

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE

Orderly Withdrawal of Insurance Business

Proposed New Rules: N.J.A.C. 11:2-29.6 and 29.8

Proposed Amendments: N.J.A.C. 11:2-29.1 through 29.5 and 29.7

Authorized By: Holly C. Bakke, Commissioner, Department of Banking and Insurance

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, 17:17-10, 17:22-6.14a(n) and 17:33B-30

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2004-380

Submit comments by December 3, 2004 to:

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The agency proposal follows:

Summary

The Department of Banking and Insurance (Department) is proposing new rules and amendments to N.J.A.C. 11:2-29 governing the withdrawal or discontinuance of insurance business by property/casualty insurers. N.J.S.A. 17:17-10 and 17:33B-30, governing domestic and foreign admitted insurers, respectively, provide that no company licensed to transact business in this State pursuant to Chapter 17 of Title 17 of the Revised Statutes may surrender its certificate of authority or discontinue writing or renewing any kind or kinds of insurance specified in the certificate, except in accordance with a plan to be submitted by the company and

approved by the Commissioner of Banking and Insurance (Commissioner) which shall provide for the orderly withdrawal from the market and for the minimization of the impact of the surrender of the certificate or the discontinuance of the writing or renewing of any kind or kinds of insurance upon the public generally and upon the company's policyholders in this State.

Pursuant to the statute, the Department adopted N.J.A.C. 11:2-29, effective May 20, 1991. The rules prescribe the procedures and requirements for companies to discontinue the transaction of one or more property/casualty lines of business in this State. In June 2003, the Legislature amended N.J.S.A. 17:17-10 and 17:33B-30. See P.L. 2003, c. 89, sections 84 and 85, respectively. These amendments become effective January 1, 2007. In the interim, the Department believes it is appropriate to propose changes to the existing rules for the reasons that follow.

After more than 10 years of experience with these rules, the Department has determined that it is appropriate to propose amendments to provide additional guidance on the process by which an insurer may exit the market, and to streamline that process where the action will have minimal impact on policyholders and the market in general. The existing rules currently provide for the Commissioner to approve a substitute procedure, rather than the filing of a formal plan of orderly withdrawal, based on the particular fact situation involved. The proposed new rules and amendments generally reflect the procedures currently utilized, and will provide additional certainty to insurers, policyholders, and others as to the procedures that will be utilized where minimal impact will result from an insurer's withdrawal from the New Jersey insurance market.

N.J.A.C. 11:2-29.1 is proposed to be amended to more accurately state the purpose of the rules, including reflecting that one purpose of the rules is to prevent adverse effects on the insurer's policyholders and permitting insurers to "withdraw" rather than "wind down their

business” to reflect the activity undertaken under the rules. The rule is also proposed to be amended to specifically provide that the rules do not apply to cancellations or block non-renewals regulated under N.J.A.C. 11:1-22 unless such action is also found to constitute a withdrawal. Finally, the rule is proposed to be amended to provide that plans of withdrawal filed after January 1, 2007, or with an effective date on or after that date, shall be subject to N.J.S.A. 17:17-10 and 17:33B-30 as amended by P.L. 2003, c.89 and N.J.A.C. 11:2-29.8, to reflect the application of those statutes as amended.

N.J.A.C. 11:2-29.2, is proposed to be amended to revise definitions as follows: “annual statement” (to add a reference to statements filed by title insurers); “automobile” (to delete the reference to “automobile insurance” and the reference to N.J.S.A. 17:30E-3); “business of insurance” or “insurance” (to refer to insurance under N.J.S.A. 17:46B-1 et seq. or 17:50-1 et seq.); “commencement date” (to refer to the effective of the first action constituting a withdrawal); “insurance producer” or “producer” (to refer to the current statutory definition in N.J.S.A. 17:22A-28); “insurer” (to delete the reference to surplus lines insurers, and add statutory references to title insurers and reciprocal exchanges); “plan” (to make language changes as a matter of form); and “rating system” (to refer to loss costs). The Department is also proposing new definitions of “hazardous financial condition” and “homeowners’ insurance.”

The proposed amendments to N.J.A.C. 11:2-29.3 reflect the Department’s current procedures under which the Commissioner shall waive the requirement that an applicant file a plan of orderly withdrawal. In determining whether to waive the filing of a plan of orderly withdrawal, the Commissioner will consider whether the company’s proposed action will have minimal impact on policyholders and the market in general. For example, such minimal impact could occur where the company will be nonrenewing a small number of policies, where there are

other companies writing the line or lines of business from which the company seeks to withdraw, and there is sufficient capacity in the voluntary market with respect to the particular coverages involved. This rule is also amended to reflect the streamlined timeframes for the Department to respond to notice of the proposed action by a company.

The Department is also proposing to amend N.J.A.C. 11:2-29.3(b) to require that 12 copies of a proposed plan be provided, rather than five, to meet the Department's needs with respect to internal review of such filings. The rule is also proposed to be amended to delete the current provisions at paragraph (b)1 regarding when the Commissioner shall begin his or her evaluation of a proposed plan, and recodify such procedures at paragraph (b)8. In addition, the proposed amendment at (b)8 provides that the Commissioner shall issue an approval of the plan within 120 days of receipt of a complete plan, or request for further information, whichever is later, subject to terms and conditions the Commissioner deems appropriate. The ability of the Commissioner to extend his or her review time set forth in N.J.A.C. 11:2-29.3(b)1ii is proposed to be deleted. N.J.A.C. 11:2-29.3 is also proposed to be amended to extend the time for the Commissioner to request additional information from 30 days to 45 days, to reflect the increased complexity in many of these plans. The rule is further proposed to be amended to provide that a failure by an insurer to respond to a request for additional information within 30 days of such request shall result in the filing being deemed withdrawn without prejudice.

The Department is also proposing amendments to N.J.A.C. 11:2-29.3(b)5i to require that the determination of an applicant's current and potential liabilities, for purposes of determining required deposits, be developed and certified by a "qualified actuary" as defined in N.J.A.C. 11:1-21.1(a)2 and 21A.2, for property/casualty and health lines, respectively.

In addition, N.J.A.C. 11:2-29.3(b)6i is proposed to be amended to provide that the

guarantee referenced therein be “in a form acceptable to the Commissioner” rather than “proper” to clarify its intent. N.J.A.C. 11:2-29.3(b)7 is also proposed to be amended to provide as an additional factor the Commissioner will consider is determining whether to waive required special deposits, when the applicant will continue to transact insurance in this State through affiliates.

N.J.A.C. 11:2-29.3(c)2 is proposed to be amended to add a reference to the authority issued to title insurers or reciprocal insurance exchanges. Further, an amendment to N.J.A.C. 11:29.3(c)2 is proposed to delete the reference to conditioning approval of a waiver to surrender all certificates of authority only upon an approved plan as redundant.

The Department is also proposing to revise the filing requirements for a plan of orderly withdrawal set forth at N.J.A.C. 11:2-29.4 to delete information deemed no longer necessary to the Department’s evaluation of a plan of orderly withdrawal or available from other sources. Amendments to conform the listing of confidential documents set forth at N.J.A.C. 11:2-29.7 are also proposed. Amendments are also proposed to codify the Department’s position that all information in a proposed plan of orderly withdrawal is confidential.

Specifically, information proposed to be deleted is set forth in current N.J.A.C. 11:2-29.4(a)3, (a)4i through iii., (a)6, (a)11i, (a)14, and (a)18v. The Department is also proposing to amend N.J.A.C. 11:2-29(a)4 to limit filing of the information related to the applicant’s producers and employees servicing the business only to the extent the withdrawal will effect these items. N.J.A.C. 11:2-29.4(a)5 is proposed to be amended to clarify that notices of cancellation and non-renewal approved pursuant to these rules shall be deemed valid and effective for all purposes related thereto. N.J.A.C. 11:2-29.4(a)6 is proposed to be amended to delete references to life and annuity business in that these rules do not apply to such business. N.J.A.C. 11:2-29.4(a)7 is

proposed to be amended to revise the requirement for information on policies in force for each producer and premium volume for each producer to be as of the date of the filing of the plan.

N.J.A.C. 11:2-29.4(a)9 is also proposed to be amended to delete references to entities that have merged with other entities, and to reflect proper citation. N.J.A.C. 11:2-29.4(a)10 is proposed to be amended to replace reference to a “Fellow of the Society of Actuaries” with the term “qualified actuary” as defined in N.J.A.C. 11:1-21A.2. This rule is also proposed to be amended to provide a more specific reference to N.J.A.C. 11:1-21.1(a)2, and delete references to “life” lines in that, as noted above, these rules do not apply to life insurance.

Further, N.J.A.C. 11:2-29.4(a)11 is proposed to be amended to limit the filing of the information required therein only to the extent those items will be affected by the withdrawal.

N.J.A.C. 11:2-29.4(a)15v is also proposed to be amended to eliminate the reference to designation of the Commissioner as the designated agent for service of process, and to refer merely to the applicant maintaining its current designation of its agent for service of process.

Additionally, N.J.A.C. 11:2-29.4(a)17 is proposed to be added to require that applicants provide a plan to maintain service to policyholders during the withdrawal period and run-off.

The Department is also proposing a new rule at N.J.A.C. 11:2-29.6 to reflect amendments to N.J.S.A. 17:22-6.14a(n), which provide that, in any transfer of business to another insurer pursuant to N.J.S.A. 17:17-10 or 17:33B-30, the policies transferred shall continue to be serviced by the agent of record and the company to which business is transferred shall offer contracts to agents of the transferring company which contain terms and conditions concerning the use, control and ownership of policy expirations and payment of commissions that are no less favorable than those under the agents’ current contracts.

In sum, the Department believes that the proposed new rules and amendments properly

balance the need for regulatory oversight of actions that could disrupt the market with the need for certainty by insurers that must commit capital to support insurance business. The requirements for oversight reflect different degrees of regulatory interest involved in different circumstances. The proposed amendments, which reflect the Department's current process, also will continue to protect New Jersey policyholders and help ensure minimal disruption to them and the market when insurers take such actions.

N.J.A.C. 11:2-29.5(a) is proposed to be amended to reflect current practice that an applicant seeking to withdraw from private passenger automobile insurance may be subject to the conditions set forth in that rule. The Department is also proposing to amend N.J.A.C 11:2-29.5(a)1i to delete the reference that a nonrenewal notice in the case of private passenger automobile insurance must comply with the content requirements of N.J.A.C 11:3-8.3. That rule generally requires information in a nonrenewal notice that would not be applicable in the case of a withdrawal. Accordingly, the Department believes that it is more appropriate to require that the form of notice be included with the insurer's filing for review by the Department.

The Department is also proposing a new rule, N.J.A.C. 11:2-29.8, to provide certain standards for the waiver of the time frames and use of replacement carriers in the case of withdrawals subject to N.J.S.A. 17:17-10 and 17:33B-30, as amended by P.L. 2003, c. 89. In connection with this proposed new rule, the Department is proposing to include the definition of "homeowners' insurance" as it is defined in the rules governing the Windstorm Market Assistance Program at N.J.A.C 11:2-41.2. The Department notes that N.J.S.A. 17:17-10e and 17:33B-30d, as amended, refer to waiver of the "minimum" three-year non-renewal period. Based on review of the other provisions of the statute, the Department is construing the statute's intent to refer to "maximum" three-year non-renewal period. Specifically, N.J.S.A. 17:17-10b(4)

and 17:33B-30a(4) set forth standards for withdrawal, including that non-renewals shall occur at a uniform rate over a period “not to exceed three calendar years.” Accordingly, the three-year non-renewal period is a “maximum” period, rather than a “minimum.”

The Department is also proposing various technical amendments to recodify existing sections as a matter of form, reflect correct cross-references, eliminate references no longer applicable, and reflect the proposed new procedures as set forth above.

A 60-day comment period is provided for this notice of proposal, and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The proposed new rules and amendments modify the existing requirements governing Department review and approval of withdrawals and other transactions wherein an insurer seeks to cease doing business with respect to a line or lines of property/casualty insurance in this State. As set forth in the Summary above, the proposed new rules and amendments reflect a streamlined process currently utilized with respect to the review of such actions, commensurate with the potential for disruption to policyholders and the market that may result from such action. Through this proposed process, the Department believes that additional certainty will be provided to the market as well as insurers, and attendant costs with respect to such proposed transactions both to insurers and the Department may be reduced, while continuing to help ensure that undue disruption will not result from such insurer actions.

Economic Impact

The Department believes that minimal, if any, additional costs should be imposed through these proposed new rules and amendments. The costs that would be imposed relate to continued administrative costs in compiling the information required as part of a plan of orderly withdrawal. The Department believes that the information required already should be available. In general, the proposed amendments reflect the current process utilized by the Department, which bases the degree of regulatory scrutiny on the nature of the transaction under review, and streamlines the review process in situations where minimal disruption to policyholders and the market should result from such actions. Accordingly, costs to insurers and ultimately to policyholders, as well as the Department, actually could be reduced.

Further, to the extent that additional certainty is provided to the process for exiting the market, insurers not currently authorized or admitted may be encouraged to enter the New Jersey property/casualty insurance market. This, in turn, would increase competition, thus benefiting the public and the market, and contributing to a healthy business climate in this State.

Federal Standards Statement

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

Jobs Impact

The Department does not anticipate that any jobs should be generated or lost as a result of the proposed new rules and amendments. However, as noted in the Economic Impact above, to the extent that the proposed new rules and amendments provide certainty to the market and

encourage additional insurers to enter the New Jersey property/casualty insurance market, they may have a positive effect on the business climate in New Jersey.

The Department invites commenters to submit any data or studies concerning the jobs impact of the proposal together with their comments on other aspects of the proposal.

Agriculture Industry Impact

The proposed new rules and amendments will not have any impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

The proposed new rules and amendments may apply to “small businesses” as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. To the extent that the proposed new rules and amendments apply to small businesses, they will be domestic property/casualty insurers seeking to cease doing business in this State.

The proposed new rules and amendments provide no different reporting, recordkeeping or other compliance requirements specifically based on insurer size. Insurers seeking to withdraw will continue to be required to file notification of such action and a plan of orderly withdrawal or alternative filing, as set forth in the proposed new rule and amendments. These notifications are currently imposed. However, the proposed new rules and amendments reduce filing requirements based on the type of business and amount of business from which the insurer is seeking to withdraw, and reflect the Department’s current process for waiving the filing of a plan of orderly withdrawal based on the amount of business transacted by the insurer, which generally is indicative of insurer size. Thus, the Department believes that the proposed new rules

and amendments will have the effect of reducing filing requirements from those currently imposed under the existing rules, with that effect being experienced to a significant degree by smaller insurers. The Department does not believe that insurers will have to utilize any additional professional services to comply with the proposed new rule and amendments.

For the foregoing reasons, the proposed new rules and amendments do not provide for different reporting, recordkeeping or other compliance requirements specifically based on insurer size.

Smart Growth Impact

The proposed new rules and amendments will not have an impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

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 preventing or minimizing [the] adverse effects upon the insurer's 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] withdraw from the marketplace 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. This subchapter shall not apply to any action constituting a block cancellation or block non-renewal regulated under N.J.A.C. 11:1-22 unless such action also is found to constitute a withdrawal under this subchapter.

(c) Plans of withdrawal filed on or after January 1, 2007, or with an effective date on or after January 1, 2007, shall be subject to N.J.S.A 17:17-10 and 17:33B-30, as amended by P.L. 2003, c. 89, and N.J.A.C. 11:2-29.8.

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:

. . .

"Annual statement" means the form of statement that is described in N.J.S.A. 17:23-1 or 17:46B-55, as applicable.

. . .

"Automobile" [and "automobile insurance" are] is as defined in N.J.S.A. [17:30E-3] 39:6A-2.

"Business of insurance" or "insurance" means any kind, line, subline, or a portion thereof authorized by Chapters 17, [or] 32, 46B or 50 of Title 17 of the Revised Statutes.

"Commencement date" of withdrawal means the [date which the applicant may begin withdrawing from] effective date of the first action constituting a withdrawal from the business of insurance in this State pursuant to the approved plan of orderly withdrawal.

. . .

"Hazardous financial condition" is as defined and determined pursuant to N.J.A.C. 11:2-27.

"Homeowners' insurance" is as defined at N.J.A.C 11:2-41.2.

. . .

"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] the definition of "insurance producer" as set forth in N.J.S.A. 17:22A-28.

"Insurer" means an insurer [or eligible surplus lines insurer], a reciprocal insurance exchange, and any insurance affiliates thereof, authorized or admitted pursuant to Chapters 17, [or] 32, 46B or 50 of Title 17 of the Revised Statutes to transact in this State the business of insurance as defined herein.

. . .

"Plan" means a plan of orderly withdrawal from the business of insurance [business] in New Jersey submitted by an insurer pursuant to this subchapter.

. . .

"Rating system" means every schedule, class, classification, rule, guide, standard, manual, table or rating plan by whatever name described containing the rates (or loss costs), rules and forms used by any insurer or by any [rating] advisory organization in determining or ascertaining [a rate] rates or loss costs.

. . .

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. In determining whether to waive the requirement that the insurer file a plan of orderly withdrawal, the Commissioner shall consider whether the withdrawal will have a minimal impact on the market, for example, whether the insurer will be nonrenewing a small number of policies, whether there are other insurers writing the line or lines of business from which the company seeks to withdraw, whether a replacement carrier will be utilized; and whether there is sufficient capacity in the voluntary market with respect to the particular coverage involved.

(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] 12 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.] 1. 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] 45 days thereafter, the failure of which shall allow the applicant to treat the filing as complete. Failure of an insurer to respond to a request for further information within 30 days of such request shall result in the filing being deemed withdrawn without prejudice.

[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. – 4. (No change.)

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] a withdrawal 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, as developed and certified by a “qualified actuary” as defined in N.J.A.C. 11:1-

21.1(a)2 for property and casualty lines, and N.J.A.C. 11:1-21A.2 for health lines, existing or that may exist in this State;

ii. (No change.)

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 in a form acceptable to the Commissioner;

ii. – iii. (No change.)

iv. Any other financial guarantee of the applicant's total liabilities in a form acceptable to the Commissioner.

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, whether it will continue to transact insurance in this State through affiliates, and whether the withdrawal is being effected pursuant to an assumption or portfolio reinsurance agreement.

8. The Commissioner shall issue an approval of the plan within 120 days of receipt of a completed plan or receipt of submission of further information, whichever is later, which decision shall include terms and conditions that the Commissioner finds appropriate.

(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, 46B or 50 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, suspension, 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. (No change.)

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. – 6. (No change.)

(d) - (f) (No change.)

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. – 2. (No change.)

[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.] 3. 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.);]

Recodify existing iv. – vii as i. – iv. (No change in text.)

[5.] 4. 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 to the extent the withdrawal will affect these items. 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.] 5. 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. Notices approved pursuant to this subchapter shall be deemed valid and effective for all purposes related thereto;

[8.] 6. 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.] 7. 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] the number of policies in force and premium volume produced by each producer as of the date of filing the plan;

[10.] 8. (No change in text.)

[11.] 9. Copies of all correspondence and notices to be sent to the following entities [of] 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.];

Recodify existing ii. – iii. as i. – ii. (No change in text.)

[iv.] iii. The Mutual Workers' Compensation Security Fund established pursuant to N.J.S.A. 34:15-112;

[v.] iv. The Stock Worker's Compensation Security Fund established pursuant to N.J.S.A. 34:15-105;

[vi.] v. The New Jersey [Insurance Division of Fraud Prevention established] Office of Insurance Fraud Prosecutor for assessments imposed pursuant to N.J.S.A. 17:33A-[1 et seq.] 8;

[vii.] vi. The Commercial Automobile Insurance [Procedure] Plan established pursuant to N.J.S.A. 17:29D-1;

[viii.] vii. (No change in text.)

[ix.] viii. The New Jersey Surplus Lines Insurance Guaranty Association established pursuant to N.J.S.A. 17:22-6.70 et seq.;

[x.] ix. (No change in text.)

[xi.] x. The Department [of Insurance] for examination fees provided for by N.J.S.A. 17:23-20 et seq. and other statutory fees provided for by N.J.S.A. 17:33-1 and N.J.A.C. 11:1-32;

Recodify existing xii. and xiii as xi. and xii. (No change in text.)

[12.] 10. 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(a)2 for property and casualty lines and [by a Fellow of the Society of Actuaries] N.J.A.C. 11:1-21A.2 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. – iv. (No change.)

[13.] 11. 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, to the extent the withdrawal will affect such activities. Provide a description of the applicant's staff and adjusters servicing these claims, including the servicing location and the procedures for consumer contact to the extent these items will be affected by the withdrawal;

[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.;

Recodify existing 15. – 17 as 12. - 14. (No change in text.)

[18.] 15. 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. – ii. (No change.)

iii. The applicant shall continue to submit annual statements and information required by the entities set forth in (a)[11]9 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; and

[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.] v. The applicant shall maintain its current designation of [the Commissioner as] its agent for service of process; [and]

[19.] 16. 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; and

17. A retention plan to maintain service to policyholders during the withdrawal period and run-off.

(b) (No change.)

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] may be subject to the following additional conditions which, if required, 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] time 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 based on the number of years the applicant has been authorized or admitted to transact business in this State as set forth in N.J.A.C. 11:1-10.8(c) or 28.10(d), as applicable, 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 or waiving 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. The form of notice shall be provided with the insurer's filing under this subchapter.

ii. (No change.).

2. (No change.)

(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. (No change.)

(c) (No change.)

11:2-29.6 Agent rights

In accordance with N.J.S.A. 17:22-6.14a(n), agents of record of a company that transfers its business to another insurer pursuant to this subchapter shall continue to service such business and shall be offered contracts by the company to which business is transferred which contain terms and conditions concerning the use, control and ownership of policy expirations and payment of commissions that are no less favorable than the agents' current contracts. Agent rights pursuant to this rule shall be governed by N.J.S.A. 17:22-6.14a(n).

11:2-[29.6] 29.7 Confidentiality of plan of orderly withdrawal

(a) All data or information contained in [the] a proposed plan shall be confidential. All data or information contain in an approved 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.] 1. N.J.A.C. 11:2-29.4(a)[4]3 - Organizational chart;

[3. N.J.A.C. 11:2-29.4(a)4i - Lines of insurance written by each affiliate;]

[4.] 2. N.J.A.C. 11:2-29.4(a)[4v]3ii - Agency relationships of affiliates by agent

name, to the extent available through the Department's licensing system;

[5.] 3. N.J.A.C. 11:2-29.4(a)[5]4 - 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.] 4. N.J.A.C. 11:2--29.4(a)[7]5 - Policyholder nonrenewal and producer termination notices;

[8.] 5. N.J.A.C. 11:2-29.4(a)[9] 7 - Name and address of each insurance producer to the extent available through the Department's licensing system;

[9.] 6. N.J.A.C. 11:2-29.4(a)[11]9 - Copies of all correspondence and notices sent to various entities, as approved, to which the applicant owes a financial obligation;

[10.] 7. N.J.A.C. 11:2-29.4(a)[12]10 - Certified statement of New Jersey incurred liabilities and reserves; and

[11. N.J.A.C. 11:2-29.4(a)14 - Deposits held by a custodian on behalf of the Commissioner; and]

[12.] 8. N.J.A.C. 11:2-29.4(a)[17]14 - Establishment of special deposits or equivalent performance bonds as approved.

11:2-29.8 Informational filing withdrawals

(a) Any proposed withdrawal filing filed on or after January 1, 2007, or which will become effective on or after January 1, 2007, shall be subject only to the provisions of this section, N.J.A.C. 11:2-29.1 and 29.2, and N.J.S.A. 17:17-10 or 17:33B-30, as applicable, as amended by P.L. 2003, c. 89.

(b) Any insurer seeking to withdraw shall file the information and otherwise comply

with the requirements set forth in N.J.S.A. 17:17-10 or 17:33B-30, as applicable.

(c) An insurer may request a waiver of the one-year and 90-day waiting period for commencement of nonrenewals pursuant to N.J.S.A. 17:17-10b(2) or 17:33B-30a(2), a waiver of the requirement to send non-renewal notices no later than one year prior to the dates of the nonrenewals set forth in N.J.S.A. 17:17-10b(3) and 17:33B-30a(3), and a waiver of the maximum three-year non-renewal period set forth in N.J.S.A. 17:17-10b(4) and 17:33B-30a(4). A request shall include a list of the insurer's producers and their current business addresses, the proposed commencement date of the withdrawal, the name(s) of any replacement carrier(s) proposed to be utilized, the number of policies to be non-renewed, and the insurer's market share in this State with respect to the type of policies to be nonrenewed. The decision regarding the request for a waiver pursuant to this section shall constitute a final agency decision.

1. The Commissioner shall approve a request for waiver for any line(s), other than private passenger automobile, homeowners', workers' compensation, or medical malpractice liability, provided:

i. The insurer files notice of the proposed withdrawal with the Commissioner at least 120 days prior to the proposed date of initial non-renewal, and provides notice to policyholders 30 days after the notice is provided to the Commissioner;

ii. Non-renewals shall take place over a period not less than one policy cycle, there are no mid-term cancellations, except as otherwise specifically provided by law for the reason(s) set forth therein, and are performed on a random, equitable basis; and

iii. The Commissioner does not find that the waiver will adversely affect the market. In making this determination, the Commissioner shall consider, without limitation, the number of policies to be non-renewed, whether there are other insurers writing the line or

lines of business from which the company seeks to withdraw, and whether there is sufficient capacity in the voluntary market with respect to the particular coverage involved.

2. With respect to private passenger automobile, homeowner's, workers' compensation, and medical malpractice liability coverages, the Commissioner shall approve a request for a waiver if the company does not have a market share of more than 9.5 percent for the particular coverage(s) involved, as of the date of the request, based on the most recent reported data available, or the Commissioner concludes that granting the waiver will not adversely affect the market after considering the standards set forth in (c)1iii above. If a waiver is granted, the insurer shall comply with the requirements in (c)1i and ii above. For purposes of this paragraph, for private passenger automobile insurance, market share shall be determined by the number of exposures, based the most recent year-end consolidated report filed pursuant to N.J.A.C 11:3-3A. For all other lines, market share shall be determined by premium volume, based on the most recent annual statement filed pursuant to N.J.S.A. 17:23-1.

3. For all lines, in addition to the foregoing, the Commissioner shall grant a waiver if he or she finds that the insurer is or would be in a hazardous financial condition absent provision of the waiver.

(d) An insurer may utilize a replacement carrier for the business that will not be renewed, pursuant to N.J.S.A. 17:17-10d or 17:33B-30d, as applicable, subject to approval by the Commissioner. The Commissioner shall approve a replacement carrier:

1. If the replacement is authorized to transact the line or lines of business being transferred;

2. The replacement carrier demonstrates to the satisfaction of the Department that it will be able to maintain a net premium-to-surplus ratio of not more than 2.5 to one for five

years after the transfer;

3. The replacement carrier certifies that it will comply with N.J.S.A. 17:22-6.14a(n) with respect to agents' rights;

4. If the replacement carrier has not transacted the particular line involved in the transfer in this State, the replacement carrier demonstrates that it possesses the requisite services and experience such that its methods of operation will not be hazardous to the policyholders of this State; and

5. If the replacement carrier is not domiciled in this State, the replacement carrier provides evidence that it has notified its domicilliary regulator of its intent to assume the business, and the domicilliary regulator does not object to such action.

Recodify existing N.J.A.C. 11:2-29.7 and 28.8 as 29.9 and 29.10 (No change in text.)

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