

**INSURANCE**

**DEPARTMENT OF BANKING AND INSURANCE**

**DIVISION OF INSURANCE**

**Administration**

**Proposed Readoption with Amendments: N.J.A.C. 11:1**

Authorized By: Thomas B. Considine, Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, 17:17-1 et seq., 17B:17-1 et seq. and 34:15-103 et seq.

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

Proposal Number: PRN 2011-149.

Submit comments by September 16, 2011 to:

Robert J. Melillo, Chief

Legislative and Regulatory Affairs

Department of Banking and Insurance

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The agency proposal follows:

**Summary**

The Department of Banking and Insurance (Department) proposes to readopt N.J.A.C. 11:1, Administration. In accordance with N.J.S.A. 52:14B-5.1b, this chapter is due to expire on

July 30, 2013. In accordance with N.J.S.A. 52:14B-5.1c(2), the submission of this notice to the Office of Administrative Law extends the expiration date for 180 days, to January 26, 2014.

This chapter includes rules related to different areas of insurance, including life/health and property/casualty, and the organization of the Department of Banking and Insurance (Department). Rules concerning the following subjects are codified in this chapter, listed by subchapter.

1. Organization of the Department;
2. Filings: Property/Casualty (filing of rates, manual rules, rating plans, policy forms and endorsements);
  - 2A. Personal Lines Filings: Rate Filing Review Procedures;
3. Disability Discrimination Grievance Procedure;
4. Unfair Discrimination;
5. Fire and Casualty Insurance;
6. New Jersey Property – Liability Insurance Guaranty Association Assessment Premium Surcharge;
7. Medical Malpractice Reporting Requirements;
8. – 9. (Reserved);
10. Admission Requirements for Foreign and Alien Property and Casualty Insurers;
11. Conduct Constituting Violations by Brokers and Agents;
12. Corporate and Partnership Licensee Requirements;
13. – 14. (Reserved);
15. Petitions for Rules; Rulemaking Notice;
16. Requirements for Filing Downward Deviation in Currently Approved Rates;

17. – 19. (Reserved);

20. Renewal, Cancellation and Nonrenewal of Commercial and Homeowners'

Insurance Policies;

21. Loss Reserve Opinions;

21A. Actuarial Opinion and Memorandum for Life/Health Insurers;

22. Prohibition of Certain Cancellation and Nonrenewal Activity;

23. (Reserved);

24. Use of Credit Cards, Charge Cards, Debit Cards or Direct Account Deduction

(Alternative Payment Method) to Pay Insurance Premiums;

25. Official Department Mailing and Electronic Mailing Lists: Address Information;

26. – 27. (Reserved);

28. Formation of a Domestic Property and Casualty Insurance Corporation (Stock or

Mutual) or Reciprocal Insurance Exchange;

29. – 30. (Reserved);

31. Surplus Lines Insurer Eligibility;

32. Fees and Special Purpose Apportionment;

33. Surplus Lines Insurance: Procurement Procedure;

34. Surplus Lines: Exportable List;

35. Insurance Holding Company Systems;

36. Examination of Insurers;

37. Licensing of Public Adjusters;

38. Oversight of Firemen's Relief Associations;

39. Disclosure of Material Transactions;

40. Recoupment of Fugitive Recovery Expenses by Surety Companies;
41. Surety Bonds for Contracts Involving the State, Local Contracting Units, Boards of Education, State Colleges and County Colleges;
42. (Reserved);
43. Unusual Hardship for Covered Claims under the New Jersey Property-Liability Insurance Guaranty Association and New Jersey Surplus Lines Insurance Guaranty Fund;
44. Standards for Safeguarding Customer Information;
45. Notice to Policyholders of Personal Lines Insurance Rate Increases;
46. Workers' Compensation Security Fund; and
47. Electronic Transactions.

The rules in this chapter were promulgated to implement the statutory requirements in Titles 17, 17B and 34 of the New Jersey Statutes. The Department has undertaken a review of these rules at several levels to determine their current effectiveness and viability. These rules continue to provide the insurance industry and consumers with vital information and useful standards concerning many aspects of insurance. The Department believes that the original purpose for each rule, as stated in the rule itself, continues to exist.

The rules in this chapter primarily serve two general purposes in the implementation of statutory law. First, they protect the consumer by addressing issues such as unfair discrimination, cancellation and nonrenewal of commercial and homeowners' insurance policies, the prohibition of certain cancellation and nonrenewal activity, the use of credit cards, charge cards, debit cards or direct account to pay insurance premiums, the licensing of public adjusters, notice of consumer insurance rate increases and the safeguarding of customer information.

Secondly, they provide guidance to the insurance industry respecting such business-related matters as: rate and form filing approvals; admission requirements for foreign and alien property and casualty insurers; filing revised rates; general requirements of loss reserve opinions; and the formation of domestic insurers.

In addition, this chapter includes many purely administrative provisions such as: Department organization; disability discrimination; grievance procedures; rulemaking procedures; mailing lists; and service fees.

Based on its review, the Department is proposing several amendments, primarily for technical reasons. The Department is proposing to amend the Department organizational chart set forth in N.J.A.C. 11:1-1.1 to reflect the current designation of units within the Department.

The Department is also proposing to amend N.J.A.C. 11:1-20.2(b) and (c) to revise the language therein to change “subject to N.J.A.C. 11:1-20.2(m) for medical malpractice liability insurance policies,” to read, “except as provided in N.J.A.C. 11:1-20.2(m) with respect to medical malpractice liability insurance policies, ...” to clarify that the timeframes for notices of nonrenewal and renewal premiums for medical malpractice liability insurance are set forth in N.J.A.C. 11:1-20.2(m) rather than in (b) and (c). The proposed amendment makes no change to any existing notification requirements or timeframes.

The Department is also proposing to amend N.J.A.C. 11:1-20.4(e) by adding new paragraphs (e)1 and 2. Proposed paragraph (e)1 provides that, pursuant to N.J.S.A. 17:29B-4.1, no inquiry by an insured for information regarding the insured’s homeowners’ insurance policy, or coverage for a particular loss under that policy, shall be categorized as a claim for purposes of determining adverse loss experience. Proposed paragraph (e)2 reflects the prohibition against cancelling or nonrenewing homeowner’s insurance or insurance on one-to-four family dwellings

based on weather related damage or third party criminal acts, pursuant to N.J.S.A. 17:36-5.20a. The proposed language tracks the applicable statutory language and does not expand any existing prohibitions or limitations.

The Department is also proposing to amend N.J.A.C. 11:1-21A.5(g)4 to add the following: “for example, the impact of the insufficiency of assets to support the payment of benefits and expenses and the establishment of statutory reserves during one or more interim periods.” This proposed amendment merely reflects the existing requirement in N.J.A.C. 11:4-32.3(b)4ii, as amended in 2010 (see 42 N.J.R. 1843(a) and 2965(b)). The commenter on that proposed amendment suggested that N.J.A.C. 11:1-21A be changed to reflect the requirements applicable to the Regulatory Asset Adequacy Issues Summary in N.J.A.C. 11:4-32.3(b)4ii. The Department is proposing this amendment in response to that comment. This amendment also is consistent with the Life and Health Actuarial Opinion and Memorandum Regulation adopted by the National Association of Insurance Commissioners (NAIC), on which N.J.A.C. 11:1-21A is based.

Finally, the Department is proposing to amend N.J.A.C. 11:1-35.3(b) to reduce the number of copies of a Form A acquisition statement required to be filed in connection with a proposed acquisition of control of a New Jersey domestic insurer from seven copies to three copies to reflect the number now needed by the Department to complete its review of such filing.

The Department believes that through readoption, these rules will continue to provide the regulatory framework by which the Department may effectively ensure that insurers and other regulated entities continue to comply with the insurance laws and other applicable laws of this State, and provide for consistent evaluation and oversight of these entities by the Department. Moreover, through readoption, these rules will continue to provide insurers and other regulated

entities with guidance and specific standards for compliance with New Jersey laws, thereby avoiding confusion regarding such requirements. This will benefit insurers, other regulated entities, policyholders, the market and the public generally.

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**

As noted above, these rules address areas of concern to consumers and protect them from potential unfair trade practices with regard to insurance and its solicitation. The rules concerning agent and broker avoidance of debt help ensure that consumers are protected from any bad faith practices on the part of insurance agents. The rules concerning disability discrimination establish a designated coordinator whose duties include assuring that the Department complies with and carries out its responsibilities under the Americans with Disabilities Act. The rules concerning cancellation and nonrenewal of commercial insurance policies protect insureds from invalid nonrenewals and cancellations, while providing insurers with the flexibility to cancel and nonrenew policies due to conditions that warrant such actions. The rules governing public adjusters establish procedures for the examination, licensing and conduct of persons acting as public adjusters in this State. Finally, the rules governing notice of consumer insurance rate increases help ensure that the policyholders are informed of pending action by an insurer that may impact their rates.

The industry also relies on the presence and effectiveness of these rules in its operation. Insurers are provided with guidance in regulated actions, including: the filing of rates, manual

rules, rating plans, policy forms and endorsements; procedures by which member insurers may recoup assessments paid to the New Jersey Property Liability Insurance Association pursuant to N.J.S.A. 17:30A-8a(3); admission procedures, requirements and standards governing the application of a foreign or alien insurer to do property/casualty business in this State; and the procedures for the formation of a domestic property/casualty insurer or a reciprocal exchange.

The rules in this chapter enable the Department to fulfill its regulatory duties under law. Failure to readopt these rules would impair the Department's regulatory powers and would disrupt established relations between insurers and the general public and between these two groups and the Department.

The protections that these rules afford the consumer and the operational guidance that they afford the insurance industry mandate their continued existence both to implement statutory provisions and to foster and promote a sound and effective regulatory policy.

The proposed amendments are technical in nature, reflecting the national standard adopted by the NAIC, or reflect existing statutory provisions or reduce the number of copies of documents required to be filed. Thus the proposed amendments should have a beneficial social impact.

### **Economic Impact**

The failure to readopt this subchapter would require the insurance industry to perform many significant statutory functions without guidance from the Department. This would impose significant costs on the industry since current compliance requirements would not be readily available to the industry. The industry has invested a great amount of time and resources to implement practices that enable insurers and other regulated entities to operate in compliance



with the Department's current procedures. This results in benefits for both the insurer and the general public.

Insurers and other regulated entities will be required to incur any costs associated with continued compliance with the requirements set forth in this subchapter. These rules impose costs on insurers who must file for rate and form approval pursuant to Department guidelines. Foreign and alien insurers will also continue to incur costs in seeking admission to do business in this State. In addition, costs will be incurred in the application for a certificate of authority as a domestic insurer in this State. None of these costs are new; they merely restate the existing requirements. The proposed amendments are technical in nature or reduce filing requirements and impose no new requirements. Professional services required to comply with the rules proposed for readoption will continue to include actuarial, accounting, legal and information technology services. Entities subject to the rule should already have contracted for or employ in-house the required services.

These rules also have a beneficial impact on consumers. The rules concerning bad faith actions on the part of brokers and agents help ensure that a consumer is not treated unfairly. In addition, rules concerning nonrenewal and cancellation provide requirements for notice to insureds of such actions and require acceptable reasons for cancellation and nonrenewal, thereby providing a reasonable degree of assurance for an insured that coverage will be maintained. The rules governing rate and rule filings enable the Department to ensure that insurers comply with statutory prohibitions against using rates that are excessive, inadequate or unfairly discriminatory.

The readoption of the current rules will enable the Department to continue to effectively monitor and regulate insurance matters consistent with its current fiscal resources and

capabilities. The Department's continued use of procedures that have proven effective over time provides administrative economies, which favorably affects insurers and other regulated entities who, based upon statutory law, are assessed to fund its insurance operations.

For the reasons set forth above, any costs associated with continuing the rules are outweighed by the benefits to be achieved.

Throughout the years, the Department has carefully monitored, and continues to monitor, the impact of the rules in this chapter through communication with the insurance industry and the public. The Department is unaware of any provision of these rules that imposes undue or unnecessarily onerous financial burdens on consumers or the insurance industry. The readoption of this chapter with amendments will not impose any additional economic impact on insurers, other regulated entities or consumers in that the readoption will continue long-standing requirements.

### **Federal Standards Statement**

A Federal standards analysis is not required because the rules proposed for readoption with amendments are not subject to any Federal requirements or standards, with the exception of surplus lines insurance. Aspects of surplus lines insurance are subject to Federal law, the Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L. 111-203 ("the Act"). The following rules are affected:

N.J.A.C. 11:1-31, governing surplus eligibility, and N.J.A.C. 11:1-33, governing surplus procurement procedures. Section 524 of the Act provides that a state may not impose eligibility requirements on, or establish eligibility criteria for, nonadmitted insurers domiciled in the United States, except in conformance with sections 5A(2) and 5C(2)(a) of the NAIC Non-Admitted

Insurance Model Act, unless the state has adopted nationwide uniform procedures developed in accordance with the Act. In addition, no state may prohibit a surplus lines producer from placing nonadmitted insurance, or procuring nonadmitted insurance from, a nonadmitted insurer domiciled outside of the United States that is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the NAIC. N.J.A.C. 11:1-31 imposes eligibility requirements on all insurers seeking to become eligible. Accordingly, under the Act, this subchapter would only continue to apply to an insurer not domiciled in the United States that is not listed on the Quarterly Listing of Alien Insurers.

N.J.A.C. 11:1-33, governing the procurement of surplus lines insurance, currently does not reflect the streamlined procedures for “exempt commercial purchasers” as defined in section 527 of the Act, to obtain surplus insurance without first going through the “declination procedures” set forth in the rule.

In all instances, the Department recognizes that the Act controls and will apply the rules consistent therewith. Changes necessary to conform the rules in this chapter that relate to surplus lines insurance with the Federal law will be separately proposed.

### **Jobs Impact**

The Department does not believe that these rules proposed for readoption with amendments will cause any jobs to be generated or lost.

The Department invites interested parties to submit any data or studies concerning the jobs impact of the proposed readoption together with their written comments on other aspects of the proposal.

### **Agriculture Industry Impact**

The rules proposed for re adoption with amendments will not have any impact on the agriculture industry in New Jersey.

### **Regulatory Flexibility Analysis**

Few, if any, insurers regulated by the rules in this chapter are "small businesses" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Several rules (for example, those which address conduct constituting violations by brokers and agents, and those providing for the regulation of public adjusters) relate to the conduct of insurance producers and public adjusters, most of whom are "small businesses." Many subchapters specifically address insurers that are not located in this State and thus are not "small businesses," such as those addressing admission requirements and those relating to surplus lines insurers.

Numerous recordkeeping, reporting and compliance requirements will continue to be imposed by this chapter, which include the requirements concerning rate and form filings, loss reserve opinions and medical malpractice reporting requirements. The Department has determined that all such compliance, recordkeeping and reporting requirements continue to be reasonable and necessary for the purposes for which they were originally proposed. These rules continue to apply to all insurers, insurance producers or public adjusters, as the case may be, without regard to size, since they implement statutory provisions and/or regulatory policies, including the protection of consumers of insurance products, that allow for no such exceptions. The Department is unaware of any provisions of these rules that are excessively onerous to "small businesses" or unnecessary. The Department notes, however, that the re adoption of these

rules with amendments will impose no new recordkeeping, reporting or other compliance requirements, but merely continue those requirements that have been in existence.

Future annual costs of compliance with these rules are not expected to differ from concurrent annual costs, as explained in the Economic Impact above. The use of professional services currently required by these rules will continue to be necessary as noted in the Economic Impact above.

### **Smart Growth Impact**

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

### **Housing Affordability Impact**

The rules proposed for re adoption with amendments will not have an impact on housing affordability in this State in that they relate to regulation of insurers, producers, and public adjusters.

### **Smart Growth Development Impact**

The rule proposed for re adoption with amendments will not have an impact on smart growth in this State and it is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2 or within designated centers under the State Development and Redevelopment Plan in New Jersey in that they relate to regulation of insurers, producers, and public adjusters.

**Full text** of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 11:1.

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

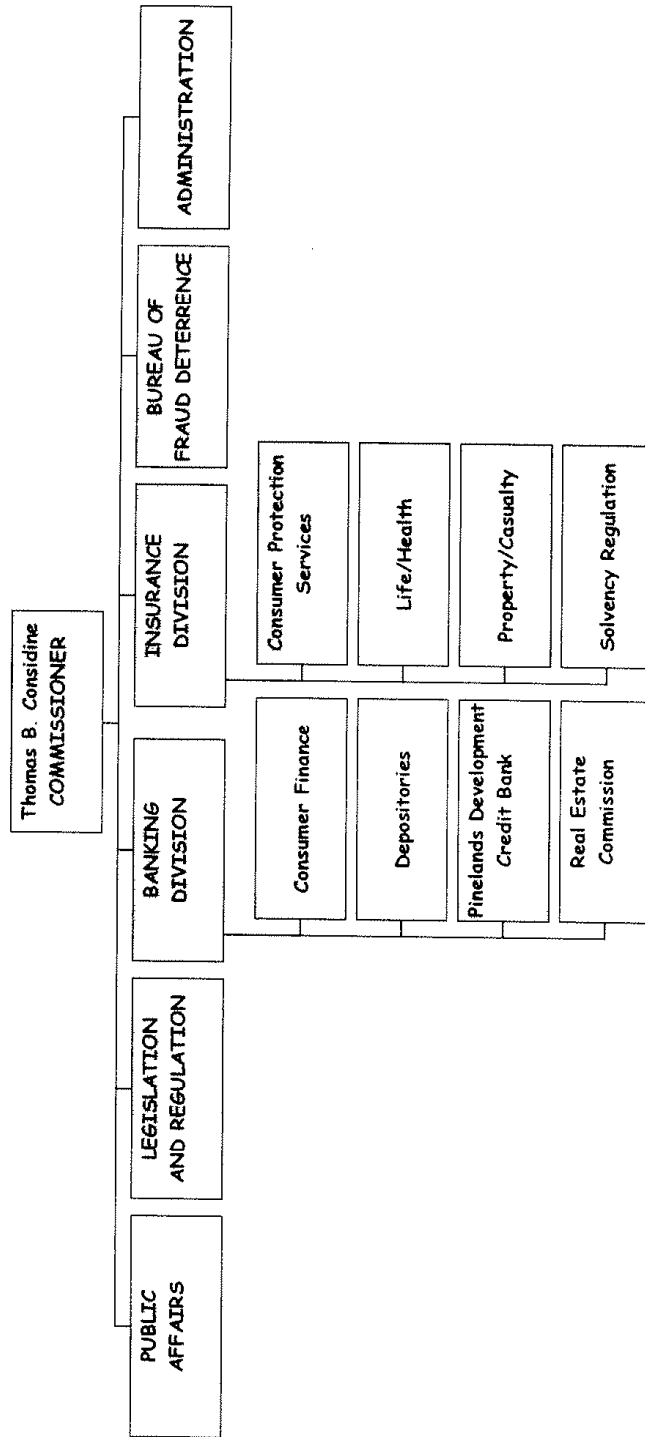
#### SUBCHAPTER 1. ORGANIZATION

##### 11:1-1.1 Organization

(a) - (b) (No change.)

**(Office of Administrative Law Note:** An amendment to the Department's organizational chart cannot be published using Register standard addition and deletion format. The organizational chart reproduced below includes the amendment and is intended to replace the chart in the current rule.)

# DEPARTMENT OF BANKING AND INSURANCE



SUBCHAPTER 20. RENEWAL, CANCELLATION AND NONRENEWAL OF  
COMMERCIAL AND HOMEOWNERS INSURANCE POLICIES

11:1-20.2 Renewal, nonrenewal and cancellation notice requirements

(a) (No change.)

(b) [Subject to] **Except as provided in N.J.A.C. 11:1-20.2(m) [for] with respect to** medical malpractice liability insurance policies, no notice of nonrenewal shall be valid unless it is mailed or delivered by the insurer to the insured not more than 120 days nor less than 30 days prior to the expiration of the policy.

(c) [Subject to] **Except as provided in N.J.A.C. 11:1-20.2(m) [for] with respect to** medical malpractice liability insurance policies, with respect to payment of the renewal premium, notice of the amount of the renewal premium and any change in contract terms shall be given to the insured in writing not more than 120 days nor less than 30 days prior to the due date of the premium and shall clearly state the effect of nonpayment of the premium by the due date.

(d) – (m) (No change.)

11:1-20.4 Cancellation and nonrenewal underwriting guidelines

(a) – (d) (No change.)

(e) Any underwriting guideline or standard premised on adverse loss experience shall be limited in application to nonrenewals only and shall specifically identify the type of loss experience which supports and justifies the nonrenewal action.

**1. Pursuant to N.J.S.A. 17:29B-4.1, no inquiry by an insured for information regarding the insured's homeowners' insurance policy, or coverage for a**



particular loss under that policy, shall be categorized as a claim for purposes of determining adverse loss experience.

2. Pursuant to N.J.S.A. 17:36-5.20a, no insurer authorized to do business in this State shall cancel or non-renew an insurance policy covering an owner occupied one-to-four family dwelling solely because of claims or losses due to weather-related damage or a third-party criminal act committed by someone who is not a resident of the insured dwelling, unless the claim or loss identifies or confirms an increase in hazard, a material change in the risk assumed or a breach of contractual duties, conditions or warranties that materially affect the nature or the insurability of the risk. However, this paragraph shall not be construed to prohibit an insurer from offering to continue coverage on different terms and conditions if the insured fails to reduce the risk of additional or future claims or losses, either by effecting necessary repairs or taking other remedial action.

(f) – (l) (No change.)

#### SUBCHAPTER 21A. ACTUARIAL OPINION AND MEMORANDUM FOR LIFE/HEALTH INSURERS

11:1-21A.5 Description of actuarial memorandum including an asset adequacy analysis and regulatory asset adequacy issues summary

(a) – (f) (No change.)

(g) The regulatory asset adequacy issues summary shall include:

1. – 3. (No change.)

4. Comments on any interim results that may be of significant concern to the appointed actuary, **for example, the impact of the insufficiency of assets to support the**

**payment of benefits and expenses and the establishment of statutory reserves during one or more interim periods;**

5. – 7. (No change.)

(h) – (k) (No change.)

**SUBCHAPTER 35. INSURANCE HOLDING COMPANY SYSTEMS**

11:1-35.3 Forms; general requirements

(a) (No change.)

(b) [Seven] **Three** complete copies of each Exhibit A statement, and one copy of each Exhibit B, C, D and E, including exhibits and all other papers and documents filed as a part thereof, shall be filed with the Commissioner by personal delivery or mail addressed to:

Holding Company Submissions

Office of Solvency Regulation

New Jersey Department of Banking and Insurance

20 West State Street

PO Box 325

Trenton, NJ 08625-0325

1. – 2. (No change.)

(c) (No change.)