

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE

Orderly Withdrawal of Insurance Business

Adopted New Rules: N.J.A.C. 11:2-29.6 and 29.8

Adopted Amendments: N.J.A.C. 11:2-29.1 through 29.5 and 29.7

Proposed: October 4, 2004 at 36 N.J.R. 4358(a)

Adopted: March 10, 2005 by Donald Bryan, Acting Commissioner, Department of Banking and Insurance

Filed: March 10, 2005 as R. 2005 d.111, 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, 17:17-10, 17:22-6.14a(n) and 17:33B-30

Effective Date: April 4, 2005

Expiration Date: November 30, 2005

Summary of Public Comments and Agency Responses:

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

1. Windels Marx Lane and Mittendorf;
2. The Insurance Council of New Jersey;
3. Progressive Insurance Company;
4. American International Group, Inc.;
5. The Professional Insurance Agents of New Jersey; and
6. Allstate New Jersey Insurance Company.

COMMENT: One commenter stated that, in light of the goal of various statutory revisions, as well as proposed changes set forth in these rules, it believed that it would be appropriate to eliminate from the scope of the rules routine changes in company operations that do not reflect any intent to withdraw from the market. In addition, several commenters expressed concern with the definition of “withdraw” or “withdrawal” set forth in N.J.A.C. 11:2-29.2. The commenters stated that the definition continues to include restrictions on agency solicitation or binding authority and insurer refusal of applications. The commenters stated, however, that these actions are now permissible pursuant to N.J.S.A. 17:33B-15 and 17:29D-1 under certain circumstances.

One commenter suggested that the definition be revised to read “... the elimination of a rating system, company termination of **more than thirty-three percent (33%) of the agency** [agent] contracts **in effect during the previous calendar year** [in whole or in part], or reduction in total agent [commissions] **compensation eligibility of more than twenty-five percent (25%)** [, or restrictions on agency solicitation or binding authority, insurer refusal of applications or declaration of a dividend to an affiliate when such action or actions exceed those occurring in the ordinary course of business.] Whether the above activities are equivalent to a withdrawal shall be determined by the Commissioner on a case-by-case basis.” (suggested additions in boldface, suggested deletions in brackets).

Other commenters suggested that the definition be revised to read: “... the elimination of a rating system, termination of agent contracts in whole or in part, reduction in agent commissions or restrictions **that are inconsistent with N.J.A.C. 11:3-35** on agency solicitation, [or] binding authority, [or] insurer **acceptance** [refusal] of applications, [or declaration of a dividend to an affiliate] when such action or actions exceed those occurring in the ordinary course of business....” (suggested additions in boldface; suggested deletions in brackets).

RESPONSE: Upon review, the Department has determined not to make these changes. Initially, the Department notes that the definition of “withdraw” or “withdrawal” was not proposed for change, and thus, the comments are outside the scope of the proposal. In addition, the basis for the commenters’ suggested percentage limitations on termination of agency contracts or compensation eligibility is unclear. The commenters referred to N.J.S.A. 17:33B-15 and 17:29D-1, which permit insurers to take certain actions in limiting the acceptance of new business in certain cases. If an insurer takes action otherwise delineated in the definition of “withdraw” that is recognized or permitted pursuant to law, such action would be deemed to be “occurring in the ordinary course of business” and therefore would satisfy the stated exception in the definition of “withdraw” or “withdrawal” set forth in the current rule. The purpose of the definition, which has been in place since the rules were originally adopted, is to prevent an insurer from taking actions, other than the nonrenewal of its business, that are tantamount to a withdrawal, without prior notice to the Department. Such notice does not necessitate a finding by the Department that the action is a withdrawal, and the Department routinely responds to these notices after having concluded that the action is not a withdrawal. The Department will continue to monitor this issue to determine whether any additional clarification is necessary, and if so, will propose appropriate amendments to the rules at that time.

COMMENT: One commenter noted that N.J.A.C. 11:2-29.8 defines the requirements for withdrawal filings made after January 1, 2007. The commenter stated that, although the rule provides for waivers of various requirements, it fails to define the period of withdrawal in the

absence of the waiver. The commenter thus suggested that the withdrawal period be defined consistent with the statutory revisions by adding a new subsection (c) to read as follows:

Unless a waiver is obtained pursuant to this section, the filing shall provide for a withdrawal period of three years beginning with the effective date of the first nonrenewal, which shall not be earlier than one year and ninety (90) days from the date of the filing of the plan of withdrawal, and ending with the effective date of the last nonrenewal, provided further that if more than one company files for withdrawal for the same line of business within the same twelve-month period as the filer, and those companies, in the aggregate, insure more than twenty-five percent (25%) of the market for that line of business, the commissioner may extend the period of withdrawal provided herein to five years for those companies, calculated in the same manner.

RESPONSE: The language suggested by the commenter reflects the statutory timeframes for withdrawals pursuant to N.J.S.A. 17:17-10 and 17:33B-30, as amended by P.L. 2003, c. 89. The Department did not believe it necessary to restate in their entirety these statutory standards. These statutes also provide an opportunity for companies to request a waiver from the Commissioner of Banking and Insurance (Commissioner) to enable them to nonrenew business over a shorter period of time. N.J.A.C. 11:2-29.8(a) specifically provides that any proposed withdrawal filing filed on or after January 1, 2007, or which will become effective on or after January 1, 2007, shall be subject only to the provisions of that section, N.J.A.C. 11:2-29.1 and

29.2 and the aforementioned statutes. The Department believes that this issue is, therefore, addressed in the current rules and that further clarification is not necessary.

COMMENT: One commenter expressed concern with the waiver provision in N.J.A.C. 11:2-29.8(c)2, which provides that, with respect to private passenger automobile, homeowner's, workers' compensation, and medical malpractice liability coverages, the Commissioner shall approve a request for a waiver of the statutory withdrawal timeframes if the company does not have a market share of more than 9.5 percent for the particular coverage involved. The commenter believed that this does not accomplish the goal of the statute or the intent of the Department to streamline the process by which insurers could seek to withdraw from certain lines of insurance. Specifically, the commenter stated that limiting the waiver to those companies that do not have a market share of more than 9.5 percent would effectively exclude many companies from the streamlined process.

In addition, the commenter stated that the proposal does not provide for a transition from the existing withdrawal requirements and the new requirements. The commenter believed that the Department should provide for a transition, especially in circumstances where companies may have either commenced the withdrawal process or had an approved plan. The commenter thus suggested that the rule be modified to include a waiver for those insurers that had an approved plan of withdrawal under the existing rules, but which terminated their withdrawal in reliance on the implementation of statutory changes. The commenter thus suggested that N.J.A.C. 11:2-29.8(c)2 be revised to read as follows:

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 **will nonrenew no** [does not have a market share of] more than 9.5 percent **of the 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 in (c)liii above , **or the insurer had an approved plan of withdrawal prior to the effective date of this subsection and which terminated its withdrawal plan prior to January 1, 2007**....(suggested additions in boldface, suggested deletions in brackets)

RESPONSE: Upon review, the Department has determined that some of the changes suggested by the commenter are appropriate. As noted in the proposal Summary, N.J.A.C. 11:2-29.8 is intended to provide standards for the waiver of the timeframes and use of replacement carriers 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. These statutes provide that the Commissioner may waive these timeframes if the Commissioner deems that the withdrawal will have a limited impact on the market. Private passenger automobile insurance and workers' compensation coverage are coverages mandated by law. In addition, homeowner's and medical malpractice liability insurance coverages are typically required for an individual owning a home or medical professionals engaging in their profession, and for which availability and affordability issues have arisen in the past. Accordingly, the Department believes that it is reasonable and appropriate with respect to these

types of coverages, that the ability to obtain a waiver from the statutory timeframes should be limited. The Department believes that the 9.5 percent market share standard is reasonable. The Department also notes that the commenter suggested no alternative market share. The Department agrees, however, that the suggestion to revise the rule to provide that, upon request, a waiver shall be approved if a company with less than a 25 percent marketshare will nonrenew no more than 9.5 percent of the market per year is reasonable and appropriate and would more accurately reflect the Department's intent. This change, however, would be a substantive change that cannot be made upon adoption because interested parties must be provided notice and an opportunity to comment. The Department intends to propose amendments to these rules in the future to address this issue.

The Department, however, does not believe that it would be appropriate to apply the waiver to an insurer solely on the basis that it had an approved plan of withdrawal prior to the effective date which was terminated prior to January 1, 2007. Such an insurer could refile under the then-existing requirements. Providing a waiver from the statutory timeframes solely on the basis that the insurer had filed a withdrawal plan that it had terminated prior to January 1, 2007 would be inconsistent with the statutory criteria for granting the waiver, that is, determining whether the impact on the market would be limited. Moreover, the proposed standard is too indefinite for the Department to administer in that it does not provide standards or timeframes for the withdrawal that would apply in such a case. The Department notes, however, that the rules as drafted provide the Commissioner with the discretion to grant a waiver. N.J.A.C. 11:2-29.8(c)2 provides that a waiver may also be granted if the Commissioner concludes that granting a waiver will not adversely affect the market.

Finally, the Department does not believe that additional transition requirements need to be provided. N.J.A.C. 11:2-29.3 provides that, for actions prior to January 1, 2007, the Commissioner may approve a substitute withdrawal procedure. The Commissioner thus could permit an insurer to use an alternate withdrawal procedure based on the circumstances of the case and the impact on the market for withdrawal filings made prior to January 1, 2007.

COMMENT: Several commenters believed that the intent of the rules is that withdrawal plans filed on after January 1, 2007 will be subjected only to the provisions of N.J.S.A. 17:17-10 and 17:33B-30, as amended by P.L. 2003, c. 89, and N.J.A.C. 11:2-29.8, and that N.J.A.C. 11:2-29.3(b) through 29.5 will not apply. The commenters believed that, as currently drafted, the rules could be construed to mean that both N.J.S.A. 17:17-10 and 17:33B-30, N.J.A.C. 11:2-29.8, and 11:2-29.3(b) through 29.5 would be applicable to post-January 1, 2007 filings.

The commenters further believed that the rules should clarify that if an insurer intends to maintain normal operations, but makes a business decision to transfer individual policies or a line or class of business to an affiliated carrier within the same insurance group, that this action would not constitute a withdrawal, nor should the insurer be required to seek the Commissioner's approval.

Further, the commenters stated that N.J.A.C. 11:2-29.1(b) provides that the rules do not apply to "block cancellations or block non-renewals" under N.J.A.C. 11:1-22. However, the commenters stated that for property/casualty personal lines, this rule applies only to homeowner's insurance.

For these reasons, the commenters suggested that the following changes be made to N.J.A.C. 11:2-29.1(b) and (c) and 29.8 as follows:

N.J.A.C. 11:2-29.1

(b) This subchapter applies to all insurers that seek to withdraw from the business of insurance as defined herein. This subchapter shall not apply to any action constituting a block cancellation or block non-renewal **of personal lines property and casualty insurance, other than private passenger auto, or any other insurance** regulated under N.J.A.C. 11:1-22 unless such action also is found to constitute a withdrawal under this subchapter.

(c) Plans of withdrawal filed on or after January 1, 2007, or with an effective date on or after January 1, 2007, shall be subject to N.J.S.A. 17:17-10, 17:33B-30 as amended by P.L. 2003, c. 89, and N.J.A.C. 11:2-29.8 **and sections 11:2-29.3(b) through 11:2-29.5 of this subchapter shall be inapplicable** (suggested additions indicated in boldface).

The commenter similarly suggested that N.J.A.C. 11:2-29.8 be revised upon adoption to delete any reference to N.J.A.C. 11:2-29.1 and 29.2, and to specifically provide the following phrase at the end of the provision: “and sections 11:2-29.3(b) through 11:2-29.5 of this subchapter shall be inapplicable.”

RESPONSE: Upon review, the Department has determined that no change is necessary. N.J.A.C. 11:2-29.8 expressly provides that any proposed withdrawal filing filed on or after January 1, 2007, or which will become effective on or after January 1, 2007, shall be subject only to the provisions of this section, N.J.A.C. 11:2-29.1 and 29.2, and N.J.S.A. 17:17-10 or 17:33B-30 as applicable, as amended by P.L. 2003, c. 89.

The Department also does not believe that the proposed change regarding reference to N.J.A.C. 11:1-22 is necessary. To the extent that N.J.A.C. 11:1-22 only applies to limited

personal lines, such limited application would apply with respect to these rules. However, the Department notes that these rules apply to commercial as well as personal lines.

Further, with respect to the transfer of business to a replacement carrier, the rules currently require notice to the Department of such action. As noted in a response to a previous comment, such notice does not necessitate a finding that the action constitutes a withdrawal.

COMMENT: Several commenters noted that the definition of “commencement date” refers to an “approved plan of orderly withdrawal.” The commenter stated that because these definitions will apply after January 1, 2007, the reference to approval should be removed.

RESPONSE: The Department does not believe that any change is necessary. The definition as drafted applies to plans filed prior to January 1, 2007, and thus properly references “approved” plans of orderly withdrawal. The Department agrees that, with respect to plans filed on or after January 1, 2007, the reference to an “approved plan” would not apply. The Department notes that N.J.A.C. 11:2-29.2 provides that the definitions shall have the stated meanings, unless the context clearly indicates otherwise. With respect to informational filings made pursuant to N.J.A.C. 11:2-29.8, the reference to an “approved plan” clearly would not apply. The Department will propose appropriate amendments in the future as deemed necessary to reflect this construction of the definition.

COMMENT: One commenter suggested that, with respect to N.J.A.C. 11:2-29.1(c), the Department should change the reference to “plans of withdrawal” to include “informational filings” in order to be consistent with what is required to be filed under N.J.S.A. 17:17-10 and

17:33B-30, as amended by P.L. 2003, c. 89. The commenter expressed the same issue with respect to N.J.A.C. 11:2-29.8(a).

RESPONSE: The Department agrees. Accordingly, the Department has revised N.J.A.C. 11:2-29.1(c) and 29.8(a) as suggested by the commenter for the reasons expressed by the commenter.

COMMENT: One commenter stated that the reference to “effective date” in N.J.A.C. 11:2-29.1(c) is not clear. The commenter questioned whether it is meant to refer to the “commencement date” or the “effective date,” as those terms are defined in N.J.A.C. 11:2-29.2. The commenter believed that a reference to the “commencement date” would be more appropriate. The commenter expressed similar questions with respect to the reference in N.J.A.C. 11:2-29.8.

RESPONSE: The Department agrees. The rule has been changed upon adoption to reflect this clarification for the reasons expressed by the commenter. A reference to the “commencement date” is more appropriate because “commencement date” is defined to mean the date which the applicant may begin withdrawing from this State, which reflects the action to be taken. Conversely, “effective date” is defined to mean the date at which the applicant has complied with all conditions in the approved plan of orderly withdrawal. As a plan of orderly withdrawal is not required for the actions referenced in N.J.A.C. 11:2-29.1(c) and 29.8, reference to “effective date” is not appropriate in that context.

COMMENT: One commenter stated that N.J.A.C. 11:2-29.3 allows an insurer to submit, and the Commissioner to approve, a reasonable substitute plan of withdrawal. The commenter believed that all of the subsequent provisions that apply to plans of withdrawal (that is, N.J.A.C. 11:2-29.3(b), 29.4 and 29.5) do not apply to substitute plans of withdrawal. The commenter suggested that N.J.A.C. 11:2-29.3(a) be revised to specifically provide that none of the requirements in the rules that are applicable to plans of withdrawal are applicable to substitute plans of withdrawal.

RESPONSE: Upon review, the Department has determined that no change is required. The Department initially notes that the language referenced by the commenter was not proposed for change. Thus, the comment is outside the scope of the proposal. In addition, the information that would be required to be filed with respect to plans filed prior to January 1, 2007 would be addressed in the substitute withdrawal procedure approved by the Commissioner.

COMMENT: One commenter stated that the confidentiality provisions of N.J.A.C. 11:2-29.7 should be expressly applicable to substitute plans of withdrawal and to informational filings. In addition, the commenter believed that the information specified in N.J.A.C. 11:2-29.7(a)9, which is correspondence with entities to which the applicant owes a financial obligation, should be substantially limited or eliminated. The commenter stated that, as written, this provision is broad and could potentially involve a significant amount of correspondence. The commenter questioned whether it would include return premiums due to policy cancellations, claim settlements or loss adjustment expenses.

RESPONSE: Upon review of the commenter's concern, the Department has determined that no change is required. Initially, the Department notes that the first change suggested by the commenter could not be made upon adoption as it would be a substantive change requiring notice to the public and an opportunity to comment. In addition, to the extent that information is required to be filed under a substitute withdrawal procedure approved by the Commissioner that is expressly confidential under N.J.A.C. 11:2-29.7, such information would continue to be considered confidential. The Department, however, does not believe that it is necessary to extend the confidentiality provisions to informational filings submitted pursuant to N.J.S.A. 17:17-10 and 17:33B-30, as applicable, as amended by P.L. 2003, c. 89, and N.J.A.C. 11:2-29.8. The filed information in question is limited in nature. The Department also notes that the confidentiality of any information filed with the Department that is not expressly addressed in these rules would be governed under the Open Public Records Act, N.J.S.A. 47:1A-1 et seq. (OPRA). That statute expressly provides that certain information filed with a public agency may, nevertheless, be treated as confidential if it contains proprietary commercial information, trade secrets, or information which, if disclosed, would provide an advantage to competitors. The Department believes that OPRA and these rules provide adequate confidentiality protections for information filed by insurers.

Finally, with respect to the comment regarding the exception contained in N.J.A.C. 11:2-29.7(a)9, the Department will respond to such a request based on the information specifically requested. The Department does not believe that the provision is too broad. It references information that is required to be filed under the rules, which the Department does not believe must be kept confidential under OPRA. To the extent that such correspondence contains information that is not public under OPRA, such information would be confidential. However,

as noted the above, the amount of information that may be public will depend on the nature of the information contained in such correspondence.

COMMENT: Several commenters expressed concerns with N.J.A.C. 11:2-29.6, which sets forth agents' rights governed under N.J.S.A. 17:22-6.14a(n). One commenter stated that the rights of agents in connection with insurers that withdraw but do not transfer business to a replacement carrier are not clear. The commenter suggested that the rule be amended to clearly indicate that if the withdrawing insurer does not "line up" a replacement carrier, its right to begin nonrenewing policies is governed by N.J.S.A. 17:17-10 or 17:33B-30, as applicable, and the obligation to offer renewals that would otherwise apply under N.J.S.A. 17:22-6.14a would not apply.

Another commenter stated that this rule would require an insurer to offer contract terms to agents of record for the transferred business "which contain terms and conditions concerning the use, control and ownership of policy expirations and payments of commissions that are no less favorable than the agents' current contracts" with the transferor. The commenter believed that this is problematic in that it would require the transferee insurer to provide terms and conditions for producer compensation which may not be economically feasible or appropriate for the type of business transferred, and which could force the transferee to write business at a loss. In addition, it may require that the transferee afford compensation to the agent of record in excess of those levels that the transferee typically pays its own producers, which could create dissatisfaction with the transferee's existing agency force should the terms of compensation offered to the transferor's agent of record become known. Finally, the rule may require the transferee to enter into a compensation arrangement, such as contingent commissions, that

violate the transferee's own internal policies on producer compensation. The commenter thus believed that the Department should adopt language that requires the transferee company to offer the agent of record terms and conditions for compensation that are "commercially reasonable," with due regard for the type of business transferred in the transferee's own internal policies and guidelines on compensation.

RESPONSE: Upon review, the Department has determined that no change is required. First, N.J.A.C. 11:2-29.6 provides that agents' rights pursuant to this rule shall be governed by N.J.S.A. 17:22-6.14a(n). That statute specifically applies only in the case of a transfer by an insurance company of any kind or kinds of insurance specified in its certificate of authority to another company. Accordingly, this statute would not apply where no transfer is made. The Department, however, notes that there are other requirements that relate to agents' rights and insurer obligations that are set forth in N.J.S.A. 17:22-6.14a that may apply in other contexts.

Similarly, the language in the rules with respect to payment of commissions tracks verbatim the statutory language at N.J.S.A. 17:22-6.14a(n). Adoption of the language suggested by the commenter thus would be inconsistent with the statute. The Department interprets the statute as requiring only that a transfer of business not change the terms of the existing agency agreement, and not to provide that no changes may be made. To the Department's knowledge, standard agency contracts provide for changes in their compensation terms by the company upon 90 days notice to the producer. This provision, like other terms of the agency contract, would not be altered by a transfer of business. Accordingly, the compensation provision of the contract may be changed either after the transfer by the transferee or by the transferor prior to the transfer, in accordance with the operative notice requirement and other terms of the contract.

COMMENT: One commenter expressly supported N.J.A.C. 11:2-29.6, which referenced N.J.S.A. 17:22-6.14a(n), and the reference to this statute in N.J.A.C. 11:2-29.8(d)3, which requires a replacement carrier to certify that it will comply with N.J.S.A. 17:22-6.14a(n) with respect to agents' rights.

RESPONSE The Department appreciates support of its proposal.

Federal Standards Statement

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

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

11:2-29.1 Purpose and scope

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

(c) *[Plans of withdrawal]* **Withdrawal informational filings*** filed on or after January 1, 2007, or with *[an effective]* **a commencement*** date on or after January 1, 2007, shall be subject to N.J.S.A 17:17-10 and 17:33B-30, as amended by P.L. 2003, c. 89, and N.J.A.C. 11:2-29.8.

11:2-29.8 Informational filing withdrawals

(a) Any proposed withdrawal **informational*** filing filed on or after January 1, 2007, or *[which will become effective]* **with a commencement date*** on or after January 1, 2007, shall be subject only to the provisions of this section, N.J.A.C. 11:2-29.1 and 29.2, and N.J.S.A. 17:17-10 or 17:33B-30, as applicable, as amended by P.L. 2003, c. 89.

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