

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

DIVISION OF INSURANCE

Insurance Group

Proposed Readoption: N.J.A.C. 11:2

Proposed New Rules: N.J.A.C. 11:2-42.9 and 42.10

Proposed Repeal: N.J.A.C. 11:2-41

Authorized By: Thomas B. Considine, Commissioner, Department of Banking and
Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, 17:17-1 et seq., 17B:17- 1 et seq., 34:15-77, and
54:18A-1 et seq.

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

Proposal Number: PRN 2010-227.

Submit comments by November 19, 2010 to:

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The agency proposal follows:

Summary

The Department of Banking and Insurance (Department) proposes to readopt N.J.A.C. 11:2, concerning insurance group rules, with proposed new rules and a proposed repeal, as discussed below. This chapter is due to expire on September 21, 2010. In accordance with N.J.S.A. 52:14B-5.1c, the submission of this notice of proposal to the Office of Administrative Law extends the expiration date 180 days to March 20, 2011.

This chapter includes rules that relate to life and health and property and casualty insurance, the financial integrity of insurers, and to workers' compensation self-insurers, risk retention groups and purchasing groups. Several of these rules are specifically required for a state to obtain or retain accreditation by the National Association of Insurance Commissioners (NAIC), or to implement statutes that are required for accreditation. Rules concerning the following subjects are codified in this chapter:

1. Admission requirements for life and health insurers;
2. Insurance on financed automobiles;
3. Credit life and health insurance;
4. Electronic data processing equipment;
5. Proxies, consents and authorizations;
6. Information required in proxy statements;
7. Information required by participants in proxy solicitation in election contests;

8. Insider trading of domestic stock insurance company equity securities;
9. Advertisement of health insurance;
10. Mass marketing of property and liability insurance;
11. Group coverage discontinuance and replacement;
12. Procedures for the conduct of voting on a plan of reorganization of a domestic mutual life insurer;
13. Insolvent insurers;
14. Guaranteed arrest bond certificates of automobile club undertaking;
15. Unfair claims settlement practices;
16. Readable policies;
17. Designation of third party for certain notification by senior citizen insureds;
18. Advertisement of life insurance and annuities;
19. Military sales practices;
20. Annual audited financial reports;
21. Determination of insurers in a hazardous financial condition;
22. Credit for reinsurance;
23. Orderly withdrawal of insurance business;
24. Determining premium for perpetual homeowners insurance;
25. Custodial deposits;
26. Workers' compensation self-insurance;
27. Allocation of surplus lines insurance premium tax and surcharge;
28. Relief from obligations under the Fair Automobile Insurance Reform Act of 1990;
29. Risk retention groups and purchasing groups;

30. Producer-controlled insurers;
 31. Increase in capital and surplus requirements for property and casualty insurers;
 32. Increase in capital and surplus requirements for insurers;
 33. Life, health and annuity reinsurance agreements;
 34. Windstorm market assistance program;
 35. Standard Hurricane Deductibles and Expedited Process for Homeowners' Insurance Rate Changes; and
36. Treatment of Allocated Deposit-Type Deferred Annuity Contract Funds for Purposes of Calculating the Special Purpose Apportionment and the Fraud Assessment.

The rules in this chapter were promulgated to implement many of the statutory requirements in Titles 17, 17B, 34 and 54 of the New Jersey Statutes. The Department has undertaken a review of these rules to determine their current effectiveness and viability. Participating in this review were the Offices of Consumer Protection Services; Property/Casualty; Life/Health; Solvency Regulation; and Legislative and Regulatory Affairs. The rules continue to provide the insurance industry, other regulated entities, and consumers with vital information and useful standards concerning many aspects of insurance. The Department believes that the original purpose for each rule, as stated in the rule itself, continues to exist.

Based on its review, the Department is proposing to repeal Subchapter 41 related to the Windstorm Market Assistance Program (Windstorm MAP), which has not been operational for several years.

The Department is proposing to add new rules to N.J.A.C. 11:2-42, which relates to homeowners' insurance hurricane deductibles and the expedited process for homeowners'

insurance rate changes. The Department is proposing a new rule at N.J.A.C. 11:2-42.9 to provide that insurers and the FAIR Plan may file to use mandatory hurricane deductibles of up to five percent and optional deductibles up to 10 percent in areas represented by the ZIP codes set forth in proposed Exhibit E in the Appendix to the subchapter. In addition, insurers and the FAIR Plan may file to use hurricane deductibles in areas other than those ZIP codes subject to approval by the Department. In determining whether to approve the use of hurricane deductibles in areas beyond the ZIP codes set forth in proposed Exhibit E, the Department shall consider an insurer's exposure to catastrophic hurricane losses, associated reinsurance costs, and potential impacts to the insurer's solvency.

The Department is also proposing a new rule at N.J.A.C. 11:2-42.10 to retain the reporting requirements relative to the amount of homeowner's insurance in-force and new business written, currently set forth in N.J.A.C. 11:2-41.9. However, the reports shall be due semi-annually, rather than annually, which adjustment was initially set forth in Bulletin No. 09-08.

The Department believes that the rules in this chapter primarily serve two general purposes in implementing insurance laws of this State. First, the rules protect current and prospective policyholders by addressing issues such as unfair claims settlement practices, advertising, readability of insurance policies and forms, and mass marketing of property and liability insurance. Secondly, they provide guidance to insurers and other regulated entities with respect to such business-related matters as insolvencies, proxies, insider trading of stock, annual audited financial reports, deposits, withdrawal from transacting business, reinsurance, capital and surplus requirements, and approval for employers to self-insure workers' compensation. Several rules serve both purposes, such as those pertaining to advertising, unfair claims settlement

practices, withdrawal from transacting business, capital and surplus requirements, deposits, and workers' compensation self-insurance. The Department believes that through their readoption, these rules will continue to provide the regulatory framework by which the Department may effectively monitor and evaluate the financial condition of insurers and other regulated entities, ensure that such entities continue to comply with the insurance laws and other applicable laws of this State, and provide for consistent evaluation and treatment by the Department of these entities. Moreover, through readoption, these rules will continue to provide insurers and other regulated entities with guidance and specific standards for compliance with New Jersey laws, thereby avoiding confusion regarding such requirements. This, in turn, should continue to benefit insurers, other regulated entities, policyholders, the market, and the public generally.

A 60-day comment period is provided for this notice of proposal, 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

As noted in the Summary above, the rules in this chapter address a myriad of subjects regarding the business of insurance in this State and impose requirements governing other regulated entities (workers' compensation self-insurers, and risk retention groups and purchasing groups). The rules concerning advertising content help ensure that consumers are fully informed about insurance products so that they can choose products best suited to their needs. The rules concerning unfair claims settlement practices enable insureds to receive prompt, efficient and appropriate consideration of their claims. The rules concerning readable policies help enable insureds and prospective insureds to understand more easily the highly technical aspects of

insurance in insurance contracts. The rules concerning mass marketing of property and liability insurance prevent abuses in the sale of such insurance pursuant to a mass marketing plan, while preserving for consumers the benefits of this form of marketing.

The insurance industry has also come to rely on the presence and viability of these rules in their operations. Insurers are provided with standards concerning certain trade practices as noted above, and with information concerning annual audited financial reports, insolvency, determination of hazardous financial condition, cancellation of property/liability policies, insider trading, proxies, sale of credit life and health insurance, as well as requirements governing producer-controlled property/liability insurers, risk retention and purchasing groups, workers' compensation self-insurers, and capital and surplus requirements. The rules in this chapter implement various statutory requirements and enable the Department to fulfill its regulatory duties under law. Failure to readopt these rules would impair the Department's ability to properly oversee insurers' operations; would unsettle established relations between insurers and the general public, as well as between these two groups and the Department; and could result in the loss of NAIC accreditation of the Department.

The protections that these rules afford to the consumer and the operational guidance that they afford to the insurance industry support their continued existence, both to implement statutory provisions and to foster and promote an effective regulatory system and sound insurer business practices.

The proposed repeal deletes rules which have not been operational in several years. The proposed new rules provide for the use by insurers and the FAIR Plan of mandatory/optional hurricane deductibles in designated coastal areas designated by the ZIP codes set forth in proposed Appendix Exhibit E, and the use of hurricane deductibles beyond those areas subject to

approval by the Department. The proposed new rules also provide for reporting semi-annually by insurers and surplus lines agents of the amount of in-force homeowner's insurance business, similar to that currently required by N.J.A.C. 11:2-41.9 and Bulletin No. 09-08. These proposed new rules thus will have a beneficial social impact by encouraging insurers to write in coastal areas of the State, and by enabling the Department to continue monitoring the extent of such writings.

Economic Impact

The proposed repeal eliminates rules that have not have not been operational in several years. The proposed new rules retain the reporting requirements set forth in N.J.A.C. 11:2-41.9 and Bulletin No. 09-08, and enable insurers and the FAIR Plan to utilize hurricane deductibles in designated coastal areas of the State, or in any area subject to the approval by the Department. Insurers and the FAIR Plan (and surplus lines agents, with respect to reporting of in-force homeowners' insurance exposures) will be required to bear any costs associated with compliance with the proposed new rules. These costs should be minimal since such reports have been required for several years, and such information should be readily available. Also, the costs for filing for approval of hurricane deductibles outside the designated coastal areas should be minimal, and is voluntary on the part of the insurer or FAIR Plan. The limitations on the amount of the hurricane deductibles for homeowners' insurance (both mandatory and optional) set forth in proposed N.J.A.C. 11:2-42.9 reflect the amounts the Department has approved over the past several years. No companies have been approved for hurricane deductibles for homeowners' insurance in excess of these amounts.

Insurers and other regulated entities will continue to be required to incur any costs associated with continued compliance with the requirements set forth in this chapter. These requirements include: the requirement that insurers file an annual audited financial report completed by an independent certified public accountant; the requirement that insurers maintain files for the Department's review concerning advertising activities; the requirement that insurers file a risk-based capital report with the Department annually; the requirement that risk retention groups and purchasing groups register with the Department and file specified information in order to enable the Department properly to monitor their activity consistent with the Federal Liability Risk Retention Act and N.J.S.A. 17:47A-1 et seq.; the requirement that producer-controlled property/casualty insurers file an actuarial opinion or other information annually with the Department as required by N.J.S.A. 17:22D-1 et seq.; the requirement that insurers continue to comply with all requirements regarding claims settlement practices; the requirement that insurers comply with any order of the Commissioner upon a finding of hazardous financial condition as set forth in N.J.A.C. 11:2-27; the requirement that insurers seeking to withdraw from transacting business in this State file required information and comply with all requirements set forth in N.J.A.C. 11:2-29; the requirement that insurers pay all custodian fees for custodial deposits; the requirement that employers seeking to self-insure workers' compensation or to continue to self-insure that coverage file required information with the Department and maintain a surety bond as set forth in N.J.A.C. 11:2-33; the requirement that surplus lines agents file required periodic reports and properly allocate premiums subject to tax and applicable surcharge in this State pursuant to N.J.A.C. 11:2-34; and the requirement that insurers seeking relief from certain statutory obligations file required information with the Department. The use of professional services currently required by the rules (for example,

actuaries, claims professionals, certified public accountants, underwriting professionals, etc.) will continue to be necessary. The costs for these services will vary depending on the professional, but should be consistent with current annual costs of compliance. The Department notes, however, that no additional costs should be imposed as this proposal merely continues requirements that are currently in effect or, in the case of N.J.A.C. 11:2-42.9, were heretofore applied.

The Department will continue to incur any costs associated with reviewing information filed pursuant to this chapter and ensuring compliance with all of the rules set forth therein.

Finally, as noted in the Social Impact above, the rules in this chapter address a myriad of aspects of the business of insurance in this State, and provide requirements governing other regulated entities. These rules will continue to provide a regulatory framework by which the Department may continue to monitor the business of insurers and other regulated entities to help ensure that such entities will be in a position to pay claims when they are due. This, in turn, should benefit insureds, insurers, taxpayers and the public generally.

The failure to readopt this chapter would require the insurance industry to perform many significant statutory functions without guidance from, or oversight by the Department. This would impose significant costs on the industry because current compliance requirements would not be readily available to the industry, requiring them to utilize procedures which may or may not be acceptable to the Department. This, in turn, could result in disruption to the market with attendant additional costs.

Further, the readoption of the current rules will enable the Department to continue to monitor insurers and other regulated entities in a manner which appropriately meets its current

fiscal resources and capabilities. The use of current procedures that have been proven effective over time produces economies for the Department.

Thus, the benefits to be achieved from readoption of the rules, as set forth above, outweigh the minimal costs insurers will incur as a result of their readoption and the significant costs that would be imposed from the failure to readopt the rules. Similarly, the benefits to be achieved by the proposed new rules will, by encouraging homeowners insurers to write in coastal areas of the State, outweigh any costs that may be incurred in connection with insurers voluntarily seeking to impose hurricane deductibles.

Federal Standards Statement

A Federal standards analysis is not required as the rules set forth in this chapter and the proposed new rules and repeal are not subject to any Federal requirements or standards.

Jobs Impact

As set forth in the Summary, the rules in this chapter address a myriad of aspects of the business of insurance. Regulated entities may be required to hire additional professional staff or may comply with this chapter through utilization of current resources or reallocation of existing resources. The readoption of these rules will continue long-standing procedures with respect to various requirements for insurers and other regulated entities, as well as the Department's ability to properly oversee the operations of these entities. Similarly, the new rules are either technical in nature, or reflect the standards for the use of hurricane deductibles for homeowner's insurance heretofore applied by the Department, and thus should not have any substantive impact.

However, to the extent that the rules in this chapter help promote a healthy insurance marketplace in New Jersey, the climate for business and job growth is improved.

Agriculture Industry Impact

The rules proposed for re adoption and the proposed new rules and repeal will have no impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

In some instances, entities regulated by the rules in this chapter are “small businesses” as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Several rules (for example, replacement of life insurance) relate to the conduct of insurance producers, most of whom are small businesses. In addition, the rules governing workers’ compensation self-insurance affect employers seeking to self-insure their workers’ compensation obligations, many of whom may be small businesses.

Numerous recordkeeping, reporting and compliance requirements will continue to be imposed by this chapter, as set forth in the Economic Impact above. The rules continue to apply to all insurers, insurance producers, risk retention groups, purchasing groups, or employers, as the case may be, without regard to size, since they implement statutory provisions and/or regulatory tenets which allow for no exceptions or differentiation based on business size. The Department notes, however, that the proposed re adoption of these rules imposes no new recordkeeping, reporting, or other compliance requirements, but merely continues those requirements that have existed for many years, in some cases for over 25 years. As noted above, the proposed new rules should impose minimal, if any, additional costs on insurers and

producers. The Department, therefore, believes that the readoption of these rules and the proposed new rules should not impose any adverse or undue burdens on “small businesses.”

The Department anticipates that future annual costs of compliance with these rules should be consistent with current annual costs.

The use of professional services currently required by the rules proposed for readoption (for example, actuaries, claims professionals, underwriting professionals, etc.) will continue to be necessary, at costs which vary with the individual professional.

Smart Growth Impact

The proposed new rules and the rules proposed for readoption and repeal will not have an impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Housing Affordability Impact

The rules proposed for readoption and the proposed repeal and new rules will not have an impact on housing affordability in this State in that the rules proposed for readoption and the proposed repeal and new rules relate to the business of insurance.

Smart Growth Development Impact

The rules proposed for readoption and the proposed repeal and new rules will not have an impact on smart growth in this State and there is an extreme unlikelihood that the rules proposed for readoption, or proposed repeal and new rules would evoke a change in housing production in Planning Areas 1 or 2 or within designated centers under the State Development and

Redevelopment Plan in New Jersey in that the rules proposed for readoption and the proposed repeal and new rules relate to the business of insurance.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 11:2.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 11:2-41.

Full text of the proposed new rules follows (additions indicated in boldface **thus**):

SUBCHAPTER 42. HOMEOWNERS' INSURANCE: STANDARD HURRICANE DEDUCTIBLES AND EXPEDITED PROCESS FOR HOMEOWNERS' INSURANCE RATE CHANGES

11:2-42.9 Application of hurricane deductibles

(a) **Insurers and the FAIR Plan may file to use mandatory hurricane deductibles of up to five percent and optional hurricane deductibles up to 10 percent.**

(b) **Hurricane deductibles may be used in areas designated by the ZIP codes set forth in Exhibit E in the Appendix to the subchapter, incorporated herein by reference. In addition, subject to approval by the Department, insurers and the FAIR Plan may file to use hurricane deductibles as set forth in (a) above in areas not designated by the ZIP codes set forth in Exhibit E. In determining whether to approve a request to apply mandatory and/or offer optional hurricane deductibles in areas beyond those set forth in Exhibit E, the Department shall consider:**

1. An insurer's exposure to catastrophic hurricane losses, associated reinsurance costs, and potential impacts to the insurer's solvency;

2. Associated reinsurance costs; and
3. Potential impacts to the insurer's solvency.

11:2-42.10 Reports

(a) Insurers and the FAIR Plan shall, semi-annually, submit reports relative to the amount of in-force and new business homeowner's insurance written. The reports shall be submitted in accordance with a format which shall be posted on the Department's website: <http://www.state.nj.us/dobi>. Surplus lines agents shall file information with respect to the placement of such coverage with surplus lines insurers.

(b) Reports shall be due January 31 and July 31 for evaluation dates of the previous December 31 and June 30, respectively.

APPENDIX

Exhibit E

ZIP CODES

07002	07719	08006	08247	08734
07008	07720	08008	08248	08735
07036	07721	08050	08251	08736
07064	07723	08087	08260	08738
07077	07724	08092	08270	08739
07201	07730	08201	08311	08740
07202	07732	08202	08324	08741
07206	07734	08203	08327	08742
07302	07735	08204	08332	08750
07304	07737	08205	08345	08751
07305	07739	08210	08349	08752
07306	07740	08212	08401	08753
07701	07748	08221	08402	08754
07702	07750	08223	08403	08755

07704	07753	08225	08404	08756
07709	07755	08226	08406	08757
07711	07756	08230	08721	08758
07712	07757	08232	08722	08832
07715	07758	08234	08723	08861
07716	07760	08241	08724	08862
07717	07762	08242	08730	08879
07718	07764	08243	08731	
08005	08244	08732		