

INSURANCE  
DEPARTMENT OF BANKING AND INSURANCE  
DIVISION OF INSURANCE

Surplus Lines Insurance: Procurement Procedure

Proposed Repeals: N.J.A.C. 11:1-33.3 through 33.7, and 11:1-33 Appendix Exhibit A

Proposed Recodification with Amendment: N.J.A.C. 11:1-33.8 as 33.3

Proposed Amendments: N.J.A.C. 11:1-33 Appendix Exhibit B

Proposed New Rules: N.J.A.C. 11:1-33 Appendix Exhibits A-1 and A-2

Authorized By: Holly C. Bakke, Commissioner Department of Banking and Insurance

Authority: N.J.S.A. 17:1-8.1, 17:22-6.41, 17:22-6.42, 17:22-6.43, and 17:22-6.45, and P.L. 2003, c. 179

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

Proposal Number: PRN 2004 - 173

Submit comments by July 2, 2004 to:

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The agency proposal follows:

**Summary**

The Department of Banking and Insurance (Department) proposes to delete N.J.A.C. 11:1-33.1(a) and to repeal N.J.A.C. 11:1-33.3 through 33.7. These provisions combined established procedures and standards for the acceptance or disapproval of policy forms submitted

by surplus lines insurance agents in accordance with the Surplus Lines Law, N.J.S.A. 17:22-6.40. The proposed deletion and repeals are in accordance with the recently enacted P.L. 2003, c.179, which deregulated policy forms used by surplus lines insurers. The Department is proposing these new rules, repeals and amendments to N.J.A.C. 11:1-33 to alert consumers of the provisions of this new law. As required in the new law, the Department will henceforth not require surplus lines producers to submit certain forms on behalf of surplus lines insurers for approval. The proposed deletion and repeals reflect the Legislature's objective to have less regulatory oversight in the surplus lines market, as is the practice in other states.

The Department is proposing to recodify N.J.A.C.11:1-33.1(b) as (a), and to make a grammatical change in this provision so as to clarify that the remaining subsections, recodified as (b) and (c), set forth the procedures for the procurement of insurance from surplus lines insurers and from ineligible unauthorized insurers, in accordance with N.J.S.A. 17:22-6.43, 6.45 and 6.47.

The Department is also proposing to amend subsections (a) of N.J.A.C. 11:1-33.8, recodification as N.J.A.C. 11:1-33.3, to indicate that a New Jersey insurance producer who may be placing coverage for a New Jersey insured with a surplus lines insurer or an ineligible unauthorized insurer must complete the form incorporated into the rule as Exhibit B, as evidence of their first having made a diligent effort to place the coverage with an authorized insurer.

In addition, the Department proposes a new N.J.A.C. 11:1-33.3(b)1 which provides that, at the time of solicitation, the producer shall provide to the person solicited a copy of the form incorporated into the rule as Exhibit A-1 in the Appendix to Subchapter 33, and retain a signed copy. The Department is also proposing to recodify N.J.A.C. 11:1-33.8(b)1 and 2 as N.J.A.C. 11:1-33.3(b)2 and 4, with no change in text. The Department further proposes new N.J.A.C.

11:1-33.(b)3 which provides that, at the time of issuing or delivering a surplus lines policy, evidence of coverage or renewal policy, the surplus lines insurer or producer shall place upon the policy, evidence of coverage and renewal policy the statement set forth in Exhibit A2 in the Appendix. The Department is also amending the text of recodified N.J.A.C. 11:1-33.3(d)1. The cross-reference therein should be to N.J.A.C. 11:1-33.3(b)1 and not to N.J.A.C. 11:1-33.9(b)1 as it currently reads.

The Department is also proposing to repeal Exhibit A in the Appendix and replace it with new Exhibits A-1 and A-2. Proposed Exhibit A-1 is a form that surplus lines insurance applicants must sign at the time of solicitation by a licensed insurance producer. The form is a notification that the insurance policy written by a surplus lines insurer is not subject to the filing or approval requirements of the Department. Proposed new Exhibit A-2 sets forth text that is to be shown on the policy, evidence of coverage and renewal, stating that the surplus lines policy may contain conditions, limitations, exclusions and less favorable terms than a policy issued by an insurer granted a Certificate of Authority by the Department.

The Department also proposes to amend Exhibit B in the Appendix, which deals with the certification of effort to place a risk with an authorized insurer. Under the amendments, originating producer certifies either that he was unable to obtain an offer/quote for coverage of the risk in the admitted market, or that the only offer(s)/quote(s) obtained in the admitted market reflect such a substantial premium increase, and/or reduction in coverage that, as a practical matter, coverage in the admitted market is unavailable.

This rule proposal provides for a comment period of 60 days, and therefore, pursuant to N.J.A.C. 1:30-3.3, is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

### **Social Impact**

The proposed repeals, new rules and amendments should have a positive impact on New Jersey consumers because they will ease current restrictions in the surplus lines market and will increase insurance availability to those who previously could not obtain insurance from insurers in the admitted market. In addition, the new disclosures which producers will be required to provide will ensure that consumers are aware of the unregulated nature and potential disadvantages of surplus lines policies, thus enabling consumers to make better-informed decisions on whether to proceed to purchase such a policy.

### **Economic Impact**

The proposed repeals, new rules and amendments will have a positive economic impact on surplus lines insurers and policyholders in New Jersey, as they will enable surplus lines insurers to better respond to the needs of applicants or insureds who cannot obtain insurance from admitted insurers. The proposed repeals, new rules and amendments will facilitate applicants and insureds being able to obtain coverage that either is not available, or that may only be obtained from an authorized insurer for a premium amount that is so high as to render the coverage unavailable from such an insurer as a practical matter. As a result, New Jersey entities that might otherwise find it impossible or unfeasible to obtain insurance may now be able to secure coverage. Ultimately, the repeals, new rules and amendment will help stabilize the market and encourage competition, consistent with the current deregulation initiative in the industry.

### **Federal Standards Statement**

A Federal standard analysis is not required because the proposed repeals, new rules and amendments deal with surplus lines insurance and are not subject to any Federal standards or requirements.

### **Jobs Impact**

The Department has determined that no jobs will be generated or lost as a consequence of the proposed repeals and new rules and amendments.

### **Agriculture Statement**

The Department does not anticipate any impact on agriculture from the proposed repeals, amendments and new rules.

### **Regulatory Flexibility Analysis**

The Department believes that the proposed repeals and new rules and amendments will apply to “small businesses” as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., because some insurers and surplus lines producers may have fewer than 100 full-time employees. To the extent that the repeals, new rules and amendments will apply to such small businesses, they will be required to comply with the proposed amendments and new rules as described in the Summary above. The Department does not believe that the proposed amendments, repeals and new rules will impose any substantial additional compliance costs on insurers and producers. Surplus lines producers’ and insurers’ costs may decrease because they will no longer be required to submit policy forms for approval. All that will be required of producers is to provide notice to applicants at the time of solicitation stating that the applicant or insured understands that a policy written by a surplus lines insurer is not subject to the filing or approval requirements of the New Jersey Department of Banking and Insurance. No distinction is made in N.J.S.A. 17:22-6.45 or PL. 2003. c. 179 amongst insurers or producers based on size. Therefore, the proposed repeals, new rules and amendments provide no differentiation in

compliance requirements based on business size. All businesses should be able to comply with the proposed repeals, new rules, amendments utilizing current staff no outside professional services or resources should be needed. The proposed amendments and new rules impose no additional reporting or recordkeeping requirements on insurers.

### **Smart Growth Impact**

The proposed repeals, new rules and amendments have no impact on the achievement of Smart growth and implementation of the State Development and Redevelopment Plan.

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 11:1 -33.3 through 33.7 and 11:1-33 Appendix Exhibit A.

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

SUBCHAPTER 33. SURPLUS LINES INSURANCE: [POLICY FORM APPROVAL  
PROCEDURES AND STANDARDS] **PROCUREMENT  
PROCEDURE**

11:1-33.1 Purpose and scope

[(a) These rules establish procedures and standards for the acceptance or disapproval of policy forms submitted by surplus lines agents in accordance with the Surplus Lines Law, N.J.S.A., 17:22-6.40 et seq. Nothing in these rules shall authorize the acceptance or use, or prohibit the disapproval, of a policy form that is otherwise prohibited by another law or rule.]

[(b)] **(a)** These rules [also] set forth procedures for the procurement of insurance from surplus lines insurers, and **from** ineligible unauthorized insurers in accordance with N.J.S.A. 17:22-6.43, 6.45 and 6.47.

(c) and (d) recodified as (b) and (c)

Recodify existing (a) and (d) as **(b) and (c)** (No change in text.)

11:1-[33.8] **33.3** Surplus lines insurance coverage procurement requirements

(a) Except for coverages on the Exportable List, any licensed New Jersey insurance producer who may be placing coverage on behalf of a New Jersey insured shall first make a diligent effort to place the coverage with an authorized insurer. **As evidence of having made such an effort, the producer shall complete form SLPS-6 CERT1, incorporated herein by reference as subchapter Appendix Exhibit B.** Only that coverage not so procurable from an authorized insurer may be placed with a surplus lines insurer, provided, however, that if the unprocurable coverage appears on the Exportable List, the associated commercial general liability and commercial property coverages may be exported along with the unprocurable coverage.

1. - 2. (No change.)

(b) When coverage on behalf of a New Jersey insured cannot be placed with an authorized insurer [pursuant to] **or a surplus lines insurer as set forth in** (a) above, a New Jersey licensed surplus lines agent may place the coverage with an ineligible unauthorized insurer. Procurement of insurance from an ineligible unauthorized insurer may be made only when it is not otherwise procurable from admitted insurers or a surplus lines insurer and only if

the express[ed] conditions in (b)1 through [5] 7 below are fully satisfied at least five working days prior to the binding of insurance coverage.

**1. At the time of solicitation, the producer shall provide to the applicant a copy of the form incorporated herein by reference as Exhibit A-1 in the Appendix to this subchapter and retain a signed copy.**

[1.] **2.** (No change in text.)

**3. At the time of issuing or delivering a surplus lines policy, evidence of coverage, or a renewal policy, the surplus lines insurer or producer shall place upon the policy, evidence of coverage and renewal policy the statement incorporated herein by reference as Exhibit A-2 in the Appendix for this subchapter.**

Recodify existing 2. – 5. As **4. – 7** (No change in text.)

(c) (No change.)

(d) Upon renewal of any placement pursuant to (b) above, a diligent effort shall be made to place the business with an authorized insurer or a surplus lines insurer in accordance with (a) above. If the business cannot be placed with an authorized insurer or a surplus lines insurer, the following conditions shall be met at least five business days prior to the effective date of the renewal policy:

1. The surplus lines agent shall, in accordance with N.J.A.C. 11:1-[33.9] **33.3(b)1**, complete forms SLPS-6 Cert1 and SLPS-8-AFF3, prior to each renewal;

2. – 3. (No change.)

(e) – (f) (No change.)



Recodify existing 11:1-33.9 **33.4** (No change in text.)

APPENDIX

**EXHIBIT A-1**

**Form to be used at the time of solicitation:**

**The undersigned solicited person has been advised by the undersigned insurance producer and understands that an insurance policy written by a surplus lines insurer is not subject to the filing or approval requirements of the New Jersey Department of Banking and Insurance. Such a policy may contain conditions, limitations, exclusions and less favorable terms than a policy issued by an insurer granted a Certificate of Authority by the New Jersey Department of Banking and Insurance.**

\_\_\_\_\_

\_\_\_\_\_  
**Solicited Person's Signature**

\_\_\_\_\_  
**Solicited Person's Name (Print or Type)**

\_\_\_\_\_  
**Producer Signature**

\_\_\_\_\_  
**Producer Name (Print or Type)**

\_\_\_\_\_  
**New Jersey Producer License Reference Number**

**EXHIBIT A-2**

**Statement to Appear on all Surplus Lines Policies, Evidence of Coverage and Renewal**

**Policies:**

**This policy is written by a surplus lines insurer and is not subject to the filing or approval requirements of the New Jersey Department of Banking and Insurance. Such a policy may contain conditions, limitations, exclusions and less favorable terms than a policy issued by an insurer granted a Certificate of Authority by the New Jersey Department of Banking and Insurance.**

EXHIBIT B

Form No.SLPS-6-CERT1

|\_|\_|\_|\_|\_| - |\_|\_| - |\_|\_|\_|\_|\_|\_|

Transaction #

STATE OF NEW JERSEY  
DEPARTMENT OF BANKING AND INSURANCE  
SURPLUS LINES EXAMINING OFFICE  
P.O. BOX 325 Trenton, New Jersey 08625-0325

CERTIFICATION OF EFFORT TO PLACE RISK WITH AUTHORIZED INSURER

This certification shall be submitted by the originating producer with the surplus lines agent within 30 business days after the effectuation of any surplus lines insurance. The original of the certification must be maintained in the files of the surplus lines agent and a copy in the files of the producer and both must be available for inspection by the Commissioner for a period of at least five years.

\_\_\_\_\_  
(Name of insured)

\_\_\_\_\_  
(Address of insured)

\_\_\_\_\_  
(Location of Property or Risk)

\_\_\_\_\_  
(Insurance Coverage: Description and Amount)  
////////////////////////////////////

\_\_\_\_\_  
(Originating producer- Corporate or partnership)

\_\_\_\_\_  
(Originating producer- Individual name and/or Title)

\_\_\_\_\_  
(Originating producer-Complete Address)

The above hereby certifies that he/she is duly licensed as an insurance producer under the laws of New Jersey, and that: On or about \_\_\_\_\_, [2001], I was engaged by the insured named herein to procure insurance of the kind described herein and in the amount

shown. [There is no renewal offer/quote or existing coverage for this risk in the admitted market]. I have made a diligent effort first to place this coverage with authorized insurers, each of which is authorized in New Jersey to write insurance of the kind requested and is an insurer that I had a good faith reason to believe might consider writing the type of coverage described herein.

**Check whichever is applicable:**

**[ ] Having made a diligent effort, I was unable to obtain an offer/quote in the admitted market;**

**AND/OR**

**[ ] Having made a diligent effort, the only offer(s)/quote(s) obtained in the admitted market reflect(s) such a substantial increase in premium over coverage I placed within the preceding 12 months that coverage in the admitted market is unavailable as a practical matter.**

The following insurers are among those that [declined to accept all or any part of the risk] **I contacted relative to this risk, or to substantially similar risks within the past 30 days:**

<u>Insurer</u>	<u>Representative</u>	<u>Telephone No.</u>	<u>Date</u>	<u>Result Code*</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

**\*Result Codes:**

**A- Insurer declined to accept all or any part of risk.**

**B- Insurer provided offer/quotes reflecting a very substantial increase in premiums compared to substantially similar coverage I placed within the preceding 12 months.**

I certify that the foregoing statements made by me are true to the best of my knowledge and belief. I am aware that if any of the statements are willfully false, I am subject to civil and criminal penalties.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature)