

INSURANCE  
DEPARTMENT OF BANKING AND INSURANCE  
DIVISION OF INSURANCE

Surplus Lines Insurance: Procurement Procedure

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

Adopted Recodification with Amendment: N.J.A.C. 11:1-33.8 and 33.3

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

Adopted New Rules: N.J.A.C. 11:1-33.3 Appendix Exhibits A-1 and A-2

Proposed: May 3, 2004 at 36 N.J.R. 2144(a)

Adopted: March 7, 2005 by Donald Bryan, Acting Commissioner,  
Department of Banking and Insurance

Filed March 7, 2005 as R. 20005 d. 104, **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, 17:22-6.41, 17:22-6.42, 17:22-6.43 and 17:22-6.45, and  
P. L. 2003, c. 179.

Effective Date: April 4, 2005

Expiration Date: January 31, 2006

**Summary** of Public Comments and Agency Responses:

The Department received two comments from the Independent Insurance Agents and the Surplus Lines Association of New Jersey.

COMMENT: Both commenters expressed support for the proposal and suggested that the Department consider amending N.J.A.C.11:1-33.3(b)1 and Exhibit A-1 to require that the notice be provided and signed at the time of “completion of an application” and not at the time of “solicitation.” The commenters believe that requiring the signature at the time of solicitation as

proposed, rather than at a later point in the application process, may delay their ability to secure coverage.

RESPONSE: The Department has upon adoption amended the proposal to provide that the notice to be provided as referenced in Exhibit A-1 and N.J.A.C. 11:1-33.3(b)1 is required to be signed at the time of quotation, rather than at the time of solicitation. Upon adoption, the provision requiring the providing of the notice has been relocated from proposed new paragraph (b)1 to new paragraph (a)3 in N.J.A.C. 11:1-33.3. This revision clarifies the timing of the delivery of the notice by tying it to the occurrence of a specific event, that is the providing of a quotation. Doing so will avoid any delay in the surplus lines coverage application process, thus addressing the concern raised in the comment and better assuring that the insured will consider the content of Exhibit A1 at or about the same time that the insured decides whether to accept the quoted premium and coverage.

COMMENT: One commenter suggested that N.J.A.C. 11:1-33.3(a) and Exhibit B be revised so as to permit placement with a surplus lines insurer where: (1) coverage is broader through the surplus lines insurer than that which is available from an authorized insurer; and (2) the financial stability of the authorized insurer currently writing the policy, or the only company through which coverage is available, is rated less than B+ by A.M. Best Co.

RESPONSE: On the first issue, the Department does not think it is appropriate to revise the proposal as suggested because it could enable surplus lines insurers to compete for business with admitted insurers. The purpose of the surplus lines market is not to enable unauthorized insurers to compete with admitted insurers, rather it is to serve as a safety valve when coverage is not available in the admitted market. On the second issue, in situations where only one admitted company provides coverage, the matter may be addressed at the Exportable List Hearing

conducted annually pursuant to N.J.A.C. 11:1-34.3. This may be done irrespective of the financial rating of the admitted company. Permitting placements in the surplus lines market based upon the financial rating of admitted companies is beyond the scope of this proposal.

COMMENT: Both commenters seek a clarification of the reference in the second check-off statement proposed to be added to Exhibit B, which they indicated could be construed as requiring that the producer placing coverage with the surplus lines insurer for reasons of premium increase must have been the same producer who had placed coverage for the consumer during the previous 12 months. The commenters question whether the rule as proposed precludes anyone other than the existing producer to place coverage, currently written with an authorized insurer, in the surplus lines market.

RESPONSE: It was not the Department's intention to have the statement as proposed be construed in the narrow manner referenced in the comments. The Department has, upon adoption, replaced the check-off statement in question with expanded explanations of the result codes to be entered on the certification form. This revision serves to clarify that the prior originating producer or any other producer may place the new coverage with the surplus lines insurer and is consistent with the proposal's goal of implementing the deregulation of the surplus lines market in accordance with N.J.S.A. 17:22-6.42 and 6.43 as amended by P.L. 2003, c. 179. This revision will also make surplus lines coverage more readily available to the public when the incumbent admitted insurer has quoted a renewal price which is effectively a de facto cancellation.

COMMENT: Both commenters opined that recodified N.J.A.C. 11:1-33.3(b) as proposed provides that the notices referenced in N.J.A.C.11:1-33.3(b)1 and 3 are required to be provided when coverage is placed with an "ineligible unauthorized insurer" and thus not to placements

with “eligible surplus lines insurers.” The commenters suggested that the proposal be amended so that the notices are required to be provided to insureds placed with eligible, as well as ineligible, surplus lines insurers.

RESPONSE: The commenters are correct that, as proposed, the text of recodified N.J.A.C. 11:1-33.3(b) appeared to indicate that the notices were required to be provided as a condition of placing coverage with an ineligible, unauthorized insurer. However, as the Summary, Social Impact and Regulatory Flexibility Analysis in the notice of proposal indicated, and as the text of the Appendix Exhibits which prescribe the required disclosures reflects, it was the Department’s intention that the notices be provided to insureds and applicants for surplus lines coverage who are dealing either with a surplus lines insurer that is deemed “eligible” in accordance with N.J.S.A. 17:22-6.45 or with an ineligible unauthorized insurer.

The text in new Appendix Exhibit A-1 as proposed referred to “a policy written by a surplus lines insurer.” In accordance with the definition of this term found in N.J.A.C. 1:1-33.2, this signifies a foreign or alien insurer eligible to transact surplus lines business in New Jersey. Similarly, the text of new Exhibit A-2 as proposed also referred to a policy “written by a surplus lines insurer” and began with the wording: “Statement to appear on all Surplus Lines Policies...” (emphasis added). Thus, it is clear from the text of these Exhibits that they were intended to be used with respect to policies procured from eligible Surplus Lines Insurers. The text of the Summary also reflected this intention of the Department, where it indicated that: “the Department is proposing to recodify N.J.A.C. 11:1-33.1(b) as (a)... 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...” (emphasis added). The Social Impact in the notice of proposal also indicated that: “the new disclosures

(referring to Exhibits A-1 and A-2) which producers will be required to provide will ensure that consumers are aware of the unregulated nature and potential disadvantages of surplus lines policies...”

Finally, the Regulatory Flexibility Analysis stated: “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 (emphasis added) is not subject to the filing or approval requirements...”

Given these indicia of the Department’s intent that the disclosures contained in Exhibits A-1 and A-2 as proposed were to be delivered by producers seeking to provide coverage from eligible surplus lines insurers, in accordance with the commenters’ suggestion, the Department is, upon adoption, amending the text of N.J.A.C. 1:1-33.3(b) as proposed. The amendments eliminate the questionable text noted in the comment from subsection (b), where it erroneously appeared in the proposal, and relocate that text, revised as discussed in the Response to a previous Comment, to new paragraphs 3 and 4 of subsection (a). Current N.J.A.C. 11:1-33.8(c), which was proposed to be and is being recodified without change as 11:1-33.3 (c) as part of this adoption, will continue to require disclosures similar to those made through Appendix Exhibits A-1 and A-2 with respect to policies issued by ineligible unauthorized insurers. As a result of these changes, the proposed recodification of existing paragraphs 1 through 5 in subsection (b) is rendered unnecessary and has not been adopted.

COMMENT: One commenter noted that proposed N.J.A.C. 11:1-33.3(b)3 requires the surplus lines producer or the surplus lines insurer to provide notice to the insured of the nature of surplus lines coverage at the time the policy is issued and delivered and at renewal, through placing upon the policy, evidence of coverage and renewal policy the statement set forth in

Appendix Exhibit A-2. The commenter suggested that N.J.A.C. 11:1-33.3(b)3 as proposed be revised so that only the surplus lines producer is responsible for providing the required notice. The commenter also suggested that Exhibit A-2 should be a stand-alone document, and not placed upon the policy as indicated in the proposal.

In addition, the commenter suggested that, with regard to Exhibit A-2, the Department add a sentence to the effect that the insurer has been approved by the Department as an eligible surplus lines insurer, but the policy is not covered by the New Jersey Insurance Guaranty Fund and that, pursuant to the New Jersey Surplus Lines Guaranty Fund Act, only medical malpractice liability insurance as defined in N.J.S.A. 17:30D-3d and property insurance covering owner-occupied dwellings of less than four dwelling units are covered by the New Jersey Surplus Lines Guaranty Fund. The commenter opined that this would further the goal of full disclosure and would be consistent with the language required by N.J.A.C. 11:1-33.8(c) with respect to coverage placed with ineligible unauthorized insurers.

RESPONSE: The Department has, upon adoption, revised N.J.A.C. 11:1-33.3(b)3 as proposed to indicate that surplus lines insurance producers, and not surplus lines insurers, will be responsible for the delivery of the required notice. This revision is being made because producers are in a better position to provide insureds with this notice in an efficient and timely manner. In addition, the Department is better able to enforce this requirement upon producers than upon eligible, unauthorized insurers who issue surplus lines policies. Upon adoption, this provision has been relocated from paragraph (b)3, where it appeared in the notice of proposal, to new paragraph (a) 4. The Department also agrees with the commenter's suggestion with respect to making Exhibit A-2 a stand-alone document and, upon adoption, has revised its text to provide producers with the option to do so. The reference to Exhibit 2 in new paragraph (a)4 in

N.J.A.C. 11:1-33.3 as adopted now also provides that option. This change will foster the implementation of the surplus lines deregulation legislation by enabling producers to provide the notice in the manner they determine is most efficient.

For the reasons mentioned in the comment, the Department agrees with commenter's suggestion to revise the text of Exhibit A-2 and, upon adoption, has added a sentence to this disclosure statement indicating that: "The insurer has been approved by the Department as an eligible surplus lines insurer, but the policy is not covered by the New Jersey Insurance Guaranty Fund, and only a policy of medical malpractice insurance as defined in N.J.S.A. 17:30D-3d or a policy of property insurance covering an owner-occupied dwelling of less than four dwelling units is covered by the New Jersey Surplus Lines Guaranty Fund."

**Summary** of Agency –Initiated Changes

Upon further review of Appendix Exhibit A-1, the Department determined that the term "solicited person" as it appears in the proposal should be revised to read "applicant" because that term more accurately describes the person seeking a surplus lines policy. Also, the term "originating" is being added before the reference to insurance producer in Exhibit A-1, since it is the originating producer who provides this notice. Upon adoption, the Department has also provided lines on which the dates that the applicant and the producer signed Exhibit A-1 are to be entered. In addition, the phrase "less favorable terms" in Exhibit A-1 is being revised to read "different terms" because the latter is a broader and more accurate description of the manner in which the terms of surplus lines policies may differ from those of policies issued by authorized New Jersey insurers.

For the reasons set forth above, the Department has also revised the reference to “less favorable terms” in Exhibit A-2 as proposed in the same manner.

Exhibit B, the Certification of Effort form, has also been amended upon adoption to enable procuring producers to easily provide more specific information on why coverage in the admitted market comparable to that previously secured by the insured is unobtainable. These revisions explicitly address situations where: coverage in the admitted market was declined; or there has been a substantial increase in premium over similar coverage placed in the admitted market; or where only substantially reduced coverage is available in the admitted market. This information is essentially the same information that was to be supplied on the Certification of Effort through the entry of the Result Codes on the revised certification as proposed. Accordingly, the Result Codes provided for in Exhibit B as proposed are being deleted upon adoption because the information referenced in them is now solicited through the additional inquiries included in Exhibit B as set forth above.

Finally, upon adoption the word “with” in the first sentence of the introductory statement in the Certification of Effort (Exhibit B) is being changed to the word “to” because the certifications are submitted to the surplus lines agent by the originating producer. As the second sentence of that statement indicates, the surplus lines agent is required to maintain the original certification in its files for at least five years.

### **Federal Standards Statement**

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



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

## SUBCHAPTER 33. PROCUREMENT PROCEDURE

### 11:1- 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.)

**\*3. At the time of quotation, the originating producer shall provide to the applicant a copy of the form incorporated herein by reference as Exhibit A-1 in the Appendix to this chapter and retain a signed copy**

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

(b) When coverage on behalf of a New Jersey insured cannot be placed with an authorized insurer 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 conditions in (b)1 through\*7]\* \*5\* 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.]\*

[2.] \*1.\* (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 proposed 4. – 7. As \*2.-5\*. (No change in text.)

(c) – (f) (No change from proposal.)

## APPENDIX

### EXHIBIT A-1

Form to be used at the time of \*[solicitation]\* \*quotation\*:

The undersigned \*[solicited person]\* \*applicant\* has been advised by the undersigned \*originating\* 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]\* \*different\* 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]\* \***Applicant's**\* Signature

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

\* \_\_\_\_\_  
**Date of Applicant's Signature**\*

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

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

\* \_\_\_\_\_  
**Date of Producer Signature**\*

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

EXHIBIT A-2

Statement to Appear on all Surplus Lines Policies, Evidence of Coverage and Renewal Policies  
**\*or to be provided or as a stand alone notice\***:

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]\* \***different**\* terms than a policy issued by an insurer granted a Certificate of Authority by the New Jersey Department of Banking and Insurance. **\*The insurer has been approved by the Department as an eligible surplus lines insurer, but the policy is not covered by the New Jersey Insurance Guaranty Fund, and only a policy of medical malpractice liability insurance as defined in N.J.S.A. 17:30D-3d or a policy of property insurance covering owner-occupied dwellings of less than four dwelling units are covered by the New Jersey Surplus Lines Guaranty Fund.\***

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]\* **\*to\*** 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.

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(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 \_\_\_\_\_, I was engaged by the insured named herein to procure insurance of the kind described herein and in the amount shown. 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 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:\*(enter appropriate code(s) for each insurer listed above)\*

A- **\*Having made a diligent effort, I was unable to obtain an offer/quote from this authorized insurer in the admitted market, which\*** \*[Insurer]\* declined to accept all or any part of the risk.

**\*AND/OR\***

B- \*[Insurer provided offer/quotes reflecting a very substantial increase in premiums compared to substantially similar coverage I placed within the preceding 12 months.]\* **\*Having made a diligent effort, the only offer(s)/quote(s) obtained reflected such a substantial increase in premium over similar coverage placed within the preceding 12 months that comparable coverage is, as a practical matter, unavailable from this authorized insurer in the admitted market.**

**AND/OR**

C- **Having made a diligent effort, the only offer(s)/quote(s) obtained reflect(s) such a substantial reduction in coverage from coverage placed within the preceding 12 months for substantially similar premium that comparable coverage is, as a practical matter, unavailable from this authorized insurer in the admitted market.\***

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)

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