

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
OFFICE OF PROPERTY/LIABILITY

Prohibition of Certain Cancellation and Nonrenewal Activity

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

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

Proposed: April 21, 2008 at 40 N.J.R. 2052(a)

Adopted: October 27, 2008 by Steven M. Goldman, Commissioner, Department of Banking and Insurance

Filed: October 30, 2008 as R. 2008 d.361, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, 17:22-6.14a(3) and 17:29C-1 et seq.

Effective Date: December 1, 2008

Expiration Date: July 30, 2011

Summary of Public Comments and Agency Responses.

The Department of Banking and Insurance (Department) timely received written comments from State Farm Fire and Casualty Company and the American Insurance Association.

COMMENT: One commenter noted that N.J.A.C. 11:1-22.2(b)9 provides that a block nonrenewal plan shall contain “the proposed duration of the nonrenewal plan.” N.J.A.C. 11:1-22.4(a) provides that if the Commissioner finds that the block nonrenewal and/or the 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. The commenter stated that it is not clear whether the rules permit an insurer to propose a plan for block nonrenewals that

would last more than three years. The commenter stated that, while insurers usually would seek a short timeframe to execute a plan for block nonrenewals because of the circumstances necessitating the decision, there are unique situations where the insurer may want to execute the plan over a longer timeframe. The commenter believed that if an insurer wishes to execute a block nonrenewal plan over a time period longer than one year, or even longer than three years, there would be no public detriment. Accordingly, the commenter suggested that N.J.A.C. 11:1-22.2(b)9 be revised to read as follows (additions in boldface): “The proposed duration of nonrenewal plan which at the option of the nonrenewing company or companies may be longer than the maximum three-year period that the Commissioner may require under N.J.A.C. 11:1-22.4(a).”

RESPONSE: The Department does not believe that the rules by their terms would prohibit an insurer from providing a nonrenewal plan with a duration of more than three years. However, in order to avoid any confusion, the Department is changing the rule upon adoption to reflect the commenter’s suggestion. For this same reason, and to ensure consistency, the Department is changing N.J.A.C. 11:1-22.2(c)9 upon adoption as it applies to block cancellations.

COMMENT: One commenter noted that N.J.A.C. 11:1-22.3 sets out the elements of the block cancellation/nonrenewal filing that will be public, as well as that to be held confidential. The commenter noted that the rule recognizes that the justification and supporting data for this type of filing will necessarily contain proprietary trade secret data that should be kept confidential, and thus, supported this rule.

RESPONSE: The Department appreciates the support of its proposal.

COMMENT: One commenter expressed concern that N.J.A.C. 11:1-22.2(a)2 and 3, which provide that nonrenewals and cancellations pursuant to a change in an insurer's underwriting guidelines, are subject to the rules. The commenter believed that the language is overly broad and could be interpreted as requiring a company to develop and file a withdrawal plan even if only one policy were nonrenewed or cancelled as a result of changes to an insurer's underwriting guidelines. Thus, the commenter requested that this language be deleted. In the alternative, the commenter suggested adding a threshold requirement to trigger the provision, such as a minimum number of policies or a certain percentage of the insurer's book of business affected by the change in the insurer's underwriting guidelines.

RESPONSE: Upon review, the Department has determined not to change this provision. The Department believes that it is reasonable and appropriate to require the filing of a plan in the case of block cancellations or nonrenewals so that the Department may be apprised of such actions, which may have a significant impact to a group of policyholders. For example, an insurer's underwriting guidelines could be changed to provide that it will no longer write coastal risks, residences with underground storage tanks, etc. Such changes could affect a significant number of policyholders. Accordingly, the Department believes that it is reasonable and appropriate to review plans for the block cancellation or nonrenewal of policyholders due to a change in underwriting guidelines. The Department disagrees that the rules are burdensome or overly broad because, by their terms, the rules apply to "block" cancellations or nonrenewals; thus, they apply to nonrenewals or cancellations of groups of insureds, and would not apply to the

nonrenewal of a single policy. Moreover, the information required under the rules should be readily available, and the Department will post on its website a sample form of nonrenewal notice to be provided to policyholders that insurers may utilize in developing the notice they send to policyholders. Finally, given the myriad of the types of changes to insurance underwriting guidelines that may affect groups of insureds, and the disparate impacts resulting from such changes, the Department does not believe that the inclusion of a “trigger” provision would be feasible.

COMMENT: One commenter expressed concern with N.J.A.C. 11:1-22.4, which gives the Commissioner the authority to extend the time-frame for block nonrenewals and/or cancellations up to three years. While the rule requires the Commissioner to consider certain criteria prior to making such a determination, the commenter stated that the rule does not provide for an alternative recourse. The commenter requested that the rule not be adopted or, in the alternative, recommended that the timeframe be shortened or that an expedited appeal process be provided.

RESPONSE: Upon review, the Department has determined not to change this provision. As noted in the notice of proposal Summary, the provision for the extension of a timeframe for a block cancellation or nonrenewal reflects current practices, 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 blocks of policies to a maximum of three years. This extension reflects the maximum time-frame generally applicable to withdrawals from transacting the business of insurance 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 the standards provided in N.J.A.C. 11:2-29.4(a)1iii with respect to the waivers of timeframes for withdrawals from the market, which raise similar concerns. With respect to any appeal process, if the party is aggrieved by an agency decision, in accordance with the New Jersey Court Rules, he or she may appeal such decision to the Appellate Division of the New Jersey Superior Court.

Federal Standards Statement

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

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***):

11:1-22.2 Prohibitions

(a) (No change from proposal.)

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

1. - 8. (No change from proposal.)

9. The proposed duration of the nonrenewal plan *, **which the nonrenewing company or companies may specify as being longer than three years, notwithstanding that, pursuant to N.J.A.C. 11:1-22.4(a), the maximum time period by which the Commissioner may extend the duration of a nonrenewal plan is three years***.

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

1. - 8. (No change from proposal.)

9. The proposed duration of the block cancellation plan *, **which the cancelling company or companies may specify as being longer than three years notwithstanding that, pursuant to N.J.A.C. 11:1-22.4(a), the maximum time period by which the Commissioner may extend the duration of a cancellation plan is three years***.

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