

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

OFFICE OF SOLVENCY REGULATION

**Data Submission Requirements for all Licensed Producers with Surplus Lines Authority
and Eligible Surplus Lines Insurers**

Adopted Amendments: N.J.A.C. 11:19-3.1 through 3.5

Proposed: June 16, 2014, at 46 N.J.R. 1406(a).

Adopted: April 21, 2015, by Kenneth E. Kobylowski, Commissioner, Department of Banking and Insurance.

Filed: April 21, 2015, as R.2015 d.085, **with non-substantial 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, 17:1-15.e, 17:1C-19 et seq., and 17:22-6.40 et seq.

Effective Date: May 18, 2015.

Expiration Date: October 3, 2015.

Summary of Public Comments and Agency Responses:

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

1. The Property Casualty Insurers Association of America;
2. The Surplus Lines Association of New Jersey;
3. The International Underwriting Association of London; and
4. The National Association of Professional Surplus Lines Offices.

COMMENT: One commenter stated that the amendment to N.J.A.C. 11:19-3.3(a), which provides that the data requested shall be used by the Department for the purpose of determining compliance with “all laws and rules applicable to eligible insurers and insurance producers” raises questions as to which specific laws and rules could be violated and determinable from the reported data, other than the proper submission of premium data for reconciliation with such data reported by producers. The commenter stated that the current system design does not allow for an insurer to submit data for a policy that was not placed through a New Jersey licensed surplus lines producer. The commenter stated that policy transactions cannot be submitted unless all fields are valid and the producer for the policy is validated in the system. While the insurer may be able to identify instances of producer noncompliance in the process of gathering the information, there appears to be no feature in the system that allows for reporting any such transactions for follow-up by the Department. The commenter thus requested clarification on the intent of this provision, including the specific references to “all laws and rules applicable” that could be violated.

RESPONSE: It is unclear to the Department why the phrase “all laws and rules applicable” is a concern. Eligible surplus lines insurers and producers with surplus lines authority are required to comply with all applicable laws and rules. Surplus lines policies should not be directly procured. Pursuant to N.J.S.A. 17:22-6.42(c) surplus lines risks must be placed through a New Jersey licensed surplus lines insurance producer. As stated in the proposal Summary, two possible uses for the data are: confirming the accuracy of the premium data reported by producers for purposes of the payment of premium tax pursuant to N.J.S.A. 17:22-6.59 and to determine whether all of

the insurer's business was placed through a New Jersey licensed surplus lines insurance producer pursuant to N.J.S.A. 17:22-6.42.

The Department also notes that it is incorrect that policy transactions cannot be submitted unless all fields are valid and the producer for the policy is validated in the system. The insurer can provide the required information to complete the required fields in the system.

COMMENT: One commenter expressed concern with N.J.A.C. 11:19-3.4(b), with respect to the requirement that the insurer "note all activities that occurred on a policy during the calendar year." The commenter believed that the intent of the rule is to designate that the insurer should record and report all premium transactions for policies that were transacted during the calendar year. Under the proposed amendments, multiple transactions would now be reported for a policy in the submission, rather than combining all related transactions during the period for a given policy. The commenter expressed concern that the term "activities" could require the notation of all non-premium bearing endorsements, such as name changes, corrections to mailing addresses, addition of mortgagees, etc. The commenter stated that only premium bearing transactions are relevant and the rule should be limited to those transactions. The commenter also believed it would be beneficial if the data elements enumerated included the transaction date.

RESPONSE: Upon review, the Department has determined that it would be appropriate to make a change upon adoption to clarify the intent of the rule to address the commenter's concerns. The current rule only required the reporting of all combined premium activity. The intent of the amendment is to obtain a report listing all premium transactions for the year. Thus, premiums will now be listed individually, rather than combined. This permits the Department to match

premiums by producer and insurer in the year they are effective. Accordingly, the Department has changed N.J.A.C. 11:19-3.4(b) upon adoption to change the word “activities” to “premium activity” in the second sentence to clarify and confirm the Department’s intent and help avoid confusion. In addition, the Department agrees that transaction dates should be included in the data elements, and in fact are so included under the Surplus Lines Automation Suite (SLAS).

COMMENT: One commenter supported the use of the SLAS system and believed that surplus lines producers should have a positive experience with the system. The commenter also appreciated the flexibility afforded by the Department in the timing of implementing SLAS, to allow surplus lines producers sufficient time to update their systems and begin collecting required data, and the accessibility and responsiveness of Department staff throughout the implementation process.

RESPONSE: The Department appreciates the support of its proposal.

COMMENT: One commenter expressed concern regarding one aspect of the information producers must report through SLAS, specifically the unique market reference number (UMR#). The commenter believed that the UMR# is not readily available to a surplus lines producer when the producer does not hold the contract with the insurer, but places the business through another wholesale producer or in the open market. The commenter stated that the UMR# would only be readily available to the New Jersey surplus lines producer if that producer itself holds the contract under which the business was placed. The commenter believed some producers may have difficulty obtaining the UMR# from another producer.

RESPONSE: Upon review, the Department has determined that no change is required. From all of the producers using SLAS, representing 99 percent of the New Jersey surplus lines producers, the Department has not received any complaints that the UMR# is not available. The Department believes that the UMR# should be readily available in that it is usually on the policy, the declarations page, or in the policy detail outlining syndicate information (in the case of Lloyd's).

COMMENT: Several commenters expressed concerns with the rules as they apply to eligible surplus lines insurers. Specifically, the annual reports of an eligible insurer's net written premium for New Jersey home state risks "if requested" by the Department. One commenter would not object to this aspect of the proposed amendments if such requests were limited to instances where the Department suspects a particular producer's report is inaccurate or that a particular placement may have been made in violation to New Jersey surplus lines law, although it believed that there are more efficient means to obtain this information. The commenters are concerned that the Department will use the reporting requirement as an annual report. One commenter noted that the Department has requested insurers to file an annual report in 2014 regarding 2013 surplus lines premium.

The commenters stated that the nature of surplus lines business and the manner by which it is written in New Jersey and elsewhere make it unlikely for surplus lines insurers to capture the raw data the Department is presumably seeking to match with that submitted by producers. The commenters stated that this may be due in part to extended producer chains which can often involve multiple producers for a single placement. The surplus lines insurer may not be able to

ascertain which producer is reporting and paying the New Jersey surplus lines premium tax through SLAS. For business written in the later part of the year, it is likely that surplus lines insurers may not have the data needed to complete the subsequent year filing in April due to the reporting being passed through extended producer chains. The commenters stated that what the Department is likely to obtain from surplus lines insurers may raise more questions than anything that can be “trued up” to what was entered by producers. Another commenter added that this is true particularly for business written pursuant to delegated authority agreements where producers in New Jersey or other states report premium on a bordereaux basis to intermediate brokers (such as London brokers) 30 to 60 days after the end of the month in which the business actually incepts, after which the London broker reports the risks to the insurer. For these reasons, the commenters believed that requiring surplus lines insurers to submit annual reports on SLAS will be onerous and inefficient and will likely not achieve its desired goal. The commenters thus requested that the Department reconsider seeking data from surplus lines insurers through SLAS.

One commenter also stated that in instances where the Department determined that it would be helpful to also have a particular surplus lines insurer’s New Jersey surplus lines premium data, the Department would be able to review that particular insurer’s United States Premiums by State on the NAIC financial filing format. The commenter noted that other states, such as California, have employed this schedule for this purpose, contacting insurers in the event of a material discrepancy.

RESPONSE: Upon review, the Department has determined that no change is required. The Department disagrees with the comment that it is unlikely that surplus lines companies would capture the data. Between 1993 and 2001, surplus lines insurers were required to submit this

information. N.J.A.C. 11:19-3.3(a) required, beginning in 2001, surplus lines insurers to maintain quarterly reports of the required data for inspection by the Department upon request. Accordingly, surplus lines insurers should have the requisite data and should have been collecting such data since 2001.

The Department also does not agree with the comment that the surplus lines insurer may not be able to ascertain which producer is reporting and paying the premium tax through SLAS, or that the insurer may not have data for policies written in the latter part of the year. As noted above, surplus lines insurers should have been maintaining this data under the current rules. In addition, surplus lines insurers should have a transaction number to ensure that they are dealing with a New Jersey licensed surplus lines insurance producer, as required by N.J.S.A. 17:22-6.42.

With respect to the comment that the data the Department is likely to obtain may raise more questions than anything that may be “trued up” to what was entered by producers, or that it may reflect data 30 to 60 days after the end of the month in which the business incepts, the Department notes that this is the purpose of SLAS, to ensure that data submitted by producers is accurate and reflects that submitted by insurers. If the data is inconsistent, the Department would make further inquiries to determine the reason(s) therefor. Also, the SLAS will keep track of premiums on a running basis, so that if data is missed for the latter part of one year, it will be reflected in the data for the next year. Moreover, the use of transaction numbers will show the date of the premium for SLAS.

The Department also does not believe that the reporting requirement is onerous or burdensome in that insurers have been required to collect and maintain the requisite data since 2001, and believes that the rules will achieve their desired goal.

Finally, the Department does not believe that NAIC data would fulfill the requirements of the rules. Data referred to by the commenter would be filed on Schedule T of the NAIC annual statement. The use of Schedule T would not be sufficient because Schedule T would not allow the matching of premium data to confirm payment of required premium taxes because it does not break out policies where New Jersey is the “home state” (and thus subject to premium tax) and those where New Jersey is not the “home state.” Moreover, Schedule T data is not broken down by broker.

COMMENT: Several commenters stated that requiring surplus lines insurers to collect and report policy data on SLAS would be inconsistent with their status and established practice in New Jersey, and would be inconsistent with the Non-Admitted and Reinsurance Reform Act (NRRA), 15 U.S.C. §§ 8201 et seq., (specifically § 8204 governing uniform standards for surplus lines eligibility), especially if the Department intends to take adverse action against an insurer that does not provide the report. Under the NRRA and state law, a surplus lines producer is permitted to place non-admitted insurance with a surplus lines insurer domiciled in a U.S. jurisdiction provided the insurer is authorized to write such business in their state of domicile and maintains the minimum capital and surplus required under state law. Likewise, a surplus lines producer may place business with any non-U.S. surplus lines insurer that is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the National Association of Insurance Commissioners (NAIC).

RESPONSE: Upon review, the Department has determined that no change is required. The Department does not believe that the insurer reporting requirements under the proposed

amendments is inconsistent with or prohibited by the NRRA's limitations on standards for surplus lines insurer eligibility. The Department recognizes the NRRA's minimum standards for surplus lines eligibility. However, such limitations do not preclude the ability to require, nor do they obviate the need for, the reporting of this data by surplus lines insurers. As set forth above, the Department requires this data to help ensure compliance with applicable laws and rules governing surplus lines insurance in this State, including ensuring accurate reporting of premium taxes due under the NRRA's "home state" rule.

COMMENT: Several commenters stated that while they understand the Department's primary objective is to ensure that surplus lines licensees are properly reporting all of the premium on New Jersey home state risks and paying the requisite premium tax in New Jersey, they believed that the Department should be able to achieve this goal by imposing SLAS implementation on surplus lines producers alone without involving surplus lines insurers. One commenter stated that, in the short term, the Department may wish to focus on the SLAS implementation process for producers to allow sufficient time to work out all issues, such as programming and data entry, and achieve a smooth transition from "SLPS" to SLAS. In instances where the Department determined that it would be helpful to also have a particular surplus lines insurer's New Jersey surplus lines premium data, the Department would be able to review that insurer's Schedule T information from the insurer's annual statement. The commenter stated that other states have employed the Schedule T for this purpose, contacting licensees and insurers in the event of a material discrepancy. Although the commenter recognized that this process is not a perfect measure of premium paid to an insurer on New Jersey home state risks, the information on

Schedule T could provide the Department with a general understanding of the amount of premium written by a surplus lines insurer in New Jersey in a given year.

RESPONSE: Upon review, the Department has determined that no change is required. Applying the filing requirements solely to producers would not achieve the goal of the rules because, as noted above, receiving data solely from producers would not provide a mechanism for the Department to check and confirm the data filed by producers, and confirm that surplus lines insurers write business in this State solely through New Jersey licensed surplus lines producers.

The Department also believes that there has been sufficient time for the implementation of SLAS with respect to producers. SLAS has been in effect for producers for over a year.

Finally, the Department does not agree that Schedule T would provide the requisite data for the reasons set forth in a response to a previous comment.

COMMENT: One commenter, while being supportive of electronic filing systems, such as SLAS, also stated it encourages states to provide an alternative filing method for its members who do not have the technological capability to comply with the specific electronic filing requirements and changes proposed at this time.

RESPONSE: Upon review, the Department has determined that no change is required. The Department has provided ample notice of this implementation of SLAS through the proposal of these rules as well as the issuance of Bulletin No. 13-03 on March 13, 2013. The Department believes that producers have been afforded ample opportunity to develop systems necessary in

order to comply with SLAS. In addition, surplus lines producers were previously required to comply with electronic filings via the SLPS system under the prior rules.

Federal Standards Statement

The adopted amendments reflect current Federal requirements set forth in the NRRA regarding the collection of premium taxes on surplus lines insurance. Accordingly, the adopted amendments reflect and do not exceed 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]***):

11:19-3.3 General requirements

(a) (No change from proposal.)

(b) All licensed surplus lines producers shall, on or before the due dates set forth in this subsection following each calendar quarter, remit premium taxes and surcharges utilizing the forms set forth on the Department's website: www.njsslssuite.com. The due dates for these filings are as follows: May 15, August 14, November 14 and February 14. The requirements in this subsection shall apply beginning with the filing covering the calendar quarter occurring immediately following ***[the effective date of these amendments]* *May 18, 2015***.

11:19-3.4 SLAS requirements for all surplus lines insurers

(a) (No change from proposal.)

(b) An insurer's annual report shall list for each policy, the named insured, the transaction number, the producer's name and address, the policy number, the written premium amount, and the effective and expiration dates. Insurers shall note all *[activities]* ***premium activity*** that occurred on a policy during the calendar year. Transaction numbers are not required with respect to risks that are directly procured without the participation of a New Jersey surplus lines agent. Upon request by the Department, an insurer shall file this report for the requested calendar year with the Department through the SLAS website: www.njsslauite.com.