

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

OFFICE OF SOLVENCY REGULATION

Annual Audited Financial Reports

Adopted Amendments: N.J.A.C. 11:2-26.1 through 26.6 and 26.9

through 26.14

Adopted New Rules: N.J.A.C. 11:2-26.14, 26.15 and 26.16

Proposed: September 21, 2009 at 41 N.J.R. 3364(a).

Adopted: December 23, 2009 by Neil N. Jasey, Commissioner, Department of Banking and Insurance.

Filed: December 23, 2009 as R. 2010 d. 026, **with substantive and technical changes**_not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 17:1-8.1, 17:1-15e and 17:23-20 et seq.

Effective Date: January 19, 2010.

Expiration Date: September 21, 2010.

Summary of Public Comments and Agency Responses:

The Department received comments from New Jersey Manufacturers Insurance Group, the American Council of Life Insurers, and High Point Safety and Insurance Management Corporation.

COMMENT: Two commenters addressed proposed N.J.A.C. 11:2-26.14(i)2, which requires that 100 percent of a domestic insurer's audit

committee members be independent, while the National Association of Insurance Commissioners (NAIC) model audit rule (MAR) requires only 75 percent independence. One commenter stated that the MAR clearly recognized that there may be some benefit to having individuals with knowledge of the internal workings of an organization serve on an audit committee, and that the Department provided no rationale for departing from the national standard. One commenter stated that the Department's proposal sets the proportion based on New Jersey's Holding Company statute at N.J.S.A. 17:27A-4(d). According to the commenter, this section pertains to domestic insurers registered as a member of an insurance holding company. The statute was adapted from another NAIC model, the Insurance Holding Company System Regulatory Act, and the subsection referred to in subsection (d) is optional language found in that NAIC model, which New Jersey has incorporated into its statute. This language refers to the establishment of internal committees by the domestic registered company within the holding company system, and the independence thresholds for that purpose. The independence determinant here is relative to the domestic's relation to the parent company so as to ensure that the domestic company or entity within the parent's system functions under the laws of New Jersey as an independent corporate entity subject to the laws for corporations and insurers domiciled in that state. The commenters requested that the Department replace the proposed language with the NAIC's MAR language for uniformity and consistency, and adequate objectivity for the audit committees established by

the MAR. One commenter added that the absence of these thresholds could potentially challenge the state's accreditation by the final adoption not being substantially the same as the MAR.

RESPONSE: The Department does not believe that any change to its proposed rule is necessary. The Department's proposed audit committee requirements merely recognize that some insurers are subject to statutory and regulatory requirements in addition to those set forth in the MAR's audit committee requirements provision. As the Department stated in the proposal Summary, unlike the MAR, the audit committee requirements set forth at N.J.A.C. 11:2-26.14 apply to entities that are statutorily required to comply with audit committee requirements pursuant to N.J.S.A. 17:27A-4(d) (domestic members of a holding company system) and entities required to comply with N.J.A.C. 11:27-12.1, which imposes specific audit committee requirements on medical malpractice insurers. Accordingly, the Department's proposed rule addressing audit committee requirements is both substantially similar to the MAR and consistent with New Jersey-specific statutory and regulatory requirements. Further, the Department does not believe that the difference between this section as proposed and the MAR audit committee requirements provision in any way jeopardizes New Jersey's accreditation because the proposed provision is no less stringent than the MAR audit committee requirements.

COMMENT: One commenter addressed the proposed amendments to N.J.A.C. 11:2-26.14 (d) and (e) (to be recodified upon adoption at N.J.A.C. 11:2-

26.17 (d) and (e)). These sections provide alternate compliance dates for domestic insurers based on whether they have retained a certified public accountant (CPA) who qualifies as independent on or before the effective date of this subchapter. Subsection (d) requires compliance with the subchapter by domestic insurers who have retained a CPA who qualifies as independent for the year ending December 31, 2010, while subsection (e) provides for a delayed compliance schedule allowing an additional year for domestic insurers who have not retained independent CPAs on or before the effective date of this subchapter. The commenter stated that insurers that have retained a CPA who qualifies as independent should not be required to file all the reports and communications required by this subchapter earlier than other insurers based solely upon the status of their CPAs. The commenter suggested that, in light of the additional information to be filed, it would be appropriate for the Department to have a uniform compliance date for all domestic insurers to file their audited financial reports and additional required communications required by this subchapter for the year ending December 31, 2011. The commenter suggested replacing proposed N.J.A.C. 11:2-26.17(d) with the following: "Domestic insurers shall comply with this subchapter for the year ending December 31, 2011 and each year thereafter unless the Commissioner permits otherwise." The commenter further suggested deleting proposed N.J.A.C. 11:2-26.17(e).

RESPONSE: The Department does not believe that any change to its proposed rule is necessary. The Department's proposed provision was intended

to provide additional time to an insurer who has not retained a certified public accountant (CPA) on or before the effective date of these rules for filing the additional reports and communications required by these rules. Insurers who have retained a CPA on or before the effective date of these rules, as well as insurers who have not, are required to file audited financial reports as of December 31, 2010.

COMMENT: One commenter addressed proposed N.J.A.C. 11:2-26.17(j), which is recodifying existing N.J.A.C. 11:2-26.14(c) pertaining to exemptions. The commenter stated that the Department's proposal differs from the MAR in that it omits the third and fourth sentences of the MAR Section 17.A, which allows an insurer to appeal from a denial of a request for an exemption from the regulation. The commenter requested that the Department adopt Section 17.A of the MAR in its entirety, as follows (proposed language in boldface): "Upon written application of any insurer, the Commissioner may grant an exemption from compliance with any and all provisions of this regulation if the Commissioner finds, upon review of the application, that compliance with this regulation 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 specified period or periods. **Within ten (10) days from a denial of an insurer's written request for an exemption from this regulation, the insurer may request in writing a hearing on its application for an exemption. The hearing shall be held in accordance with the**

regulations of the Department of Banking and Insurance pertaining to administrative hearing procedures.”

RESPONSE: The Department does not believe that any change to the proposed rule is necessary. There is no statutory provision that confers upon an insurer a right to an exemption as referenced in existing N.J.A.C. 11:2-26.14(c) nor a right to an administrative hearing if the Commissioner exercises his discretion to deny a request for such an exemption. New Jersey's Administrative Procedure Act at N.J.S.A. 52:14B-1 et seq. and the New Jersey Court Rules govern the process for appeals of final agency decisions.

Federal Standards Statement

A Federal standards analysis is not required because the adopted amendments and new rules are not subject to any Federal requirements or standards.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

11:2-26.17 Exemptions and effective dates

(a) – (c) (No change from proposal.)

(d) Domestic insurers who have retained a certified public accountant on or before *[the effective date of this subchapter]* ***January 19, 2010*** who qualifies as independent shall comply with this subchapter for the year ending December 31, 2010 and each year thereafter unless the Commissioner permits otherwise.

(e) Domestic insurers who have not retained a certified public accountant on or before *[the effective date of this subchapter]* ***January 19, 2010*** who qualifies as independent may meet the following schedule for compliance unless the Commissioner permits otherwise:

1. – 2. (No change from proposal.)

(f) – (h) (No change from proposal.)

(i) The requirements for audit committees as set forth in N.J.A.C. 11:2-26.14 are to be in effect January *[1]* ***19***, 2010. An insurer or group of insurers that is not required to have independent audit committee members or only a majority of independent audit committee members (as opposed to a supermajority) because the total written and assumed premium is below the threshold and subsequently becomes subject to one of the independence requirements due to changes in premium shall have one year following the year the threshold is exceeded (but

not earlier than January *[1]* *19*, 2010) to comply with the independence requirements. Likewise, an insurer that becomes subject to one of the independence requirements as a result of a business combination shall have one calendar year following the date of acquisition or combination to comply with the independence requirements.

(j) (No change from proposal.)