

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF PROPERTY CASUALTY

Commercial Lines Insurance

Proposed Readoption with Amendments: N.J.A.C. 11:13

Proposed Repeal: N.J.A.C. 11:13-3

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

Authority: N.J.S.A. 17:1-8.1, 17:1-15e and 17:29AA-1 et seq.

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

Proposal Number: PRN 2007-368

Submit comments by February 15, 2008 to:

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The agency proposal follows:

Summary

Pursuant to Executive Order No. 66 (1978), the Commissioner of Banking and Insurance (Commissioner) proposes to readopt N.J.A.C. 11:13, Commercial Lines Insurance. This chapter is due to expire on June 9, 2008, pursuant to N.J.S.A. 52:14B-5.1c.

The Department has undertaken a review of these rules at several levels and finds that these rules continue to be necessary to implement and interpret the Commercial Insurance Deregulation Act of 1982 (Act), N.J.S.A. 17:29AA-1 et seq. The Act establishes a rating law for

commercial lines insurance separate from the provisions of the existing property/liability rating law except as specifically provided in the Act. By establishing a separate law for commercial lines insurance, the Act affords insurers greater flexibility in the underwriting and rating of commercial risks while maintaining appropriate regulatory oversight by the Department of Banking and Insurance (Department). The Commissioner is empowered under the Act at N.J.S.A. 17:29AA-29 to promulgate rules and regulations in order to implement and enforce its provisions.

As required by Executive Order No. 66, the Department has reviewed these rules and determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated.

This chapter includes rules related to commercial lines insurance. The Department has established rules concerning the following subjects codified in this chapter, listed by subchapter.

Subchapter 1, General Provisions, including the purpose, scope, and definitions for this chapter and its rate and policy form requirements;

Subchapter 2, Commercial Lines Filings, which provides requirements for rate, rule and policy form submissions;

Subchapter 3, Expense Experience, which incorporates N.J.A.C. 11:4-10 into this chapter regarding the reporting of expense experience;

Subchapter 4, Special Risks, which interprets the statutory definition of “special risks” and provides statistical reporting requirements;

Subchapter 5, Procedure for the Regulation of Consent to Higher Rate Filings, which incorporates N.J.A.C. 11:4-7, Procedure for the Regulation of Consent to Higher Rate Filings, into this chapter;

Subchapter 6, Commercial Insurance Rating Plans, provides for commercial insurance rating plans and establishes standards for rating plans that modify rates for specific risks;

Subchapter 7, Commercial Lines Insurance: Policy Form Standards, provides standards for the acceptance or disapproval of policy forms;

Subchapter 8, Commercial Lines Insurance: Prospective Loss Costs Filing Procedures, provides requirements for prospective loss cost filings;

Appendix A, Adoption of Advisory Organization Prospective Loss Costs, Summary of Supporting Information Form; and

Appendix B, New Jersey Expense Constant Supplement Calculation of Company Loss Cost Multiplier.

The Department is proposing to repeal N.J.A.C. 11:13-3 because it references N.J.A.C. 11:4-10, which only exists as a reserved chapter. Thus, this subchapter is no longer necessary.

The Department is also proposing to amend N.J.A.C. 11:13-4.1(b) to delete the reference to Subchapter 3, and is also deleting N.J.A.C. 11:13-4.2(a) because of the reference therein to Subchapter 3, as no longer necessary because Subchapter 3, Expense Experience is proposed for repeal. The Department is amending and, as the section's only paragraph, eliminating the codification of N.J.A.C. 11:13-4.2(b). The Department amending this paragraph by added "including expense statistics with respect to special risks written by insurers" to reflect the requirements of N.J.S.A. 17:29AA-17.

N.J.A.C. 11:13-7.4 was promulgated in 1998 to prohibit the use by commercial lines insurers of lead paint or lead contamination exclusions in any policy forms until January 1, 1999. This purpose was made clear in the text of the original subsection (a), which subsection was, in turn, referenced in the original subsection (b). See 28 N.J.R. 5137(b) and 30 N.J.R. 367(a).

However, when N.J.A.C. 11:13-7.4 was amended in 2002 to eliminate the prohibiting subsection (a) as outdated, that the section applied to lead liability was inadvertently obscured. See 34 N.J.R. 2947(a) and 35 N.J.R. 252(a). To clarify the section's application, the Department is amending its heading to read, "Exclusions from coverage for lead liability," and amending paragraph (a)1 to add "lead liability" before "exclusions."

A 60-day comment period is provided and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The Department believes that these rules, implementing the Commercial Insurance Deregulation Act of 1982, continue to enhance the ability of commercial insureds and insurers to effectively negotiate contracts, thereby stimulating competition and encouraging efficient rating and marketing practices.

These rules also set standards for individual premium risk modification plans filed by insurers of commercial risks and thus impact both insurers and insureds. Risk premium modification plans provide limited flexibility to vary the price of a policy based on the characteristics of a special risk.

Although the Department recognizes that many commercial insurers do not require the same degree of regulatory protection afforded to individual personal insureds, the requirements of the Act and the rules herein proposed for readoption with amendments ensure that the rights of commercial insureds are adequately protected. The deletion of N.J.A.C. 11:13-3 and other

related amendments will have no impact because the referenced provision in N.J.A.C. 11:4-10 no longer exists.

Economic Impact

The readoption of these rules will permit insurers to continue pricing individual commercial lines policies in a more accurate manner, within specified limits above and below their filed rates, based upon the actual risk undertaken. The readoption of these rules will continue to promote market competition, availability of commercial insurance and lower premiums.

Insurance companies will incur no additional expenses because the proposed readoption with amendments does not change the scope of the current rules. The Department similarly will not incur additional expenses in connection with the proposed readoption with amendments.

The filing and statistical reporting requirements in Subchapters 2, 4 and 5 continue to impose some economic cost upon insurers. However, the Department believes that these costs are necessary to provide for the Department's limited oversight of commercial lines insurance as required by the Act. The Department believes that the costs imposed by these rules are negligible when compared to the volume of business to which they apply. All commercial lines insurers currently maintain staff or use outside organizations to fulfill such requirements.

The deletion of N.J.A.C. 11:13-3 has no economic impact because the reference to N.J.A.C. 11:4-10 no longer exists.

The standards for commercial insurance rating plans in Subchapter 6 continue to impose some minimal economic costs upon insurers to comply with the filing requirements. These costs are similarly minimal when compared to the volume of commercial lines insurance business to

which they apply, and are reasonable in consideration of the public purposes for which they serve.

The standards for commercial insurance policy forms in Subchapter 7 do not impose any direct costs. These provisions establish what policy forms are acceptable, or not acceptable, for filing and use in this State pursuant to N.J.S.A. 17:29AA-6.

The Department believes that the Commercial Lines Insurance Prospective Loss Costs Filing Procedures, which introduced loss costs filings by rating organizations, continue to help encourage competition in commercial lines based on the cost of providing services.

Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for re-adoption with amendments and repeal relate to the business of commercial lines insurance and are not subject to any Federal requirements or standards.

Jobs Impact

The Department does not anticipate that any jobs will be either generated or lost as a consequence of the rules proposed for re-adoption with amendments and repeal.

Agriculture Industry Impact

The Department does not expect any impact on the agriculture industry by the rules proposed for re-adoption with amendments and repeal.

Regulatory Flexibility Analysis

The Department's rules proposed for readoption with amendments and repeal will only affect commercial lines insurers. If there are "small businesses" in the commercial lines insurance industry as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-1 et seq., they can expect to incur no additional costs because the proposed readoption does not change the reporting, recordkeeping and compliance obligations imposed by current rules. Costs are discussed more fully in the Economic Impact above.

To the extent that insurers qualify as "small business," they typically use the services of rating organizations or advisory organizations for rate and form filings. Nevertheless, there may be insurers that independently file rates and forms that qualify as "small businesses" according to the statutory definition.

The rules for commercial lines rating plans make no distinction between plans filed by small businesses and those filed by other insurers. The filing requirements are minimal and are currently being met by insurers of all sizes that wish to provide the rate flexibility available through such plans.

Since the purpose of the rules regarding commercial policy filings is to establish minimum standards for use by insurers, it would be inconsistent with these rules and the Act to establish different standards based upon company size.

Smart Growth Impact

The rules proposed for readoption with amendments and repeal have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 11:13.

Full text of the proposed amendments and repeal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 3. [EXPENSE EXPERIENCE] **(RESERVED)**

[11:13-3.1 Expense experience

(a) N.J.A.C. 11:4-10.1 and 10.2 including all subsequent amendments and supplements are hereby adopted as rules with the modifications indicated in (b) below.

1. This document is available for review at or may be purchased from the New Jersey Department of Banking and Insurance, 20 West State Street, PO Box 325, Trenton, New Jersey 08625.

(b) The following are modifications to the rule referenced in (a) above:

1. Reference to N.J.S.A. 17:29A-5 contained in N.J.A.C. 11:4-10.1(a) is deleted and replaced with N.J.S.A. 17:29AA-16.]

11:13-4.1 Special risks

(a) (No change.)

(b) Except as otherwise required by the provisions of this chapter or as may be ordered by the Commissioner, the requirements and procedures found in [subchapters] **N.J.A.C. 11:13-2** [and 3 above] shall not apply to special risks.

11:13-4.2 Reporting requirements

[(a) Expense experience statistics with respect to special risks written by an insurer shall be maintained in accordance with subchapter 3 of this chapter and shall be reported promptly to the Department upon request.

(b) The Commissioner may require the filing of such additional reports, **including expense statistics with respect to special risks written by insurers**, as he deems necessary to implement the provisions of the Commercial Insurance Deregulation Act of 1982 and this chapter.

11:13-7.4 Exclusions from coverage **for lead liability**

(a) The Department shall approve policy forms filings that include policy provisions or rating rules as follows:

1. That the **lead liability** exclusion applies only if the covered premises were constructed prior to 1978; and

2. (No change.)

(b) (No change.)