

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE

Orderly Withdrawal of Insurance Business
Informational Filing Withdrawals

Proposed Amendment: N.J.A.C. 11:2-29.8

Authorized By: Donald Bryan, Acting Commissioner, Department of Banking and Insurance

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, 17:17-10 and 17:33B-30

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

Proposal Number: PRN 2005-422

Submit written comments by January 20, 2006 to:

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The agency proposal follows:

Summary

The Department of Banking and Insurance (Department) recently adopted new rules and amendments to N.J.A.C. 11:2-29 governing the withdrawal or discontinuance of insurance business by property/casualty insurers. The new rules and amendments became effective April 4, 2005. See 37 N.J.R. 1069(a). Among other things, the Department adopted N.J.A.C. 11:2-29.8 to provide certain standards for the waiving by the Commissioner of Banking and Insurance (Commissioner) of the timeframes during which an insurer may nonrenew its policies and provide prior notice to its policyholders of such intended action 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 accordance with the aforementioned statutes, these provisions apply to waiver requests on withdrawals commencing on or after January 1, 2007. Specifically, N.J.A.C. 11:2-29.8(c)2 provides that, with respect to private passenger automobile, homeowner's, workers' compensation and medical malpractice liability coverage, 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 N.J.A.C. 11:2-29.8(c)1iii. Subsequent to its proposal, the Department received several comments on this particular provision. One commenter believed that the waivers should also be available to those insurers that have a total market share of more than 9.5 percent, so long as the company will nonrenew no more than 9.5 percent of the market per year. This would afford these companies the ability to avail themselves of the streamlined process, while essentially maintaining the standard in the rule, that is, that no more than 9.5 percent of the market be nonrenewed in any one year. In response to the comment, the Department indicated that it agreed that the change should be made. The Department noted, however, that because the suggested change would be a substantive change, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., all interested parties had to be afforded notice and an opportunity to comment before such a provision could be included in an adopted rule. The Department also noted that it would be proposing amendments to address this issue. For the reasons set forth above, the Department is now proposing amendments to N.J.A.C. 11:2-29.8(c) to revise the standard by which the Commissioner shall grant waivers of the statutory timeframes during which an insurer seeking to withdraw may nonrenew policies and provide

notice of such action to policyholders with respect to private passenger automobile, homeowner's, workers' compensation, and medical malpractice liability coverages. The amendments provide that the Commissioner shall approve a request for a waiver if the company will nonrenew no more than 9.5 percent of the market per year for the particular coverage involved. The Department believes that this maintains the existing standard as set forth in the rule, that is, that no more than 9.5 percent of the market be nonrenewed in any one year, while providing additional certainty to the market with respect to the granting of the waivers referenced in the rule.

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 amendments will further clarify and codify the intent of the Department as set forth in the Summary above with respect to the granting of waivers of the statutory timeframes set forth in N.J.S.A. 17:17-10 and 17:33B-30 and referenced in N.J.A.C. 11:2-29.8(c) with respect to private passenger automobile, homeowner's, workers' compensation, and medical malpractice liability coverages, commensurate with the potential for disruption to policyholders and the market that may result from an insurer's withdrawal from such coverage. The proposed amendments will further link the degree of regulatory scrutiny on a proposed withdrawal to the nature and scope of the transaction under review, and streamline the review process in situations where minimal disruption to policyholders and the market should result from such actions. The proposed amendments should provide additional certainty to the market

as well as insurers, while continuing to help ensure that undue disruption will not result from such insurer actions.

Economic Impact

The Department believes that no additional costs will be incurred by insurers, consumers or the Department through the proposed amendments. As set forth above, the proposed amendments clarify the standard under which an insurer may be granted waivers of the various requirements applicable to the nonrenewal of policies with respect to private passenger automobile, homeowner's, workers' compensation, and medical malpractice liability coverages pursuant to N.J.S.A. 17:17-10 and 17:33B-30, as amended. As a result, the costs attendant upon qualifying proposed withdrawal transactions to insurers, the Department and ultimately to policyholders, may be reduced.

Further, as is the case with the existing rules, 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 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 amendments. However, as noted in the Economic Impact above, and consistent with the goal of the recently adopted new rules and amendments, to the extent that the proposed amendments provide additional 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 amendments will not have any impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

The proposed 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 amendments apply to small businesses, they will apply to domestic property/casualty insurers seeking to cease doing business in this State. The proposed amendments provide no different reporting, recordkeeping or other compliance requirements based on insurer size. The proposed amendments impose no new reporting, recordkeeping or compliance requirements on any insurer. As noted above, the proposed amendments further clarify the standards under which an insurer seeking to exit the private passenger automobile, homeowner’s, workers’ compensation,

or medical malpractice liability markets may obtain waivers of the statutory timeframes applicable to nonrenewals implementing withdrawals commencing on or after January 1, 2007. No additional professional services will be required in order to comply with the proposed amendments.

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

Smart Growth Impact

The proposed 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]):

11:2-29.8 Informational filing withdrawals

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

(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. (No change.)

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] **will nonrenew no** more than 9.5 percent **of the total market per year** 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, **the total** 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, **the total** 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. (No change.)

(d) (No change.)

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