

INSURANCE  
DEPARTMENT OF BANKING AND INSURANCE  
OFFICE OF PROPERTY/LIABILITY

Prohibition of Certain Cancellation and Nonrenewal Activity

Proposed Amendments: N.J.A.C. 11:1-22.2 and 22.5

Proposed New Rules: N.J.A.C. 11:1-22.3 and 22.4

Authorized By: Steven M. Goldman, Commissioner, Department of Banking and Insurance

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, 17:22-6.14a3 and 17:29C-1 et seq.

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

Proposal Number: PRN 2008-123

Submit written comments by June 20, 2008 to:

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The agency proposal follows:

Summary

N.J.A.C. 11:1-22 sets forth standards for the block cancellation or nonrenewal of specified commercial lines property/liability insurance policies and homeowners' insurance policies. The rules were originally adopted in 1985, and last amended in 1995 to apply to homeowners' insurance. In general, the rules require that an insurer may block cancel or block nonrenew policies subject to the rules only in accordance with a plan submitted to the Commissioner of Banking and Insurance (Commissioner), that is submitted at least 60 days in

advance of its implementation date and which is not disapproved within 30 days after its filing with the Commissioner. In addition, a shorter timeframe for the implementation of a block cancellation or nonrenewal plan is provided when the reason for the block cancellation or block nonrenewal is due to: loss or substantial change in reinsurance for the company; a change in exposure to the company due to changes in statutory or case law; a loss or reduction of available insurance capacity; or agency termination.

The purpose of the rules is to ensure that the Department of Banking and Insurance (Department) is apprised of instances where an insurer seeks to cancel or nonrenew a block or class of insurance within a line of insurance, such as homeowners' insurance in a coastal region or coverage afforded to certain types of contractors, and to help ensure that insureds who will be affected by the block cancellation or nonrenewal have sufficient time to seek alternative coverage. Ultimately, these requirements help minimize disruptions to affected policyholders and the market that can ensue from such actions by insurers.

After more than 20 years' experience with these rules, the Department has determined that it is appropriate to amend these rules to provide further direction to insurers regarding the information required to be filed as part of a plan of block cancellation or nonrenewal, as well as to clarify the timeframes for its review of such plans. In addition, the Department believes it is appropriate for the rules to provide procedures regarding the confidentiality of information contained in plans submitted pursuant to the subchapter, and to reflect current practice regarding the extension of the duration of a plan if the Commissioner finds that the block nonrenewal and/or block cancellation will adversely affect the market.

A summary of the proposed amendments and new rules follows.

N.J.A.C. 11:1-22.2 is proposed to be amended to provide, in new subsections (b) and (c), the specific requirements that a plan for a block nonrenewal or a block cancellation, respectively, shall meet. These proposed new subsections generally codify existing requirements for such plans. The provisions would require that the plans include: the reason(s) for the action; the name of all companies involved in the action; the line or class of insurance or program affected by the action; the number of policies and exposures for each line or class to be nonrenewed or cancelled; and a provision for a minimum of 60 days notice to be provided to the insured prior to the cancellation or nonrenewal.

In addition, N.J.A.C. 11:1-22.2(a)2 is proposed to be amended to reference the requirements to be included in the plan for a block nonrenewal in proposed N.J.A.C. 11:1-22.2(b), as well as to expressly provide that nonrenewals pursuant to a change in an insurer's underwriting guidelines shall be considered nonrenewals subject to this subchapter. This proposed amendment clarifies that, if an insurer changes its underwriting guidelines to eliminate eligibility for coverage for a certain class of insureds, such action would be considered a block nonrenewal. This proposed amendment is not intended to limit or modify the application of N.J.A.C. 11:1-20.4(g) and (h), relating to when changes in underwriting guidelines may apply to nonrenew an existing policyholder. This rule is also proposed to be amended to change the date by which a plan must be filed with the Commissioner from 60 days prior to the plan's implementation date to 30 days prior to the issuance of any notice of nonrenewal. This amendment clarifies the time within which an insurer must file a plan to block nonrenew and shortens such timeframe. This proposed amendment does not shorten the time for the Department's review of a plan, but eliminates the possibility that an insurer may be required to

wait an additional 30 days after a plan has not been disapproved to begin sending notices of nonrenewal.

Similarly, N.J.A.C. 11:1-22.2(a)3 is proposed to be amended to specifically provide that the plan of block cancellation must comply with the requirements in proposed N.J.A.C. 11:1-22.2(c). In addition, this paragraph is proposed to be amended to provide for the same timeframes for the submission and review by the Department of a plan for a block cancellation as are provided for the submission and review of a plan for a block nonrenewal. Currently, there are no timeframes for the submission by companies or the review by the Department of plans for block cancellations. This proposed amendment will provide consistent timeframes applicable to the submission and review of plans for block nonrenewals and block cancellations. In addition, similar to the proposed amendment in N.J.A.C. 11:1-22.2(a)2, the paragraph is proposed to be amended to provide that cancellations pursuant to a change in an insurer's underwriting guidelines shall be considered cancellations subject to this subchapter. As noted above, this amendment is not intended to limit or modify the application of N.J.A.C. 11:1-20.4(g) and (h), relating to when changes in underwriting guidelines may apply to cancel an existing policyholder.

N.J.A.C. 11:1-22.2(b) is proposed to be recodified as subsection (d). This subsection, as well as newly recodified subsections (e) and (f) discussed below, provide for the review of a plan of block cancellation or nonrenewal on an expedited basis where the proposed action is based on: the loss of reinsurance, a change in exposure to the company due to changes in statutory or case law, a loss or reduction of insurance capacity, or agency termination. Subsection (d) also is proposed to be amended to require that plans for a block cancellation or nonrenewal submitted under that subsection for expedited review must contain the information set forth in proposed

new N.J.A.C. 11:1-22.2(b) or (c), as applicable. In addition, a proposed amendment provides for the filing of such a plan at least 20 days prior to the issuance of any notice of cancellation or nonrenewal, rather than 10 days, as is currently provided. The Department believes that 10 days does not provide sufficient time for a meaningful review of such plans. In addition, a proposed amendment provides that the plan shall be deemed to become effective, unless disapproved by the Commissioner within 20 days after such a plan has been filed with the Department.

N.J.A.C. 11:1-22.2(c) and (d) are proposed to be recodified as subsections (e) and (f). In addition, recodified subsections (e) and (f) are proposed to provide for the same timeframes for the submission and review of a plan of block cancellation or nonrenewal as are set forth in proposed N.J.A.C. 11:1-22.2(d).

N.J.A.C. 11:1-22.2(d)2 is proposed to be amended to reference changes in codification and to make other format amendments as a matter of form. Similar amendments are also made in recodified N.J.A.C. 11:1-22.2(e)1 and (f)1.

Proposed new N.J.A.C. 11:1-22.3 provides that all data or information contained in a block nonrenewal and/or block cancellation plan filed pursuant to the subchapter shall be confidential and not be considered a public record for purposes of the Open Public Records Act, N.J.S.A. 47:1A-1 et seq. (OPRA), with the exception of the following information: the letter from the Department acknowledging receipt of the filing; policyholder notices; any information that the filer is providing to the policyholder (for example, hurricane mitigation requirements); the letter from the filer to the Department providing notice of the proposed implementation date of the plan; and the letter from the filer to the Department providing notice of the proposed expiration date of the last policy to be cancelled and nonrenewed. With the exception of the items set forth above, the information contained in a plan filed pursuant to the rules is

proprietary, contains trade secrets or other information that could be used to benefit competitors, and thus is not deemed to be a public record under OPRA.

Proposed new N.J.A.C. 11:1-22.4 provides that if the Commissioner finds that the block nonrenewal and/or block cancellation will adversely affect the market, the timeframe for block nonrenewals or cancellations may be extended to a maximum period of three years. In making this determination, the Commissioner shall consider, without limitation, the number of policies to be nonrenewed and/or cancelled, whether there are other insurers writing the line or class of insurance to be nonrenewed or cancelled, and whether there is sufficient capacity in the voluntary market with respect to the particular coverage or class of coverage involved. The provision for the extension of the timeframe for the block cancellation or nonrenewal reflects current practice, and recognizes that when a large group of policyholders is terminated at one time, significant disruptions to the market may occur. Accordingly, the Department believes that it is reasonable to provide, in appropriate circumstances, for the extension of the timeframe for the nonrenewal or cancellation of such policies to a maximum of three years. This extension reflects the maximum timeframe generally applicable to withdrawals under N.J.S.A. 17:10-10 and 17:33B-30. In addition, the standards that the Commissioner shall consider in determining whether the market will be adversely affected reflect those standards provided in N.J.A.C. 11:2-29.8(c)1iii with respect to the waivers of timeframes for withdrawals from the market, which raise similar concerns.

Finally, N.J.A.C. 11:1-22.3, which provides penalties for violations of this subchapter, is proposed to be recodified as N.J.A.C. 11:1-22.5 without amendment.

This rule proposal provides for a comment period of 60 days, and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, 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 and new rules generally clarify the existing regulatory framework applicable to block cancellations and nonrenewals to provide more guidance to insurers regarding the information required to be contained in a plan, as well as to extend the timeframe under which the Department will review a plan submitted for expedited review, to ensure that the Department has at least a minimal, reasonable time to review any such plan. Ultimately, the proposed amendments and new rules should assist the Department in its continuing efforts to monitor the activities of insurers that seek to block cancel or nonrenew insureds, and to help minimize the disruptions to policyholders and the market that can result from such actions.

#### Economic Impact

Little or no economic impact should be imposed on insurers by the proposed new rules and amendments. Insurers will be required to bear any costs associated with filing the information required to be contained in a plan for block cancellation or nonrenewal within the prescribed timeframes. Generally, the proposed amendments and new rules codify the data currently required to be filed. The Department does not believe that any undue economic burden will be imposed by the proposed amendments and new rules. All of the information required should be readily available and easily ascertainable by the filer. The kinds of professional

services required to accomplish a block cancellation or nonrenewal will continue to include actuarial and financial services. No new professional services will be required to comply with the proposed amendments and new rules.

In addition, the proposed amendments and new rules will further assist the Department in evaluating plans for block cancellations and block non-renewals to help ensure that disruptions to policyholders and the market, and thus attendant costs, are minimized.

#### Federal Standards Statement

A Federal standards analysis is not required because the proposed amendments and new rules 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 proposed amendments and new rules.

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

#### Agriculture Industry Impact

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



### Regulatory Flexibility Analysis

The proposed amendments and new rules will apply to few, if any, “small business,” as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. To the extent the proposed amendments and new rules apply to small businesses, they will apply to New Jersey domestic insurers seeking to block cancel or block nonrenew policies to which the rules apply. As noted above, the Department does not anticipate any undue economic impact on insurers. Generally, small businesses will be required to incur costs associated with filing the required information. This information is currently required and, in any event, should be readily available to filers. Services that would be required include actuarial and financial services. The Department believes that no additional professional services will be required in order to comply with the proposed amendments and new rules.

The proposed amendments and new rules provide no differentiation in compliance requirements based on business size. As noted above, the proposed amendments and new rules provide additional guidance and clarification regarding the information and data that must be included with a plan for block cancellation or block nonrenewal; clarify the timeframes for the receipt and review of such plans; provide for the confidentiality of such plans, with limited exceptions; and provide for an extension of the timeframe for the block cancellation and nonrenewal to a maximum of three years, if the Commissioner finds that such action will adversely affect the market. The purpose of the proposed amendments and new rules is to facilitate the Department’s prompt and thorough evaluation of plans for block cancellation and nonrenewal, and thus help ensure that disruptions to policyholders subject to such actions and to the market in general are minimized. These goals, as well as the application of the existing rules, do not vary based on business size.

### Smart Growth Impact

The proposed amendments and new rules will not have any 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 in brackets [thus]):

#### 11:1-22.2 Prohibitions

(a) The following acts or practices are specifically prohibited with respect to those policies subject to the provisions of this subchapter:

1. (No change.)
2. Block nonrenewing entire lines or classes of insurance, except pursuant to a plan **which: complies with (b) below; is** submitted to the Commissioner at least [60] **30** days [in advance of its implementation date which] **prior to the issuance of any notice of nonrenewal; and** is not disapproved within 30 days after its filing with the Commissioner. For the purpose of this paragraph, the termination or attempted termination of an appointed agent solely to achieve the block nonrenewal of entire lines or entire classes of insurance shall be deemed a nonrenewal subject to this paragraph. **In addition, nonrenewals pursuant to a change in an insurer's underwriting guidelines shall be subject to this subchapter.**
3. Block cancelling entire lines of insurance or classes of business except pursuant to a plan [approved by] **which: complies with (c) below; is submitted to the Commissioner at least 30 days prior to the issuance of any notice of cancellation; and is not**

**disapproved within 30 days after its filing with** the Commissioner. For the purposes of this paragraph, the termination or attempted termination of an appointed agent solely to achieve the block cancellation of entire lines of insurance or entire classes of business shall be deemed a cancellation subject to this paragraph. **In addition, cancellations pursuant to a change in an insurer's underwriting guidelines shall be subject to this subchapter.**

**(b) A plan filed pursuant to (a)2 above shall contain the following information:**

- 1. The reason(s) for the block nonrenewal;**
- 2. The name of all companies involved in the block nonrenewal;**
- 3. The line or class of insurance or the program affected by the block nonrenewal;**
- 4. The number of policies and exposures for each line or class being nonrenewed;**
- 5. The total market share of the nonrenewing company or companies by line of insurance. For homeowners' policies, this shall include the number of exposures by WindMAP zip codes and, separately, any additional zip codes that fall within a company's definition of a coastal area;**
- 6. A copy of the proposed nonrenewal notice. The notices shall not include the statements otherwise required pursuant to N.J.A.C. 11:1-20.2(h) and 11:3-8.3(e)2i, as applicable, related to filing complaints with the Department concerning the non-renewal. A sample of such notice shall be posted on the Department's web site at <http://www.state.nj.us/dobi/>, and may be modified by the Department from time to time;**
- 7. The criteria being utilized for the block nonrenewal (such as coastal underwriting guidelines, etc.);**

8. A provision for a minimum of 60 days notice to be provided to the insured prior to nonrenewal; and

9. The proposed duration of the nonrenewal plan.

(c) A plan filed pursuant to (a)3 above shall contain the following information:

1. The reason(s) for the block cancellation;

2. The name of all companies involved in the block cancellation;

3. The line or class of insurance or the program affected by the block cancellation;

4. The number of policies and exposures for each line or class being cancelled;

5. The total market share of the nonrenewing company or companies by line of insurance. For homeowners' policies, this shall include the number of exposures by WindMAP zip codes and, separately, any additional zip codes that fall within a company's definition of a coastal area;

6. A copy of the proposed cancellation notice. The notices shall not include the statements otherwise required pursuant to N.J.A.C. 11:1-20.2(h) and 11:3-8.3(e)2i, as applicable, related to filing complaints with the Department concerning the cancellation. A sample of such a notice shall be posted on the Department's web site at <http://www.state.nj.us/dobi/>, and may be modified by the Department from time to time;

7. The criteria being utilized for the block cancellation (such as coastal underwriting guidelines, etc.);

8. A provision for a minimum of 60 days notice to be provided to the insured prior to cancellation; and

**9. The proposed duration of the block cancellation plan.**

[(b)] **(d)** Notwithstanding (a)2 and [(a)]3 above, an insurer may cancel or nonrenew a line or class of business where such cancellation or nonrenewal is necessary because of loss or substantial changes in applicable reinsurance by filing a plan with the Commissioner **that contains the information set forth in (b) or (c) above, as applicable, and** pursuant to the requirements of this subsection. The insurer's plan [must] **shall** be filed with the Commissioner at least [10] **20** days prior to the issuance of any notice of cancellation or nonrenewal. **The plan shall be deemed to become effective unless disapproved by the Commissioner within 20 days after such plan has been filed with the Department.**

1. (No change.)

2. Any plan for cancellation or nonrenewal due to loss of or substantial changes in applicable reinsurance may be submitted to the Department as provided at [(b)] **(d)** above only if the guideline meets the standards set forth at N.J.A.C. 11:1-20.4(b)10. A plan for termination based on any other guideline for loss of or substantial changes in available reinsurance must be submitted to the Department for approval as specified at [N.J.A.C. 11:1-22.2](a)2 or 3 **above**, as applicable.

[(c)] **(e)** Notwithstanding (a)2 and [(a)]3 above, an insurer may cancel or nonrenew a line or class of insurance based upon a material increase in exposure arising out of changes in statutory or case law subsequent to the issuance of the insurance contract or loss of or reduction in available insurance capacity by filing a plan with the Commissioner pursuant to the requirements of this subsection. The insurer's plan [must] **shall** be filed with the Commissioner at least [10] **20** days prior to the issuance of any notice of cancellation or nonrenewal. **The plan**

**shall be deemed to become effective unless disapproved by the Commissioner within 20 days after such plan has been filed with the Department.**

1. Any plan for cancellation or nonrenewal due to loss of or reduction in available insurance capacity may be submitted to the Department as provided at [(c)] **(e)** above, only if the guideline meets the standards set forth at N.J.A.C. 11:1-20.4(b)8. A plan for termination based on any other guideline for loss of or reduction in available insurance capacity must be submitted to the Department for approval as specified at [N.J.A.C. 11:1-22.2](a)2 or 3 **above**, as applicable.

[(d)] **(f)** Notwithstanding (a)2 and [(a)]3 above, an insurer may nonrenew a line or class of insurance based upon agency termination by filing a plan with the Commissioner pursuant to the requirements of this subsection. The insurer's plan [must] **shall** be filed with the Commissioner at least [10] **20** days prior to the issuance of any notice of cancellation or nonrenewal. **The plan shall be deemed to become effective unless disapproved by the Commissioner within 20 days after such plan has been filed with the Department.**

1. Any plan for nonrenewal due to agency termination may be submitted to the Department as provided at [(d)] **(f)** above only if the guideline meets the standards at N.J.A.C. 11:1-20.4(b)13. A plan for nonrenewal based on any other guideline for agency termination must be submitted to the Department for approval as specified at [N.J.A.C. 11:1-22.2](a)2 **above**.

### **11:1-22.3 Confidentiality**

**(a) All data or information contained in a block nonrenewal and/or block cancellation plan filed pursuant to this subchapter shall be confidential and shall not be**

considered a public record for purposes of the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., with the exception of the following information:

1. The letter from the Department acknowledging receipt of the filing;
2. Proposed and final versions of any policyholder notices;
3. Any information that the filer will be providing to the policyholder

(for example, hurricane mitigation requirements);

4. The letter from the filer to the Department providing notice of the proposed implementation date of the plan; and

5. The letter from the filer to the Department providing notice of the proposed expiration date of the last policy to be cancelled or nonrenewed.

11:1-22.4 [(RESERVED)] Extension of duration of plan

(a) If the Commissioner finds that the block nonrenewal and/or block cancellation will adversely affect the market, the timeframe for the block nonrenewals and/or cancellations may be extended to a maximum period of three years.

(b) In making the determination as to whether a block nonrenewal or block cancellation will adversely affect the market, the Commissioner shall consider, without limitation, the number of policies to be nonrenewed and/or cancelled, whether there are other insurers writing the line or class of insurance to be block nonrenewed and/or cancelled, and whether, following the nonrenewal or cancellation, there will be sufficient capacity in the voluntary market with respect to the particular coverage or class of coverage involved.

11:1-[22.3] **22.5** (No change in text.)

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