

INSURANCE  
DEPARTMENT OF BANKING AND INSURANCE  
OFFICE OF THE COMMISSIONER

Electronic Transactions

Adopted New Rules: N.J.A.C. 11:1-47

Adopted Amendments: N.J.A.C. 11:3-15.4, 15.7, and 47.3

Proposed: September 20, 2004 at 36 N.J.R. 4207(a)

Adopted: January 31, 2005 by Holly C. Bakke, Commissioner, Department of Banking and Insurance

Filed: January 31, 2005 as R. 2005 d. 83, 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 12A:12-1 et seq.

Effective Date: March 7, 2005

Expiration Date: January 31, 2006, N.J.A.C. 11:1  
January 4, 2006, N.J.A.C. 11:3

Summary of Public Comments and Agency Responses:

The Department of Banking and Insurance (Department) received timely written comments from the following:

1. GEICO Insurance Company;
2. Insurance Services Office, Inc.;
3. The Professional Insurance Agents of New Jersey;
4. The Independent Insurance Agents and Brokers of New Jersey;
5. The American Council of Life Insurers; and
6. Thrivent Financial for Lutherans.

COMMENT: Several commenters supported the proposed new rules and amendments, and the overall goal of permitting electronic transactions at the option of the company or producer with the agreement of all parties.

RESPONSE: The Department appreciates the support of its proposal.

COMMENT: One commenter expressed concern with the proposed amendment to N.J.A.C. 11:3-15.4(a)3, which provides that a completed coverage selection form showing the coverage choices made by the insured must be provided to the insured within five business days after a telephonic transaction is completed. The commenter stated that it currently does not possess the systems or technology necessary to implement this requirement and does not expect it will have such technology implemented in the near future. The commenter stated that it sends insureds a blank coverage selection form for purposes of making any changes to their coverage selections upon their review of the consumer documentation it is required to provide to consumers. The commenter stated that it believes that the rule is intended to address the concern that the insured understand the selections that he or she has made. The commenter stated that it does provide such information on the declaration page and that it would be able to include a separate message on the declaration page indicating that the declaration page outlines the choices of coverage chosen by the insured. The commenter further stated that it currently provides a message that if the insured wants to make any changes to his or her selected coverages, the insured should make those changes on the enclosed coverage selection form and return it to the company.

RESPONSE: The Department agrees with the commenter that the intent of this requirement is to ensure that insureds purchasing coverage through the use of a telephonic method receive a written record of the choices he or she has made. The Department believes that a system whereby the insurer clearly delineates on the declarations page or in a separate notice included with the mailing sent to the policyholder within the prescribed five business day time period that the coverage choices selected are outlined on the declarations page, and that any changes may be effectuated by returning the enclosed coverage selection form, satisfies the intent of N.J.A.C. 11:3-15.4(a)3. The Department will monitor the implementation of procedures and compliance with these requirements to determine whether any issues arise that may require further attention from the Department to ensure that policyholders are fully aware of the coverage choices they have made, in consideration of the new procedures and methods that may be utilized for the purchase and binding of insurance coverage.

COMMENT: One commenter noted that N.J.A.C. 11:3-15.4(a)3 provides, in part, that insureds may alter coverages based on a review of documents received from the insurer by returning a signed coverage selection form with the changes noted therein, or electronically, if such process is made available by the insurer. The commenter stated that the term “electronically” as used in the provision is not defined. The commenter questioned if the insured returns the coverage selection form electronically, whether an electronic signature as defined in N.J.S.A. 12A:12-2 is required. The commenter suggested that after the term “electronically,” the following phrase be added “provided the requirements of N.J.S.A. 12A:12-1 et seq. with respect to the use of electronic transactions are satisfied.”

RESPONSE: Upon review, the Department has revised N.J.A.C. 11:3-15.4(a)3 to reflect the addition suggested by the commenter. While the Department believed that it was clearly indicated in the notice of proposal that any electronic transaction or electronic signature must satisfy the requirements of N.J.S.A. 12A:12-1 et seq., in order to avoid any confusion regarding this issue, the Department has made the change as suggested by the commenter.

COMMENT: One commenter suggested that N.J.A.C. 11:1-47.1(b), which provides that “all transactions between carriers and producers, and applicants, insureds or other parties...” should be revised to read “between carriers **or** producers, and applicants, insureds, or other parties...” to ensure consistency with N.J.A.C. 11:1-47.1(a) (suggested addition underlined and in boldface). The commenter stated that this would permit electronic transactions to be used by both carriers and producers in their dealings with applicants, insureds and other parties.

RESPONSE: The Department agrees. This suggestion is consistent with the Department’s intent as expressed in the notice of proposal. Accordingly, the Department has revised N.J.A.C. 11:1-47.1(b) upon adoption to reflect the change suggested by the commenter.

COMMENT: One commenter questioned whether the exclusion of the application of the rules to cancellation, nonrenewal or termination of insurance coverage, pursuant to N.J.A.C. 11:1-47.1(b), would also apply in situations where an insurer is required to provide a written denial of coverage.

RESPONSE: The rules by their terms apply to all transactions between carriers or producers and an applicant, insured or other party for all kinds of insurance, but shall not apply to cancellation, nonrenewal or termination of any insurance coverage. A declination of an application for coverage would thus not fall into these stated exclusions. In addition, the Department notes that N.J.S.A. 12A:12-1 et seq. and the rules are intended to provide essentially that transactions otherwise required to be made in writing may be made electronically. If an application is taken electronically, a declination may be made electronically.

COMMENT: One commenter stated that it is unclear how the new rules would work in conjunction with N.J.A.C. 11:17A-4.2, which requires insurance producers to witness the signature of an applicant on an insurance application prior to submission to the insurer. The commenter requested that, if the Department does not intend to delete this requirement, it explain how a producer would witness a signature of an applicant using an electronic application process.

RESPONSE: N.J.S.A. 12A:12-1 et seq. provides that a record or signature may not be denied legal effect solely because it is in electronic form, and that an electronic signature satisfies any law which requires a signature. Clearly, the application of the witness of signature requirement in N.J.A.C. 11:17A-4.2 to electronic transactions could effectively preclude the use of electronic transactions, in contravention of N.J.S.A. 12A:12-1 et seq. Therefore, the Department will not construe the requirement that the procuring producer witness the signature of the applicant as applicable in cases where electronic signatures are used. The Department intends to propose amendments to N.J.A.C. 11:17A-4.2 in the future to clarify its application to electronic

transactions, consistent with the position set forth herein. In addition, the Department also notes that N.J.A.C. 11:17A-4.2 also permits insurers to waive the requirement that the signature be witnessed.

COMMENT: One commenter noted that N.J.A.C. 11:1-47.3(b) provides that all parties shall agree to the use of electronic records in order for such transactions to be given effect. The commenter believed that this is redundant since N.J.A.C. 11:1-47.3(a) provides that the requirements of N.J.S.A. 12A:12-1 et seq. must be satisfied. This statute requires that the parties to a contract must agree to conduct the transaction by electronic means.

RESPONSE: Upon review, the Department has determined not to change this provision. The Department recognizes that N.J.S.A. 12A:12-1 et seq., which is referenced in N.J.A.C. 11:1-47.3(a), requires that the parties agree to conduct the transaction by electronic means. However, the Department believes that N.J.A.C. 11:1-47.3(b) restates and reinforces this important provision of the statute.

COMMENT: Several commenters noted that N.J.A.C. 11:3-15.4(a)2 provides that, where an application for or renewal of an insurance policy is made via the Internet, the requirement to provide a Buyer's Guide, Coverage Selection Form and Consumer Bill of Rights may be accomplished by making these documents available to the applicant/insured on the insurer's web site. The commenters suggested that, since insurance producers often provide these documents to the consumer, the documents be allowed to be provided on a producer's web site as well as on the insurer's.

RESPONSE: Again, consistent with the intent of the proposed new rules and amendments as expressed in the notice of proposal, the Department agrees that the documents may also be placed on the producer's website, if provided or authorized by the insurer. The information shall be placed on the insurer's website in all cases. The Department has revised N.J.A.C. 11:3-15.4(a)2 upon adoption to reflect this clarification.

COMMENT: One commenter noted that N.J.A.C. 11:3-15.4(a)3 provides that, where an application for or renewal of an insurance policy is made via the telephone and coverage is bound during the telephonic transaction, the requirement to provide the Buyer's Guide, Coverage Selection Form, and Consumer Bill of Rights is satisfied if the insurer, with the agreement of the applicant or insured, sends the insured those documents within five business days after the telephonic transaction is completed. The commenter raised several questions regarding this provision.

First, the commenter stated that the first sentence refers to a "telephonic transmission." However, later in the sentence the Department uses the term "telephonic transaction." The commenter believed that it would be more appropriate to use the phrase "telephonic transaction" throughout.

Secondly, the commenter noted that this provision allows an insurer to send the documents only with the agreement of the applicant or insured. The commenter questioned what would happen if the applicant or insured did not agree to receive the documents after the telephonic transaction. The commenter questioned whether an insurer would be prohibited from

doing business with these consumers. Moreover, the commenter questioned how an applicant or insured would provide his or her consent and whether a verbal agreement would be sufficient.

The commenter expressed these same concerns with respect to the changes to N.J.A.C. 11:3-47.3(a)5.

RESPONSE: With respect to changing the word “transmission” to “transaction,” the Department agrees. Accordingly, this change has been made upon adoption to N.A.C. 11:3-15.4(a)3 and 47.3(a)5 in order to clarify the text of these paragraphs.

With respect to the questions regarding how the applicant may provide his or her consent, the Department believes that such issues are best addressed by the insurer or producer, as applicable, in the development of their procedures or systems to accept or process transactions electronically. The Department is attempting to afford insurers and producers flexibility in allowing the use of electronic transactions in their dealings with applicants or insureds, so long as the requirements of N.J.S.A. 12A:12-1 et seq. are satisfied. The Department believes that this will permit each insurer or producer to develop appropriate procedures to fulfill the requirements of the rules and the statute that best suit their needs and systems.

Similarly, with respect to questions regarding what would happen if an applicant or insured did not agree to receive documents after the telephonic transaction, the Department assumes that insurers will develop appropriate systems and procedures to record an applicant’s or insured’s agreement to conduct the transaction electronically and be bound by such agreement. Any disputes engendered by an applicant’s or insured’s change in position subsequent to the conclusion of the telephonic application transaction would be addressed as any other dispute where the transaction is conducted through hard copy.

COMMENT: One commenter noted that N.J.A.C. 11:3-47.3(a)4 provides that where an application for an insurance policy is made via the Internet, the requirement to provide insurance scenarios is satisfied by having the scenarios readily available to the applicant on the insurer's web site. The commenter suggested that the scenarios also be allowed to be placed on the producer's web site as well. The commenter stated that this would recognize the fact that producers are required to provide insurance scenarios to applicants and that the Department would allow the use of electronic transactions to be used by both insurers and producers.

RESPONSE: The Department agrees for the reasons expressed by the commenter and noted in responses to prior similar comments. Accordingly, the suggested change has been made to N.J.A.C. 11:3-47.3(a)4 upon adoption.

COMMENT: One commenter stated that N.J.A.C. 11:3-15.4 provides that compliance for provision of the Coverage Selection Form may be met by having the Coverage Selection Form readily available to the applicant/insured on the insurer's web site. However, for new applications, a completed Coverage Selection Form is a requirement of a completed application. The commenter believed that there should be a requirement that the insured affirmatively select the coverage desired on the web site and provide a final approval selection. Similarly, for coverage selected by phone, the commenter stated that the insurer is only required to send a completed Coverage Selection Form to the applicant, but there is no requirement that it be signed and returned (either by electronically approving or returning the signed document).

RESPONSE: The commenter may have misconstrued the operation of this provision. As noted in a response to a previous comment, the purpose of these rules is to implement N.J.S.A. 12A:12-1 et seq., which essentially provides that documents previously required to be signed in writing may be provided electronically. The Coverage Selection Form, if provided on a web site, would be completed and electronically “signed” on the web site as part of the electronic application for new coverage. If the application were taken telephonically, coverage choices would be made electronically over the phone, with confirmation of the coverage choices being provided after the fact. N.J.A.C. 11:3-15.4 is intended to address how the existing procedures concerning the providing of the automobile insurance Buyer’s Guide, Coverage Selection Form and Automobile Insurance Consumer Bill of Rights to applicants and insureds, and the providing of the insurance scenarios to applicants, can be reconciled with permitting transactions to be performed electronically.

COMMENT: One commenter stated that N.J.S.A. 17:28-1.9a provides that, when an insured completes a Coverage Selection Form, producers are not liable in an action for damages on account of the election of a given level of motor vehicle insurance coverage by a named insured, as long as those limits provide at least the minimum coverage required by law. The commenter believed that completion of a Coverage Selection Form electronically would satisfy the immunity provisions of this statute and requested clarification that the State believes that the provisions of the rules would continue to provide the same level of immunity.

RESPONSE: The Department is not responsible for the administration of this statute. The issues raised by the commenter would be addressed by the courts. However, the Department

would anticipate that the immunity provisions in N.J.S.A. 17:28-1.9a would continue to apply where transactions are completed electronically in consideration of the fact that electronic transactions are expressly recognized under both State law, N.J.S.A. 12A:12-1 et seq., and Federal law, 15 U.S.C. §§ 7001 et seq., which provide for the validity of electronic records and signatures in commerce, including insurance transactions.

**COMMENT:** Several commenters requested clarification whether the exclusion of the application of the rules to the cancellation, nonrenewal or termination of insurance coverage would apply to transactions where the cancellation or termination is requested by the insured or contract owner. Similarly, the commenters questioned whether the rules would prohibit a policy owner's electronic signature for decreases in face amount, cancellation or reduction in amounts of riders, and similar policy changes.

**RESPONSE:** The intent of the limitation was to require additional notice where existing rights of a policyholder or contract holder were being affected unilaterally by action of the insurer. For example, where an insurer cancels or nonrenews an insurance policy for nonpayment of premium or failure to continue to meet underwriting guidelines. If an insured seeks to make changes to the policy or aspects of the policy, such as where the insured seeks to terminate the contract or seeks to change the benefits or reduce the benefits provided therein, such a transaction would not be required to be made in writing but could be made electronically, subject to the insured and the insurer agreeing to undertake the transaction electronically.

**Federal Standards Statement**

The use of electronic records and signatures in insurance transactions are subject to Federal law, 15 U.S.C. §§ 7001 et seq., as well as State law, N.J.S.A. 12A:12-1 et seq. The Department believes that the adopted new rules and amendments are consistent with existing New Jersey law and do not impose any burdens greater than those imposed by the Federal law with respect to the electronic transactions to which these rules will apply.

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

## SUBCHAPTER 47. ELECTRONIC TRANSACTIONS

### 11:1-47.1 Purpose and scope

- (a) (No change from proposal.)
- (b) This subchapter applies to all transactions between carriers \*[and]\* **\*or\*** producers, and an applicant, insured or other party for all kinds of insurance pursuant to Titles 17 and 17B of the New Jersey Statutes. This subchapter shall also apply to transactions involving the PAIP and CAIP. This subchapter shall not apply to cancellation, nonrenewal or termination of any insurance coverage. This subchapter shall not apply to filings required to be made with the Department.

## SUBCHAPTER 15. BUYER'S GUIDE, COVERAGE SELECTION FORM, AND AUTOMOBILE INSURANCE CONSUMER BILL OF RIGHTS FOR STANDARD AND BASIC POLICIES

### 11:3-15.4 Compliance

- (a) No new private passenger automobile insurance policy or renewal shall be issued on or after July 13, 2004 unless the application for the policy or renewal is accompanied by a Buyer's Guide, a Coverage Selection Form and an Automobile Insurance Consumer Bill of Rights that meet the minimum standards prescribed in this subchapter.
  - 1. (No change).
  - 2. Where application for or renewal of an insurance policy is made via the Internet, compliance with (a) above shall be satisfied by having the Buyer's Guide, Coverage Selection Form and Automobile Insurance Consumer Bill of Rights readily available to the

applicant/insured on the insurer's web site. \*In addition to being readily available on the insurer's website, this information also may be placed on the producer's website, if provided or authorized by the insurer.\*

3. Where application for or renewal of an insurance policy is made via the telephone and coverage is bound during the telephonic \*[transmission]\* \*transaction\*, compliance with (a) above shall be satisfied if the insurer, with the agreement of the applicant or insured, sends the insured the Buyer's Guide, a completed Coverage Selection Form showing the coverage choices made by the insured, and an Automobile Insurance Consumer Bill of Rights within five business days after the telephonic transaction is completed. Insureds may alter coverages based on their review of such documents by returning a signed Coverage Selection Form with the changes noted therein, or electronically, \*provided that the requirements of N.J.S.A. 12A:12-1 et seq. are satisfied and that\* \*[if]\* such process is made available by the insurer. Such alterations shall be effective in accordance with N.J.A.C. 11:3-15.7(d)2.

(b)– (d) (No change.)

11:3-47.3 Insurance scenarios

(a) Pursuant to N.J.S.A. 17:29A-52, insurers and insurance producers shall provide insurance scenarios in accordance with this subchapter.

1. – 3. (No change.)

4. Where application for an insurance policy is made via the Internet, compliance with (a)1 above shall be satisfied by having the insurance scenarios readily available to the applicant on the insurer's website. \*In addition to being readily available on the insurer's website, this information also may be placed on the producer's website.\*

5. Where application for an insurance policy is made via the telephone and coverage is bound during the telephonic \*[transmission]\* **\*transaction\***, compliance with (a)1 above shall be satisfied if the insurer, with the agreement of the applicant, sends the applicant the insurance scenarios within five business days after the telephonic transaction is completed. Insureds may alter coverages based on their review of the insurance scenarios by returning a signed Coverage Selection Form with the changes noted therein, or electronically, if such process is made available by the insurer. Such alterations shall be effective in accordance with N.J.A.C. 11:3-15.7(d)2.

(b) – (g) (No change.)

INOREGS\jc04-17.doc