

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
OFFICE OF SOLVENCY REGULATION

FAIR Plan Surcharge

Adopted Amendment: N.J.A.C. 11:1-5.1

Proposed: December 1, 2008 at 40 N.J.R. 6733(a)

Adopted: November 4, 2009 by Neil N. Jasey, Commissioner, Department of Banking and Insurance

Filed: November 5, 2009 as R. 2009 d.363 , without change.

Authority: N.J.S.A. 17:1C-6, 17:1-8.1, 17:1-15e and 17:37A-1 et seq.

Effective Date: December 7, 2009

Expiration Date: July 30, 2011

Summary of Public Comments and Agency Responses:

The Department of Banking and Insurance (Department) timely received written comments from

1. AXA Art Insurance Corporation; and
2. The American Insurance Association.

COMMENT: One commenter stated that it is a specialty insurance carrier that writes only inland marine insurance, specifically fine art insurance. The commenter questioned whether its business would be subject to the FAIR Plan surcharge.

RESPONSE: The surcharge applies to premiums written on “basic property insurance,” as that term is defined in N.J.S.A. 17:37A-2(b). Inland marine insurance is reported on a separate line on the annual statement and has had an evolving industry definition through the years, but

usually includes items that are in transit or are at a location that can be moved, such as jewelry and fine art. By its terms, basic property insurance does not include inland marine coverage.

COMMENT: One commenter requested additional clarification of the proposed amendment to N.J.A.C. 11:1-5.1(b)2. The commenter noted that this amendment provides that insurers will surcharge endorsements effective on or after the date fixed by the Order issued by the Commissioner pursuant to the proposed amendments. The commenter requested clarification whether this applies to endorsements for policies with effective dates on or after the date fixed by the Order, or to any endorsement regardless of effective date. The commenter believed that endorsements on policies should be surcharged at the same rate and basis as determined by the policy effective date; otherwise, a situation could be created whereby a policyholder would be treated inconsistently for transactions during a single policy period.

RESPONSE: The application of the surcharge for policies and endorsements will be tied to the effective date of the policy. Endorsements on policies with effective dates subject to the surcharge will be subject to the same surcharge as the underlying policy. Policies with effective dates prior to the imposition of the surcharge would not be impacted by the surcharge until renewal.

Federal Standards Statement

A Federal standards analysis is not required because these adopted amendments are not subject to any Federal requirements or standards.

Full text of the adoption follows:

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