

**INSURANCE**

**DEPARTMENT OF BANKING AND INSURANCE**

**PROPERTY AND CASUALTY DIVISION**

**Reporting Financial Disclosure and Excess Profits**

**Adopted Amendments: N.J.A.C. 11:3-20.3, 20.4 and 20.5, and 11:3-20 Appendix**

Proposed: November 15, 2010 at 42 N.J.R. 2701(a).

Adopted: February 9, 2011 by Thomas B. Considine, Commissioner, Department of Banking and Insurance.

Filed: February 10, 2011 as R. 2011 d. 084, **without change**.

Authority: N.J.S.A. 17:1-8.1, 17:1-15e and 17:29A-5.6 through 5.14.

Effective Date: March 7, 2011.

Expiration Date: June 7, 2011.

**Summary of Public Comments and Agency Responses:**

The Department of Banking and Insurance (Department) received timely written comments from the following: New Jersey Manufacturers Insurance Group; State Farm Insurance Companies; Property Casualty Insurers Association of America; and the Insurance Council of New Jersey.

COMMENT: One commenter expressed concern with proposed N.J.A.C. 11:3-20.3 which amends the definition of “actual investment income” to state that the rate of return that is used is the average rate of return on invested assets that offset unearned premium and loss reserves without regard to when and from whom those assets were generated. The commenter stated that doing such a computation for 2010 will be no problem. The commenter did question what actual investment income/rate of return figures should be used for years prior to 2010. The commenter

stated that the rate of return for prior years under the proposed definition will be different from the 2010 figure (investment rate of return, of course, varies from year to year) so the 2010 figure cannot be used. Rather than going back and recomputing all of the prior years based on data not in prior auto excess profits reports, the commenter suggests that the rate of return figures contained in those prior filed excess profits reports be used for those years. The commenter believes that this is easier for both the insurer in filling out the report for filing (one purpose of these proposed regulations) and for the Department in verifying the figures in the filed report. The commenter suggested that the proposed N.J.A.C. 11:3-20.3 definition of “actual investment income” should be amended to read,

“Actual investment income” means that portion of income generated by investment of policyholder-supplied funds. Policyholder-supplied funds are the assets that offset the insurer’s total New Jersey private passenger automobile insurance unearned premium and loss reserves without regard to whether those funds came from private passenger automobile insurance policyholders or other policyholders or were from policyholder funds from the last seven calendar years or earlier years. For years in the excess profits report that are prior to 2010, the actual investment income figures for those years that were reported in the filed 2009 excess profits report shall be used. (Suggested new language is underlined)

RESPONSE: The Department agrees with the commenter but does not believe that it is necessary to amend these rules to so provide. The Department’s Excel spreadsheet template will include instructions indicating that companies will have the option of recalculating prior years’

information but are not required to make that recalculation. As noted in the Social Impact for this proposal, these rules are intended to streamline the Department's filing requirements and make compliance with the data reporting requirements easier for insurers.

COMMENT: Several commenters expressed concern with the possibility that the proposed amendments may not be adopted in sufficient time to allow for preparation of the report using the new requirements. The commenters noted that insurers must file their excess profit reports by July 1 of each year pursuant to N.J.S.A. 17:29A-5.6. The commenters stated that insurers generally begin preparation of their reports on or before May 1 in order to meet the July 1 deadline. The commenters requested that if the amendments are not adopted by May 1, that the Department issue a Bulletin either permitting carriers to use the proposed requirements in their 2011 filings or, in the alternative, waiving any penalties for late filings for up to two months after notification.

RESPONSE: The Department recognizes that the commenters (and all filers) need a sufficient amount of time in order to prepare their reports. No bulletins will be necessary as the notice of adoption will appear in the March 7, 2011 New Jersey Register, which is sufficient enough time for insurers to comply.

COMMENT: One commenter stated that the proposed (recodified) Appendix Exhibit Four seeks to eliminate the term "acquired" with respect to bonds and real estate, thereby calling for use of imbedded yields in the calculation. The commenter further stated that the use of the imbedded yield does not present as accurate a representation of investment earnings on current business. The commenter recommended that the term "acquired" remain in the regulation.

RESPONSE: The Department disagrees with the commenter. Exhibit Four was designed to determine investment income from various types of assets, for example bonds and real estate. The proposed amendment was made in order to comply with N.J.S.A. 17:29A-5.6(a), which defines investment income to be from assets “without regard to whether those funds came from private passenger automobile insurance policyholders or other policyholders or were from policyholder funds from the last seven calendar years or earlier.”

### **Federal Standards Statement**

A Federal standards analysis is not required because these adopted amendments regulate the business of automobile insurance and are not subject to any Federal requirements or standards.

**Full text** of the adoption follows:

TEXT