force or subsequently adopted in New Jersey governing specific aspects of the sale or replacement of life insurance including, but not limited to, rules dealing with life insurance cost comparison indices, deceptive practices in the sale of life insurance, replacement of life insurance policies, and rules concerning annuities and deposit funds.

“Endorsement” means any appraisal, analysis, testimonial or other public statement describing or expressing approval of any insurance product or the terms, benefits or any other aspect of any insurance product.

“Insurer” shall include any individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyd’s, fraternal benefit society, and any other legal entity which is defined as an “Insurer” in the insurance laws of this State or which issues life insurance or annuities in this State and is engaged in the advertisement of a policy.

“Person” means any individual, insurer, company, association, organization, society, partnership, syndicate, trust, corporation and every legal entity.

“Policy” shall include any policy, plan, certificate, contract, agreement, statement of coverage, rider, or endorsement which provides for life insurance or annuity benefits.

Amended by R.1989 d.391, effective July 17, 1989.  
See: 21 N.J.R. 970(a), 21 N.J.R. 2039(a), 21 N.J.R. 2289(c).  
Definitions of “endorsement” and “person” added.

**11:2-23.4 Form and content of advertisements in general**

(a) Advertisements shall be truthful and not misleading in fact or by implication. Words or phrases the meaning of which is clear only by implication or by familiarity with insurance terminology shall not be used. The form and content of an advertisement of a policy shall be sufficiently complete and clear so as to avoid deception. The advertisement shall not have the capacity or tendency to mislead or deceive.

(b) Whether an advertisement has the capacity or tendency to mislead or deceive shall be determined by the Commissioner of Insurance from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

(c) No advertisement shall use the terms "investment," "investment plan," "founder's plan," "charter plan," "savings," "savings plan," or other similar terms in connection with a policy when they have the tendency to mislead a purchaser or prospective purchaser into believing that he will receive something other than a policy or some benefit not available to other persons of the same class and equal expectation of life.

(d) The fact that the policy offered is made available to a prospective insured prior to consummation of the sale or that an offer is made to refund the premium if the purchaser is not satisfied does not remedy misleading statements.

**11:2-23.5 Disclosure requirements**

(a) All information required to be disclosed by this subchapter shall be set out conspicuously and in close conjunction with the statements to which such information relates or under appropriate captions of such prominence that it shall not be minimized, rendered obscure, or presented in an ambiguous fashion, or intermingled with the context of the advertisements so as to be confusing or misleading.

(b) No advertisement shall omit material information or use words, phrases, statements, references, or illustrations if such omission or such use has the capacity, tendency, or effect of misleading or deceiving purchasers or prospective purchasers as to the nature or extent of any policy benefit payable, loss covered, premium payable, or State or Federal tax consequences.

(c) An advertisement for a policy containing graded or modified benefits shall prominently display any limitation of benefits. If the premium is level and coverage decreases or increases with age or duration, such fact shall be prominently disclosed.

(d) An advertisement for a policy with non-level premiums shall prominently describe the premium changes.

(e) Advertisements referring to dividends must comply with the following requirements:

1. An advertisement shall not utilize or describe dividends in a manner which is misleading or has the capacity or tendency to mislead;

2. An advertisement shall not state or imply that the payment or amount of dividends is guaranteed. If dividends are illustrated, they must be based on the insurer's current dividend scale and the illustration must contain a statement to the effect that they are not to be construed as guarantees or estimates of dividends to be paid in the future; and

3. An advertisement shall not state or imply that illustrated dividends under a participating policy and/or pure endowments will be or can be sufficient at any future time to assure, without the further payment of premiums, the receipt of benefits, such as a paid-up policy, unless the advertisement clearly and precisely explains:

i. What benefits or coverage would be provided at such time; and

ii. Under what conditions this would occur.

(f) An advertisement shall not state a purchaser of a policy will share in or receive a stated percentage or portion of the earnings on the general assets of the company.

(g) In the event an advertisement uses "Non-Medical," "No-Medical Examination Required," or similar terms where issuance of a policy is not guaranteed, such terms shall be accompanied by further disclosure of equal prominence and in juxtaposition thereto to the effect that issuance of the policy may depend upon the answers to the health questions.

(h) An advertisement shall not use as the name or title of a life insurance policy any phrase which does not include the words "life insurance" unless accompanied by other language clearly indicating that it is life insurance.

(i) An advertisement shall prominently describe the type of policy advertised, such as group, term, whole life, etc.

(j) An advertisement of an insurance policy marketed by direct response techniques, such as direct mail or toll-free telephone, shall not state or imply that because there is no agent or commission involved there will be a cost saving to prospective purchasers unless such is the fact. No such cost savings may be stated or implied without justification satisfactory to the Commissioner of Insurance. Such justification must be available to the Commissioner upon request.

(k) Endorsements by third parties must comply with the following requirements:

1. Endorsements used in advertisements shall be genuine, represent the current opinion of the author, be applicable to the policy advertised and be accurately

reproduced. The insurer, in using an endorsement, adopts as its own all of the statements contained therein, and the advertisement, including such statements, shall be subject to all of the provisions of this subchapter.

2. A person shall be a "spokesperson" if either his or her image, voice or words are used in making an endorsement and if the person:

i. Has a financial interest in the insurer or a related entity as a stockholder, director, officer, employee or otherwise;

ii. Is an entity formed by the insurer, or is owned or controlled by the insurer, its employees, or the person or persons who own or control the insurer;

iii. Is in a policymaking position and is affiliated with the insurer in any of the capacities in (k)2i and ii above; or

iv. Is in any way directly or indirectly compensated for making the endorsement.

3. Any person acting as a spokesperson as defined in (k)2 above, who acts as or holds himself or herself out to be an insurance producer as defined at N.J.S.A. 17:22A, and who is required to have a license pursuant to N.J.S.A. 17:22A-3, shall be considered to be an insurance producer and shall be required to be licensed pursuant to and shall submit to the requirements of N.J.S.A. 17:22A-1 et seq. and any implementing rules.

4. Where, pursuant to (k)3 above, a spokesperson required to be licensed as an insurance producer is not licensed as an insurance producer, the advertisement shall include, in the manner prescribed by (k)5 below, the following statement: "This offer is not available in New Jersey." The requirements of this paragraph shall apply to cases where the advertisement originates in or emanates from another state but is received or appears in New Jersey and to advertisements which originate in or emanate from New Jersey.

5. The fact of a financial interest, or the proprietary or representative capacity of a spokesperson, shall be disclosed in an advertisement. In both television and radio advertising, the disclosure shall be spoken by the spokesperson and, in the case of television, visually presented consistent with the requirements for print advertising in this subsection. In print advertising, the disclosure shall be presented in a type style and size that is at least equal to the largest type otherwise used in the advertisement. The disclosure required by this paragraph shall be accomplished in the introductory portion of the endorsement and shall be given prominence.

6. If a spokesperson is directly or indirectly compensated for making an endorsement, such fact shall be disclosed by use of the phrase "This is a Paid Endorsement" or by words of similar meaning in the manner provided by (k)5 above. The requirements of this paragraph do not apply where the spokesperson is a company officer, a company director or an employee who is paid generally, but not specifically, for making the advertisement.

7. The disclosure requirements of this subchapter shall not apply where the sole financial interest or compensation of a spokesperson, for all endorsements made on behalf of the insurer, consists of the payment of union "scale" wages required by union rules, and if the payment is actually for such "scale" for television or radio performances.

8. An advertisement shall not state or imply that an insurer, policy or contract, or any type or line of insurance has been approved or endorsed by any individual, group of individuals, society, association, organization, governmental agency or other entity, unless such is the fact and any proprietary relationship between such individual(s) or entity and the insurer is disclosed and the prior written approval of the individual, group of individuals, society, association, organization, governmental agency or other person has been secured. Prior written approval shall not be required in cases where the endorsing individual is a company officer, company director or employee.

9. If the person making the endorsement in (k)8 above has been formed by the insurer or is owned, or controlled by the insurer, or the person or persons who own or control the insurer, such fact shall be disclosed in the advertisement. If the insurer or an officer of the insurer formed or controls the association, or holds any policymaking position in the association, that fact shall also be disclosed.

10. When an endorsement refers to benefits received under a policy for a specific claim, the claim date, including claim number, date of loss and other pertinent information shall be retained by the insurer for inspection until the completion by the Department of Insurance of the next market conduct examination of the insurer.

11. Endorsements which do not correctly reflect the present practices of the insurer or which are not applicable to the policy or benefits being advertised shall not be used.

12. An advertisement shall not state or imply that an insurer or a policy has been approved or an insurer's financial condition has been examined and found to be satisfactory by a governmental agency unless such is the fact and without prior written approval.

(l) An advertisement shall not contain statistical information relating to any insurer or policy unless it accurately reflects recent and relevant facts. The source of any such statistics used in an advertisement shall be identified therein.

(m) Advertisements referring to introductory, initial, or special offers and enrollment periods must comply with the following requirements:

1. An advertisement of an individual policy or combination of such policies shall not state or imply that such policy or combination of such policies is an introductory, initial, or special offer, or that applicants will receive substantial advantages not available at a later date, or that the offer is available only to a specified group of individuals, unless such is the fact. An advertisement shall not describe an enrollment period as "special" or "limited" or use similar words or phrases in describing it when the insurer uses successive enrollment periods as its usual method of marketing its policies;

2. An advertisement shall not state or imply that only a specific number of policies will be sold, or that a time is fixed for the discontinuance of the sale of the particular policy advertised because of special advantages available in the policy;

3. An advertisement shall not offer a policy which utilizes a reduced initial premium rate in a manner which overemphasizes the availability and the amount of the reduced initial premium. When an insurer charges an initial premium that differs in amount from the amount of the renewal premium payable, all references to the reduced initial premium shall be followed by an asterisk or other appropriate symbol which refers the reader to that specific portion of the advertisement which contains the full rate schedule for the policy being advertised; and

4. An enrollment period during which a particular insurance policy may be purchased on an individual basis shall not be offered in New Jersey unless there has been a lapse of not less than three months between the close of the immediately preceding enrollment period. The advertisement shall specify the date by which the applicant must mail the application, which shall be not less than 10 days and not more than 40 days from the date on which such enrollment period is advertised for the first time.

i. Paragraph (m)4 above applies to all advertising media, that is, mail, newspapers, radio, television, magazines, and periodicals, by any one insurer. The phrase "any one insurer" includes all the affiliated companies of a group of insurance companies under common management or control.

ii. Paragraph (m)4 above does not apply to the use of a termination or cutoff date beyond which an individual application for a guaranteed issue policy will not be accepted by an insurer in those instances where the application has been sent to the applicant in response to his or her request.

iii. Paragraph (m)4 above is also inapplicable to solicitations of employees or members of a particular group or association which otherwise would be eligible under specific provisions of the New Jersey insurance laws for group or blanket insurance.

iv. In cases where an insurance product is marketed on a direct basis to prospective insureds by reason of some common relationship with a sponsoring organiza-

tion, this rule shall be applied separately to each sponsoring organization.

(n) An advertisement of a particular policy shall not state or imply that prospective insureds shall be or become members of a special class, group, or quasi-group and as such enjoy special rates, dividends, or underwriting privileges, unless such is the fact.

(o) An advertisement shall not make unfair or incomplete comparisons of policies, benefits, dividends, or rates of other insurers. An advertisement shall not falsely or unfairly describe other insurers, their policies, services, or methods of marketing.

Amended by R.1989 d.391, effective July 17, 1989.

See: 21 N.J.R. 970(a), 21 N.J.R. 2039(a), 21 N.J.R. 2289(c).

At (k), requirements regarding third party endorsements greatly expanded.

#### 11:2-23.6 Identification of insurer, plan and number of policies

(a) The name of the insurer shall be clearly identified, and if any specific individual policy is advertised it shall be identified either by form number or other appropriate description. An advertisement shall not use a trade name, an insurance group designation, name of a parent company of the insurer, name of a particular division of the insurer, service mark, slogan, symbol, or other device or reference without disclosing the name of the insurer, if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the insurer or create the impression that a company other than the insurer would have any responsibility for the financial obligation under a policy.

(b) No advertisement shall use any combination of words, symbols, or physical materials which by their content, phraseology, shape, color or other characteristics are so similar to a combination of words, symbols, or physical materials used by a governmental program or agency or otherwise appear to be of such a nature that they tend to mislead prospective insureds into believing that the solicitation is in some manner connected with such governmental program or agency.

(c) When a choice of the amount of benefits is referred to, an advertisement shall disclose that the amount of benefits provided depends upon the plan selected and that the premium will vary with the amount of the benefits.

(d) When an advertisement refers to various benefits which may be contained in two or more policies, other than group master policies, the advertisement shall disclose that such benefits are provided only through a combination of such policies.

## Case Notes

Fine was appropriate penalty for insurance broker's misleading advertisement. *Karpinski v. Automated Insurance Concepts Agency, Inc.*, 96 N.J.A.R.2d (INS) 13.

### 11:2-23.7 Jurisdictional licensing and status of insurer; statements about the insurer

(a) An advertisement which is intended to be seen or heard beyond the limits of the jurisdiction in which the insurer is licensed shall not imply licensing beyond such limits.

(b) An advertisement may state that an insurer is licensed in the state where the advertisement appears, provided that it does not exaggerate such fact or suggest or imply that competing insurers may not be so licensed.

(c) Such advertisements by direct mail insurers shall indicate that the insurer is licensed in a specified state or states only, or is not licensed in a specified state or states, by use of some language such as "This Company is licensed only in State A" or "This Company is not licensed in State B."

(d) An advertisement shall not create the impression that the insurer, its financial condition or status, the payment of its claims, or the merits, desirability, or advisability of its policy forms or kinds of plans of insurance are recommended or endorsed by any governmental entity. If a governmental entity has recommended or endorsed a policy form or plan, however, such fact may be stated if the entity authorized its recommendation or endorsement to be used in an advertisement and if the advertisement clearly defines the scope and extent of the recommendation.

(e) An advertisement shall not contain statements, pictures, or illustrations which are false or misleading, in fact or by implication, with respect to the assets, liabilities, insurance in force, corporate structure, financial condition, age or relative position of the insurer in the insurance business. An advertisement shall not contain a recommendation by any commercial rating system unless it clearly defines the scope and extent of the recommendation.

### 11:2-23.8 Insurers' responsibility and control; advertising file; certificate of compliance

(a) All advertisements, regardless of by whom written, created or designed, shall be the responsibility of the insurer sponsoring the same.

(b) Every insurer shall at all times maintain complete control over the content, form and method of distribution of all advertisements of its contracts.

(c) Each insurer shall maintain at its home or principal office a complete file containing every printed, published or prepared advertisement of blanket, franchise, and group policies hereafter distributed in this state, with a notation attached to each such advertisement which shall indicate the manner and extent of distribution and the form number of any policy advertised.

(d) Such file shall be subject to regular and periodic inspection by the Department of Insurance.

(e) All such advertisements shall be maintained in said file for a period of five years from their last use.

(f) Each insurer required to file an annual statement which is now or which hereafter becomes subject to the provisions of this subchapter must file with the Department of Insurance, together with its annual statement, a certificate executed by an authorized officer of the insurer wherein it is stated that to the best of his knowledge, information and belief the advertisements were disseminated by the insurer during the preceding statement year complied or were made to comply in all respects with the provisions of the insurance laws of this State as implemented and interpreted by this subchapter.

Amended by R.1989 d.391, effective July 17, 1989.

See: 21 N.J.R. 970(a), 21 N.J.R. 2039(a), 21 N.J.R. 2290(a).

Deleted requirement that files be maintained for not less than four years.

### 11:2-23.9 Failure to comply

Failure to comply with the provisions of this subchapter shall subject the offender to the penalties set forth under N.J.S.A. 17B:30-17 and any other penalty authorized by law.

### 11:2-23.10 Severability

If any provision or clause of this subchapter or the application thereof to any person or situation is held invalid, such invalidity shall not affect any other provision or application of the subchapter which can be given effect without the invalid provision or application, and to this end the provisions of this subchapter are declared to be severable.

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## SUBCHAPTERS 24 THROUGH 25. (RESERVED)

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## SUBCHAPTER 26. ANNUAL AUDITED FINANCIAL REPORTS

### 11:2-26.1 Purpose

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

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

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



Financial "condition" changed to financial "position".  
Amended by R.1996 d.3, effective January 2, 1996.  
See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).  
Added (b).

### 11:2-26.2 Scope

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

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

### 11:2-26.3 Definitions

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

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

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

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

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

"Department" means the Department of Insurance.

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

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

certified public accountant in the course of his or her examination of the financial statements of an insurer and which support his or her opinion thereof.

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

Deleted reference to New Jersey Automobile Full Insurance Underwriting Association, in definition of "insurer".

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

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

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

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

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

(b) Extensions of the June 1 filing date may be granted by the Commissioner for 30 day periods upon showing by the insurer and its independent certified public accountant the reasons for requesting such extension and determination by the Commissioner of good cause for an extension. The request for an extension must be submitted in writing not less than 10 days prior to the due date of the financial report in sufficient detail to permit the Commissioner to make an informed decision with respect to the requested extension.

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

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

### 11:2-26.5 Contents of annual audited financial report

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

(b) The annual audited financial report shall include:

1. A report of an independent certified public accountant;
2. A balance sheet reporting admitted assets, liabilities, capital and surplus;
3. A statement of operations;
4. A statement of cash flows;
5. A statement of changes in capital and surplus; and

6. Notes to financial statements. These notes shall be those required by the appropriate NAIC Annual Statement Instructions and any other notes required by generally accepted accounting principles and shall also include:

- i. A reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed pursuant to N.J.S.A. 17:23-1 and 17B:21-1 with a written description of the nature of these differences;
- ii. A summary of ownership and relationships of the insurer and all affiliated companies; and
- iii. Such other information as may be specifically requested.

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

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

Amended by R.1993 d.68, effective February 1, 1993.  
See: 24 N.J.R. 1940(a), 24 N.J.R. 2708(a), 25 N.J.R. 588(a).  
NAIC requirements added to (b)6; rounding and combining provisions at (c)2 and 3 deleted.

#### 11:2-26.6 Qualifications of independent certified public accountants

(a) The Commissioner shall not recognize any person or firm as a qualified independent certified public accountant unless they are in good standing with the American Institute of Certified Public Accountants and in all states in which the accountant is licensed to practice or, for alien insurers, that is not a chartered or similarly certified accountant.

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

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

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

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

1. Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. Sections 1961-1968, or any dishonest conduct or practices under Federal or state law, or similar conduct under any foreign law;
2. Has been found to have violated the insurance laws of this State with respect to any previous reports submitted under this rule; or
3. Has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of this subchapter.

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

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

Amended by R.1993 d.68, effective February 1, 1993.  
See: 24 N.J.R. 1940(a), 24 N.J.R. 2708(a), 25 N.J.R. 588(a).  
"Qualified" specified at (a) and (b); subsections (c)-(e) added to specify qualifications necessary.  
Amended by R.1996 d.3, effective January 2, 1996.  
See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).

#### 11:2-26.7 Certification by independent certified public accountant

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

**11:2-26.14 Exemptions**

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

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

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

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

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

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

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

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

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

**11:2-26.15 Alien insurers**

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

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

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

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

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

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

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

**11:2-26.16 Confidentiality of documents**

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

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

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

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

**11:2-26.17 Penalties**

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

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

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

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

**11:2-26.18 Severability**

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

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

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

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

## SUBCHAPTER 27. DETERMINATION OF INSURERS IN A HAZARDOUS FINANCIAL CONDITION

**11:2-27.1 Purpose and scope**

(a) The purpose of this subchapter is to set forth the factors which the Commissioner shall consider in determining whether an insurer is in a hazardous financial condition as defined herein. A determination of hazardous financial condition provides one of the grounds upon which the Commissioner may seek an order from the Superior Court to rehabilitate, liquidate the business or conserve the assets within this State of domestic, foreign or alien insurers pursuant to N.J.S.A. 17:30C-1 et seq. and 17B:32-31 et seq., or upon which an insurer may become subject to administrative supervision pursuant to N.J.S.A. 17:51A-1 et seq., and provides one of the grounds upon which the Commissioner may take action to revoke or nonrenew an insurer's authority to transact insurance in this State, or withdraw the eligibility of an eligible surplus lines insurer to insure surplus lines risks in the State pursuant to law, including but not limited to, N.J.S.A. 17:32-2, 17B:23-2, and 17:22-6.46.

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

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

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

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

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

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

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

### 11:2-27.2 Definitions

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

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

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

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

“Department” means the New Jersey Department of Insurance.

“Eligible surplus lines insurer” means an unauthorized insurer in which an insurance coverage is placed or may be placed pursuant to N.J.S.A. 17:22-6.40 et seq.

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

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

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

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

“NAIC” means the National Association of Insurance Commissioners.

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

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

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

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

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

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

### 11:2-27.3 Determination of hazardous financial condition; factors

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

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

(b) If an insurer is subject to an order issued by the Commissioner pursuant to (a) above, and the insurer objects to the actions ordered to be taken as set forth therein, the insurer may request a hearing before the Department on the Commissioner's determination within 10 days from the date of receipt of such order as follows:

1. A request for a hearing shall be in writing and shall include:

- i. The name, address, and daytime telephone number of a contact person familiar with the matter;
- ii. A copy of the order involved;
- iii. A statement requesting the hearing; and
- iv. A concise statement specifying the manner wherein the action(s) ordered by the Commissioner would not result in improving the condition of the insurer.

2. Pursuant to N.J.S.A. 17:51A-1 et seq., all proceedings, hearings, notices, correspondence, reports, records and other information in the possession of the Commissioner or the Department relating to the supervision of the insurer are confidential, except as otherwise provided by N.J.S.A. 17:51A-1 et seq. Any confidential proceeding in connection with an order issued pursuant to this rule and N.J.S.A. 17:51A-1 et seq. shall be held by the Commissioner or his designee at the Department.

3. The Commissioner may open such proceedings or hearings or disclose the notices, correspondence, reports, records or information to a department, agency or instrumentality of this or another state of the United States, or make such information public, if the Commissioner determines that the disclosure is necessary or proper for the enforcement of the laws of this or another state of the United States, is in the best interest of the public, or in the best interest of the insurer, its insureds or creditors.

(c) Nothing contained in this section shall be construed to limit or preclude the Commissioner from independently requiring an insurer to take specific actions or limit specified activities pursuant to other provisions of Title 17 or 17B of the Revised Statutes.

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

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

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

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

Changes upon adoption effective November 15, 1993.

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

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

## SUBCHAPTER 28. CREDIT FOR REINSURANCE

### 11:2-28.1 Purpose and scope

(a) The purpose of these rules is to implement the provisions of N.J.S.A. 17:51B-1 et seq. by establishing procedures

to be employed by insurers which cede risks to appropriate reinsurers and which assume the risk from the ceding insurers to whom these rules apply.

(b) This subchapter applies to all insurers which transact business in this State, except as described in (b)2 below, including insurers which are domiciled in this State. This subchapter also applies to insurers which are either licensed to transact business in this State or are eligible to write surplus lines insurance in this State, and which in either case are domiciled in a state or country which does not employ standards regarding credit for reinsurance substantially similar to the standards set forth herein.

1. For a life and health ceding insurer to qualify for a credit for reinsurance in accordance with this subchapter, the ceding insurer shall also comply with the requirements of N.J.S.A. 17:51B-1 et seq. and all administrative rules promulgated thereunder concerning the regulation of life and health reinsurance contracts.

2. Where an insurer which is either licensed to transact business in this State or is an eligible surplus lines insurer in this State and in either case the state in which it is domiciled is accredited by the NAIC or employs standards regarding credit for reinsurance as determined by the Commissioner to be substantially similar to the standards set forth in these rules, the insurer shall comply with the rules regarding credit for reinsurance in its state of domicile.

Amended by R.1993 d.557, effective November 15, 1993.

See: 25 N.J.R. 4289(a), 25 N.J.R. 5184(a).

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

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

### 11:2-28.2 Definitions

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

“Annual statement” means a statement showing an insurer's financial condition at the close of business on December 31 of the preceding year and its business for that year in the form adopted by the NAIC, prepared in accordance with the annual statement instructions and the Accounting Practices and Procedures Manual adopted by the NAIC and all applicable provisions of law.

“Assuming insurer” or “reinsurer” means any person which engages in the activity of insuring part or all of an insurance risk from an originating or ceding insurer.

“Authorized officer” means the president of the company whose signature is attested to by the secretary of the company or any such equivalent officers or individuals.

“Beneficiary”:

1. As used in N.J.A.C. 11:2-28.9 means the entity for whose sole benefit the trust has been established and any

successor of the beneficiary by operation of law. Where a court of competent jurisdiction appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver, conservator, rehabilitator or liquidator; or

2. As used in N.J.A.C. 11:2-28.10 means the domestic insurer for whose benefit the letter of credit has been established and any successor of the beneficiary by operation of law. Where a court of competent jurisdiction appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver, conservator, rehabilitator or liquidator.

“Ceding insurer” means an insurer which procures indemnification for itself from an assuming insurer with respect to all or part of an insurance risk associated with one or more policies which it issued should losses be sustained.

“Certificate of eligibility” means a certificate issued by the Commissioner evidencing the authority of an unauthorized insurer to transact the business of surplus lines insurance in this State.

“Clean and unconditional letter of credit” or “clean and unconditional confirmation” means a letter of credit or confirmation which:

1. Makes no reference to any other agreement, document or entity;
2. Provides that a beneficiary need only draw a sight draft under the letter of credit or confirmation and present it to promptly obtain funds and that no other document need be presented; and
3. Indicates that it is not subject to any conditions or qualifications outside of the letter of credit.

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

“Date of the ceding insurer’s statutory financial statement” means the period ending date for which the statutory financial statement is rendered.

“Delinquency proceeding” means, for the purpose of this subchapter, any proceeding commenced against a reinsurer for the purpose of liquidating, rehabilitating, reorganizing or conserving such reinsurer.

“Department” means the New Jersey Department of Insurance.

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

“Eligible surplus lines insurer” means an unauthorized insurer which is issued a certificate of eligibility to transact the business of insurance in this State and in which insurance coverage is placed or may be placed pursuant to N.J.S.A. 17:22-6.40 et seq.

“Evergreen” means a provision in a letter of credit or its confirmation which prevents the expiration of the letter of credit or its confirmation without due advance written notice to the beneficiary from the issuing or confirming bank or trust company.

“Grantor” as used in connection with the establishment of a trust agreement means the entity that has established a trust for the sole benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited assuming insurer.

“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 N.J.S.A. 17:17-1 et seq. or N.J.S.A. 17B-17-1 et seq.; any medical service corporation operating pursuant to N.J.S.A. 17:48A-1 et seq.; any hospital service corporation operating pursuant to N.J.S.A. 17:48-1 et seq.; any health service corporation operating pursuant to N.J.S.A. 17:48E-1 et seq.; or any dental service corporation operating pursuant to N.J.S.A. 17:48C-1 et seq.

“NAIC” means the National Association of Insurance Commissioners.

“Net assets” means an insurer’s total admitted assets less its total reserves and other liabilities.

“Obligations” as used in connection with the establishment of a trust agreement means:

1. Reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;
2. Reserves for reinsured losses reported and outstanding;
3. Reserves for reinsured losses incurred but not reported; and
4. Reserves for allocated reinsured loss expenses and unearned premiums.

“Qualified United States financial institution”:

1. As used at N.J.A.C. 11:2-28.8(b)3 and 28.10 means an institution that:
  - i. Is organized or, in the case of a branch or agency office of a foreign banking organization in the United States, licensed, under the laws of the United States or any state thereof;

ii. Is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies; and

iii. Has been determined by either the Commissioner, or the Securities Valuation Office of the NAIC, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the Commissioner; or

2. As used elsewhere in this subchapter means an institution that:

i. Is organized or, in the case of a branch or agency office of a foreign banking organization in the United States, licensed, under the laws of the United States or any state thereof and has been granted authority to operate with fiduciary powers; and

ii. Is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies.

“Reinsurance” means a contractual arrangement, as evidenced by a written agreement, whereby an insurer, for some consideration, agrees to indemnify a ceding insurer, for all or part of a loss which the ceding insurer may incur under one or more policies that the ceding insurer has or will issue.

“Reinsurance intermediary” means a reinsurance intermediary-broker or a reinsurance intermediary-manager.

“Reinsurance intermediary-broker” means a person, other than an officer or employee of the ceding insurer, which solicits, negotiates or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of that insurer unless expressly provided in a broker of record letter.

“Reinsurance intermediary-manager” means a person which has authority to bind or manages all or part of the assumed reinsurance business of a reinsurer, including the management of a separate division, department or underwriting office, and acts as an agent for that reinsurer whether known as a reinsurance intermediary-manager, manager or other similar term, except that the following persons shall not be considered a reinsurance intermediary-manager, with respect to that reinsurer, for the purposes of this subchapter:

1. An employee of the reinsurer;
2. A United States manager of a United States branch of an alien reinsurer;
3. An underwriting manager which, pursuant to contract, manages all or part of the reinsurance operations of the reinsurer, is under common control with the reinsurer, subject to N.J.S.A. 17:27A-1 et seq., and whose compen-

sation is not solely based on the volume of premiums written;

4. The manager of a group, association, pool or organization of insurers which engage in joint underwriting or joint reinsurance and who are subject to examination by the insurance commissioner or other similar regulatory officer of the state in which the manager’s principal business office is located;

5. A licensed attorney-at-law who negotiates contracts or provides general financial counsel provided no commission or brokerage fee is provided.

“Substantially similar standards” means standards on credit for reinsurance which the Commissioner determines are equal to or exceed the standards of this subchapter.

“Surplus as regards policyholders” means the net assets of the insurer or assuming insurer.

Amended by R.1993 d.557, effective November 15, 1993.

See: 25 N.J.R. 4289(a), 25 N.J.R. 5184(a).

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

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

In the definition of “beneficiary” added 2.

### 11:2-28.3 Reinsurer licensed in New Jersey

An insurer shall be permitted to take a credit for reinsurance ceded to an assuming insurer where the assuming insurer is licensed to transact business in this State as of the date of the ceding insurer’s statutory financial statement, except as limited in accordance with N.J.A.C. 11:2-27.

### 11:2-28.4 Reinsurer accredited in New Jersey

(a) An insurer shall be permitted to take a credit for reinsurance ceded to an assuming insurer where the assuming insurer is accredited as a reinsurer in this State as of the date of the ceding insurer’s statutory financial statement. An accredited reinsurer is one which meets all of the following standards:

1. Files with the Commissioner a letter requesting approval for accreditation and listing the information upon which it will rely and is submitting in connection therewith;
2. Submits a non-refundable filing fee made payable to Treasurer, State of New Jersey, of \$1,000 for an initial filing and \$1,000 for a renewal filing;
3. Files with the Commissioner a properly executed form AR-1 (incorporated herein by reference as Exhibit 1 in the Appendix) which establishes that it submits to this State’s jurisdiction and this State’s authority to examine its books and records;
4. Files with the Commissioner a certified copy of a certificate of authority, a certificate of compliance or an equivalent document which has been properly notarized, as evidence that it is currently licensed to transact insurance or reinsurance in at least one state or, in the case of

a United States branch of an assuming alien insurer, is entered through and licensed to transact insurance or reinsurance in at least one state;

5. Files annually with the Commissioner:

- i. A copy of its most recent annual statement filed with the insurance department of its state of domicile;
- ii. Its most recent audited financial statement;
- iii. A current actuarial opinion which certifies:

(1) For a property and casualty insurer, to the adequacy of the loss and loss adjustment expense reserves; or

(2) For a life and health assuming insurer that:

(A) Its policy reserves are adequate;

(B) It satisfies all minimum capital and surplus requirements in all states in which it is licensed to transact business; and

(C) That its capital and surplus levels are adequate relative to its distribution by type and level of risk of its invested assets and the business being written, and attaches any and all documents in support thereof; and

iv. The quarterly statement for the quarter immediately preceding the application, except for renewals which shall require the quarterly statement due May 15;

6. Either:

i. Maintains a surplus as regards policyholders in an amount not less than \$20,000,000 and whose accreditation has not been denied by the Commissioner within 120 days of filing its submission with the Commissioner; or

ii. Maintains a surplus as regards policyholders of less than \$20,000,000 whose accreditation has been approved by the Commissioner; and

7. Provides any additional information which may include, but is not limited to, information which the Commissioner deems necessary to ensure that the particular reinsurer's condition and methods of operation are not such as would render its operations hazardous to the public or its policyholders.

(b) The above information shall be filed with the Commissioner at:

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

(c) Except for applicants for accreditation that maintain surplus as regards policyholders of less than \$20,000,000, an initial application for accreditation shall be deemed approved unless the Commissioner transmits a letter to the filer, within 120 days from the date of the filing of the completed application identifying the reasons upon which the Commissioner has denied the filer's accreditation. Where a filing is deemed approved, the initial approval shall be valid until August 31. If the initial approval is issued after June 1, it shall be deemed valid until August 31, of the following year.

(d) A reinsurer shall apply for renewal of its accreditation annually at the address in (b) above, to the attention of "Renewal Reinsurance Accreditation." The reinsurer shall file its application for renewal no later than June 1 of any year in which it seeks to continue its accreditation and shall submit updated information as required in (a) above.

(e) A renewal filed in accordance with the above shall be deemed approved unless denied by the Commissioner prior to August 31.

(f) An accredited reinsurer shall notify the Commissioner within 30 days of the occurrence of any of the following actions taken against it by any state or jurisdiction:

- 1. Any limitation on its ability to write new or renewal business;
- 2. Any delinquency proceedings;
- 3. The suspension, revocation or nonrenewal of its certificate of authority in any state or jurisdiction;
- 4. An order or any action by any state or jurisdiction which requires it to cease writing new or renewal business; or
- 5. Any action by any state or jurisdiction requiring that the reinsurer file a plan or any document to increase its capital, for example, a risk based capital plan.

(g) Where the Commissioner determines that an assuming insurer has failed to maintain any of the qualifications set forth in (a)1 through 7 and (f) above, after written notice and opportunity for a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., the Commissioner may revoke or refuse to renew the assuming insurer's accreditation.

(h) The Department shall promulgate annually on October 31, a list of accredited reinsurers. The list shall be published in the New Jersey Register as a public notice.

(i) An insurer shall be prohibited from reporting a credit with respect to reinsurance ceded after 90 days from the date an assuming insurer has had its accreditation denied, revoked or nonrenewed.

Amended by R.1993 d.557, effective November 15, 1993.  
See: 25 N.J.R. 4289(a), 25 N.J.R. 5184(a).

Public Notice: List of accredited reinsurers.  
 See: 26 N.J.R. 4836(a).  
 Public Notice: List of accredited reinsurers.  
 See: 27 N.J.R. 5058(a).  
 Amended by R.1996 d.3, effective January 2, 1996.  
 See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).  
 Public Notice: List of accredited reinsurers.  
 See: 29 N.J.R. 5339(a).  
 Public Notice: List of accredited reinsurers.  
 See: 31 N.J.R. 80(a).  
 Public Notice: List of accredited reinsurers.  
 See: 32 N.J.R. 608(a).  
 Public Notice: List of accredited reinsurers.  
 See: 32 N.J.R. 4314(a).

**11:2-28.5 Reinsurer domiciled and licensed in another state or jurisdiction which employs substantially similar standards to this subchapter**

(a) An insurer shall be permitted to take a credit for reinsurance ceded to an assuming insurer which, as of the date of the ceding insurer's statutory financial statement:

1. Is domiciled and licensed in, or in the case of a United States branch of an alien assuming insurer, is entered through and licensed in, a state which employs substantially similar standards regarding credit for reinsurance to those set forth in this subchapter;

2. Submits a non-refundable filing fee of \$250.00 made payable to Treasurer, State of New Jersey;

3. Files with the Commissioner a certified copy of a certificate of authority, a certificate of compliance or an equivalent document which has been properly notarized as evidence that it is licensed to transact insurance or reinsurance in its state of domicile or, in the case of a United States branch of an assuming alien insurer, is entered through and licensed to transact insurance or reinsurance in at least one state;

4. Files with the Commissioner a properly executed form AR-1 (see Appendix) as evidence that it submits to this State's jurisdiction and authority to examine its books and records;

5. Files with the Commissioner a certification executed by an authorized officer of the reinsurer which certifies that the reinsurer's condition and method of operations are financially sound and will not render its operations hazardous to the public or its policyholders as determined by the factors set forth at N.J.A.C. 11:2-27.3. The officer shall certify that:

i. For a life and health assuming insurer, that:

(1) Its policy reserves are adequate; and

(2) It satisfies all minimum capital and surplus requirements in all states in which it is licensed to transact business; and

(3) Its capital and surplus levels are adequate relative to its distribution by type and level of risk of its invested assets and the business being written, and attaches any and all documents in support thereof;

ii. For a property and casualty assuming insurer, that net premium written to surplus as to policyholders

does not exceed a 3:1 premium to surplus ratio and loss and loss adjustment expense reserve liability to surplus does not exceed a 4:1 ratio as of the date of the certified balance sheet from its most recent annual statement; and

iii. Except for reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system, that it maintains a surplus as regards policyholders in an amount not less than \$20,000,000;

6. A reinsurer shall append to the certification set forth in (a)5 above, a certified balance sheet from the reinsurer's most recent annual statement;

7. Within 90 days from the date of receipt of the completed filing, the filing shall either be deemed approved or the Commissioner shall transmit a letter to the filer which identifies the reasons upon which the Commissioner has found that either the reinsurer's state or jurisdiction of domicile does not employ substantially similar standards or the reinsurer otherwise fails to satisfy the requirements of this subchapter;

8. A reinsurer authorized pursuant to this section shall notify the Commissioner within 30 days of the occurrence of any of the following actions taken against it by any state or jurisdiction:

i. Any limitation on its ability to write new or renewal business;

ii. Any delinquency proceedings;

iii. A suspension, revocation or nonrenewal of its certificate of authority in any state or jurisdiction;

iv. An order or any action by any state or jurisdiction which requires it to cease writing new or renewal business; or

v. Any action, by any state or jurisdiction, requiring that the reinsurer file a plan or any document to increase its capital, for example, a risk based capital plan.

9. The above information shall be filed with the Commissioner at:

Attention: Reinsurance—Similar Standards  
 Division of Financial Examinations  
 New Jersey Department of Insurance  
 20 West State Street  
 PO Box 325  
 Trenton, New Jersey 08625-0325

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

**11:2-28.6 Reinsurer maintaining trust funds**

(a) An insurer shall be permitted to take a credit for reinsurance ceded to an assuming insurer where as of the date of the ceding insurer's statutory financial statement the assuming insurer meets the standards set forth in (a)1 and 2 below, in accordance with the procedures set forth in (a)3 through 8 below:

1. The assuming insurer maintains a trust fund in an amount prescribed in (b) below in a qualified United States financial institution for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest.

2. The assuming insurer files with the Commissioner a letter requesting authorization to provide reinsurance. The letter shall specify: that the reinsurer seeks authorization based on the fact that it maintains trust funds for the benefit of its ceding insurers and United States policyholders; the location of the trust funds; and a list of documents and information submitted therewith and upon which the assuming insurer shall rely in connection with its request for authorization. The reinsurer shall submit to the Commissioner the following:

- i. A nonrefundable filing fee made payable to Treasurer, State of New Jersey of \$1,000 for an initial filing and \$1,000 for a renewal filing;
- ii. A properly executed form AR-1;
- iii. A description of which categories of insurance are effected by the cessions;
- iv. A certification executed by an authorized officer of the reinsurer which certifies that the reinsurer's condition and method of operations are financially sound and will not render its operations hazardous to the public or its policyholders as determined in accordance with the factors set forth at N.J.A.C. 11:2-27.3. The officer shall certify:

(1) For a life and health assuming insurer, that:

(A) Its policy reserves are adequate;

(B) It satisfies all minimum capital and surplus requirements in all states in which it is licensed to transact business; and

(C) Its capital and surplus levels are adequate relative to its distribution by type and level of risk of its invested assets and the business being written, together with any and all documents in support thereof;

(2) For a property and casualty assuming insurer, that net premium written to surplus as to policyholders does not exceed a 3:1 premium to surplus ratio and loss and loss adjustment expense reserve liability to surplus does not exceed a 4:1 ratio as of the date of the certified balance sheet from its most recent annual statement; and

(3) To the accuracy of the information required by (b) below;

v. A certified balance sheet from the reinsurer's most recent annual statement; and

vi. A list of the assets of the trust certified by the trustee.

3. The information in (a)1 and 2 shall be filed with the Commissioner at:

Attention: Reinsurance Trust Fund  
Division of Financial Examinations  
New Jersey Department of Insurance  
20 West State Street  
PO Box 325  
Trenton, New Jersey 08625-0325

4. A reinsurer shall reapply for authorization annually at the address set forth in (a)3 above no later than June 1 of each year.

5. Within 30 days from receipt of the information in (a)1 and 2 above the Commissioner shall notify the filer of any deficiencies in its submission and the filer shall have 30 days to cure such deficiencies.

6. Within 90 days from the date of receipt of the completed filing, the filing shall either be deemed approved or the Commissioner shall transmit a letter to the filer which identifies the reasons upon which he or she has relied to determine that the filer has not met the requirements of this section and that insurers shall be prohibited from reporting credits for reinsurance for insurance ceded to the filer.

7. A reinsurer authorized pursuant to this section shall notify the Commissioner within 30 days of the occurrence of any of the following actions taken against it by any state or jurisdiction:

i. Any limitation on its new or renewal business;

ii. Any delinquency proceedings;

iii. Its certificate of authority is suspended, revoked or nonrenewed in any state or jurisdiction;

iv. An order has been entered or any action has been taken by any state or jurisdiction which requires it to cease writing new or renewal business; or

v. Any action, by any state or jurisdiction, requiring that the reinsurer file a plan or any document to increase its capital, for example, a risk based capital plan.

8. An assuming insurer shall report annually to the Commissioner substantially the same information as that required to be reported on the NAIC annual statement form by licensed insurers to be evaluated by the Commissioner, including, but not limited to: a recent actuarial opinion which certifies to the adequacy of the loss and loss adjustment expense reserve liabilities, and, where applicable, life and health reserve liabilities, in order to determine the sufficiency of the trust fund; and any additional information the Commissioner deems necessary to ensure that the assuming insurer's condition and method of operation are not such as would render its operations hazardous to the public or policyholders in this State.

(b) In order to qualify as a reinsurer as provided in (a) above, an assuming insurer shall establish a trust fund. The trust fund established by the assuming insurer shall meet the following standards based upon the following category of assuming insurer into which it falls:

1. The trust fund for a single assuming insurer shall consist of a trustee account in an amount not less than the assuming insurer's liabilities attributable to business written in the United States, and, in addition, a trustee surplus of not less than \$20,000,000.

2. The trust fund for a group of insurers, which group includes individual unincorporated underwriters, shall consist of a trustee account in an amount not less than the group's aggregate liabilities attributable to business written in the United States and, in addition, the group shall maintain a trustee surplus of which not less than \$100,000,000 shall be held jointly for the benefit of the United States ceding insurers of any member of the group. The group shall make available to the Commissioner an annual certification of the solvency of each underwriter for the fiscal period immediately preceding, which fiscal period shall not be less than one year, by the group's domiciliary regulator and its certified public accountant.

3. The trust fund for a group of incorporated insurers under common administration which complies with the filing requirements set forth in this section whose members possess aggregate policyholder's surplus of \$10,000,000,000, calculated and reported in substantially the same manner as prescribed by the annual statement instructions and Accounting Practices and Procedures Manual of the NAIC, and which has continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation, shall consist of funds in trust in an amount not less than the group's several liabilities attributable to business ceded by United States ceding insurers to any members of the group pursuant to reinsurance contracts issued in the name of such group and, in addition, the group shall maintain a joint trustee surplus of which not less than \$100,000,000 shall be held jointly and exclusively for the benefit of the United States ceding insurers of any member of the group. The group shall file a properly executed form AR-1 as evidence of its submission to this State's authority to examine the books and records of any of its members and shall certify that any member examined will bear the expense of any such examination. The group shall make available to the Commissioner annual certifications by the members' domiciliary regulators and their independent certified public accountants of the solvency of each member of the group for the fiscal period immediately preceding which fiscal period shall not be less than one year.

(c) The trust required by (b) above shall be established in a form approved by the Commissioner and in compliance with this section, and the content, location, legal currency

and financial institutions shall be acceptable to the Commissioner. The trust instrument shall provide that:

1. Contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied 30 days after entry of the final order of any court of competent jurisdiction in the United States;

2. Legal title to the assets of the trust shall be vested in the trustees of the trust for the benefit of the grantor's United States policyholders and ceding insurers, their assignees and successors in interest;

3. The trust shall be subject to examination as determined by the Commissioner;

4. The trust shall remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, shall have outstanding obligations due under reinsurance agreements subject to the trust;

5. No later than February 28 of each year the trustees of the trust shall report to the Commissioner in writing setting forth the balance of the trust and listing the trust's investments at the preceding year's end, and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31.

i. The trust assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash (United States legal tender), certificates of deposit (issued by a United States bank and payable in United States legal tender) investments of stocks and bonds listed by the NAIC's Securities Valuation Office or any obligations issued by the State of New Jersey or any of its political subdivisions, or any combination of the above, provided that such investments are issued by an institution that is not the grantor, beneficiary, parent, subsidiary or an affiliate of either the grantor or the beneficiary; and

6. No amendment to the trust shall be effective unless filed with and approved in advance by the Commissioner.

Amended by R.1993 d.557, effective November 15, 1993.

See: 25 N.J.R. 4289(a), 25 N.J.R. 5184(a).

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

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

#### 11:2-28.7 Credit for reinsurance required by law

(a) An insurer may be permitted to take a credit for reinsurance ceded to an assuming insurer which does not meet any of the requirements set forth at section 11:2-28.3, 28.4, 28.5 or 28.6, but only with respect to the insurance of risks located in jurisdictions where such reinsurance is required or provided by the applicable law or regulation of that jurisdiction. As used in this section, "jurisdiction" means any state, district or territory of the United States and any lawful national government.

(b) A credit may taken for insurance ceded by a ceding insurer to a state owned or controlled insurance or reinsurance company or a ceding company participating in pools, guaranty funds or joint underwriting associations required by statute, regulation or administrative order.

Amended by R.1993 d.557, effective November 15, 1993.  
See: 25 N.J.R. 4289(a), 25 N.J.R. 5184(a).

**11:2-28.8 Reduction from liability for reinsurance ceded to an unauthorized assuming insurer**

(a) An insurer shall be permitted to take a reduction from liability for reinsurance ceded to an assuming insurer not meeting the requirements of N.J.A.C. 11:2-28.3, 28.4, 28.5, 28.6 or 28.7 in an amount which does not exceed the liabilities carried by the ceding insurer. Such reduction shall be in the amount of the funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations thereunder. Such security shall be held in the United States subject to withdrawal solely by and under the exclusive control of the ceding insurer, or in the case of a trust held in a qualified United States financial institution, subject to withdrawal solely by and under the exclusive control of the ceding insurer.

(b) The security shall be in the form of:

1. Cash (United States legal tender);
2. Securities listed by the Securities Valuation Office of the NAIC and qualified as admitted assets;
3. Clean, irrevocable, evergreen, unconditional letters of credit issued or confirmed by a qualified United States institution no later than December 31st of the year for which filing is being made, and in the possession of the ceding company on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation shall, notwithstanding the issuing or confirming qualified United States financial institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs, unless the issuer has been declared insolvent under applicable statutory or regulatory provisions; or
4. Any other form of security approved by the Commissioner upon formal request.

**11:2-28.9 Trust agreements qualified pursuant to N.J.A.C. 11:2-28.8**

(a) An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to N.J.A.C. 11:2-28.8 shall be permitted only when the requirements set forth below and in N.J.A.C. 11:2-28.10 and 28.11 are met.

1. The beneficiary, the grantor and a trustee shall enter into a trust agreement. The trustee shall be a qualified United States financial institution.

2. The trust agreement shall create a trust account into which the trust's assets shall be deposited.

3. All assets in the trust account shall be held by the trustee at the trustee's office in the United States, except that a bank may apply for the Commissioner's permission to use a foreign branch office of such bank as trustee for trust agreements established pursuant to this section. If the Commissioner approves the use of such foreign branch office as trustee, then its use must be approved by the beneficiary in writing and the trust agreement must provide that the written notice described in 4i below must also be presentable, as a matter of legal right, at the trustee's principal office in the United States. The trust assets shall consist of cash (United States legal tender), certificates of deposit (issued by a United States bank and payable in United States legal tender), investments of stocks and bonds listed by the NAIC's Securities Valuation Office, or any obligations issued by the State of New Jersey or any of its political subdivisions, or any combination of the above, provided that such investments are issued by an institution that is not the parent, subsidiary or an affiliate of either the grantor or the beneficiary.

4. The trust agreement shall provide that:

- i. The beneficiary shall have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustees;
- ii. No other statement or document is required to be presented in order to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;
- iii. It is not subject to any conditions or qualifications outside of the trust agreement; and
- iv. It shall not contain references to any other agreements or documents except as provided below in (a)11 below.

5. The trust agreement shall be established for the sole benefit of the beneficiary.

6. The trust agreement shall require the trustee to:

- i. Receive assets and hold all assets in a safe place;
- ii. Determine that all assets are in such form that the beneficiary or the trustee, upon direction by the beneficiary, may whenever necessary negotiate any such assets, without consent or signature from the grantor or any other person or entity;
- iii. Furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;

ii. The receiver of a ceding insurer shall give or arrange to give to the reinsurer, written notice of the pendency of a claim against the ceding insurer, within a reasonable period of time after the initiation of the receivership. Failure to give such notice shall not excuse the obligation of the reinsurer unless it is substantially prejudiced thereby. The reinsurer may interpose, at its own expense, in the proceeding where such claim is to be adjudicated, any defense or defenses which it may deem available to the ceding company or its receiver. The reasonable expense thus incurred by the reinsurer shall be payable, subject to court approval, out of the estate of the insolvent ceding insurer as part of the expense of the receivership to the extent of a proportionate share of the benefit which may accrue to the ceding insurer in receivership, solely as a result of the defense undertaken by the reinsurer; and

iii. Payments by the reinsurer shall be made directly to the receiver of the ceding insurer except where the contract of insurance or reinsurance specifically provides another payee for such reinsurance in the event of the insolvency of the ceding insurer.

Amended by R.1993 d.557, effective November 15, 1993. See: 25 N.J.R. 4289(a), 25 N.J.R. 5184(a). Amended by R.1996 d.3, effective January 2, 1996. See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).

11:2-28.13 Contracts affected

All new and renewal reinsurance transactions entered into after February 5, 1994 shall meet the standards set forth in this chapter if credit is to be given to the ceding insurer for such reinsurance.

APPENDIX

FORM AR-1

CERTIFICATE OF ASSUMING INSURER

I, \_\_\_\_\_ of \_\_\_\_\_, the assuming insurer under a reinsurance agreement(s) with one or more insurers domiciled in \_\_\_\_\_, hereby certify that \_\_\_\_\_ ("Assuming Insurer"):

1. Submits to the jurisdiction of any court of competent jurisdiction in \_\_\_\_\_ for the adjudication of any issues arising out of the reinsurance agreement(s), agrees to comply with all requirements necessary to given such court jurisdiction, and will abide by the final decision of such court or any appellate court in the event of an appeal. Nothing in this paragraph constitutes or should be understood to constitute a waiver of Assuming Insurer's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. This paragraph

is not intended to conflict with or override the obligation of the parties to the reinsurance agreement(s) to arbitrate their disputes if such an obligation is created in the agreement(s).

2. Designates the Insurance Commissioner of \_\_\_\_\_ as its lawful attorney upon whom may be served any lawful process in any action, suit or proceeding arising out of the reinsurance agreement(s) instituted by or on behalf of the ceding insurer.

3. Submits to the authority of the Insurance Commissioner of \_\_\_\_\_ to examine its books and records and agrees to bear the expense of any such examination.

4. Submits with this form a current list of insurers domiciled in \_\_\_\_\_ reinsured by Assuming Insurer and undertakes to submit additions to or deletions from the list to the Insurance Commissioner at least once per calendar quarter.

Dated: \_\_\_\_\_ BY: \_\_\_\_\_ (name of assuming insurer) (name of officer) (title of officer)

REG11228.A/LRWPC

Amended by R.1993 d.557, effective November 15, 1993. See: 25 N.J.R. 4289(a), 25 N.J.R. 5184(a).

SUBCHAPTER 29. ORDERLY WITHDRAWAL OF INSURANCE BUSINESS

11:2-29.1 Purpose and scope

(a) The purpose of this subchapter is to establish the requirements and procedures by which insurers may undertake an orderly withdrawal from the business of insurance in this State, thereby minimizing the adverse effects upon policyholders of eliminating coverage; preventing or minimizing the disruption in the marketplace and harm to the public that would otherwise occur in the absence of regulation; and permitting insurers to wind down their business in an orderly fashion as is consistent with N.J.S.A. 17:17-10 and 17:33B-30.

(b) This subchapter applies to all insurers that seek to withdraw from the business of insurance as defined herein.

## Case Notes

Commissioner, in setting insurer's price for withdrawing from automobile insurance industry, was not arbitrary or capricious. *Matter of Plan for Orderly Withdrawal From New Jersey of Twin City Fire Ins. Co.*, 248 N.J.Super. 616, 591 A.2d 1005 (A.D.1991), certification granted 127 N.J. 548, 606 A.2d 362, affirmed 129 N.J. 389, 609 A.2d 1248, certiorari denied 113 S.Ct. 1066, 506 U.S. 1086, 122 L.Ed.2d 370.

## 11:2-29.2 Definitions

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

"Affiliate" means an insurer that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the insurer that initiates a withdrawal, as defined in N.J.S.A. 17:27A-1.

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

"Applicant" means the insurer seeking approval to withdraw from the business of insurance in this State.

"Assumption agreement" means a contract between insurers whereby one insurer transfers all or substantially all its rights, duties and obligations arising from certain policies to another insurer.

"Authority" means the power granted by the Commissioner which enables an insurer to transact the business of insurance.

"Automobile" and "automobile insurance" are as defined in N.J.S.A. 17:30E-3.

"Business of insurance" or "insurance" means any kind, line, subline, or a portion thereof authorized by Chapters 17 or 32 of Title 17 of the Revised Statutes.

"Commencement date" of withdrawal means the date which the applicant may begin withdrawing from this State pursuant to the approved plan of orderly withdrawal.

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

"Control" is as defined in N.J.S.A. 17:27A-1.

"Department" means the New Jersey Department of Insurance.

"Effective date" of withdrawal means the date at which the applicant has complied with any and all conditions contained in the approved plan of orderly withdrawal.

"Insurance holding company system" consists of two or more affiliated persons, one or more of which is an insurer as defined in N.J.S.A. 17:27A-1.

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

"Insurer" means an insurer or eligible surplus lines insurer, and any insurance affiliates thereof, authorized or admitted pursuant to Chapters 17 or 32 of Title 17 of the Revised Statutes to transact in this State the business of insurance as defined herein.

"Multi-state account" means a single contract or policy of commercial lines insurance as defined in N.J.S.A. 17:29AA-3 which covers risks or locations in both New Jersey and at least one other state; any group policy in which covered members of the group reside in New Jersey and at least one other state; and any plan approved for the mass marketing of insurance pursuant to N.J.A.C. 11:2-12 in which policyholders of the plan reside in New Jersey and at least one other state.

"Plan" means a plan of orderly withdrawal from insurance business in New Jersey.

"Portfolio reinsurance agreement" means a contract between insurers whereby one insurer transfers its entire liability for in-force policies or outstanding losses, or both, to another insurer regarding a described segment of insurance business.

"Rating system" means every schedule, class, classification, rule, guide, standard, manual, table or rating plan by whatever name described containing the rates, rules and forms used by any insurer or by any rating organization in determining or ascertaining a rate.

"Reinsurance agreement" means a contract between insurers whereby one insurer agrees to insure part or all of an insurance risk of an originating, or ceding, insurer.

"Residual market mechanism" means any program authorized or created by the New Jersey State Legislature which is designed to provide an insurance market for insureds who are unable to obtain insurance in the voluntary market.

"State" means the State of New Jersey.

"Withdraw" or "withdrawal" means the nonrenewal, cancellation, or termination of policies, or surrender of authority to transact the business of insurance in this State, or any insurer action that is equivalent to a withdrawal from the business of insurance in this State which may include, but is not limited to, the elimination of a rating system, termination of agency contracts, reduction in agency commissions, restrictions on agency solicitation or binding authority, insurer refusal of applications or declaration of a dividend to an affiliate, when such action or actions exceed those occurring in the ordinary course of business. Whether the above activities are equivalent to a withdrawal shall be determined by the Commissioner on a case-by-case basis.

“Withdraw” or “withdrawal” also means the transfer to another insurer of insurance business pursuant to an assumption agreement as defined herein or a portfolio reinsurance agreement as defined herein.

### 11:2-29.3 General provisions

(a) Any insurer that seeks to undertake any of the actions described as withdrawals in N.J.A.C. 11:2-29.2 shall provide the Commissioner with written notification so that he or she may determine whether the insurer must file a plan of orderly withdrawal pursuant to N.J.A.C. 11:2-29.4 or, if such plan is waived by the Commissioner under circumstances he or she considers appropriate, a reasonable substitute withdrawal procedure approved by the Commissioner.

(b) Any insurer that is required by the Commissioner to file a plan of orderly withdrawal pursuant to N.J.A.C. 11:2-29.4 shall submit to the Department an original and five copies of a proposed plan for prior approval thereof.

1. The Commissioner shall not begin his or her evaluation of the proposed plan until the applicant has complied with the requirements contained herein for its submission, including the submission of any additional information specifically required pursuant to N.J.A.C. 11:2-29.4(b), after which the Commissioner shall approve the plan within 120 days, subject to the terms and conditions which he or she may consider appropriate.

i. The Commissioner shall acknowledge to the applicant the receipt of any filing and request any additional information required for review pursuant to N.J.A.C. 11:2-29.4(b) within 30 days thereafter, the failure of which shall allow the applicant to treat the filing as complete.

ii. The Commissioner may extend the 120 day time frame for approval of the plan an additional 40 days for good cause and shall provide notice to the applicant of such extension.

2. An applicant shall not commence any action in furtherance of a withdrawal as defined herein prior to the Commissioner's approval thereof. For the purposes of this paragraph, commencing an action in furtherance of a withdrawal does not include the non-binding oral or written communication between an insurer/applicant and another insurer in negotiating a replacement of the insurer/applicant's insurance business by the other insurer, the negotiation of an agreement with a replacement carrier subject to approval of the Commissioner and conditioned on approval of the plan, or non-binding oral or written communications with any of the entities set forth at N.J.A.C. 11:2-29.4(a)11.

3. The authority of an applicant to conduct the business of insurance from which it seeks to withdraw, as well as any other authority which it is required to surrender pursuant to this subchapter shall, upon approval of the

plan, continue in effect, but only in accordance with the plan as approved.

4. No withdrawal shall become effective until the applicant has complied with any and all conditions contained in the approved plan which relate to the effective date of withdrawal.

5. Unless the applicant specifically requests and is granted a waiver, the applicant shall make either or both of the following special deposits, as a condition of approval of the plan, in securities or the equivalent thereof in performance bonds as determined by the Commissioner, until such time as the applicant's liabilities as determined by the Commissioner no longer exist in this State:

i. A deposit established with and in the name of the Commissioner for the benefit of all of the applicant's New Jersey policyholders, claimants and creditors which shall be equal to an amount not to exceed 125 percent of the applicant's current and potential liabilities existing or that may exist in this State;

ii. A deposit established with and in the name of the Commissioner pursuant to a consent order signed by the applicant to guarantee compliance with the approved plan, a material breach of which may, upon notice to the insurer, result in an immediate forfeiture of the deposit in whole or in part. This deposit shall be in an amount established at the discretion of the Commissioner and may equal the greater of one million dollars or 10 percent of the applicant's average annual net direct premiums written within the last three years in the line(s) from which it seeks to withdraw.

6. The applicant may substitute, with the approval of the Commissioner, in place of the deposits required in (b)5i above, the following:

i. A proper guarantee from its immediate or ultimate parent;

ii. A letter of credit;

iii. A trust agreement; or

iv. Any other financial guarantee of the applicant's total liabilities.

7. For good cause shown, the Commissioner may waive the special deposits or substitutes required in (b)5 and 6 above upon a consideration of factors including, but not limited to, the uniqueness of the applicant's circumstances, its size, and its volume of business and whether the withdrawal is being effected pursuant to an assumption or portfolio reinsurance agreement.

(c) The Commissioner may require as a condition of approval of the plan the surrender of some or all certificates of authority, issued pursuant to Chapters 17 or 32 of Title 17 of the Revised Statutes, held by the applicant or by other companies within the same insurance holding company system as the applicant for amendment, termination, suspen-

sion, restriction or such other modification as the Commissioner considers appropriate. Upon specific request by the applicant for a waiver of any portion of these requirements the Commissioner may grant the waiver in whole or in part if the Commissioner finds that, based upon proofs presented, one or more of the following mitigating circumstances exist:

1. The withdrawal will not cause a market availability problem or an undue disruption in the marketplace;
2. The applicant will enter into an agreement with a proposed replacement carrier to assume the applicant's existing book of business conditioned, however, upon an approved plan;
3. The withdrawal will not adversely affect competition;
4. The withdrawal is due to specified problems affecting the solvency of the applicant;
5. The withdrawal is consistent with the insurer's overall plan of withdrawal in other jurisdictions as part of a corporate restructuring; or
6. The public interest is best served by such a waiver.

(d) If more than one insurer within the same holding company system seeks or is required by the Commissioner pursuant to this subchapter to withdraw from the business of insurance in this State, each withdrawing affiliate shall submit a separate plan to the Commissioner pursuant to this subchapter or, if such plan is waived pursuant to (a) above, a reasonable substitute withdrawal procedure approved by the Commissioner.

(e) An insurer that currently services a residual market mechanism and is subject to the withdrawal provisions contained in the plan of operation governing such mechanism is exempted from the requirements of this subchapter to the extent of the insurance business serviced by the insurer in such mechanism.

(f) The applicant and its affiliates shall be prohibited for a period of up to five years after the effective date of withdrawal from acquiring, directly or indirectly, a controlling interest in any insurer that is licensed to do business in this State without approval of the Commissioner.

#### **11:2-29.4 Elements of proposed plan of orderly withdrawal**

(a) A proposed plan of orderly withdrawal shall contain the following information supported by adequate proof of the validity thereof, if not specifically required herein:

1. The reasons the applicant seeks to withdraw, supported by a description and documentation of the applicant's financial condition for the last three years or such other period as the Commissioner considers appropriate, including the underlying accounting, actuarial and other relevant data or material relied upon in deciding to seek withdrawal;

2. The proposed commencement date of such withdrawal;

3. A description of the following:

i. All authority currently and previously held by the applicant in all jurisdictions (specifically listing states in which the applicant has withdrawn);

ii. The authority in New Jersey currently and previously held by its insurer affiliates, including dates of issuance, surrender, suspension or revocation; and

iii. The authority in other jurisdictions held by the applicant or its insurer affiliates that has recently been surrendered or is intended for surrender currently and in the future;

4. An organizational chart and narrative description of the relationships among the applicant and its insurer affiliates, if any, indicating at a minimum:

i. The business of insurance which each has authority to write in New Jersey;

ii. The management relationships;

iii. The financial relationships (for example, reinsurance agreements, pooling arrangements, common investments, etc.);

iv. The marketing relationships;

v. The agency relationships;

vi. The claims handling relationships; and

vii. Whether any of the applicant's insurer affiliates are also taking action or applying to withdraw from the business of insurance in this State (and if so, the details thereof);

5. A description, by line of insurance written in New Jersey, of the applicant's and its insurer affiliates' business (both property/casualty and life/health) during the last three years, including for each year the corresponding premium volume, number of current policyholders, number of exposures, approximate market share and the number of insurance producers and employees servicing the business. If employees of the applicant or any of its affiliates will be terminated in this State as a result of the applicant's withdrawal, a description of the method of termination, a description of the termination benefits, and any other financial or nonfinancial accommodations made on the employees' behalf shall be included;

6. The address of each of the applicant's offices in this State;

7. Copies of the proposed cancellation and nonrenewal notices, and termination notices, the applicant intends to send to its policyholders and insurance producers, respectively, as well as any other withdrawal-related correspondence, including the proposed dates of such notices or correspondence. Producer termination notices shall comply with the requirements contained in N.J.S.A. 17:22-6.14a;

8. In the case of a proposed withdrawal of life, health or annuity business to be effected through one or more assumption agreements, the proposed certificate(s) of assumption and letters of notification (where appropriate) to policyholders informing them of the transfer of their policies to another insurer. In the case of a proposed withdrawal of other than life, health or annuity business to be effected through one or more portfolio reinsurance agreements, the reinsurance agreement(s) and letters of notification (where appropriate) to policyholders informing them of the reinsurance of their risks with another insurer;

9. The name and address of each insurance producer, as well as the number of policies sold and premium volume produced by each producer, by line of insurance, for a 12 month period prior to the filing of the proposed plan;

10. A specimen copy of each current producer contract;

11. Copies of all correspondence and notices to be sent to the following entities or their statutory successors, as well as a description of all agreements (which need not be in final form) reached with such entities or their statutory successors as to the applicant's financial and reporting obligations to them, as applicable; if not applicable, an explanation why. The following list is not intended to be exhaustive. It is the responsibility of the applicant to furnish the information required under this paragraph for any other statutorily created or authorized entity to which it owes or may owe a financial or reporting obligation. The Commissioner may require the applicant to deposit with any of the below-listed entities (or their statutory successors) an amount sufficient to meet the applicant's obligations thereto.

i. The Unsatisfied Claim and Judgment Fund established pursuant to N.J.S.A. 39:6-61 et seq.;

ii. The New Jersey Property-Liability Insurance Guaranty Association established pursuant to N.J.S.A. 17:30A-1 et seq.;

iii. The New Jersey Automobile Insurance Risk Exchange established pursuant to N.J.S.A. 39:6A-21 through 22.1;

iv. The Mutual Workers Compensation Security Fund established pursuant to N.J.S.A. 34:15-112;

v. The Stock Workers Compensation Security Fund established pursuant to N.J.S.A. 34:15-105;

vi. The New Jersey Insurance Division of Fraud Prevention established pursuant to N.J.S.A. 17:33A-1 et seq.;

vii. The Commercial Automobile Insurance Procedure established pursuant to N.J.S.A. 17:29D-1;

viii. The New Jersey State Division of Taxation for premium taxes required by N.J.S.A. 54:18A-1 et seq. and 17:33B-49;

ix. The Surplus Lines Guaranty Association established pursuant to N.J.S.A. 17:22-6.70 et seq.;

x. The Medical Malpractice Reinsurance Association established pursuant to N.J.S.A. 17:30D-1 et seq.;

xi. The Market Transition Facility established pursuant to N.J.S.A. 17:33B-11;

xii. The New Jersey Automobile Full Insurance Underwriting Association for examination assessments provided by N.J.S.A. 17:30E-18.1;

xiii. The New Jersey Automobile Full Insurance Underwriting Association for residual market equalization charges and policy constants established pursuant to N.J.S.A. 17:30E-8 and 17:29A-37.1, respectively; and

xiv. The Department of Insurance for examination fees provided for by N.J.S.A. 17:23-1 et seq. and other statutory fees provided for by N.J.S.A. 17:33-1;

12. A statement, by line of insurance written in this State, of all of the applicant's current incurred liabilities and reserves, including those incurred but not reported, as developed and certified by a "qualified actuary" as defined in N.J.A.C. 11:1-21.1 for property and casualty lines and by a Fellow of the Society of Actuaries for life and health lines, as of a date not earlier than 90 days prior to the submission of the proposed plan and which shall include the following in the case of insurance other than life:

i. Copies of all work papers of the actuary supporting the actuarial opinions;

ii. Copies of all underlying statistics used by the actuary;

iii. If not included in (b)12ii above, development triangles, New Jersey only and countrywide for the following. Triangles shall be constructed as of December 31 for as many accident years and as many development years as necessary to display at least five mature accident years. For the purpose of this requirement, a mature accident year is defined as one for which paid losses equal at least 99 percent of incurred losses including IBNR. Such data shall be supplied both in hard copy and as their ASCII equivalent. Any narrative necessary for proper interpretation of the data supplied shall be provided.

(1) Paid losses;

(2) Incurred losses; and

(3) Claim counts:

(A) Reported; and

## (B) Closed; and

iv. If the insurer does not have five mature accident years as required in (b)12iii above, then it shall display five accident years which are the closest to being mature, and if the insurer does not have five accident years of data, then it shall display the accident years it has.

13. A description of the manner in which the applicant has in the past three years handled and intends to handle claims, premium factor charges, premium billing, and policyholder service regarding policies held by New Jersey residents remaining in force after the plan has been approved. Provide a description of the applicant's staff and adjusters servicing these claims, including the servicing location and the procedures for consumer contact;

14. A list of all the applicant's and its affiliates' deposits, if any, currently held pursuant to N.J.S.A. 17:20-1 et seq.;

15. A description of the kind and amount of all reinsurance assumed and ceded by the applicant, identifying each ceding and assuming insurer and describing the corresponding risks in each reinsurance agreement. An explanation of whether the proposed withdrawal will affect the surplus of another insurer as a result of the loss of credit received by that insurer on any of the applicant's assumed reinsurance, as well as a description of the procedures designed to minimize any marketplace disruption or hazardous financial condition that may occur as a result of the loss of credit, shall be included;

16. A description of all multi-state accounts under which insurance has been provided for risks located in New Jersey, as well as an explanation of the impact of withdrawal on such risks;

17. The proposed amount of the special deposits required under N.J.A.C. 11:2-29.3(b)5, which shall be maintained until such time as the applicant's liabilities and potential liabilities no longer exist in this State;

18. Written certification from a duly authorized officer of the applicant, signed under the pains and penalties of perjury, that the information submitted in the proposed plan is accurate and complete to the best of his or her belief and that for as long as insurance policies are in force or there are unpaid losses or expenses in this State:

i. The applicant shall fully honor all of its legal obligations in this State;

ii. The applicant shall continue to service, without discrimination, all outstanding policies, bonds and surety obligations, which includes processing all usual and customary endorsements requested by insureds during the term of such policies, subject to the applicant's normal underwriting standards;

iii. The applicant shall continue to submit annual statements and information required by the entities set forth in (a)11 above, upon request, for as long as the applicant has any unearned premium or any unpaid or incurred losses in this State;

iv. The applicant shall continue to operate in accordance with the laws and regulations of this State and remain subject to examination by the Department for as long as considered necessary by the Commissioner;

v. The applicant shall not accept any new business whatsoever in this State unless authorized or required by the Commissioner, including reinsurance and excess or surplus lines placements; and

vi. The applicant shall maintain its designation of the Commissioner as its agent for service of process; and

19. The plan shall include a method acceptable to the Commissioner to verify the applicant's compliance with its obligations under the plan as approved which may include, but is not limited to, quarterly financial and informational reports of the applicant's progress under the plan.

(b) The Commissioner may require any other information he or she considers relevant to the evaluation of the request to withdraw.

**11:2-29.5 Replacement; non-renewal**

(a) Notwithstanding the provisions of N.J.A.C. 11:3-8.3, if an applicant's request to withdraw involves private passenger automobile insurance and the applicant is required to submit a proposed plan, the applicant is subject to the following additional conditions which must be addressed in the proposed plan:

1. The applicant shall seek to place its business with a voluntary market replacement carrier or carriers acceptable to the Commissioner for a specified period of years after the Commissioner's approval of the plan or until all automobile insurance is replaced, whichever is sooner.

i. The period of time in which an applicant must seek to place its business with a replacement carrier will be determined by the Commissioner, but in no instance will it be less than one year or more than five years. If, at the end of the designated period, the applicant has not succeeded in placing all of its private passenger automobile insurance policies with a voluntary market carrier, the applicant shall begin an orderly process of nonrenewal at a rate designated by the Commissioner. In accordance with such process, the applicant shall provide two notices of nonrenewal to remaining policyholders. Unless the Commissioner finds that good cause exists for shortening the initial notice period, the first nonrenewal notice shall be provided at least one year prior to the next policy expiration date and its contents shall comply with the provisions of N.J.A.C. 11:3-8.3. The insurer shall issue a second notice of nonrenewal in compliance with the time and content requirements of N.J.A.C. 11:3-8.3.

ii. An insurer which acts as a replacement carrier for the private passenger automobile insurance business from which the applicant seeks to withdraw assumes all of the legal rights, duties and obligations associated with the participation of private passenger automobile insurers in the automobile insurance market in this State.

2. An applicant shall be required to accept the quotas established by N.J.S.A. 17:33B-11(c)5 unless the applicant specifically requests and the Commissioner agrees to a waiver of this requirement.

(b) The Commissioner shall not consider any replacement carrier or carriers acceptable for the purposes of (a) above unless the applicant certifies that it will take any action(s) necessary to ensure that such replacement carrier(s) will maintain a net premium-to-surplus ratio not to exceed 2.5 to one. Where the replacement carrier is an affiliate of the applicant, the applicant shall provide a guarantee from its ultimate parent that such parent will take any action necessary to ensure the requirements set forth in this subsection are met.

1. The duration of the guarantee requirement set forth in (b) above shall be for a period not less than one or more than five years, such period to be coterminous with the remaining portion of the withdrawal period determined by the Commissioner pursuant to (a)1i above.

2. If the replacement carrier(s) is not an affiliate of the applicant, the Commissioner may waive the requirement set forth in (b) above if the applicant demonstrates to the Commissioner that the financial capacity of replacement carrier(s) to service the business to be assumed is equal to or greater than that of the withdrawing carrier, and that the financial condition and methods of operation of the proposed replacement carrier(s) is not such that the assumption of the applicant's book of business would render the replacement carrier's condition or operations hazardous to the public or policyholders of this State.

(c) If an applicant's request to withdraw involves other than private passenger automobile insurance, the applicant may be subject to conditions addressed either in the approved plan or, if the plan is waived pursuant to N.J.A.C. 11:2-29.3(a), in a reasonable substitute withdrawal procedure approved by the Commissioner.

Amended by R.1995 d.577, effective November 6, 1995.  
See: 27 N.J.R. 2533(a), 27 N.J.R. 4311(a).

#### 11:2-29.6 Confidentiality of plan of orderly withdrawal

(a) All data or information contained in the plan is confidential and will not be disclosed by the Department to any person other than its employees and representatives,

except the following items, but only upon written, specified request and upon notice to the insurer/applicant:

1. N.J.A.C. 11:2-29.4(a)3i—Description of current and prior authority to do business by jurisdiction;
2. N.J.A.C. 11:2-29.4(a)4—Organizational chart;
3. N.J.A.C. 11:2-29.4(a)4i—Lines of insurance written by each affiliate;
4. N.J.A.C. 11:2-29.4(a)4v—Agency relationships of affiliates by agent name, to the extent available through the Department's licensing system;
5. N.J.A.C. 11:2-29.4(a)5—Premium volume, number of current policyholders, market share and number of producers by line of business;
6. N.J.A.C. 11:2-29.4(a)6—Address of applicant's offices in this State;
7. N.J.A.C. 11:2-29.4(a)7—Policyholder nonrenewal and producer termination notices;
8. N.J.A.C. 11:2-29.4(a)9—Name and address of each insurance producer to the extent available through the Department's licensing system;
9. N.J.A.C. 11:2-29.4(a)11—Copies of all correspondence and notices sent to various entities, as approved, to which the applicant owes a financial obligation;
10. N.J.A.C. 11:2-29.4(a)12—Certified statement of New Jersey incurred liabilities and reserves;
11. N.J.A.C. 11:2-29.4(a)14—Deposits held by a custodian on behalf of the Commissioner; and
12. N.J.A.C. 11:2-29.4(a)17—Establishment of special deposits or equivalent performance bonds as approved.

#### 11:2-29.7 Fines and penalties

Failure to comply with this subchapter may result in the imposition of sanctions by the Department including, but not limited to, sanctions pursuant to N.J.S.A. 17:33-2.

#### Case Notes

Ability to pay should not be considered in ordering restitution of misappropriated funds in trucking insurance fraud scheme. *Fortunato v. Pappas Trucking Insurance Agency, Inc.*, 96 N.J.A.R.2d (INS) 1.

#### 11:2-29.8 Severability

If any provision of this subchapter or its application to any person or circumstance is held invalid, such determination shall not affect other provisions or applications of this subchapter which can be given effect without the invalid provision or application, and to that end the provisions of this subchapter are separable.

## SUBCHAPTER 30. (RESERVED)

SUBCHAPTER 31. MANNER OF DETERMINING  
PREMIUM FOR PERPETUAL  
HOMEOWNERS INSURANCE**11:2-31.1 Purpose**

This subchapter sets forth the manner of determining premium for perpetual homeowners insurance for any applicable statutory fee, surcharge, tax or assessment.

**11:2-31.2 Scope**

The provisions of this subchapter apply to all insurers transacting the business of perpetual homeowners insurance in this State, including all perils insured thereunder.

**11:2-31.3 Definitions**

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

“Annual adjustments” means any adjustments in the perpetual deposit account during the calendar year, exclusive of dividends. Increases include any additions to the account, such as policy fees and premium assessments. Decreases include the return of perpetual deposits, in whole or in part, due to the termination of policies and any other decreases, exclusive of dividends.

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

“Insurer” means an insurance company licensed to transact the business of perpetual homeowners insurance in this State.

“Net perpetual deposits” means the total perpetual deposits received by an insurer for perpetual homeowners insurance increased or decreased by annual adjustments.

“Perpetual deposit” means a payment by a policyholder for perpetual homeowners insurance.

“Perpetual homeowners insurance” means a homeowners policy and related endorsements, including all perils insured thereunder, which remains continuously in effect until cancelled, and is paid for with one lump sum deposit with no additional payment required, notwithstanding any subsequent fees or assessments.

**11:2-31.4 Determination of premium**

(a) For the purposes of any statutory fee, surcharge, tax or assessment based on premium and applicable to perpetual homeowners insurance, premium is:

1. The sum of the net perpetual deposits received for perpetual homeowners insurance from the inception of the policy through the calendar year immediately preceding the date that such applicable statutory fee, surcharge, tax or assessment is due, multiplied by:

2. The average annual interest rate on one-year U.S. Treasury bills for the calendar year in question.

(b) The premium base for any applicable statutory fee, surcharge, tax or assessment is calculated annually as set forth in (a) above less any so-called dividends returned or credited to policyholders during the calendar year in question.

**11:2-31.5 Data filed; examination**

(a) Each insurer shall include with the annual statement filed with the Commissioner, a list of the lines of business under which perpetual homeowners insurance is written, on form(s) prescribed by the Commissioner.

(b) All data submitted is examined by the Commissioner and he or she may make any further audit or investigation or reaudit as necessary. An insurer shall pay the reasonable expenses of any examination, pursuant to N.J.S.A. 17:23-4.

**11:2-31.6 Penalties**

Failure to comply with these provisions may result in the imposition of sanctions by the Department including, but not limited to, sanctions pursuant to N.J.S.A. 17:33-2.

## SUBCHAPTER 32. CUSTODIAL DEPOSITS

**11:2-32.1 Purpose and scope**

(a) The purpose of this subchapter is to set forth the procedures for the holding by the Commissioner of any required deposits and to establish the fees to be charged the depositor for the services of the custodian of such deposits pursuant to N.J.S.A. 17:20-1 et seq., 17:46B-1 et seq., 17:50-6, and 17B:18-37 et seq.

(b) This subchapter applies to all insurers required by the laws of this State to make a security deposit to be held for the benefit and security of all the policyholders of the company making such deposit. This subchapter also applies to any other entity required to make a deposit with the Commissioner in order to transact business in this State. This subchapter does not apply to any insurer under liquidation pursuant to N.J.S.A. 17:30C-1 et seq. or 17B:32-1 et seq., as applicable.

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

**11:2-32.2 Definitions**

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

“Bank” means a State or Federally chartered bank, savings bank, or savings and loan association which has trust powers and which has its principal office in New Jersey.

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

“Custodian” means a bank which performs fiduciary functions in the maintenance of deposits.

“Deposit” means those deposits of securities required to be made by insurance companies prior to their authorization to transact business within any jurisdiction or required to be made by any other entity prior to being authorized by the Commissioner to transact business in this State.

“Federal Reserve book-entry system” means the computerized system sponsored by the United States Department of the Treasury and certain agencies and instrumentalities of the United States for holding and transferring securities of the United States government and the agencies and instrumentalities, respectively, in Federal Reserve Banks through banks which are members of the Federal Reserve System or which otherwise have access to this computerized system.

#### **11:2-32.3 Deposits with custodian; establishment of fees**

(a) Whenever the Commissioner is required or authorized by a law of this or any other State or country to receive and hold a deposit, such deposit shall be made with the custodian on behalf of the Commissioner. The custodian is appointed by the Commissioner on the basis of bids submitted by banks to perform such fiduciary functions as the Commissioner deems necessary in the maintenance of deposits, pursuant to N.J.S.A. 17:20-1b and 17B:18-37b.

(b) If securities are deposited, such securities must be:

1. Bills, bonds and notes issued by the United States Treasury;
2. Debt obligations of the State of New Jersey, its authorities, counties and municipalities; or
3. Certificates of deposit of a State or Federally chartered bank, savings bank or savings and loan association with its principal office in New Jersey.

(c) All securities deposited shall be held by the custodian in physical form or, in the case of bills, bonds and notes issued by the United States Treasury, purchased for the depositor's account in the Federal Reserve book-entry system.

(d) The fees to be charged the depositor for the services of the custodian shall be established by the contract between the Commissioner and the custodian.

(e) All depositors shall pay the applicable fee to the custodian when due. All depositors shall also pay any applicable fees or penalties charged by the custodian for nonpayment in addition to any penalties which may be imposed by the Commissioner pursuant to law for violation of this subchapter.

#### **11:2-32.4 Compliance dates**

(a) All deposits made on or after January 7, 1991 shall conform to the requirements contained in this subchapter.

(b) To the extent a depositor has on deposit securities that do not conform with the types of securities specified

herein, such depositor shall, by June 30, 1991 or upon the maturity of such non-conforming securities, whichever is sooner, make any substitution of securities necessary so that the securities deposited conform with the types of securities specified in this subchapter.

#### **11:2-32.5 Penalties**

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

### **SUBCHAPTER 33. WORKERS' COMPENSATION SELF-INSURANCE**

#### **11:2-33.1 Purpose and scope**

(a) This subchapter sets forth the filing requirements for an employer seeking to self-insure its workers' compensation liability pursuant to N.J.S.A. 34:15-77.

(b) This subchapter applies to all employers seeking to self-insure workers' compensation liability in this State.

#### **11:2-33.2 Definitions**

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

“Applicant” means an employer applying for an exemption from insuring its compensation liability.

“Certificate of Order Granting Exemption from Insuring Liability for Compensation” or “certificate” means the written order of the Commissioner that exempts the applicant from insuring its workers' compensation liability pursuant to N.J.S.A. 34:15-77.

“Certificate holder” means an employer who currently possesses a valid certificate.

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

“Compensation liability” means loss or damage from liability as established by N.J.S.A. 34:15-1 et seq.

“Employer” is as defined at N.J.S.A. 34:15-36.

#### **11:2-33.3 Exemption from insuring compensation liability; filing requirements**

(a) Any employer which applies for an exemption from insuring all or part of its compensation liability shall submit the following to the Commissioner:

1. A copy of its most recent annual financial statement certified by an independent certified public accountant to present fairly, in accordance with generally ac-

cepted accounting principles, and statutory accounting principles where applicable, the financial condition of the applicant;

2. A copy of its Form 10K filing;

3. A brief description of the following, inclusive of all operations in New Jersey, for every separate applicant seeking an exemption:

i. The nature and location of the applicant's business operations;

ii. The applicant's number of employees; and

iii. The estimated average annual payroll; and

4. For corporate applicants domiciled in a state other than this State, a copy of the applicant's registration with the New Jersey Secretary of State.

(b) Upon the Commissioner's review and acceptance of the information submitted pursuant to (a) above, the applicant shall submit the following information to the Commissioner:

1. A completed application form in the format of Exhibit A in the Appendix incorporated herein by reference;

2. Evidence that excess insurance will be obtained in a form and amount acceptable to the Commissioner including the amount of liability that the applicant intends to retain;

3. A loss history on open and closed claims for the applicant's workers' compensation and employers' liability for the three years immediately preceding the date of the application; and

4. The application filing fee as set forth in N.J.A.C. 11:1-32.4(b)13.

(c) If the applicant is a corporation, the applicant may request that the Commissioner include the name of any subsidiary corporation under the control of that corporation in the certificate conditioned upon the applicant's compliance with the requirements of (a) and (b) above for each subsidiary corporation.

1. The Commissioner shall not include the name of any subsidiary in the certificate unless the ultimate parent corporation guarantees that it will discharge the subsidiary's liability as evidenced by filing an indemnity agreement in the format of Exhibit B in the Appendix incorporated herein by reference, or in such other form which is acceptable to the Commissioner. The applicant shall also file a certification of the resolution of the board of directors, in the format of Exhibit C in the Appendix incorporated herein by reference, or in such other form which is acceptable to the Commissioner.

2. If the name of the subsidiary is included in the certificate of the ultimate parent corporation and ownership of the ultimate parent or subsidiary corporation changes, the ultimate parent or subsidiary shall reapply for the certificate within 30 days of the ownership change. The Commissioner may revoke the existing certificate if the ultimate parent or subsidiary fails to reapply for the certificate as set forth above.

(d) An applicant with a substantial number of subsidiaries in New Jersey may request permission to file a consolidated application on behalf of itself and its subsidiaries which shall be in a form acceptable to the Commissioner. The applicant shall demonstrate that the relationship between the parent company and the subsidiaries is clearly evident to covered employees.

1. Upon granting any such request, the Commissioner shall require such information as he or she deems necessary to ensure that the applicant and its subsidiary corporations will satisfy the requirements for the issuance of a certificate pursuant to N.J.S.A. 34:15-77 and this subchapter, including, but not limited to, a listing of all subsidiary corporations to be included in the certificate(s).

2. If the application is approved pursuant to this subsection, the certificate holder shall notify the Commissioner of any additions or deletions to the list of subsidiaries covered under the certificate(s) within 15 days of such change. Coverage for a subsidiary under the parent corporation's certificate(s) shall not terminate until notice has been filed with the Commissioner.

3. The Commissioner may subsequently require an applicant or certificate holder permitted to file consolidated information pursuant to this subsection to file information for each subsidiary corporation based upon any changes in the relationship between the parent and its subsidiaries occurring after permission was granted.

(e) If the applicant is a subsidiary, and the subsidiary's ultimate parent does not apply for a certificate, the subsidiary shall obtain a guarantee from the ultimate parent that it will discharge the subsidiary's liability as evidenced by the filing of an indemnity agreement and certification of the resolution of the board of directors as set forth in (c) above.

(f) In addition to the filing fee set forth in (b)4 above, the applicant shall be assessed and shall pay upon demand the amount necessary to reimburse the Department for expenses incurred in obtaining a risk assessment report on the applicant from a rating agency as determined by the Commissioner.

(g) If an application is approved, the applicant shall submit a surety bond in a form and amount determined by the Commissioner, with a minimum penal sum of \$500,000 and an executed contract of excess insurance in an amount acceptable to the Commissioner. Upon receipt of the required surety bond and executed contract of excess insurance, the Commissioner shall issue a "Certificate of Order Granting Exemption from Insuring Liability for Compensation" to the applicant.

(h) All certificates shall be valid from the date of issuance until June 30 immediately following and may be renewed thereafter, pursuant to N.J.A.C. 11:2-33.4, for a one-year period beginning July 1 and ending June 30 the following year.

(i) All information or notifications 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  
 Division of Financial Examinations  
 Attention: Workers' Compensation Self-Insurance  
 20 West State Street  
 CN-325  
 Trenton, New Jersey 08625

#### 11:2-33.4 Renewals

(a) Any certificate holder which applies for renewal shall submit the following so that it is received by the Commissioner not later than 60 days prior to the expiration of its current certificate:

1. A completed "Statement by Employer Exempted From Insuring Liability For Compensation" as set forth in Exhibit D in the Appendix incorporated herein by reference;

2. A supplementary statement of outstanding death or disability claims as set forth in Exhibit E in the Appendix incorporated herein by reference for the calendar year immediately preceding the expiration date of the certificate;

i. The certificate holder shall provide the name, address and telephone number of the person who actually completed the supplementary statement, and shall provide the location of the claim records utilized in the preparation of the statement.

3. A copy of the certificate of renewal of excess insurance;

4. A financial statement for the fiscal year immediately preceding the expiration date of the certificate which is certified by an independent certified public accountant to present fairly, in accordance with generally accepted accounting principles, and statutory accounting principles, where applicable, the financial condition of the certificate holder;

5. A certification that the certificate holder recognizes that it may be subject to examination by the Commissioner as required pursuant to (e) below;

6. The renewal fee as set forth in N.J.A.C. 11:1-32.4(b)13; and

7. Any other information that is materially different from the information provided in the original application

or from the information provided in the last renewal period.

(b) In addition to the renewal fee set forth in (a)6 above, upon the initial renewal of its certificate the certificate holder shall be assessed and shall pay upon demand the amount necessary to reimburse the Department for expenses incurred in obtaining a risk assessment report on the certificate holder from a rating agency as determined by the Commissioner.

1. The requirement in (b) above shall not apply to any certificate holder that was required to submit a risk assessment report as part of the initial application pursuant to N.J.A.C. 11:2-33.3(f).

2. After the initial submission of the risk assessment report pursuant to N.J.A.C. 11:2-33.3(f) or 33.4(b), the Department may obtain a risk assessment report on the certificate holder and assess the certificate holder the costs of obtaining such report as set forth herein if the Commissioner determines that the certificate holder's financial condition may have deteriorated, or an event occurs which is reasonably likely to cause the certificate holder's financial condition to deteriorate as provided at (e) below.

(c) After the submission of the application for renewal, the Commissioner may require a surety bond, or an increase in the penal sum of an existing surety bond, in an amount determined by the Commissioner if he or she deems it necessary to ensure that the certificate holder satisfies the requirements for the issuance of a certificate set forth in N.J.S.A. 34:15-77 and this subchapter.

(d) Upon approval of the application for renewal, the Commissioner shall issue a new certificate.

(e) If the Commissioner determines that the certificate holder's financial condition may have deteriorated, or an event occurs which is reasonably likely to cause the certificate holder's financial condition to deteriorate, he or she may conduct such further examination of the certificate holder as he or she deems necessary to ensure that the certificate holder continues to satisfy the requirements for the issuance of a certificate set forth in N.J.S.A. 34:15-77 and this subchapter.

1. In determining whether to conduct such an examination pursuant to this section, the Commissioner shall consider the following factors, without limitation:

i. A major loss suffered by the certificate holder over the previous year or a trend of losses over several years;

ii. A significant decrease in the certificate holder's bond rating over the previous year or a trend of decreases over the past several years;

iii. A significant increase in claims payments by the certificate holder to employees; or

iv. Major environmental litigation or asbestosis litigation to which the certificate holder has or may become subject.

2. The examination may consist of an examination at the certificate holder's offices conducted by the Commissioner's designee; a review of such additional information as the Commissioner may request, including, but not limited to, a risk assessment report as set forth in (b) above, and a statement of opinion by a qualified actuary attesting to the adequacy of reserves for outstanding death or disability claims that meets the requirements of N.J.A.C. 11:1-21; or both.

3. The costs of any examinations shall be borne by the certificate holder.

Administrative Correction.  
See: 25 N.J.R. 4179(a).

#### 11:2-33.5 Confidentiality

The financial reports submitted pursuant to N.J.A.C. 11:2-33.3(a)1 and 33.4(a)4, and the supplementary statement submitted pursuant to N.J.A.C. 11:2-33.4(a)2, 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. However, financial reports or statements which have been filed with the Securities and Exchange Commission or the New Jersey Bureau of Securities shall not be confidential pursuant to this section.

#### 11:2-33.6 Cancellation of exemption

(a) A certificate holder may cancel its exemption from insuring compensation liability by notifying the Commissioner in writing by certified letter return receipt requested not later than 30 days prior to date such cancellation takes effect.

(b) Notwithstanding the cancellation of the exemption, the employer shall continue to file with the Commissioner a supplementary statement of outstanding death or disability claims as set forth in Exhibit E not later than June 1 of each year until such time as all open claims are resolved to final payment.

(c) If no surety bond is in effect at the time of the notification of cancellation, the Commissioner may require as a condition of cancellation the certificate holder to provide a surety bond, deposit or other security to ensure the discharge of its obligations under N.J.S.A. 34:15-1 et seq.

#### 11:2-33.7 Failure to comply with subchapter; denial of exemption

Failure to submit the information required by this subchapter completely and accurately shall constitute grounds for and may result in the denial or refusal to renew an exemption from insuring workers' compensation liability.

#### 11:2-33.8 Severability

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

APPENDIX

EXHIBIT A (290)

Exemption No. ....

NOTE:-All Information Given in this Application is Confidential.

STATE OF NEW JERSEY DEPARTMENT OF INSURANCE

EMPLOYER'S APPLICATION FOR THE PRIVILEGE OF PAYING COMPENSATION WITHOUT INSURANCE

(As provided by Title 34, Chapter 15, Article 77, of the "Revised Statutes")

To the Commissioner of Insurance of New Jersey:

The undersigned, an employer, subject to the provisions of Title 34, Chapter 15, of the "Revised Statutes" of New Jersey, hereby applies for the privilege of being exempt from insuring the payment of compensation, and submits the following facts under oath to the Commissioner of Insurance to enable him to determine if sufficient financial ability exists to render certain the payment of such compensation.

- 1. Name of applicant
2. P. O. address
3. The applicant is
4. If a partnership: Date of formation of partnership Date of commencement of business

Table with 4 columns: Name of each partner, Address, Amount of capital contributed, Individual's worth outside of interest in this business

- 5. If a corporation: Date of incorporation Date of commencement of business
Incorporated under the laws of the State of Rates of dividends paid during each of the last five years?

List below the names and addresses of officers and directors and the par value of the stock owned by each.

Table with 4 columns: Title, Name, Address, Stock owned

Is the employer a subsidiary? If so, give name and address of parent company?

- 6. Safety, sanitation and welfare conditions:
Is your plant inspected otherwise than by State authority?
If so, by whom?
Have you a committee of safety whose duty it is to recommend safety devices and to secure compliance with statutes or general orders of the Department of Labor as to safety and sanitation?
Do you maintain a hospital in connection with your works? If so, state description of its equipment and service

- 7. Do you maintain any reinsurance against losses? If so, furnish copy of policy.

- 8. Have you set aside any special funds in trust specifically designated for the discharge of outstanding claims of long duration? If any, give name of beneficiary, amount and place of deposit.

- 9. Give complete description of the organization, personnel and other special arrangements or facilities for performing the duties of a self-insurer

10. FINANCIAL STATEMENT, AS OF THE LAST CLOSING DATE \_\_\_\_\_, 19.....

Assets		Amount	Liabilities		Amount
Cash on hand .....		\$	Open accounts owing (not due) .....		\$
Cash in .....	Bank .....		Open accounts owing (past due) .....		
Cash in .....	Bank .....		Notes payable .....		
Cash in .....	Bank .....		Owing to .....	Bank .....	
Stocks and Bonds owned (Schedule B)			Owing to other banks, bankers or		
Merchandise in stock, at cost .....			brokers .....		
(Insurance on same \$.....)			Owing to other persons, relatives or		
Work in process or raw material in			friends .....		
warehouse at cost .....			Deposits and other trust funds .....		
(Insurance on same \$.....)			Goods held on consignment .....		
Bills } Less than 12 mos. due			Liens on merchandise .....		
receivable, } Over 12 mos. due.....			Chattel mortgages on .....		
Accounts, receivable, GOOD .....			Bonded indebtedness .....		
Secured loans owned (Schedule A) .....			Mortgages or deeds of trust on real		
Machinery & fixtures (Cost \$.....)			estate (see Schedule C) .....		
Animals & vehicles (Cost \$.....)			Unpaid workmen's compensation		
Real estate owned (Schedule C) .....			claims .....		
If the employer is a partnership or a			Other liabilities including reserves		
corporation, state the amount, if			(specify) :		
any, of bills and accounts owing			.....		
from partners, officers, stock-			.....		
holders, directors or employees.			.....		
(NOTE: The amount if any, should			.....		
also be included among the accounts			.....		
and bills receivable listed above.)			.....		
..... \$ .....			CONTINGENT LIABILITIES		
..... \$ .....			(Do not carry amounts out into column)		
..... \$ .....			Upon bills receivable, not included		
..... \$ .....			in above statement, rediscounted		
Other assets (specify) :			..... \$ .....		
.....			Accommodation paper		
.....			or endorsements .....	\$	
.....			Exchanged paper .....	\$	
.....			Guarantees .....	\$	
.....			Bonds .....	\$	
.....			Capital stock outstanding .....		
.....			Surplus .....		
Total .....		\$	Total .....		\$

Are the above assets pledged as collateral? ..... Are any of the above liabilities secured by collateral? .....

If yes, explain ..... If yes, explain .....

Is foregoing statement based on actual inventory? ..... If so, date .....

Have the books been audited by a public accountant? ..... If so, when and by whom? .....

11. PROFIT AND LOSS STATEMENT AS OF THE LAST CLOSING DATE \_\_\_\_\_, 19.....

Losses	Amount	Profits	Amount
Expenses of operation .....	\$	Surplus beginning of period .....	\$
Taxes, rentals and interest paid .....		From operations .....	
Bad debts charged off .....		interest and discounts .....	
Depreciation charged off .....		investments .....	
Repairs or betterment charges .....		bad debts previously charged off .....	
Dividends paid or amounts otherwise		All income other than from usual	
withdrawn .....		operations .....	
All other amounts withdrawn .....		.....	
.....		.....	
Surplus end of period .....		.....	
Total .....	\$	Total .....	\$

What is the amount of net profits from operations during period? \$ .....



13. Statement of Locations of Shops and other Workplaces, Number of Employees, Payrolls and Description of Operations in New Jersey.

This report covers the latest fiscal period of the Employer, extending from \_\_\_\_\_ to \_\_\_\_\_

Location of Factory, Office or other work place by town, city or other designation	Estimated Average Number of Employees at Each Location	Division of Operations (Payroll and number of employees are to be given on separate lines for each operation at each location.)	Actual Payroll Expenditure for past Year	Rate (Do not fill in)	Premium (do not fill in)
		(a) Clerical office employees and draftsmen engaged exclusively in office duties. (b) Outside salesmen, collectors and messengers. (c) Drivers and helpers. (d) Chauffeurs and helpers. (e) General operations at plant of employer or elsewhere within the State of New Jersey. Note: Classify each separate operation as closely as possible in accordance with insurance rate manual in force.			

14. Total estimated average number of employees \_\_\_\_\_, and total payroll expenditure in the past year \$ \_\_\_\_\_ for all operations wherever conducted.

15. The applicant agrees to discharge faithfully and promptly all payments and obligations which are now due or shall become due under the provisions of Title 34, Chapter 15, of the "Revised Statutes" of New Jersey; to furnish to the Commissioner of Insurance such further information as is from time to time requested as a condition to the privilege of going without insurance; and to advise the said Commissioner of Insurance immediately of any accident resulting fatally to two or more employees.

(Signature of Applicant Employer)

By \_\_\_\_\_ (Name) \_\_\_\_\_ (Title)

Dated at \_\_\_\_\_, 19\_\_\_\_\_

AFFIDAVIT

(The person subscribing to the below affidavit should be the employer himself; or if the employer be a partnership, one of the partners; or if employer be a corporation, its president, vice-president, secretary or treasurer.)

STATE OF NEW JERSEY }  
 County of \_\_\_\_\_ } ss.

\_\_\_\_\_ first being duly sworn on oath deposes and says that he is acquainted with the affairs of the above-mentioned applicant employer, to which representations and statements set forth in the foregoing application relate; that he has read said application, knows the contents thereof and that said representations and statements therein contained are true to the best of his knowledge and belief.

Subscribed and sworn to before me at

\_\_\_\_\_ N. J. }  
 this \_\_\_\_\_ day of \_\_\_\_\_ }  
 \_\_\_\_\_, A. D. 19\_\_\_\_\_ }

(Official Title)

EXHIBIT B

INDEMNITY AGREEMENT

This agreement is made on \_\_\_\_\_, 19\_\_\_\_, in the City of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_,

The parties to the agreement are \_\_\_\_\_, of \_\_\_\_\_, City of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_, hereinafter called "indemnitor," and \_\_\_\_\_, of \_\_\_\_\_, City of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_, hereinafter called "indemnatee."

Since indemnitee is a subsidiary of indemnitor and is an employer subject to the provisions of N.J.S.A. 34:15-1 et seq. and, as such, has applied to the Commissioner of Insurance of New Jersey for exemption from insuring payment of workers' compensation liability in conformity with the provisions of said statutes and an assumption by indemnitor of the self-insurance obligations of indemnitee is essential to secure payment thereof pursuant to the provisions of N.J.A.C. 11:2-33, in consideration of the grant of exemption from insuring liability by the Commissioner of Insurance of New Jersey to indemnitee,

It is hereby agreed:

In the event (indemnitee) shall not pay or cause to be paid directly to claimants the benefits due or that may become due under N.J.S.A. 34:15-1 et seq., then (indemnitor) covenants and agrees that it will pay to all such claimants the benefits due, with the expressed knowledge and understanding that the execution and acceptance of this agreement is for the benefit of unknown and unnamed claimants of (indemnitee) and (indemnitor) does hereby recognize this agreement as a direct financial guarantee to said claimants.

PROVIDED HOWEVER, (indemnitor) shall have a right to cancel and terminate this agreement at any time upon giving the New Jersey Insurance Department at least thirty (30) days written notice of its desire to do so; provided such cancellation shall not affect its liability as to any benefits payable for claims occurring prior to the date of cancellation specified in such notice.

This agreement shall be effective as of \_\_\_\_\_, 19\_\_\_\_.  
Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

ON BEHALF OF INDEMNITOR  
BY: \_\_\_\_\_  
(signature and title)

ATTEST:  
\_\_\_\_\_  
(signature and title)

ON BEHALF OF INDEMNITEE  
BY: \_\_\_\_\_  
(signature and title)

ATTEST:  
\_\_\_\_\_  
(signature and title)

EXHIBIT C  
CERTIFICATION OF RESOLUTION OF THE  
BOARD OF DIRECTORS OF \_\_\_\_\_

Whereas the \_\_\_\_\_ and \_\_\_\_\_ [titles of corporate officers] of this corporation propose to execute a general indemnity agreement in favor of \_\_\_\_\_, a subsidiary, by which this corporation agrees and undertakes to guarantee the payment of any sum of money for compensation, including disability benefits, which may be or become legally due from said subsidiary under the provisions of N.J.S.A. 34:15-1 et seq., and that this resolution will not be amended or abrogated without prior notice to the Commissioner of Insurance, State of New Jersey; and such agreement having been fully considered and approved by the directors present at this meeting;

Now, therefore, be it resolved that the \_\_\_\_\_ and \_\_\_\_\_ [titles of officers] are hereby expressly authorized to execute the general indemnity agreement in favor of \_\_\_\_\_ [subsidiary] by unanimous vote of the directors of this corporation.

I hereby certify that I am the \_\_\_\_\_ [secretary] of \_\_\_\_\_ [corporation], and that the above resolution is a true and accurate copy of a resolution unanimously adopted by the board of directors at a meeting duly called and held on \_\_\_\_\_, 19\_\_\_\_, in the office of the corporation, at which a quorum of the directors was present.

Dated \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_  
Signature and Title

[Corporate seal]

EXHIBIT D

(281) Exemption No. \_\_\_\_\_  
 NOTE:—All Information Given in this Statement is Confidential

STATE OF NEW JERSEY  
 DEPARTMENT OF INSURANCE

STATEMENT BY EMPLOYER EXEMPTED FROM INSURING  
 LIABILITY FOR COMPENSATION

To the Commissioner of Insurance of New Jersey:

The undersigned employer, being the holder of a certificate of exemption from insuring liability for compensation, in accordance with Title 34, Chapter 15, Section 77 of the "Revised Statutes," desires to have such certificate continued in force and for that purpose submits the following verified statement:

1. Name of employer \_\_\_\_\_
2. P. O. address \_\_\_\_\_  
(Number) (Street) (City or Town) (County) (State)
3. The applicant is \_\_\_\_\_  
(State whether individual, co-partnership, limited partnership, corporation, receiver or trustee)
4. If a partnership: Date of formation of partnership \_\_\_\_\_ Date of commencement of business \_\_\_\_\_

Name of each partner	Address	Amount of capital contributed	Individual's worth outside of interest in this business
		\$	\$

5. If a corporation: Date of incorporation \_\_\_\_\_ Date of commencement of business \_\_\_\_\_  
 Incorporated under the laws of the State of \_\_\_\_\_ Rate of dividend paid during the past year? \_\_\_\_\_  
 List below the names and addresses of your officers and directors and the par value of the stock owned by each.

Title	Name	Address	Stock owned
President			
Vice-President			
Secretary			
Treasurer			
Director			
Director			
Director			
Director			
Director			
Director			
Director			
Director			

Is the employer a subsidiary? \_\_\_\_\_ If so, give name and address of parent company? \_\_\_\_\_

6. Safety, sanitation and welfare conditions:  
 Is your plant inspected otherwise than by State authority? \_\_\_\_\_  
 If so, by whom? \_\_\_\_\_  
 Have you a committee of safety whose duty it is to recommend safety devices and to secure compliance with statutes or general orders of the Department of Labor as to safety and sanitation? \_\_\_\_\_  
 Do you maintain a hospital in connection with your works? \_\_\_\_\_ If so, state description of its equipment and service \_\_\_\_\_
7. Do you maintain any reinsurance against losses? \_\_\_\_\_ If so, file copy of policy unless already on file \_\_\_\_\_
8. Have you set aside any special funds in trust specifically designated for the discharge of outstanding claims of long duration? \_\_\_\_\_ If any, give name of beneficiary, amount and place of deposit. \_\_\_\_\_
9. Give complete description of the organization, personnel and other special arrangements or facilities for performing the duties of a self-insurer \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

10. FINANCIAL STATEMENT, AS OF THE LAST CLOSING DATE \_\_\_\_\_, 19\_\_\_\_

ASSETS		AMOUNT	LIABILITIES		AMOUNT
Cash on hand		\$	Open accounts owing (not due)		\$
Cash in _____ Bank			Open accounts owing (past due)		
Cash in _____ Bank			Notes payable		
Cash in _____ Bank			Owing to _____ Bank		
Stocks and Bonds owned (Schedule B)			Owing to other banks, bankers or brokers		
Merchandise in stock, at cost			Owing to other persons, relatives or friends		
(Insurance on same \$ _____)			Deposits and other trust funds		
Work in Process or raw material in warehouse at cost			Goods held on consignment		
(Insurance on same \$ _____)			Liens on merchandise		
Bills { Less than 12 mos. due			Chattel mortgages on		
receivable,   Over 12 mos. due			Bonded indebtedness		
Accounts receivable, GOOD			Mortgages or deeds of trust on real estate (see Schedule C)		
Secured loans owned (Schedule A)			Unpaid workmen's compensation claims		
Machinery & fixtures (Cost \$ _____)			Other liabilities including reserves (specify):		
Animals & vehicles (Cost \$ _____)					
Real estate owned (Schedule C)					
If the employer is a partnership or a corporation, state the amount, if any, of bills and accounts owing from partners, officers, stockholders, directors or employees. (NOTE: The amount if any, should also be included among the accounts and bills receivable listed above.)			CONTINGENT LIABILITIES (Do not carry amounts out into columns)		
_____ \$ _____			Upon bills receivable, not included in above statement, rediscounted		
_____ \$ _____			_____ \$ _____		
_____ \$ _____			Accommodation paper or endorsements		
_____ \$ _____			Exchanged paper		
Other assets (specify):			Guarantees		
_____			Bonds		
_____			Capital stock outstanding		
_____			Surplus		
Total		\$	Total		\$

Are the above assets pledged as collateral? \_\_\_\_\_

If yes, explain \_\_\_\_\_

Are any of the above liabilities secured by collateral? \_\_\_\_\_

If yes, explain \_\_\_\_\_

Is foregoing statement based on actual inventory? \_\_\_\_\_ If so, date \_\_\_\_\_

Have the books been audited by a public accountant? \_\_\_\_\_ If so, when and by whom? \_\_\_\_\_

11. PROFIT AND LOSS STATEMENT AS OF THE LAST CLOSING DATE \_\_\_\_\_, 19\_\_\_\_

Losses	Amount	Profits	Amount
Expense of operation	\$	Surplus beginning of period	\$
Taxes, rentals and interest paid		From operations	
Bad debts charged off		interest and discounts	
Depreciation charged off		investments	
Repair or betterment charges		bad debts previously charged off	
Dividends paid or amounts otherwise withdrawn		All income other than from usual operations:	
All other amounts withdrawn			
Surplus end of period			
Total	\$	Total	\$

What is the amount of net profits from operations during period? \$ \_\_\_\_\_



**13. Statement of Locations of Shops and other Work places, Number of Employees, Payrolls and Description of Operations in New Jersey.**

This report covers the latest fiscal period of the Employer, extending from \_\_\_\_\_ to \_\_\_\_\_.

Location of Factory, Office or other work place by town, city or other designation	Estimated Average Number of Employees at Each Location	Division of Operations (Payroll and number of employees are to be given on separate lines for each operation at each location.)	Actual Payroll Expenditure for past year	Rate (Do not fill in)	Premium (Do not fill in)
		(a) Clerical office employees and draftsmen engaged exclusively in office duties. (b) Outside salesmen, collectors and messengers. (c) Drivers and helpers. (d) Chauffeurs and helpers. (e) General operations at plant of employer or elsewhere within the State of New Jersey. Note: Classify each separate operation as closely as possible in accordance with insurance rate manual in force.			

14. Total estimated average number of employees \_\_\_\_\_, and total payroll expenditure in the past year \$ \_\_\_\_\_ for all operations wherever conducted.

**15. Loss Exhibit**

- A. Total amount of compensation (indemnity only) PAID during past year ..... \$ .....
- B. Total amount of medical, hospital and surgical expense for the past year including cost of supplies and equipment for employer's plant hospital (paid \$.....) total incurred ..... \$ .....
- C. Outstanding Indemnity Reserve (total of reserve as per Col. 10 of supplementary statement) ..... \$ .....
- D. Total incurred loss for past year [ A. + B. + C. - C. (Prior Year) ] ..... \$ .....

.....  
 (Signature of Employer)  
 By ..... (Name) ..... (Title)  
 Dated at ..... 19.....

**AFFIDAVIT**

(The person subscribing to the below affidavit should be the employer himself; or if the employer be a partnership, one of the partners; or if the employer be a corporation its president, vice-president, secretary or treasurer.)

STATE OF NEW JERSEY, }  
 \_\_\_\_\_ County. } ss.

\_\_\_\_\_ first being duly sworn on oath deposes and says that he is acquainted with the affairs of the above-mentioned employer, to which the foregoing statement and supplementary statement of outstanding disability claims accompanying the same relate, that he has read said statements, knows the contents thereof and that the same are true and completely answer the several questions to the best of his knowledge and belief.

Subscribed and sworn to before me at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 19\_\_\_\_

\_\_\_\_\_  
 (Official Title)



**SUBCHAPTER 34. SURPLUS LINES INSURANCE:  
ALLOCATION OF PREMIUM TAX AND  
SURCHARGE**

**11:2-34.1 Purpose and scope**

(a) This subchapter sets forth the method by which the surplus lines premium receipts tax imposed pursuant to N.J.S.A. 17:22-6.59 and 6.64 and the New Jersey Surplus Lines Insurance Guaranty Fund assessment imposed pursuant to N.J.S.A. 17:22-6.75 is computed on the portion of the premium which is properly allocable to the risks or exposures located within this State.

(b) This subchapter applies to all surplus lines agents and insureds required to forward premium receipts tax to the Commissioner pursuant to N.J.S.A. 17:22-6.59 and 6.64, and assessments to the New Jersey Surplus Lines Insurance Guaranty Fund pursuant to N.J.S.A. 17:22-6.75a(2).

**11:2-34.2 Definitions**

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

“Allocation Schedule” means the schedule in the Appendix to this subchapter incorporated by reference which sets forth the criteria for tax allocation to New Jersey of a portion of the premium of multi-state risks.

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

“Department” means the New Jersey Department of Insurance.

“Guaranty fund” means the New Jersey Surplus Lines Insurance Guaranty Fund created by N.J.S.A. 17:22-6.73.

“Located in New Jersey” or “in New Jersey” means a physical presence in or headquartered in the State of New Jersey.

“Surplus lines agent” means an individual licensed pursuant to N.J.S.A. 17:22A-1 et seq. and N.J.A.C. 11:17-2.2 to place insurance coverages with unauthorized insurers.

“Surplus lines insurer” means an unauthorized insurer which is eligible for placement of insurance coverage pursuant to N.J.S.A. 17:22-6.42, 6.43 and 6.45.

“Unauthorized insurer” means an insurer that is not duly authorized to transact business in this State by a current certificate of authority issued pursuant to N.J.S.A. 17:17-1 et seq. for domestic insurance companies and N.J.S.A. 17:32-1 et seq. for foreign companies, and any other laws of this State.

**11:2-34.3 Allocation of premium tax and surcharge**

(a) Each surplus lines agent shall on or before the end of the month next following each year calendar quarter file with the Commissioner a verified report in duplicate of all surplus lines insurance transacted, or not transacted, during such calendar quarter as set forth in N.J.S.A. 17:22-6.58. The surplus lines agent shall collect from the insured and forward to the Commissioner the appropriate amount of tax collected for each quarterly period as set forth in N.J.S.A. 17:22-6.59 which shall be allocated as set forth in this subchapter when a surplus lines policy covers risks or exposures only partially located within this State.

(b) Premiums charged by eligible surplus lines insurers in this State are subject to a surcharge of up to four percent calculated in accordance with N.J.S.A. 17:22-6.75(2). The surplus lines agent shall collect from the insured and forward to the Fund the amount of the surcharge on a quarterly payment basis.

(c) The surplus lines agent or insured shall determine the premium and surcharge properly allocable to risks or exposures located in this State by using the method of allocation according to the Allocation Schedule set forth in the Appendix to this subchapter, which is hereby incorporated by reference, which pertains to the classification describing the coverage.

(d) If the Allocation Schedule does not identify a classification appropriate to the property or risk located in this State, the surplus lines agent or insured shall use an alternative equitable method of allocation for the property or risk.

(e) If a policy covers more than one classification:

1. For any portion of the coverage identified by a classification on the Allocation Schedule, the tax shall be computed using the Allocation Schedule for the corresponding portion of the premiums.

2. For any portion of the coverage not identified by a classification on the Allocation Schedule, the tax shall be computed as set forth in (d) above.

3. For any portion of the coverage where the premium is indivisible, the tax shall be computed by using the method of allocation that pertains to the classification on the Allocation Schedule describing the predominant coverage.

(f) If, in the opinion of the Commissioner, the information provided by the surplus lines agent or insured is insufficient to support its method of allocation, or if the Commissioner determines that the method used is incorrect, the Commissioner shall determine an equitable and appropriate method of allocation as follows:

1. If the Allocation Schedule identifies a classification appropriate to the coverage, the Commissioner shall use the method of allocation as set forth in (c) above.

2. If the Allocation Schedule does not identify the classification appropriate to the coverage, the Commissioner, in determining an alternate method of allocation, shall give significant weight to documented evidence of the underwriting exposure basis and any other criteria used by the insurer to determine the policy premium. The Commissioner may also consider other available information to the extent he or she finds the information sufficient and relevant, including, but not limited to, the following:

- i. The percentage of the insured's physical assets in this State;
- ii. The percentage of the insured's employee payroll in this State;
- iii. The percentage of the insured's sales in this State; and
- iv. The amount of premium tax paid to another jurisdiction.

(g) The listing of any coverage of insurance in the Allocation Schedule shall not mean that such coverage has been deemed by the Commissioner as eligible for export. No coverage shall be eligible for export unless the conditions set forth in N.J.S.A. 17:22-6.43 are satisfied.

**11:2-34.4 Duty to file allocation form**

(a) The surplus lines agent shall file a copy of the work sheets which show the method of allocation when it employs an alternative method of allocation to compute the surplus lines insurance premium tax in accordance with N.J.S.A. 17:22-6.57 and 6.58 and all renewals, until such time as a different method is approved and filed.

(b) The insured or self-insured shall file a copy of the allocation form when it employs an alternative method of allocation to compute the surplus lines insurance premium tax in accordance with N.J.S.A. 17:22-6.64 and 6.65, and all renewals, until such time the alternative method is approved and filed.

**11:2-34.5 Duty to keep records**

(a) The surplus lines agent shall maintain records concerning the method used to compute the surplus lines insurance premium tax in accordance with N.J.S.A. 17:22-6.57 and 6.58, including those records as indicated in the allocation schedule, and all renewals, for a period not less than three years.

(b) The insured or self insured shall maintain records concerning the method used to compute the surplus lines insurance premium tax in accordance with N.J.S.A. 17:22-6.64 and 6.65, including those records as indicated in the allocation schedule, and all renewals, for a period not less than three years.

(c) These records shall be available for review by the Department at all times and copies shall be provided to the Surplus Lines Examining Office of the Department, upon request, at any time during the period of retention.

**11:2-34.6 Penalties**

Failure to comply with the provisions of this subchapter may result in the imposition of penalties as provided by law including, but not limited to, N.J.S.A. 17:22-6.61, 6.64 and 6.76.

**APPENDIX**

**SURPLUS LINES PREMIUM TAX AND ALLOCATION SCHEDULE**  
Criteria for Tax Allocation of Multi-State Risks

Classification	Allocated to New Jersey by
<b>PROPERTY INSURANCE</b>	
Real Property (including buildings and other permanent additions)	Insured value of structures and other property in New Jersey
Personal Property (including inland marine)	Insured value of property permanently or principally situated in New Jersey
Business Interruption, Time Element or similar time valued coverages	Insured time valued elements in New Jersey
Farmowners, Homeowners and Businessowners (BOP)	Insured value of structures and other property in New Jersey
Aircraft	Insured value of aircraft principally hangared in New Jersey
Motor Vehicle	Insured value of motor vehicles principally garaged in New Jersey
Kidnap and Ransom	Number of insured employees principally employed in New Jersey
Ocean Marine	None to New Jersey
<b>FIDELITY AND SURETY</b>	
Fidelity, Forgery and other Indemnity Bonds	Number of insured employees in New Jersey
Bankers Blanket Bonds	Number of insured employees in New Jersey
Performance Bonds	Total bond value of contracts in New Jersey
Other Surety Bonds	Total bond value of contracts in New Jersey
<b>CREDIT INSURANCE</b>	
Credit Insurance	Value of insured debt in New Jersey
<b>RESIDUAL VALUE INSURANCE</b>	
Residual Value Insurance	Allocate to value of underlying property
<b>LIABILITY INSURANCE</b>	
Manufacturers and Contractors	Payroll in New Jersey
Premises Operations	Square footage of premises in New Jersey
Owners and Contractors Protective Products	Cost of contract in New Jersey
Completed Operations	Number of units manufactured in New Jersey
Child Care	Receipts in New Jersey
Contractual	Number of children in New Jersey
Recreational	If "stand alone" policy, value of sales in New Jersey
	Amount of gate receipts in New Jersey

Classification	Allocated to New Jersey by
Environmental Impairment	Number of units of exposure in New Jersey
Asbestos Abatement	Payroll in New Jersey
Employee/Member Benefit Program	Number of employees/members in New Jersey
Special Events	Number of events in New Jersey
Professional Liability	Number of named insureds in New Jersey
Errors and Omissions	Revenues generated in New Jersey
Directors and Officers: For-profit organization	Revenues generated in New Jersey Number of employees
Non-for-profit organization	Headquartered in New Jersey
Hospital, Nursing Home and Adult Home	Number of beds in New Jersey plus one additional bed for each 100 outpatient visits at locations in New Jersey
Liquor Liability	Receipts from sales of alcoholic beverages in New Jersey
Railroad Protective Aircraft	Miles of track in New Jersey
Motor Vehicle	Number of aircraft principally hangared in New Jersey
Umbrella	Number of motor vehicles principally garaged in New Jersey
Excess Liability	Classification of predominant coverage; except if underlying coverages are divisible, then use underlying classifications
Comprehensive General Liability	If directly over primary, use underlying classifications. If over umbrella, use method for "umbrella" coverage
	Composite Rated Exposure based allocated to New Jersey

### SUBCHAPTER 35. RELIEF FROM INSURER OBLIGATIONS UNDER THE FAIR AUTOMOBILE INSURANCE REFORM ACT OF 1990

#### 11:2-35.1 Purpose and scope

(a) The purpose of this subchapter is to establish the informational and procedural requirements for insurer requests for exemption, abatement, deferral, suspension of or excuse from an insurer's obligation, as the case may be, under the Fair Automobile Insurance Reform Act of 1990, N.J.S.A. 17:33B-1 et seq.

(b) This subchapter applies to all insurers licensed to transact the business of property/casualty insurance in this State and all insurers licensed to transact and writing the business of private passenger automobile insurance in this State, as the case may be.

Amended by R.1993 d.24, effective January 4, 1993.  
See: 24 N.J.R. 3212(a), 25 N.J.R. 138(a).

Provision for excuse from obligation added.

#### 11:2-35.2 Definitions

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

"Applicant" means the insurer seeking an exemption, abatement, deferral, suspension of or excuse from its obligations pursuant to the FAIR Act.

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

"FAIR Act" means the Fair Automobile Insurance Reform Act of 1990, P.L. 1990, c.8 (N.J.S.A. 17:33B-1 et seq.).

"Insurer" means any person, corporation, association, partnership, company or interinsurance exchange authorized or admitted by the laws of this State to transact the business of insurance in this State.

"Relief" means an exemption, abatement, deferral, suspension of or excuse from the obligations imposed pursuant to the FAIR Act.

"Unsafe or unsound financial condition" is as defined in N.J.S.A. 17:33B-19, 17:33B-20, 17:33B-23, 17:33B-24, 17:33B-27, 17:33B-28, 17:33B-52, 17:33B-53, 17:33B-55 and 17:33B-56, as applicable. For purposes of relief from obligations imposed pursuant to N.J.S.A. 17:30E-14g, 17:33B-9c, and 17:33B-11c(5), "unsafe or unsound financial condition" shall have the same meaning as in N.J.S.A. 17:33B-19 and 17:33B-20, and the same procedures therein shall be followed depending on whether the relief sought is immediate or discretionary.

Amended by R.1993 d.24, effective January 4, 1993.

See: 24 N.J.R. 3212(a), 25 N.J.R. 138(a).

"Excuse" added to "Applicant" and "Relief" definition; "unsafe or unsound" clarified further.

#### 11:2-35.3 Application procedures and filing format

(a) Any insurer seeking immediate relief from any FAIR Act obligation pursuant to N.J.S.A. 17:30E-14g, 17:33B-9c, 17:33B-11c(5), 17:33B-19, 17:33B-23, 17:33B-27, 17:33B-52 or 17:33B-55 shall submit a request for such relief no more than 45 days and not less than 15 days prior to the due date for payment or fulfillment of such obligation.

(b) Any insurer seeking discretionary relief from any FAIR Act obligation pursuant to N.J.S.A. 17:30E-14g, 17:33B-9c, 17:33B-11c(5), 17:33B-20, 17:33B-24, 17:33B-28, 17:33B-53 or 17:33B-56 shall submit a request for such relief no later than the due date of such obligation.

(c) All requests outlined in this subchapter shall be accompanied by a statement averring a need for immediate or discretionary relief from such obligation, as the case may be, including supporting documentation, as set forth in N.J.A.C. 11:2-35.4 and shall specify the statutory basis for such relief.

A single filing may request relief from any number of FAIR Act obligations.

(d) Each request shall be in loose leaf form inserted into standard two-ring or three-ring binders tabbed or otherwise indexed to correspond to the exhibits set forth in N.J.A.C. 11:2-25.4. The loose leaf sheets used in the request shall be eight and one-half inches wide and 11 inches long and punched for two-ring or three-ring binders, as appropriate.

(e) All insurers requesting relief pursuant to this subchapter shall submit five copies of each request in the format set forth in (d) above.

(f) A request which is untimely, which is not submitted in the proper format, or which does not contain all of the information required by N.J.A.C. 11:2-35.4 or this section, may be rejected on such grounds by the Commissioner.

(g) If a request fails to contain all of the information required by N.J.A.C. 11:2-35.4 or this section, the Department shall notify the insurer that its request for relief is deficient and is denied for inadequate documentation. The notice shall also set forth the information required to cure the deficiency. The insurer shall submit the additional information within 30 days of receipt of the Department's notice of deficiency. Failure to submit within 30 days the information necessary to cure the deficiency may result in the insurer's request being rejected as untimely.

Amended by R.1993 d.24, effective January 4, 1993.

See: 24 N.J.R. 3212(a), 25 N.J.R. 138(a).

N.J.S.A. citations added, in reference to FAIR Act exemptions.

#### 11:2-35.4 Informational filing requirements

(a) When requesting immediate or discretionary relief pursuant to the FAIR Act, an insurer shall provide with its request the following information in a clear, concise and complete manner.

1. A cover letter stating:

i. The name of the applicant;

ii. The form and specific amount/percentage of relief which the insurer is requesting and a statement of facts relied upon as the basis under which relief is sought; and

iii. A name, telephone number and telefax number of a contact person familiar with the filing to whom the Department may direct any additional questions;

2. Exhibits for the latest preceding calendar quarter ending at least 45 days prior to the date of the request, and, unless otherwise indicated, on a statutory accounting basis that show:

i. Balance sheet;

ii. Profit and loss statement, containing information as set forth in the statutory annual statement page 4, Underwriting and Investment Income Exhibit, Statement of Income; and

iii. Cash flow page;

3. Exhibits by each line of business written in New Jersey that show:

i. Profit and loss statements containing information as set forth in (a)2ii above by line of business for three calendar years prior to the date of filing;

ii. Profit and loss statements containing information as set forth in (a)2ii above by line of business from the period beginning January 1 in the year of filing to date of the filing as reported in the NAIC quarterly statement filed immediately preceding the date of the filing; and

iii. A detailed description of the method of allocation of expenses by line of business;

4. A detailed explanation, with supporting documentation, of the projected effect that fulfillment of the obligation would have on the immediate and long term financial condition of the company unless relief is granted as requested;

5. The most recent financial examination report conducted by the state of domicile;

6. A statement that summarizes any pending New Jersey rate filing requests, including any New Jersey flex rate filings projected to be made on or after July 1 of the year in which relief was requested. The Department of Insurance filing number, the amount of the rate request, and the requested effective date of the change shall be included;

7. A statement addressing whether the company is planning to modify its method of doing business in any way including, but not limited to, new acquisitions or new restructuring;

8. If the company is a member of a holding company system, the following shall be provided:

i. A list of all members of the holding company system;

ii. A list of all intercompany transactions for the period noted in (a)3i and ii above;

iii. A balance sheet and profit and loss statement for the ultimate parent company on a consolidated basis for the periods noted in (a)3i and ii above; and

iv. A balance sheet and profit and loss statement for the ultimate parent company on an unconsolidated basis for the periods noted in (a)3i and ii above;

9. A certification of reserves for unearned premiums, losses and loss adjustment expense, such certification to be attested to by a qualified actuary as defined in N.J.A.C. 11:1-21.1;

10. A report signed by the certifying actuary referred to in (a)9 above, which includes in summary form, if necessary, all data utilized by him or her, a complete explanation of methods and assumptions and sufficient additional narrative to account for any features of the data or circumstances necessary for proper interpretation;

i. All data shall be presented as hard copy and on 5¼ inch floppy diskettes as Lotus 1-2-3 worksheet files or the equivalent thereof with page breaks omitted (submitting, in total, one copy of the diskettes for each filing). The data shall include, at a minimum, relevant loss and loss expense triangles both on paid and incurred bases for sufficient numbers of accident years and maturities such that, on a paid basis, at least five accident years are developed to within 90 percent of ultimate. If only a lesser amount of data is available, state the reason for this deficiency.

ii. In the event that paid or incurred loss developments have been distorted by changes in the rate of settlements, in the relative adequacy of reserving, in the mix of business, or in other relevant factors, such distortions shall be fully explained in the narrative. To include the impact of these distortions, appropriate adjusted triangles shall also be supplied plus corresponding triangles of reported, paid and outstanding claim counts.

iii. Annual earned premiums shall be shown as the first column of each triangle;

11. For insurers seeking discretionary relief and asserting that it would experience an adverse change in its rating by A.M. Best and Company, Dun and Bradstreet, Moody's or Standard and Poor's, a statement from a representative of the appropriate rating agency that the insurer will experience an adverse change in its rating through fulfillment of the obligation from which relief is sought; and

12. Any other information the Commissioner may deem relevant to the consideration of the request.

(b) If the applicant is a member of a pooling operation among affiliates, all information requested in items (a)2 and 3 above shall be provided on a pre-pooled and post-pooled basis. The applicant shall indicate the names of other members in the pool that are also filing for exemption, abatement, deferral or suspension of, or excuse from an obligation, as the case may be, under the FAIR Act.

(c) An insurer asserting that the Department's review of its request be evaluated on a particular basis (that is, pre-pooled, post-pooled, consolidated or unconsolidated) shall submit a written statement which sets forth the reasons for

which it believes evaluation on a particular basis is appropriate to that insurer, and the reasons for which evaluation on other bases would be inappropriate.

Amended by R.1993 d.24, effective January 4, 1993.

See: 24 N.J.R. 3212(a), 25 N.J.R. 138(a).

Exhibits further specified at (a)3; deleted (a)4; text at (b) clarified.

#### 11:2-35.5 Relief

(a) When the Commissioner determines that fulfillment of a FAIR Act obligation or obligations set forth at N.J.A.C. 11:2-35.3(a) or (b) will result in the insurer being or becoming in an unsafe or unsound financial condition, or that an insurer is currently in an unsafe or unsound financial condition, the Commissioner shall order relief from the obligation(s) as set forth in (b) and (c) below.

(b) Except as provided at (c) below, the Commissioner shall order that insurer's duty to fulfill the applicable FAIR Act obligation be suspended or excused pending quarterly review of the insurer's financial condition.

(c) Where the Commissioner has granted an insurer relief from payment of assessments or surtaxes pursuant to N.J.S.A. 17:30A-8a(9) or 17:33B-49, as applicable, the Commissioner shall order that the insurer's obligation be exempted, abated or deferred, as follows:

1. Except as provided at (c)2 below, the Commissioner shall in all cases order that the insurer's obligation be deferred pending a quarterly review of the insurer's financial condition. The deferral shall be deemed to be an exemption two years from the date the obligation was originally due, unless the Commissioner, prior to that date, determines that the insurer's financial condition has improved such that payment of the obligation, or a portion thereof, will not result in the insurer's financial condition being or becoming unsafe or unsound. If an insurer is required to pay a portion of its obligation prior to the expiration of the two-year period, the remainder shall be deferred, and shall be deemed exempt at the expiration of the two-year period in the same manner as provided in this paragraph for deferred obligations.

2. The Commissioner shall order that the insurer's obligation be exempted, and thus no obligation thereafter shall be deemed to exist for the particular obligation for which the exemption was granted, if the insurer is in liquidation pursuant to N.J.S.A. 17:30C-8, or similar statute of the insurer's state of domicile, at the time the request is made. The Commissioner shall also grant an exemption if the insurer is in rehabilitation or conservation pursuant to N.J.S.A. 17:30C-6 or 17:30C-11, or similar statute of the insurer's state of domicile. The Commissioner shall also grant an exemption if payment of the obligation would result in the insurer being in a hazardous financial condition as determined in accordance with N.J.A.C. 11:2-27. An exemption granted under this paragraph to an insurer shall be for the entire obligation and no obligation thereafter shall exist for the

particular obligation for which the exemption was granted; provided that the determination whether to grant an exemption from a future obligation shall be considered at the time such obligation becomes due based on the insurer's financial condition at that time.

3. The Commissioner shall order that the insurer's obligation to pay the full amount of the assessment or surtax be abated if he or she determines that payment of some amount will not result in the insurer's financial condition being or becoming unsafe or unsound. The amount which is not abated shall be deferred in the same manner provided by (c)1 above.

New Rule, R.1993 d.24, effective January 4, 1993.  
See: 24 N.J.R. 3212(a), 25 N.J.R. 138(a).

### 11:2-35.6 Hearings

(a) If the Commissioner denies an insurer's request for relief made pursuant to this subchapter, or if the insurer objects to the form of relief granted, the insurer may request a hearing on the Commissioner's determination within seven days from the date of such receipt of determination as follows:

1. A request for a hearing shall be in writing and shall include:
  - i. The name, address, and daytime telephone number of a contact person familiar with the matter;
  - ii. A copy of the order involved;
  - iii. A statement requesting a hearing; and
  - iv. A concise statement describing the basis for which the insurer believes that the Commissioner's findings of fact are erroneous.
2. The Commissioner may, after receipt of a properly completed request for a hearing, provide for an informal conference between the insurer and such personnel of the Department as the Commissioner may direct, to determine whether there are material issues of fact in dispute.
3. The Commissioner shall, within 30 days of a properly completed request for a hearing, determine whether the matter constitutes a contested case, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.
  - i. If the Commissioner finds that there are no good-faith disputed issues of material facts and the matter may be decided on the documents filed, the Commissioner shall notify the applicant in writing as to the final disposition of the matter.
  - ii. If the Commissioner finds that the matter constitutes a contested case, the Commissioner shall transmit the matter to the Office of Administrative Law for a hearing consistent with the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) Receipt of a timely request for a hearing in the form set forth in (a)1 above shall stay the effect of a denial of relief until the Commissioner's final disposition of the matter made pursuant to this section.

New Rule, R.1993 d.24, effective January 4, 1993.  
See: 24 N.J.R. 3212(a), 25 N.J.R. 138(a).

## SUBCHAPTER 36. RISK RETENTION GROUPS AND PURCHASING GROUPS

### 11:2-36.1 Purpose and scope

(a) The purpose of this subchapter is to regulate in this State the formation and/or operation of:

1. Foreign or alien risk retention groups; and
2. Purchasing groups formed in the United States pursuant to 15 U.S.C. § 3901 et seq.

(b) This subchapter applies to:

1. All foreign or alien risk retention groups and their legal representatives, who are doing or intend to do business in this State; and
2. All purchasing groups with members located in this State and their legal representatives, who are doing or intend to do business in this State.

### 11:2-36.2 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.

"Doing business in this State" means solicitation in this State, having group members in this State, or having an office in this State.

"Domicile" means, with respect to a purchasing group: for a corporation, the state in which the purchasing group is incorporated; for an unincorporated entity, the state of its principal place of business.

"Insurance" means primary insurance, excess insurance, reinsurance, surplus line insurance and any other arrangement for shifting and distributing risk which is determined to be insurance pursuant to the laws of the State.

"Liability" means legal liability for damages, including the cost of defense, legal costs and fees, and other claims expenses, because of injuries to other persons, damage to their property, or other damage or loss to such other persons resulting from or arising out of: any profit or non-profit business, trade, product, services, including professional services, premises, or operations; or any activity of any state or local government or any agency or political subdivision thereof, but does not include personal risk liability or an employer's liability with respect to its employees other than legal liability under the Federal "Employers' Liability Act," 45 U.S.C. § 51 et seq.

“Plan of operation or a feasibility study” means an analysis which presents the expected activities and results of the risk retention group, including: information sufficient to verify that its members are engaged in business or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar or common business, trade, product, services, premises or operations; for each state in which it intends to operate, the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer; historical and expected loss experience of the proposed members and national experience of similar exposures to the extent that this experience is reasonably available; pro forma financial statements and projections; appropriate opinions by a qualified actuary, including the determination of minimum premium or participation levels and capitalization required to commence operations and to prevent a hazardous financial condition, which shall be in the format and otherwise satisfy all requirements established by the Commissioner for loss reserve actuarial opinions required to be submitted by licensed property and casualty insurers in this State; identification of management, underwriting and claims procedures, marketing methods, managerial oversight methods, investment policies and reinsurance agreements; identification of each state in which the risk retention group has obtained, or sought to obtain, a charter and license, and a description of its status in each such state; and such other matters as may be prescribed by the commissioner of the state in which the risk retention group is chartered for liability insurance companies authorized by the insurance laws of that state.

“Purchasing group” means any group which has as one of its purposes the purchase of liability insurance on a group basis; purchases such insurance only for its group members and only to cover their similar or related liability exposure; is composed of members whose business or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar or common business, trade, product, services, premises or operations; and is domiciled in this or any other state.

“Risk retention group” means any corporation or other limited liability association: which is organized for the primary purpose of, and whose primary activity consists of, assuming and spreading all, or any portion, of the liability exposure of its group members; which is chartered and licensed as a liability insurance company and is authorized to engage in the business of insurance under the laws of any state, or prior to January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands, and before that date, certified to the commissioner of insurance, or other appropriate official, of at least one state that it satisfied the capitalization requirements of that state, except that any such group shall be considered to be a risk retention group only if it has been engaged in business continuously since that date and only for the purpose of continuing to provide

insurance to cover product liability or completed operations liability, as defined in the Federal “Product Liability Risk Retention Act of 1981,” Pub.L. 97-45 (15 U.S.C. § 3901 et seq.), before October 27, 1986; which does not exclude any person from membership in the group solely to provide for members of that group a competitive advantage over such a person; which has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group, or has as its sole owner an organization which has as its members only persons who comprise the membership of the risk retention group and its owners are the only persons who comprise the membership of the risk retention group and who are provided insurance by such group; whose members are engaged in businesses or activities similar or related with respect to the liability to which those members are exposed by virtue of any related, similar or common business, trade, product, services, premises or operations; whose activities do not include the provision of insurance, other than liability insurance for assuming and spreading all or any portion of the liability of its group members, and reinsurance with respect to the similar or related liability exposure of any other risk retention group, or any member of any other group, which is engaged in businesses or activities so that this group or member meets the requirement that members are engaged in businesses or activities similar or related with respect to the liability to which those members are exposed by virtue of any related, similar or common business, trade, product, services, premises or operations for membership in the risk retention group which provides the reinsurance; and the name of which includes the phrase “risk retention group.”

### 11:2-36.3 Risk retention group registration requirements

(a) No risk retention group shall do business in this State as a risk retention group until it has complied with the requirements of this subchapter and received Notice of Registration from the Department.

(b) Any risk retention group which is chartered and licensed under the laws of any other state and which wishes to do business in this State shall submit to the Department:

1. A copy of its certificate of authority or license authorizing it to transact business as an insurance company, certified by the state of domicile;

2. A statement identifying the state(s) in which the risk retention group is chartered and licensed as a liability insurance company, the date of its charter and admission as a licensed insurer and its principal place of business, and any other information, including information regarding its membership. Additionally, the statement shall include the following:
  - i. The identity of those individuals who organized the group or who will provide administrative services or otherwise influence or control the activities of the group;
  - ii. The amount and nature of initial capitalization;

- iii. The coverages to be afforded; and
- iv. The states in which the group intends to operate;

3. A copy of its plan of operation or a feasibility study and revisions of such plan or study submitted to the state or states in which the risk retention group is chartered and licensed in accordance with N.J.S.A. 17:47A-1 et seq.;

4. A statement of registration (as set forth in Appendix A and incorporated herein by reference) and a Notice of Appointment (as set forth in Appendix B and incorporated herein by reference), which designates the Commissioner as its agent for the purpose of receiving service of legal documents or process; and

5. Payment of the \$100.00 registration filing fee which shall accompany the statement of registration, in accordance with N.J.A.C. 11:1-32.

(c) Any risk retention group currently registered with the Department prior to August 16, 1993 shall submit a statement of registration (as set forth in Appendix A) and a Notice of Appointment (as set forth in Appendix B). The registration must be filed no later than November 8, 1993. The risk retention group shall notify the Department of any change in the information in the statement of registration within 30 days of any change.

(d) Each foreign and alien risk retention group which has received a certificate of registration from the Department to do business in this State shall submit to the Department:

1. On or before March 1, or as prescribed by the state of domicile, a statement of financial condition for the preceding calendar year ended December 31. The statement shall be on a form as prescribed by the state of domicile;

2. On or before June 1, a statement of opinion on loss or loss adjustment expense reserves made by a member of the American Academy of Actuaries, or a qualified loss reserve specialist;

3. By June 30, a report of financial condition, certified by an independent public accountant;

4. Within 30 days after filing in its state of domicile, a copy of each examination of the risk retention group as certified by the chartering state's commissioner or public official conducting the examination;

5. Upon request of the Commissioner, a copy of any information or document pertaining to any outside audit performed with respect to the risk retention group;

6. Such information as may be required to verify its continuing qualification as a risk retention group under N.J.A.C. 11:2-36.2, including, but not limited to, a certification of an officer that the group is composed of members whose business or activities are similar or related with respect to liability; and

7. Payment of the \$100.00 Annual Statement filing fee in accordance with N.J.A.C. 11:1-32.

(e) Failure by any currently registered risk retention group either to file a statement of registration, to complete all information requested pursuant to this subchapter or to update changes in the statement of registration may result in suspension or forfeiture of the risk retention group's registration status with the Department.

(f) Any person wishing to establish a risk retention group chartered and licensed to write only liability insurance in this State shall, in addition to meeting the requirements pursuant to N.J.S.A. 17:17-1 et seq., submit to the Department a plan of operation or feasibility study. The risk retention group shall submit an appropriate revision in the event of any subsequent material change in any item of the plan of operation or feasibility study, within 10 days of any such change. The group shall not offer any additional kinds of liability insurance in this State, or in any other state, until a revision of such plan or study is approved by the Commissioner. Additionally, the risk retention group shall adhere to the requirements of N.J.S.A. 17:47A-1 et seq. and (b)1 through 5 above.

(g) Each risk retention group, its agents and representatives shall comply with the Unfair Claims Settlement Practices Act of this State, N.J.S.A. 17:29B-1 et seq., and any other State law regarding deceptive, false or fraudulent acts or practices.

(h) Each risk retention group must submit to an examination by the Commissioner to determine its financial condition if the commissioner of the jurisdiction in which the group is chartered and licensed has not initiated an examination or does not initiate an examination within 60 days after a request by the Commissioner of this State. The risk retention group shall pay the reasonable expenses of such an examination upon presentation by the Commissioner of a detailed account of the expenses.

(i) Each risk retention group shall comply with any lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by the Commissioner if there has been a finding of financial impairment after an examination pursuant to this section.

(j) Each risk retention group shall comply with any injunction issued by a court of competent jurisdiction upon a petition by the Commissioner alleging that the group is in a hazardous financial condition or is financially impaired.

Amended by R.1993 d.558, effective November 15, 1993.  
See: 25 N.J.R. 4298(a), 25 N.J.R. 5197(a).  
Amended by R.1996 d.3, effective January 2, 1996.  
See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).

11:2-36.4 Additional risk retention groups requirements

(a) Any risk retention group which is registered in this State and chartered and licensed under the laws of any other state and which wishes to do business in this State, in addition to the requirements of N.J.A.C. 11:2-36.3, shall distribute its annual statement of operations to its members.

11:2-36.5 Notice and registration requirements of purchasing groups

(a) No purchasing group shall do business in this State as a purchasing group until it has complied with the requirements of this subchapter and received notification from the Department that it has been registered to do business in this State.

(b) Any group of persons with similar exposure to risk may form a purchasing group for the purpose of purchasing liability insurance.

1. Any purchasing group with members located in this State shall submit to the Department a statement of registration (as set forth in Appendix C and incorporated herein by reference) and a Notice of Appointment (as set forth in Appendix D and incorporated herein by reference) which shall be accompanied by a registration fee in accordance with N.J.A.C. 11:1-32.

2. Each purchasing group registered pursuant to this section shall submit to the Department from time to time, as it may require, reports relative to the group's operations.

3. Each purchasing group with members in this State registered pursuant to this subsection is subject to audits or examination as the Commissioner may deem necessary.

(c) Any purchasing group which was doing business in this State prior to August 16, 1993 shall submit to the Department a statement of registration (as set forth in Appendix C) and a Notice of Appointment (as set forth in Appendix D). The statement of registration must be filed no later than November 8, 1993. The purchasing group shall notify the Commissioner of any change in the information in the statement of registration within 30 days of any change.

(d) Failure of any currently registered purchasing group either to file a statement of registration, to complete all information requested pursuant to this subchapter or to update changes in the statement of registration, may result in suspension or forfeiture of the purchasing group's registration status with the Department.

11:2-36.6 Fines and penalties

(a) Each risk retention group, whether chartered in this State or otherwise, is subject to the same fines and penalties to which insurers licensed in this State are subject for any violation of this subchapter or any other applicable law.

(b) Failure of a risk retention group or purchasing group doing business in this State to comply with the provisions of this section may, after notice and 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, result in the revocation or suspension of its registration in this State.

APPENDIX A

STATEMENT OF REGISTRATION
STATE OF NEW JERSEY
APPLICATION FOR REGISTRATION AS
A RISK RETENTION GROUP

(All information should be typed)

- 1. List the corporate name of the Risk Retention Group.
(Name must include the phrase "Risk Retention Group")
2. The Risk Retention Group is chartered and licensed as a liability insurance company under the laws of the State of \_\_\_\_\_, and is authorized to engage in the following lines of insurance under the laws of its chartering State:
3. Ownership of the Risk Retention Group consists of one of the following (check one):
[ ] the owners of the Group are the only persons who comprise the membership of the Group and who are provided insurance by the Group;
[ ] the sole owner of the Group is \_\_\_\_\_
(Give name and address of organization)
an organization whose members only comprise the membership of the Group, and whose owners are only persons who comprise the membership of the Group and who are provided insurance by the Group.
4. Give a general description of business or activities engaged in by Group members:
5. List the name, address, fax number and telephone number of each officer of the Risk Retention Group and the key officer or staff person (Not an employee of the group's management company) responsible for overseeing "hands on management" of the group. (Attach additional pages if necessary.)
6. A. List the home office address of the Risk Retention Group:
B. List the mailing address of the Risk Retention Group:

7. List the name, address and telephone number of the company responsible for management of the insurance operations of this risk retention group. (If none, answer none.)

8. List the name, address and telephone number of the principal agent or broker responsible for marketing the group's insurance policies, pursuant to N.J.S.A. 17:22A-1 et seq.

Name:
Address:
Phone Number:
Producer ID Reference Number:

9. The items described below should be attached to the registration form:

- A. If not previously submitted, registration fee in the amount of \$100.00 made payable to the "State of New Jersey General Treasury."
B. Completed and signed Service of Process.
C. A listing of the individual(s) who organized the group and the individuals who are providing administrative services or otherwise influence or control the activities of the group.

As President or Chief Executive Officer of the \_\_\_\_\_, I hereby certify that the information contained in this registration is true and correct and in conformance with 15 USC 3901 et seq., N.J.S.A. 17:\_\_\_ and N.J.A.C. 11:\_\_\_.

The Risk Retention Group is composed of members who are engaged in the following described business or activities, which are similar or related with respect to the liability to which such members are exposed by virtue of related, similar, or common business, trade, product, services, premises or operations.

The primary activity of this Risk Retention Group consists of assuming and spreading all, or any portion, of the liability exposure of its members.

The Risk Retention Group is organized for the primary purpose of conducting the activity described above.

The Risk Retention Group does not exclude any person from membership in the Group solely to provide for members of the Group a competitive advantage over such a person.

The activities of the Risk Retention Group do not include the provision of insurance other than:

- (a) Liability insurance for assuming and spreading all or any portion of the similar or related liability exposure of its Group members; and
(b) Reinsurance with respect to the similar or related liability exposure of another Risk Retention Group (or a member of such other Risk Retention Group) engaged in business or activities which qualify such other Risk Retention Group (or member) under item (6) above for membership in this Group.

In addition all required documents as set forth in 15 USC 3901 et seq., N.J.S.A. 17:\_\_\_ and N.J.A.C. 11:\_\_\_ are being included in this filing.

President or Chief Executive Officer

Secretary

Sworn before me this \_\_\_ day of \_\_\_, 19\_\_\_.

Notary Public, State of:
My Commission Expires:

(Revised 7/93)

Amended by R.1993 d.558, effective November 15, 1993.
See: 25 N.J.R. 4298(a), 25 N.J.R. 5197(a).

APPENDIX B

NOTICE OF APPOINTMENT OF ATTORNEY TO ACCEPT SERVICE

STATE OF \_\_\_\_\_

DEPARTMENT OF INSURANCE

The \_\_\_\_\_, a Risk Retention Group (called the Group) duly organized under the laws of the State of \_\_\_\_\_, appoints the Insurance Commissioner of the State of \_\_\_\_\_, and his or her successors in office, to be its lawful attorney upon whom all legal process in any action or proceeding against it shall be served and further agrees that any lawful process against it which is served upon this attorney shall have the same legal validity as if served personally upon the Group.

The Group gives the Insurance Commissioner and his or her successors, full authority to do every act necessary to be done under this appointment as fully as the Group could do if personally present, and ratifies all that lawfully do under the power granted by this appointment. This authority may be withdrawn only upon a written notice of revocation and in any case shall continue in effect so long as any liability arising out of this appointment remains outstanding in the State. This constitutes full compliance with Section 2(a)(1)(D) of the Liability Risk Retention Act of 1986.

The Group designates [\_\_\_\_\_] whose address is [\_\_\_\_\_] as the person to whom process against the Group served upon the Commissioner [Director, Superintendent] shall be forwarded.

IN WITNESS OF THIS APPOINTMENT, said Group pursuant to a resolution duly adopted by its Board of Directors, has caused this instrument to be executed in its name by its President and Secretary, and its corporate seal to be affixed at the City of \_\_\_\_\_, State of \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_.

Attest:

Secretary (Name of Risk Retention Group)

By

President

APPENDIX C

STATE OF NEW JERSEY
APPLICATION FOR REGISTRATION
AS A PURCHASING GROUP

(All information should be typed)

- 1. List the exact name of the Purchasing Group.
2. Indicate the form of organization or incorporation and date.
3. The Purchasing Group is domiciled in the State of:
4. List any other names under which the Purchasing Group is or may be doing business in this State or any other State if different from above.
5A. List the complete physical address of the Purchasing Group.
5B. List the mailing address of the Purchasing Group.
6A. List the name, title, address, fax number, and telephone number of the principal officer of the purchasing group who has knowledge of its insurance program, including membership criteria, coverages, and key personnel of the group's administrator and insurance carrier.
6B. List the name, title, address, fax number, and telephone number of the firm that acts as the administrator of the purchasing group and the name of the principal account executive responsible for the group's insurance program. (If none, answer none.)
7. List the names, addresses and occupation of the principal officers and directors of the Purchasing Group. Attach additional pages if necessary.
Principal Officers Principal Directors

- 8. Give a general description of the business or activities engaged in by purchasing group members:
9. List the lines and classification of liability insurance Purchasing Group will purchase:
10. What are the limits of liability including per occurrence, aggregate per participant and group aggregate.
11. Deductible and self-insurance retentions
(a) Which are the responsibility of the individual participant?
(b) Which are the responsibility of the purchasing group and how funded?
12. List the insurance carriers from whom the Purchasing Group will purchase liability insurance described in item (9) above. Give full name of company, state of domicile and NAIC#:
13. Purchasing groups procuring insurance through companies licensed in New Jersey or registered Risk Retention Groups must use an insurance producer pursuant to N.J.S.A. 17:22A-1 et seq. Please identify the producer(s) representing the purchasing group:
Name
Address
Phone No.
Producer License Reference Number:
14. Purchasing groups procuring insurance from New Jersey eligible surplus lines companies must place it through a licensed New Jersey insurance producer with surplus lines authority pursuant to N.J.S.A. 17:22-6.40 et seq. and 17:22A-1. Please identify the producer(s) representing the purchasing group:
Name
Address
Phone No.
Producer License Reference Number:
15. List who will adjust the claims?
Name
Address
Phone No.
Producer License Reference Number:
16. Has any person transacting business on behalf of this Purchasing Group ever:
(A) been arrested, indicted and convicted of a felony or is a felony charge currently pending against any such person?
(B) had denied any application for a professional, vocational or business license?
(C) had suspended or revoked any such license?

(D) had withdrawn or surrendered any such application or license to avoid potential disciplinary action against licensee? \_\_\_\_\_

If the answer to any part of this question is yes, attach a supplementary statement explaining in full each such occurrence.

The items described below should be attached to the registration form:

- (a) If not previously submitted, registration fee in the amount of \$100.00 made payable to the "State of New Jersey—General Treasury."
- (b) Completed and signed Service of Process.
- (c) A listing of the individual(s) who organized the Purchasing Group and the individuals who are providing administrative services or otherwise influence or control the activities of the group.
- (d) A listing of current members.
  - The Purchasing Group is composed of members whose business or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises or operations.
  - The Purchasing Group purchases such liability insurance only for its members and only to cover their similar or related liability exposure, as described in item (8) above.
  - The policy and promotional material the purchasing group will use has been forwarded along with the registration.

In addition, all required documents are set forth in 15 USC 3901 et seq., N.J.S.A. 17:\_\_\_ and N.J.A.C. 11:\_\_\_ are being included in this filing.

\_\_\_\_\_  
President or Chief Executive Officer

\_\_\_\_\_  
Secretary

Sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of:  
My Commission Expires:

(Revised 7/93)

**APPENDIX D**

**NOTICE TO APPOINTMENT OF ATTORNEY TO ACCEPT SERVICE STATE OF NEW JERSEY**

The \_\_\_\_\_, a Purchasing Group (called the Group) duly organized under the laws of the State of \_\_\_\_\_, appoints the Insurance Commissioner of the State of \_\_\_\_\_, and his or her successors in office, to be its lawful attorney upon whom all legal process in any action or proceeding against it shall be served and further agrees that any lawful process against it which is served upon this attorney shall have the same legal validity as if served personally upon the Group.

The Group gives the Insurance Commissioner and his or her successors full authority to do every act necessary to be done under this appointment as fully as the Group could do if personally present, and ratifies all that lawfully do under the power granted by this appointment. This authority may be withdrawn only upon a written notice of revocation and in any case shall continue in effect so long as any liability arising out of this appointment remains outstanding in the State. This constitutes full compliance with Section 2(a)(1)(D) of the Liability Risk Retention Act of 1986.

The Group designates [\_\_\_\_\_] whose address is [\_\_\_\_\_] as the person to whom process against the Group served upon the Commissioner [Director, Superintendent] shall be forwarded.

IN WITNESS OF THIS APPOINTMENT, said Group pursuant to a resolution duly adopted by its Board of Directors, has caused this instrument to be executed in its name by its President and Secretary, and its corporate seal to be affixed in the City of \_\_\_\_\_, State of \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Attest:  
\_\_\_\_\_  
Secretary (Name of Risk Retention Group)  
  
By \_\_\_\_\_  
President

Amended by R.1993 d.558, effective November 15, 1993.  
See: 25 N.J.R. 4298(a), 25 N.J.R. 5197(a).

**SUBCHAPTER 37. PRODUCER-CONTROLLED INSURERS**

**11:2-37.1 Purpose**

The purpose of this subchapter is to implement N.J.S.A. 17:22D-1 et seq. to enable the Department to regulate transactions involving insurers which are controlled by insurance producers.

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

**11:2-37.2 Scope**

This subchapter shall apply to all licensed property and casualty insurers domiciled in this State or domiciled in a state that is not an accredited state having in effect a law substantially similar to N.J.S.A. 17:22D-1 et seq. This subchapter shall not apply to captive insurers.

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

**11:2-37.3 Definitions**

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

“Accredited state” means a state in which the insurance department or other regulatory agency has qualified as meeting the minimum financial regulatory standards promulgated and established from time to time by the NAIC.

“Captive insurer” means an insurance company owned by another organization whose exclusive purpose is to insure risks of the parent organization and affiliated companies or, in the case of groups and associations, insurance organizations owned by the insureds whose exclusive purpose is to insure risks to member organizations or group members and their affiliates.

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

“Control” or “controlled” has the same meaning as defined at N.J.S.A. 17:27A-1c.

“Controlled insurer” means a licensed insurer which is controlled, directly or indirectly, by a producer.

“Controlling producer” means a producer who, directly or indirectly, controls an insurer.

“Department” means the New Jersey Department of Insurance.

“Licensed insurer” or “insurer” means any corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd’s insurer, or other person engaged in the business of insurance pursuant to N.J.S.A. 17:17-1.

“FNAIC” means National Association of Insurance Commissioners.

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

“Producer-controlled” means controlled, directly or indirectly, by a producer.

**11:2-37.4 Filing of Producer-Controlled Insurer Information Report**

All licensed property and casualty insurers domiciled in this State or domiciled in another state that is not a NAIC accredited state having in effect a law substantially similar to N.J.S.A. 17:22D-1 et seq., shall file an annual Producer-Controlled Insurer Information Report on a form (incorporated herein by reference as Appendix A) approved by the Commissioner. The Report shall be completed and filed with the Commissioner on or before April 1 for the calendar year immediately preceding.

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

**11:2-37.5 Contents of the Producer-Controlled Insurer Information Report**

(a) A Producer-Controlled Insurer Information Report form (Appendix A) shall be completed annually by each licensed property and casualty insurer to whom this subchapter applies and shall include the following information:

1. The name and address of the reporting insurer and any controlling producer. (A separate form should be completed and filed for each controlling producer.);

2. A certification by insurers that are not producer-controlled that they are not issuing any property and casualty insurance coverages that are or may be reportable pursuant to the provisions of N.J.S.A. 17:22D-1 et seq. or this subchapter;

3. A certification by producer-controlled insurers containing the following information:

i. The amount of the insurer’s admitted assets as of September 30 of the preceding calendar year, gross premiums written during the calendar year and the percentage that gross premiums written represent of admitted assets;

ii. The amount of net premiums written during the preceding calendar year, commissions paid to the controlling producer during the calendar year and the percentage that commissions paid to the controlling producer represent of the net premiums written;

iii. Comparable amounts and percentage paid to noncontrolling producers for placement of the same kinds of insurance;

iv. An opinion of an independent casualty actuary reporting loss ratios for each line of business written and attesting to the adequacy of loss reserves established for losses incurred and outstanding as of year-end, including losses incurred but not reported, on business placed by the controlling producer, which loss reserve opinion shall satisfy all requirements established by N.J.A.C. 11:1-21 for loss reserve opinions required to be submitted by licensed property and casualty insurers in this State; and

v. A statement indicating whether or not the insurer’s controlling producer or producers have been notified of the requirements of N.J.S.A. 17:22D-1 et seq. and these rules.

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

**11:2-37.6 Confidentiality of documents**

All documents submitted to the Commissioner pursuant to this subchapter are confidential and not public documents

as defined in the Public Records Act, N.J.S.A. 47:1A-1 et seq.

11:2-37.7 Penalties

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

APPENDIX A

PRODUCER-CONTROLLED INSURER INFORMATION REPORT FORM

Calendar Year Ending December 31, \_\_\_\_

Instructions: All licensed property and casualty insurers domiciled in New Jersey, or domiciled in another state that is not a NAIC "accredited state" having in effect a law substantially similar to N.J.S.A. 17:22D-1 et seq., are required to complete annually either Section I or Section II of this form. Section I certifies that the requirements of New Jersey law have been reviewed and there is no controlling producer information to be reported. Section II should be completed for each producer who "controls" a reporting insurer. Completed reporting forms are due annually, on or before April 1 of each year.

SECTION I

To be completed by Insurers that are not Producer-Controlled

I certify that

\_\_\_\_\_  
(Name of Insurer)

\_\_\_\_\_  
(Address of Insurer)

is not issuing any property and casualty insurance coverages that are or may be reportable pursuant to the provisions of N.J.S.A. 17:22D-1 et seq. and N.J.A.C. 11:2-37.1 et seq.

\_\_\_\_\_  
Date Authorized signature  
\_\_\_\_\_  
Title

SECTION II

To be completed by Producer-Controlled Insurers (A separate Report Form should be completed and filed for each controlling producer.)

Calendar Year Ending December 31, \_\_\_\_

Name of Reporting Insurer: \_\_\_\_\_

Address: \_\_\_\_\_

Name of Controlling Producer: \_\_\_\_\_

Address: \_\_\_\_\_

- 1. Insurer's admitted assets as of September 30 of calendar year pursuant to N.J.S.A. 17:22D-3a: \$ \_\_\_\_\_
2. Gross premiums written, calendar year: \$ \_\_\_\_\_
3. Percentage that gross premiums written represent of admitted assets: \_\_\_\_\_%
4. Net premiums written, calendar year: \$ \_\_\_\_\_
5. Amount of commissions paid to controlling producer, calendar year: \$ \_\_\_\_\_
6. Percentage that commissions paid represent of net premiums written: \_\_\_\_\_%
7. Comparable amounts and percentage paid to noncontrolling producers for placement of the same kinds of insurance:
Net premiums written: \$ \_\_\_\_\_
Commissions paid: \$ \_\_\_\_\_
Percentage: \_\_\_\_\_%
8. Attach the information required by N.J.S.A. 17:22D-3e: An opinion of an independent casualty actuary reporting loss ratios for each line of business written and attesting to the adequacy of loss reserves established for losses incurred and outstanding as of year-end, including losses incurred but not reported, on business placed by the controlling producer.
9. We have notified our controlling producer(s) of the requirements of N.J.S.A. 17:22D-1 et seq. and N.J.A.C. 11:2-37.1 et seq.

I certify that the above information is accurate and complete.

\_\_\_\_\_  
Date Authorized signature  
\_\_\_\_\_  
Title

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

SUBCHAPTER 38. TEMPORARY WAIVER FROM INCREASE IN PROPERTY AND CASUALTY CAPITAL AND SURPLUS REQUIREMENTS

Subchapter Historical Note

The name of Subchapter 38, Increase in Property and Casualty Capital and Surplus Requirements, was changed to Temporary Waiver From Increase in Property and Casualty Capital and Surplus Requirements by R.1997 d.186, effective May 5, 1997. See: 29 N.J.R. 404(a), 29 N.J.R. 2175(b).

11:2-38.1 Purpose and scope

(a) The purpose of this subchapter is to provide procedures whereby property and casualty insurers may request a temporary waiver from the minimum capital and surplus requirements set forth in N.J.S.A. 17:17-6 and 17:17-7.

**11:2-39.1 Purpose and scope**

(a) The purpose of this subchapter is to provide a framework for the establishment of uniform risk-based capital and surplus requirements for all insurers authorized, admitted or eligible to transact business pursuant to Title 17 or Title 17B of the New Jersey Statutes, and to implement the provisions of N.J.S.A. 17:17-6 et seq., and 17B:18-67 et seq. (enacted August 9, 1993), which provide new minimum capital and surplus requirements and authorize the Commissioner to increase these requirements for individual insurers based upon the insurer's business risks.

(b) This subchapter shall apply to all insurers authorized, admitted or eligible to transact business pursuant to Title 17 or Title 17B of the New Jersey Statutes. This subchapter shall not apply to mortgage guaranty insurers, financial guaranty insurers, or title insurers.

(c) This subchapter also shall not apply to any domestic property/casualty insurer that writes direct business only in this State; writes direct annual premiums of not more than \$2 million; and assumes no reinsurance in excess of five percent of direct premiums written.

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

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

Amended by R.1997 d.186, effective May 5, 1997.

See: 29 N.J.R. 404(a), 29 N.J.R. 2175(b).

In (a), inserted reference to admitted and eligible insurers, substituted reference to transacting business for reference to writing health, life, and annuity business, and amended N.J.S.A. references; and added (b) and (c).

**11:2-39.2 Definitions**

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

"Adjusted RBC Report" means an RBC Report which has been adjusted by the Commissioner in accordance with N.J.A.C. 11:2-39.3(d).

"Corrective order" means an order issued by the Commissioner in accordance with N.J.A.C. 11:2-39.5(b).

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

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

"Life/health insurer" means an insurer authorized or admitted to transact life, health or annuities business pursuant to N.J.S.A. 17B:18-35 et seq., or 17B:23-1 et seq., as applicable, or an authorized or admitted property/casualty insurer writing only accident and health insurance.

"NAIC" means the National Association of Insurance Commissioners.

"NAIC RBC Instructions" means the form of the Life Risk-Based Capital Report and instructions for completing such form adopted by the NAIC, as such form and instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

"NAIC RBC Report" means the Risk-Based Capital Report prepared pursuant to the NAIC RBC Instructions as set forth in N.J.A.C. 11:2-29.3.

"Negative trend" means with respect to a life/health insurer a negative trend over a period of time, as determined in accordance with the "Trend Test Calculation" included in the NAIC RBC Instructions.

"Property/casualty insurer" means an insurer authorized, admitted or eligible to transact business pursuant to N.J.S.A. 17:17-1 et seq., 17:32-1 et seq., or 17:22-6.40 et seq., as applicable.

"RBC" means Risk-Based Capital.

"RBC Instructions" means the NAIC RBC Instructions as supplemented by the Commissioner.

"RBC Level" means an insurer's Company Action Level RBC, Regulatory Action Level RBC, Authorized Control Level RBC, or Mandatory Control Level RBC where:

1. "Company Action Level RBC" means, with respect to any insurer, the product of 2.0 and its Authorized Control Level RBC;
2. "Regulatory Action Level RBC" means, with respect to any insurer, the product of 1.5 and its Authorized Control Level RBC;
3. "Authorized Control Level RBC" means, with respect to any insurer, the number determined under the risk-based capital formula in accordance with the RBC Instructions; and
4. "Mandatory Control Level RBC" means, with respect to any insurer, the product of .70 and its Authorized Control Level RBC.

"RBC Plan" means a comprehensive financial plan containing the elements specified at N.J.A.C. 11:2-39.4(b). If the Commissioner rejects the RBC Plan, and it is revised by the insurer, with or without the Commissioner's recommendation, the plan shall be called the "Revised RBC Plan."

"RBC Report" means the NAIC RBC Report as supplemented pursuant to the RBC Instructions.

"Total adjusted capital" means an insurer's statutory capital and surplus as determined in accordance with statutory accounting applicable to the annual financial statements required to be filed pursuant to N.J.S.A. 17:23-1 et seq., and 17B:21-1 et seq., increased or decreased by such other items, if any, as the RBC Instructions may provide.

Amended by R.1993 d.561, effective November 15, 1993.

See: 25 N.J.R. 4309(a), 25 N.J.R. 5208(a).

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

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

Amended by R.1997 d.186, effective May 5, 1997.

See: 29 N.J.R. 404(a), 29 N.J.R. 2175(b).

Added "Domestic insurer", "Foreign insurer", "Life/health insurer", and "Property/casualty insurer"; and amended "NAIC RBC Report", "Negative trend", and "Total adjusted capital".

### 11:2-39.3 RBC reports

(a) Every domestic insurer shall, on or before each March 1 (the "filing date"), prepare and submit to the Commissioner an RBC Report as of the preceding December 31. The RBC Report shall be sent or delivered to:

New Jersey Department of Banking and Insurance  
Office of Financial Examinations, RBC Reports  
20 West State Street  
CN 325  
Trenton, New Jersey 08625-0325

(b) If at any time the Commissioner believes that the financial condition of an insurer may have materially changed, the Commissioner may request in writing an updated RBC Report from the insurer. In such event, the insurer shall, on or before the 45th day following such request (the "filing date"), prepare and submit to the Commissioner at the address in (a) above an RBC Report as of the last day of the calendar month coincident with or last preceding the date of the request.

(c) Every domestic insurer shall also file its NAIC RBC Report with the NAIC in accordance with the NAIC RBC Instructions. In addition, if the insurer has been notified in writing by the insurance department of any state in which the insurer is authorized to do business, the insurer shall file its NAIC RBC Report with such state by the filing date or, if later, within 15 days from receipt of notice to file.

(d) If an insurer files an RBC Report which in the judgment of the Commissioner is inaccurate, then the Commissioner shall adjust the RBC Report to correct the inaccuracy and shall notify the insurer of the adjustment. The notice shall contain a statement of the reason for the adjustment. An RBC Report so adjusted shall be referred to as an Adjusted RBC Report.

(e) The calculation of an insurer's Required Surplus as set forth in an RBC Report filed and accepted by the Commissioner pursuant to (a) or (b) above, or as adjusted by the Commissioner pursuant to (d) above, shall be deemed to be a redetermination of the insurer's minimum statutory capital and surplus requirement pursuant to N.J.S.A. 17:17-16 and 17B:18-70.

1. If an insurer disagrees with the minimum capital and surplus as determined above, it may request a hearing as provided at N.J.A.C. 11:2-39.9.

2. An insurer requesting a hearing shall do so upon filing an RBC Report, or within 20 days of receipt of notice from the Commissioner of an adjustment.

3. Failure to request a hearing shall be deemed to be a waiver of the right to a hearing on the redetermined minimum capital and surplus requirement for the insurer.

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

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

Amended by R.1997 d.186, effective May 5, 1997.

See: 29 N.J.R. 404(a), 29 N.J.R. 2175(b).

In (a) and (b), deleted reference to specified types of insurers; in (a), changed filing date from March 15 to March 1 and amended Department reference in delivery address; in (d), added last sentence; and in (e), inserted additional N.J.S.A. reference.

### 11:2-39.4 Company action level event

(a) "Company action level event" means any of the following events:

1. The filing of an RBC Report by an insurer which indicates that:

i. The insurer's total adjusted capital is greater than or equal to its Regulatory Action Level RBC but less than its Company Action Level RBC; or

ii. If a life/health insurer, the insurer has total adjusted capital which is greater than or equal to its Company Action Level RBC but less than the product of its Authorized Control Level RBC and 2.5 and has a negative trend;

2. The notification by the Commissioner to the insurer of an Adjusted RBC Report that indicates the event in (a)1i or ii above, provided the insurer does not challenge the Adjusted RBC Report under N.J.A.C. 11:2-39.9; or

3. If the insurer, under N.J.A.C. 11:2-39.9, challenges an Adjusted RBC Report that indicates the event in (a)1i or ii above, the notification by the Commissioner to the insurer that the Commissioner has, after a hearing, rejected the insurer's challenge.

(b) In the event of a company action level event, a domestic insurer shall within 45 days prepare and submit to the Commissioner an RBC Plan which shall:

1. Identify the conditions which contribute to the company action level event;

2. Set forth corrective actions which the insurer intends to take that are reasonably expected to result in the elimination of the company action level event;

3. Provide projections of the insurer's financial results in the current year and at least the four succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory operating income, net income, capital and/or surplus. (The projections of both new and renewal business shall include separate projections for each major line of business and separately identify each significant income, expense and benefit component);

In (b) inserted reference to eligible insurers and substituted "pursuant to Title 17 or Title 17B of the New Jersey Statutes" for "in this State"; in (c), inserted reference to authorized control event and inserted "under the RBC requirements . . . under this subchapter,"; and in (d), inserted additional N.J.S.A. reference.

#### 11:2-39.13 Severability clause

If any provision of this subchapter, or the application thereof to any person or circumstance, is held invalid, such determination shall not affect the provisions or applications of this subchapter which can be given effect without the invalid provision or application, and to that end the provisions of this subchapter are severable.

#### 11:2-39.14 Notices

All notices by the Commissioner to an insurer which may result in regulatory action hereunder shall be effective upon dispatch if transmitted by registered or certified mail to the insurer's mailing address as provided pursuant to N.J.A.C. 11:1-25 or, in the case of any other transmission, shall be effective upon the insurer's receipt of such notice.

#### 11:2-39.15 Phase-in provision

(a) A life/health insurer subject to this subchapter may request a temporary waiver of the minimum capital and surplus requirements set forth in N.J.S.A. 17B:18-67 et seq. as follows:

1. The insurer must make application in writing to the Commissioner by October 15, 1993. The waiver request shall be forwarded to:

New Jersey Department of Banking and Insurance  
Office of Financial Examinations, Capital and Surplus Waivers  
20 West State Street  
CN 325  
Trenton, New Jersey 08625-0325

2. Filing the waiver request shall constitute a regulatory action level event. The insurer shall prepare and file an RBC Plan with the Commissioner at the same address as set forth above, but the time for filing the RBC Plan shall be extended to 120 days. After such review, examination and analysis as is deemed necessary, the Commissioner shall issue a corrective order which may include an appropriate limited waiver of the minimum capital and surplus requirements. In no event shall the corrective order temporarily waive the applicable capital and surplus requirements for a period of more than five years.

3. If the insurer is responding to the corrective order in a manner satisfactory to the Commissioner, then the filing of an RBC Report shall not constitute an authorized control level event or a mandatory control level event.

4. Solely for the purpose of this subsection, an insurer's RBC Plan may be limited to a certification that its capital and surplus meet the minimum requirements set

forth in N.J.S.A. 17B:18-67 et seq. as of December 31, 1993. Such certification shall be signed by the insurer's Chief Executive Officer and shall have the effect of terminating the regulatory action level event. The Commissioner may request that the insurer submit additional documentation to support the certification, if necessary.

(b) For RBC Reports required to be filed by life/health insurers with respect to 1993, the following requirements shall apply in lieu of the provisions of N.J.A.C. 11:2-39.5, 39.6 and 39.7:

1. In the event of a regulatory action level event under N.J.A.C. 11:2-39.5(a)1, 2 or 3, the Commissioner shall take the actions required under N.J.A.C. 11:2-39.4.

2. In the event of a regulatory action level event under N.J.A.C. 11:2-39.5(a)4, 5, 6, 7, 8 or 9 or an authorized control level event, the Commissioner shall take the actions required under N.J.A.C. 11:2-39.5 with respect to the insurer.

3. In the event of a mandatory control level event with respect to an insurer, the Commissioner shall take the actions required under N.J.A.C. 11:2-39.6 with respect to the insurer.

(c) For RBC Reports required to be filed by property/casualty insurers with respect to 1996, the following requirements shall apply in lieu of the provisions of N.J.A.C. 11:2-39.5, 39.6 and 39.7.

1. In the event of a regulatory action level event under N.J.A.C. 11:2-39.5(a), 2 or 3, the Commissioner shall take the actions required under N.J.A.C. 11:2-39.4.

2. In the event of a regulatory action level event under N.J.A.C. 11:2-39.5(a)4, 5, 6, 7, 8 or 9 or an authorized control level event, the Commissioner shall take the actions required under N.J.A.C. 11:2-39.5.

3. In the event of a mandatory control level event with respect to an insurer, the Commissioner shall take the actions required under N.J.A.C. 11:2-39.6 with respect to the insurer.

Amended by R.1993 d.561, effective November 15, 1993.

See: 25 N.J.R. 4309(a), 25 N.J.R. 5208(a).

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

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

Amended by R.1997 d.186, effective May 5, 1997.

See: 29 N.J.R. 404(a), 29 N.J.R. 2175(b).

In (a), substituted "A life/health insurer" for "An insurer"; in (a)1, amended Department reference in delivery address; in (b), inserted "by life/health insurers"; in (b)2, inserted additional N.J.A.C. reference; and rewrote (c).

## SUBCHAPTER 40. LIFE, HEALTH AND ANNUITY REINSURANCE AGREEMENTS

### 11:2-40.1 Purpose and scope

(a) The purpose of this subchapter is to provide standards for reinsurance agreements pursuant to which a ced-

ing insurer may reduce a liability or establish an asset on any financial statements filed with the Department.

(b) This subchapter shall apply to the following:

1. All domestic insurers authorized to transact life insurance, accident and health insurance or annuity business in this State;

2. All foreign and alien insurers authorized to transact life insurance, accident and health insurance or annuity business in this State which otherwise are not subject to rules in their state of domicile that are substantially similar to those contained herein;

3. All reinsurers authorized to effect life, accident and health or annuity reinsurance agreements in this State; and

4. All reinsurance agreements entered into by an entity subject to this subchapter, except as N.J.A.C. 11:2-40.5 may apply.

(c) This subchapter shall not apply with respect to assumption reinsurance agreements or group term reinsurance. N.J.A.C. 11:2-40.4(a)1, 4, 6 and 7 shall not apply to catastrophe, stop-loss or other nonproportional reinsurance. N.J.A.C. 11:2-40.4(a)4, 6 and 7 shall not apply to other term reinsurance.

Amended by R.1993 d.562, effective November 15, 1993.

See: 25 N.J.R. 4314(a), 25 N.J.R. 5212(a).

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

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

In (c) added group term reinsurance and inserted "other" preceding "term insurance".

### 11:2-40.2 Definitions

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

"Actuary" means a Member of the American Academy of Actuaries or a Fellow of the Society of Actuaries or a Fellow of the Casualty Actuarial Society who is qualified by training and experience, pursuant to the standards promulgated by the Actuarial Standards Board, to provide the opinions required in this subchapter.

"Assumption reinsurance" means reinsurance whereby the reinsurer assumes from the ceding insurer all risks, obligations, duties and rights arising under a policy; following assumption, a policy is treated by all persons as if the reinsurer were the insurer which had issued the policy.

"Authorized" means that an insurer has a certificate of authority issued by the Commissioner to act as an insurer in this State pursuant to Title 17 or 17B of the New Jersey Statutes.

"Catastrophe reinsurance" means reinsurance of the risk that the aggregate number or dollar amount of claims incurred under a set of policies as a result of a single event or occurrence, such as an accident or a storm, will exceed a defined threshold number or amount.

"Ceding insurer" means an insurer which procures indemnification for itself from another insurer with respect to all or part of an insurance risk associated with one or more policies issued by the former insurer, should losses be sustained.

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

"Department" means the New Jersey Department of Insurance.

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

"Insurer" means any person or entity transacting the business of life, accident or health insurance, or annuities.

"LTC" means long-term care insurance.

"Policy" means any life insurance, health insurance or annuity policy or contract, as defined pursuant to N.J.S.A. 17B:17-3, 4 and 5, which is not reinsurance.

"Reinsurance" means a contractual arrangement whereby an insurer, for some consideration, agrees to indemnify a ceding insurer for all or part of a loss which the ceding insurer may incur under one or more policies that the ceding insurer has or will issue. This term is intended to include facultative reinsurance, automatic reinsurance agreements, reinsurance agreements of pools and associations, and such other similar reinsurance arrangements by whatever name or device.

"Reinsurance credit" means the amount of a liability reduction or the asset established as permitted by this subchapter.

"Reinsurer" means an insurer which agrees to provide reinsurance.

"Renewable term reinsurance" means term reinsurance which is renewable, automatically or at the option of the ceding insurer, for successive terms at rates not exceeding those guaranteed in the reinsurance agreement.

"Significant risk" means an element of risk associated with a policy such that the actual experience of an insurer related to such element will have a direct and material effect on the profit or loss realized by the insurer as a consequence of having issued or assumed such policy.

“Stop-loss reinsurance” means reinsurance of the risk that the aggregate number or dollar amount of claims incurred under a set of policies during a specified period will exceed a defined threshold number or amount.

“Term reinsurance” means reinsurance of the risk that a mortality or morbidity claim on an insured life will be incurred during a specified term, such as one year.

### 11:2-40.3 Reinsurance agreements

(a) No ceding insurer subject to this subchapter shall enter into any new reinsurance agreement, nor amend any existing reinsurance agreement so as to increase its reinsurance credit, which shall reduce any liability or establish any asset in any financial statement filed with the Department **except** pursuant to the following requirements:

1. The reinsurance agreement or amendment shall be filed with the Commissioner no later than 30 days after its execution. In addition, no domestic insurer shall enter into any reinsurance agreement for which the Commissioner has been granted statutory prior approval authority involving a substantial transfer of risk without the prior approval of the Commissioner. For purposes of this subsection, a transfer of risk associated with a reinsurance agreement is considered to be substantial if a material number or percentage of policies are affected by the agreement, or if there is a material change in the reserve liabilities on the policies affected by the agreement. Such agreements shall be submitted to:

Valuation Bureau  
Life and Health Division  
New Jersey Department of Insurance  
CN 325  
Trenton, NJ 08625-0325

2. This filing shall include a written opinion of an actuary representing the reinsurer which describes the ceding insurer’s significant risks under the policies reinsured and specifies the extent (if any) to which these significant risks are transferred to the reinsurer.

3. Each reinsurance agreement filed with the Department shall be accompanied by documentation detailing the financial impact of the agreement. This documentation shall include information as to reserves transferred under the agreement and details as to payment and expense charges to and from each party to the agreement.

(b) No reinsurance agreement or amendment to any agreement may be used to reduce any liability or to establish any asset in any financial statement filed with the Department unless the agreement, amendment or a binding letter or intent has been duly executed by both parties no later than the last day of the period covered by the financial statement, filed with the Commissioner pursuant to (a) above and meets the following standards:

1. In the case of a letter of intent, the letter of intent shall stipulate that the reinsurance agreement is subject to approval by the Commissioner where the Commissioner has been granted statutory prior approval authority, and that no reserve credits shall be taken by the insurer until the Commissioner has approved the agreement.

2. In the case of a letter of intent, a reinsurance agreement or an amendment to a reinsurance agreement must be executed within a reasonable period of time, not exceeding 90 days from the execution date of the letter of intent, and before the filing of the first financial statement in which a credit is to be taken, in order for credit to be granted for the reinsurance ceded.

3. The reinsurance agreement or amendment shall stipulate that coverage thereunder shall terminate if it is not approved by the Commissioner where the Commissioner has been granted statutory prior approval authority and that, in any financial statement filed before the Commissioner has approved it, the ceding insurer shall take no reinsurance credit therefor, other than for any net cash refund available in the event that the agreement is not approved.

4. The reinsurance agreement shall stipulate that the written agreement, including any written amendments thereto, as filed with the Commissioner constitutes the entire agreement between the parties with respect to the risks being reinsured thereunder. The reinsurance agreement shall further stipulate that any change or modification of its terms shall be null and void unless made by written amendment signed by both parties, and that to the extent the original agreement required prior approval by the Commissioner, unless such change or modification is filed with the Commissioner for approval along with any necessary revisions to the actuarial opinion required by (a)2 above. There shall be no additional terms or conditions, either written or oral, and the parties to the reinsurance agreement shall not enter into any understandings or supplemental agreements with respect to the reinsurance, other than those set forth in the written agreement filed with the Commissioner.

Amended by R.1993 d.562, effective November 15, 1993.  
See: 25 N.J.R. 4314(a), 25 N.J.R. 5212(a).  
Amended by R.1996 d.3, effective January 2, 1996.  
See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).  
Substantially amended (b)4 and deleted (b)5.

### 11:2-40.4 Agreements or conditions precluding reduction of liability or inclusion as an asset

(a) Except as N.J.A.C. 11:2-40.5 applies, no insurer shall reduce any liability or establish any asset in any financial statement filed with the Department for any reinsurance ceded if by the terms of the reinsurance agreement, any of the following conditions exist, in substance or effect:

1. Renewal expense allowances provided or to be provided to the ceding insurer by the reinsurer in any accounting period are not sufficient to cover anticipated

allocable renewal expenses of the ceding insurer on the portion of the business reinsured unless an adequate liability is established by the ceding insurer for the present value of the shortfall by taking into consideration assumptions equal to the applicable statutory reserve basis on the business reinsured. Those expenses include commissions, premium taxes and direct expenses including, but not limited to, billing, valuation, claims and maintenance expected by the ceding insurer at the time the business is reinsured;

2. The ceding insurer can be deprived of surplus or assets at the reinsurer's option or automatically upon the occurrence of some event, such as the insolvency of the ceding insurer, except that termination of the reinsurance agreement by the reinsurer for nonpayment of reinsurance premiums or other amounts due, such as modified coinsurance reserve adjustments, interest and adjustments on funds withheld, and tax reimbursements, shall not be considered to be such a deprivation of surplus or assets;

3. The ceding insurer is required to reimburse the reinsurer for negative experience under the reinsurance agreement, except that neither offsetting experience refunds against current and prior years' losses under the agreement nor payment by the ceding insurer of an amount equal to the current and prior years' losses under the agreement upon voluntary termination of in force reinsurance by the ceding insurer shall be considered such a reimbursement to the reinsurer for negatives experience. Voluntary termination does not include situations where termination occurs because of unreasonable provisions which allow the reinsurer to reduce its risk under the agreement. An example of such a provision is the right of the reinsurer to increase reinsurance premiums or risk and expense charges to excessive levels forcing the ceding company to prematurely terminate the reinsurance treaty;

4. The ceding insurer is required, at specific points in time scheduled in the agreement, to terminate or automatically recapture all or part of the reinsurance ceded;

5. The reinsurance agreement involves the possible payment by the ceding insurer to the reinsurer of amounts other than from income realized from the reinsured policies. For example, it is improper for a ceding company to pay reinsurance premiums, or other fees or charges to a reinsurer which are greater than the direct premiums collected by the ceding company;

6. The treaty does not transfer all of the significant risk inherent in the business being reinsured. Exhibit 1 entitled "Significant Risks" appearing in the Appendix to this subchapter identifies the risks considered to be significant for the various products or types of business set forth in the table. For products not specifically included, the risks determined to be significant shall be consistent with this table;

7. The credit quality, reinvestment, or disintermediation risk is significant for the business reinsured and the ceding company does not (other than for the classes of business excepted in (a)8 below) either transfer the underlying assets to the reinsurer, maintain such assets in a separate trust or escrow account, or otherwise establish a mechanism by contractual arrangement satisfactory to the Commissioner whereby the underlying assets are legally segregated;

8. Notwithstanding the requirements of (a)7 above, the assets supporting the reserves for the following classes of business and any classes of business which do not have a significant credit quality, reinvestment, or disintermediation risk may be held by the ceding company without segregation of such assets: Health Insurance—LTC/LTD; Traditional Non-Par Permanent; Traditional Par Permanent; Adjustable Premium Permanent; Indeterminate Premium Permanent; and Universal Life Fixed Premium (no dump-in premiums allowed). The formula for determining the reserve interest rate adjustment should reflect the ceding company's investment earnings and incorporate all realized and unrealized gains and losses reflected in the financial statement. The formula set forth as Exhibit 2 in the Appendix to this subchapter is an example of an acceptable formula;

9. Settlements are made less frequently than quarterly or payments due from the reinsurer are not made in cash within 90 days of the settlement date;

10. The ceding insurer is required to make representations or warranties which are not reasonably related to the business being reinsured;

11. The ceding insurer is required to make representations or warranties about future performance of the business being reinsured;

12. The reinsurance agreement is entered into for the principal purpose of producing significant surplus aid for the ceding insurer, typically on a temporary basis, while not transferring all of the significant risks inherent in the business reinsured and, in substance or effect, the expected potential liability to the ceding insurer remains basically unchanged.

(b) Notwithstanding (a) above, in financial statements filed with the Department a ceding insurer subject to this subchapter may, with the prior approval of the Commissioner, take such reinsurance credit as the Commissioner may deem consistent with the fair presentation of the insurer's financial condition under statutory accounting principles (as permitted or prescribed by Title 17B of the New Jersey revised statutes and rules and regulations promulgated thereunder), including actuarial interpretations and standards adopted by the Department.

**11:2-40.5 Exceptions to agreements or conditions precluding reduction of liability or inclusion as an asset**

(a) Agreements entered into on or after August 16, 1993 which involve the reinsurance of business issued prior to the effective date of the agreements, along with any subsequent amendments thereto, shall be filed by the ceding company with the Commissioner within 30 days from their date of execution.

(b) Any increase in surplus net of Federal income tax resulting from arrangements described in (a) above shall be identified separately on the insurer's financial statement as a surplus item (aggregate write-ins for gains and losses in surplus in the Capital and Surplus Account, page 4 of the Annual Statement) and recognition of the surplus increase as income shall be reflected on a net of tax basis in the "Reinsurance Ceded" line, page 4 of the Annual Statement as earnings emerge from the business reinsured.

(c) Insurers subject to this subchapter shall reduce to zero by December 31, 1995 any reserve credits or assets established with respect to reinsurance agreements entered into prior to August 16, 1993 which, under the provisions of this subchapter would not be entitled to recognition of the reserve credits or assets; provided, however, that the reinsurance agreements shall have been in compliance with laws or regulations in existence immediately preceding August 16, 1993.

**11:2-40.6 Additional standards**

(a) The ceding insurer's actuary signing the financial statement actuarial opinion with respect to the valuation of reserves shall consider this subchapter and any applicable actuarial standards of practice when determining the proper credit in financial statements filed with the Department. The actuary shall maintain adequate documentation and be prepared upon request by the Department to describe the actuarial work performed for inclusion in the financial statements and to demonstrate that such work conforms to this subchapter.

(b) Compliance with N.J.A.C. 11:2-40.4 shall not abrogate the requirement that reserve credits shall be based upon actual liability assumed by a reinsurer to reimburse a ceding insurer for benefits that the ceding insurer is obligated to pay under its direct policies and that gave rise to a required statutory reserve amount. An agreement meeting the technical requirements of N.J.A.C. 11:2-40.4, but failing to comply with the objective of this rule, shall not provide a basis for the taking of reserve credits by a ceding insurer.

(c) The ceding insurer shall maintain data used to determine reinsurance credits at its place of business for review by the Department upon request. Such data and documentation shall demonstrate compliance by the ceding insurer with this subchapter, and shall include, but not be limited to:

1. A comparison of the renewal expense allowances with the ceding insurer's anticipated expenses; and
2. A comparison of the guaranteed reserve adjustment interest rates to the maximum allowable statutory valuation rates in accordance with N.J.S.A. 17B:19-8.

Amended by R.1993 d.562, effective November 15, 1993.  
See: 25 N.J.R. 4314(a), 25 N.J.R. 5212(a).

**11:2-40.7 Penalties**

Failure to comply with the terms of this subchapter may result in the denial of any credit taken for the reinsurance agreement, as well as the assessment of any and all penalties available pursuant to law. These penalties may be assessed against any and all parties to a reinsurance agreement that fails to comply with the terms of this subchapter.

**11:2-40.8 Severability**

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

## APPENDIX

## EXHIBIT 1

## Significant Risks

Products/Types of Business	Risk Categories**					
	a	b	c	d	e	f
Health Insurance—other than LTC/LTD*	+	O	+	O	O	O
Health Insurance—LTC/LTD*	+	O	+	+	+	O
Immediate Annuities	O	+	O	+	+	O
Single Premium Deferred Annuities	O	O	+	+	+	+
Flexible Premium Deferred Annuities	O	O	+	+	+	+
Guaranteed Interest Contracts	O	O	O	+	+	+
Other Annuity Deposit Business	O	O	+	+	+	+
Single Premium Whole Life	O	+	+	+	+	+
Traditional Non-Par Permanent	O	+	+	+	+	+
Traditional Non-Par Term	O	+	+	O	O	O
Traditional Par Permanent	O	+	+	+	+	+
Traditional Par Term	O	+	+	O	O	O
Adjustable Premium Permanent	O	+	+	+	+	+
Indeterminate Premium Permanent	O	+	+	+	+	+
Universal Life Flexible Premium	O	+	+	+	+	+
Universal Life Fixed Premium	O	+	+	+	+	+
Universal Life Fixed Premium dump-in premiums allowed	O	+	+	+	+	+

+ = Significant/O = Insignificant

\*LTC = Long Term Care Insurance

LTD = Long Term Disability Insurance

\*\*Risk categories

a. Morbidity

b. Mortality

c. Lapse. This is the risk that a policy will voluntarily terminate prior to the recoupment of a statutory surplus strain experienced at issue of the policy.

d. Credit Quality (C1). This is the risk that invested assets supporting the reinsured business will decrease in value. The main hazards are that assets will default or that there will be a decrease in earning power. It excludes market value declines due to changes in interest rate.

e. Reinvestment (C3). This is the risk that interest rates will fall and funds reinvested (coupon payments or monies received upon asset maturity or call) will therefore earn less than expected. If asset durations are less than liability durations, the mismatch will increase.

f. Disintermediation (C3). This is the risk that interest rates rise and policy loans and surrenders increase or maturing contracts do not renew at anticipated rates of renewal. If asset durations are greater than the liability durations, the mismatch will increase. Policyholders will move their funds into new products offering higher rates. The company may have to sell assets at a loss to provide for these withdrawals.

## EXHIBIT 2

## Formula for Determining Reserve Interest Rate Adjustment

$$\text{Rate} = \frac{2(I + CG)}{X + Y - I - CG}$$

Where: I is the net investment income

CG is capital gains less capital losses

X is the current year cash and invested assets plus investment income due and accrued less borrowed money

Y is the same as X but for the prior year

All data is as reported in the Annual Statement.

Amended by R.1993 d.562, effective November 15, 1993.

See: 25 N.J.R. 4314(a), 25 N.J.R. 5212(a).

## SUBCHAPTER 41. WINDSTORM MARKET ASSISTANCE PROGRAM

### 11:2-41.1 Purpose and scope

(a) The purpose of this subchapter is to establish a program to ensure that eligible property owners in the coastal areas of the State are able to obtain homeowners' insurance through voluntary market outlets by:

1. Creating an Informal Referral Program ("IRP") by which information is provided to consumers and producers about insurers which are actively writing homeowners' insurance in the coastal areas of the State; and
2. Establishing the framework for a Formal Assistance Program ("FAP") among voluntary market insurers for qualified applicants unable to secure homeowners' coverage through normal market channels or the informal referral program and for the equitable distribution of such risks to insurers that choose to accept risks.

(b) The provisions of this subchapter shall apply to all property and casualty insurers admitted to write homeowners' insurance in this State.

### 11:2-41.2 Definitions

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

"Coastal area" shall be those areas of the State identified by postal zip code as set forth in Appendix A to this subchapter which is incorporated herein by this reference.

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

"Department" means the New Jersey Department of Insurance.

"Homeowners' insurance" means the type of personal lines insurance provided against loss to real and personal property as defined in the standard fire policy and extended coverage endorsement thereon, a dwelling policy, the homeowner's multiple peril policy, insurance against the perils of vandalism, malicious mischief, burglary, or theft, or liability insurance, or any combination thereof, delivered or issued for delivery in this State. These policies include, but are not limited to, coverages written under six basic forms as follows:

1. Form 1—Basic, which covers: The dwelling, other structures, and personal property against fire, lightning, the extended coverage perils, vandalism, malicious mischief, theft, and glass breakage. Loss of use and additional coverages listed below are also included in this and each of the homeowners forms.
2. Form 2—Broad, which covers: The perils listed in Form 1 above plus falling objects; weight of ice, snow or

sleet; accidental discharge from a plumbing, heating, air conditioning or sprinkler system or household appliance; tearing, cracking, burning, or bulging of a steam or hot water heating system; freezing of a plumbing, heating, air conditioning or sprinkler system or a household appliance; damage from artificially generated electricity; and volcanic eruption.

3. Form 3—Special, which covers: The dwelling and other structures on an open perils basis. Coverage on personal property applies with respect to the broad named perils insured under Form 2 above, plus the peril of damage by glass or safety glazing material which is part of a building, storm door or storm window.

4. Form 4—Tenants and Renters, which primarily covers: Tenants of a rented premises and provides only personal property coverage (no coverage on dwellings or on other structures) plus a limited amount of coverage on building additions and alterations made by the insured.

5. Form 6—Condominium: This form is designed especially for residential condominium unit owners.

6. Form 8—Modified coverage: This form is designed for homes not considered eligible for replacement cost coverage.

"Insurer" means any person or persons, corporation, association, partnership, company, or other legal entity admitted to transact the business of homeowners' insurance in this State except any residual market mechanism created by or pursuant to statute.

"Qualified applicant" means an applicant for homeowners' insurance whose property is located in the defined coastal area and who has applied for insurance to at least three admitted voluntary market insurers and has been denied coverage.

"Windstorm Market Assistance Program" or "Windstorm MAP" means the program created at N.J.A.C. 11:2-41.3.

### 11:2-41.3 Creation of the Windstorm MAP

(a) There is hereby created in the State of New Jersey a plan for the administration and apportionment of homeowners' insurance for qualified applicants to be known as the New Jersey Windstorm Market Assistance Program.

(b) The Windstorm MAP shall be administered by a governing committee appointed pursuant to this subchapter and a plan of operation approved by the Commissioner.

(c) The administrative offices of the Windstorm MAP shall be located within the State of New Jersey.

(d) All insurers admitted to transact and transacting the business of homeowners' insurance shall be members of the Windstorm MAP.

(e) The Independent Insurance Agents of New Jersey, Professional Insurance Agents of New Jersey and Insurance Brokers Association of New Jersey shall also be participants of the Windstorm MAP.

#### 11:2-41.4 Governing committee

(a) The Windstorm MAP shall be administered by a governing committee of nine voting members.

1. Five members shall be salaried employees of insurers which are members of the Windstorm MAP. No more than one member shall be employed by the same insurer.

2. Three members shall be licensed producers.

3. One member shall be a public representative appointed by the Commissioner who is knowledgeable about homeowners' insurance matters but who is not employed by, or otherwise affiliated with, insurers, insurance producers, or other entities of the insurance industry.

4. The Commissioner, or his or her designated representative, shall be an ex-officio, non-voting member of the governing committee.

(b) The following insurer trade organizations shall each nominate two members to represent insurers:

1. Alliance of American Insurers;
2. American Insurance Association;
3. National Association of Independent Insurers; and
4. New Jersey Association of Mutual Insurance Companies.

(c) The Commissioner shall appoint one member from insurers which are not members of the organizations identified in (b) above. After a Plan of Operation is adopted, such insurers shall nominate two members in accordance with a fair method set forth in the plan of operation.

(d) The following organizations shall each nominate two members:

1. Independent Insurance Agents of New Jersey;
2. Insurance Brokers' Association of New Jersey; and
3. Professional Insurance Agents of New Jersey.

(e) With regard to the nomination of members set forth in (b), (c) and (d) above, in the event the Commissioner fails to appoint either of the nominees, the organization shall nominate another representative.

(f) The initial governing committee appointed pursuant to this subchapter shall serve for staggered terms of one or two years or until successors are appointed. Thereafter, all members of the governing committee shall serve for one year or until a successor is appointed. Each member may designate an alternate.

(g) All meetings of the governing committee shall be conducted in accordance with this subchapter and the plan of operation.

(h) The governing committee shall have the power and duty to:

1. Develop and submit to the Commissioner for approval a plan of operation;
2. Investigate complaints and hear appeals from members or participants about any matter pertaining to the proper administration of the Windstorm MAP;
3. Provide for the establishment of subcommittees, to which may be delegated specific tasks and the authority to act on behalf of the governing committee; and
4. Perform such other functions as may be necessary and proper in accordance with this subchapter and the approved plan of operation.

#### 11:2-41.5 Plan of operation

(a) The plan of operation shall provide for the prompt and efficient administration of the IRP established by the Department, and for the provision of homeowners' insurance to qualified applicants under the FAP. The plan of operation shall provide for the following:

1. The internal organization and proceedings of the governing committee;
2. The coverages to be offered through the Windstorm MAP to qualified applicants;
3. Procedures to distribute on an equitable basis risks qualified for coverage based on the voluntary commitment of insurers to accept risks;
4. Procedures by which insurers may voluntarily agree to participate and to provide coverage through the Windstorm MAP;
5. Procedures to apply for coverage, including disqualifying characteristics;
6. Procedures for handling complaints and appeals to the governing committee;
7. Procedures for the operation of the informal referral program;
8. Procedures for the payment of commissions, where practicable, to licensed insurance producers that recognize the importance of maintaining producer/consumer relationships; and
9. Such other provisions as are deemed necessary by the governing committee for the operation of the Windstorm MAP.

(b) The governing committee shall, within 30 days of the adoption of these rules, submit to the Commissioner, for his or her review and approval, a proposed plan of operation. After approval of the plan, the governing committee may thereafter propose an amendment to the plan of operation at any time for review and approval by the Commissioner. If approved, the Commissioner shall certify approval to the governing committee.

1. If the Commissioner disapproves all or any part of the plan of operation or any amendment, he or she shall return same to the governing committee with a statement that sets forth the reasons for his or her disapproval and may include other recommendations he or she may wish to make.

2. If the governing committee does not submit a plan of operation by February 16, 1995, or a new plan which is acceptable to the Commissioner within 30 days after the disapproval of a proposed plan, the Commissioner may promulgate a plan of operation and certify same to the governing committee, until such time as the governing committee submits its own plan of operation which is acceptable to the Commissioner.

3. The Commissioner may review the plan of operation at any time and may suggest amendments to the governing committee.

#### 11:2-41.6 Informal Referral Program ("IRP")

(a) The IRP shall provide for the distribution to the public of information about insurers offering coverage to qualified applicants that meet current underwriting guidelines.

(b) The governing committee shall provide in the plan of operation for administration of the IRP, which shall include provision for maintaining necessary records in order to confirm the applicant's qualification for the FAP pursuant to N.J.A.C. 11:2-41.7(a)2.

(c) The Windstorm MAP may revise the IRP as necessary to provide maximum assistance to property owners seeking homeowners' insurance in the coastal area; however, only the Department may gather underwriting information from homeowner insurers the Department determines is needed for use in the IRP.

#### 11:2-41.7 Formal Assistance Program ("FAP") application process

(a) Any person applying for homeowners' insurance through the FAP shall demonstrate that he or she is a qualified applicant.

(b) The FAP shall arrange for coverage to qualified applicants to the extent that the Windstorm MAP has capacity to provide such coverage based upon the participation of insurers.

(c) The governing committee shall establish procedures in the plan of operation with respect to documentation to be provided by the applicant or the producer showing (where applicable) the reasons for termination of previous insurance coverage, including, but not limited to:

1. Previous insurance company name and policy number;
2. Reasons for termination and effective date of termination; and
3. Claim history for the preceding three years.

(d) Those insurers that have agreed to consider risks through the FAP shall provide homeowners' insurance coverage to qualified applicants in accordance with each insurers' voluntary commitment to participate and to provide coverage.

#### 11:2-41.8 Right to petition for appeal to the Commissioner

(a) A member or participant may petition for appeal to the Commissioner from an adverse decision of the governing committee by filing a request in writing within 20 days of the date of receipt of the written decision of the governing committee.

1. The written request to appeal shall set forth the facts upon which it is based and include a copy of the written decision of the governing committee.

2. The Commissioner shall notify the petitioner and the governing committee within 30 days whether the request to appeal shall be granted.

3. Notice from the Commissioner that an appeal has been granted shall also provide a statement about whether the action of the governing committee has been stayed pending the disposition of the appeal.

(b) An appeal to the Commissioner granted pursuant to this rule shall be conducted on the record before the governing committee in accordance with applicable provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

#### 11:2-41.9 Reports

Member insurers shall, no less frequently than quarterly, submit reports relative to the amount of homeowners' insurance in force and new business written in a format which shall be prescribed by Order of the Commissioner.

#### 11:2-41.10 Windstorm deductibles

Member insurers that demonstrate pursuant to the provisions of this subchapter proportionate Statewide and coastal area market shares, may file for approval, pursuant to N.J.S.A. 17:29A-1 et seq., amendments to their filed rating systems in order to offer optional and/or mandatory wind-

storm deductibles. In determining whether to approve such filings, the Commissioner shall consider the insurer's demonstrated participation in the homeowners' insurance market and whether approval of the filing will contribute to improve availability and affordability of homeowners' insurance in the coastal areas.

### APPENDIX A

#### COASTAL REGION ZIP CODES

07002	07715	07753	08202	08405	08750
07008	07716	07755	08203	08406	08751
07036	07717	07756	08204	08411	08752
07064	07718	07757	08212	08721	08753
07077	07719	07758	08223	08723	08754
07201	07720	07760	08226	08724	08755
07202	07721	07762	08230	08730	08756
07206	07723	07764	08243	08731	08757
07302	07730	08005	08247	08732	08758
07304	07732	08006	08248	08734	08832
07305	07734	08008	08260	08735	08861
07306	07735	08050	08400	08736	08862
07709	07737	08087	08401	08738	08878
07711	07740	08092	08402	08739	08879
07712	07748		08403	08740	
07713	07750		08404	08742	