

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

DIVISION OF PROPERTY CASUALTY

Commercial Lines Insurance

Proposed Readoption with Amendments: N.J.A.C. 11:13

Proposed Repeal: N.J.A.C. 11:13-7.5

Authorized By: Kenneth E. Kobylowski, Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1-15.e, and 17:29AA-1 et seq.

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

Proposal Number: PRN 2015-025.

Submit comments by May 15, 2015, to:

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The agency proposal follows:

Summary

The Department of Banking and Insurance (Department) proposes to readopt N.J.A.C. 11:13, which is scheduled to expire on February 28, 2015, in accordance with N.J.S.A. 52:14B-5.1.b. In accordance with N.J.S.A. 52:14B-5.1.c(2), the submission of this notice to the Office of Administrative Law extended the expiration date 180 days to August 27, 2015.

The Department has undertaken a review of these rules at several levels and finds that these rules continue to be necessary to implement and interpret the Commercial Insurance Deregulation Act of 1982, N.J.S.A. 17:29AA-1 et seq. (the Act). The Act establishes requirements for rates and forms for commercial lines insurance separate from the provisions of the existing property/liability rating law, N.J.S.A. 17:29A-1 et seq., except as specifically provided in the Act. By establishing a separate law for commercial lines insurance, the Act affords insurers greater flexibility in the underwriting and rating of commercial risks while maintaining appropriate regulatory oversight by the Department. Under the Act at N.J.S.A. 17:29AA-29, the Commissioner of Banking and Insurance (Commissioner) is empowered to promulgate rules and regulations in order to implement and enforce its provisions. Such rules have been adopted in N.J.A.C. 11:13.

The Department has reviewed the rules in this chapter and determined that they continue to be necessary, reasonable, and proper for the purposes for which they were originally promulgated.

This chapter includes rules related to commercial lines insurance. The Department has established rules concerning the following subjects codified in this chapter, listed by subchapter.

Subchapter 1, General Provisions, including the purpose, scope, and definitions for this chapter and its rate and policy form requirements;

Subchapter 2, Commercial Lines Filings, which provides requirements for rate, rule, and policy form submissions;

Subchapter 3 is reserved;

Subchapter 4, Special Risks, which interprets the statutory definition of “special risks” and provides statistical reporting requirements;

Subchapter 5, Procedure for the Regulation of Consent to Higher Rate Filings, which incorporates N.J.A.C. 11:4-7, Procedure for the Regulation of Consent to Higher Rate Filings, into this chapter;

Subchapter 6, Commercial Insurance Rating Plans, provides for commercial insurance rating plans and establishes standards for rating plans that modify rates for specific risks;

Subchapter 7, Commercial Lines Insurance: Policy Form Standards, provides standards for the acceptance or disapproval of policy forms; and

Subchapter 8, Commercial Lines Insurance: Prospective Loss Costs Filing Procedures, provides requirements for prospective loss cost filings.

These rules implement many essential provisions of N.J.S.A. 17:29AA-1 et seq. related to the regulation of commercial lines insurance. As part of this readoption process, the Department has undertaken a review of N.J.A.C. 11:13 to determine the current effectiveness of the rules contained therein. This review was undertaken in order to ensure the continuing relevancy and effectiveness of the rules in the chapter. Each rule was examined to determine whether it still serves a useful function within the commercial lines insurance regulatory framework existing in New Jersey. The Department examined the continuing relevance of the rules and also considered whether they require unnecessary time and expense.

The Department finds that, with the exception of N.J.A.C. 11:13-7.5, the rules in N.J.A.C. 11:13 continue to provide the insurance industry, other regulated entities, business enterprises, and consumers with appropriate and useful regulatory standards concerning many aspects of commercial lines insurance. Thus, the Department has concluded that the purposes of N.J.A.C. 11:13 as declared in the rules continue to be relevant and necessary and the need for this chapter remains.

The Department is proposing to repeal N.J.A.C. 11:13-7.5 because it is no longer necessary. N.J.A.C. 11:13-7.5 sets forth time frames for refileing forms to meet the standards for lead liability coverage as set forth in N.J.A.C. 11:13-7.4, adopted in 1998. Such revised forms were required to be filed by May 20, 1998. Accordingly, N.J.A.C. 11:13-7.5 is no longer applicable.

The Department is also proposing to amend N.J.A.C. 11:13-5.1(b)1 to correct cross-references set forth therein. This rule relates to filings for consent to higher rates as set forth in N.J.A.C. 11:4-7. As N.J.A.C. 11:4-7.1 was recodified as N.J.A.C. 11:4-7.3 in 2006, the reference to N.J.A.C. 11:4-7.1(b)11 is updated as N.J.A.C. 11:4-7.3(b)11. In addition, the reference to N.J.S.A. 17:29AA-22 is changed to N.J.S.A. 17:29A-22, to match the reference in N.J.A.C. 11:4-7.3(b)11.

A 60-day comment period is provided 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 Department believes that these rules continue to enhance the ability of commercial insureds and insurers to effectively negotiate contracts, thereby stimulating competition and encouraging efficient rating and marketing practices.

These rules also set standards for individual premium risk modification plans filed by insurers of commercial risks and thus impact both insurers and insureds. Risk premium modification plans provide limited flexibility to vary the price of a policy based on the characteristics of a special risk.

The insurance industry also has come to rely upon the presence of, and the predictability afforded by, these rules in their operations. Insurers are provided with standards of conduct which are identifiable, achievable, reasonable and predictable. This kind of stability in a regulatory structure is essential to the proper functioning of an insurance enterprise. Thus, the protections that these rules afford to consumers, insurers, and producers justify their continued existence.

Although the Department recognizes that many commercial insureds do not require the same degree of regulatory protection afforded to individual personal insureds, the requirements of the Act and the rules proposed for readoption with amendments ensure that the rights of commercial insureds will continue to be adequately protected.

The deletion of N.J.A.C. 11:13-7.5 and other amendments will have no negative impact because the rule proposed for repeal is no longer applicable, and the proposed amendments correct citation errors.

Economic Impact

The readoption of these rules will permit insurers to continue pricing individual commercial lines policies in a more accurate manner, within specified limits above and below their filed rates, based upon the actual risk undertaken. The readoption of these rules will continue to promote market competition, availability of commercial insurance, and lower premiums.

Insurance companies will incur no additional expenses because the proposed readoption with amendments does not change the scope of or compliance requirements imposed by the current rules. The rules proposed for readoption do not impose any fees upon insurers offering commercial lines insurance as set forth in N.J.A.C. 11:13-2. The Department similarly will not incur additional expenses in connection with the proposed readoption with amendments.

The professional services required to comply with the rules proposed for readoption will continue to be actuarial, risk management, and legal. Commercial lines insurers currently maintain staff or use outside organizations to fulfill such requirements. The Department believes that any costs imposed by these rules are negligible when compared to the volume of business to which they apply. The benefits achieved by maintaining these rules, and the continuation of the certainty provided by the existing regulatory framework, outweigh any continued compliance expenses.

The proposed repeal and amendments will not impose any additional expenses because, as noted above, the proposed repeal eliminates a rule that is no longer applicable and the proposed amendments update a cross-reference and correct a citation error.

Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for readoption with amendments and repeal relate to the business of commercial lines insurance and are not subject to any Federal requirements or standards.

Jobs Impact

The Department does not anticipate that any jobs will be generated or lost as a result of the rules proposed for readoption with amendments and repeal.

The Department invites commenters to submit any data or studies on the potential jobs impact of the proposed readoption with amendments and repeal together with their comments on other aspects of the proposal.

Agriculture Industry Impact

The rules proposed for readoption with amendments and repeal will not have any impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

The rules proposed for readoption with amendments and repeal will only affect commercial lines insurers. If there are “small businesses” in the commercial lines insurance industry as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-1 et seq., they can expect to incur no additional costs because the proposed readoption does not change the reporting, recordkeeping, and compliance obligations imposed by current rules. Costs are discussed more fully in the Economic Impact above.

To the extent that insurers qualify as “small business,” they typically use the services of rating organizations or advisory organizations for rate and form filings. Nevertheless, there may be insurers that independently file rates and forms that qualify as “small businesses” according to the statutory definition.

The rules for commercial lines rating plans make no distinction between plans filed by small businesses and those filed by other insurers. The filing requirements are minimal and are currently being met by insurers of all sizes that wish to provide the rate flexibility available through such plans.

Since the purpose of the rules regarding commercial policy filings is to establish minimum standards for use by insurers as required by the Act, and the Act provides for no differentiation in compliance requirements based on insurer size, it would be inconsistent with the Act to establish different standards based upon insurer size.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments and repeal will not have an impact on housing affordability in this State in that the rules proposed for readoption with amendments and repeal relate to the provision of commercial lines insurance in this State.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments and repeal will not have an impact on smart growth in this State and there 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 the rules proposed for

readoption with amendments and repeal relate to the provision of commercial lines insurance in this State.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 11:13.

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

11:13-5.1 Higher rate filings

(a) (No change.)

(b) The following are modifications to the rule referenced in (a) above:

1. Reference to N.J.S.A. [17:29AA-22] **17:29A-22** contained in N.J.A.C. 11:4-[7.1(b)11]**7.3(b)11** is deleted and replaced with N.J.S.A. 17:29AA-26.

[11:13-7.5 Refiling policy forms

(a) Insurers with policy forms containing provisions that are inconsistent with the standards set forth in this subchapter shall amend those forms and refile them in accordance with N.J.S.A. 17:29AA-6 as follows:

1. For N.J.A.C. 11:13-7.4, by April 20, 1998, and the forms shall be effective no later than May 20, 1998.

(b) Policy forms refiled as set forth in (a) above shall comply with the standards set forth in this subchapter.

(c) Policy forms refiled in accordance with this rule shall be accompanied by a certification of an officer of the insurer that the policy form is being refiled in accordance with the standards set forth in this subchapter and that the refiling has been done within the time provided by (a) above.]