

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
OFFICE OF FINANCIAL SOLVENCY

Surplus Lines Insurance: Allocation of Premium Tax and Surcharge

Proposed Amendments: N.J.A.C. 11:2-34.2 and 34.3

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

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, 17:22-6.40 et seq. and 17:22-6.70 et seq.

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

Proposal Number: PRN 2006-217

Submit written comments by September 1, 2006 to:

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The agency proposal follows:

Summary

N.J.A.C. 11:2-34 sets forth the method by which the surplus lines premium receipts tax imposed pursuant to N.J.S.A. 17:22-6.59 and 6.64 and the New Jersey Surplus Lines Insurance Guaranty Fund Assessment, which may be imposed pursuant to N.J.S.A. 17:22-6.75, are computed on the portion of the premium which is properly allocable to the risks or exposures located within this State. The Department of Banking and Insurance (Department) is proposing several technical amendments to reflect proper statutory citations and filing deadlines.

The definition of “surplus lines agent” in N.J.A.C. 11:2-34.2 is proposed to be amended to reference the proper statutory citation for the New Jersey Insurance Producer Licensing Act.

N.J.A.C. 11:2-34.3(a) is proposed to be amended to provide that surplus lines agents shall file the verified report within 45 calendar days, rather than the end of the month, after the end of each calendar quarter to reflect the timeframe for such filings set forth in N.J.S.A. 17:22-6.58.

N.J.A.C. 11:2-34.3(b) is proposed to be amended to revise the provision that surplus lines policies are subject to a maximum four percent surcharge by the Surplus Lines Insurance Guaranty Fund to provide that such policies may be subject to such a surcharge. This reflects that a surcharge is not currently imposed by the Guaranty Fund, and has not been imposed for the past several years, but may at some time in the future be imposed if deemed required by the Guaranty Fund.

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

The proposed amendments revise the existing rules to reflect the proper statutory citation and statutory filing deadlines, and to reflect that the New Jersey Surplus Lines Insurance Guaranty Fund surcharge is not currently in effect, but may be in the future, and if so, the rules would apply. The proposed amendments thus conform the rules to existing statutory and operational requirements, thereby minimizing confusion to surplus lines agents and insureds.

Economic Impact

The proposed amendments are technical in nature and will impose no economic impact on regulated entities, consumers, or the Department.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendments are not subject to any Federal requirements or standards.

Jobs Impact

The Department does not anticipate that any jobs will be generated or lost as a result of the proposed amendments.

The Department invites commenters to submit any data or studies concerning the jobs impact of the proposal together with their comments on other aspects of the proposal.

Agriculture Industry Impact

The proposed amendments will not have any impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

The proposed amendments may apply to “small businesses,” as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. To the extent that the proposed amendments apply to small businesses, they will apply to surplus lines agents who are resident in New Jersey. The proposed amendments do not impose any new reporting, recordkeeping, or other compliance requirements, but merely reflect current statutory citations and timeframes within which verified reports shall be filed with the Department pursuant to N.J.S.A. 17:22-6.58. No new professional services will be required to comply with the proposed amendments and

existing staff utilized to comply with the current rules would be utilized to comply with the proposed amendments. As the proposed amendments are procedural in nature and reflect statutory requirements, there is no differentiation in compliance requirements based upon business size.

Smart Growth Impact

The proposed amendments will not have an impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

11:2-34.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

...

“Surplus lines agent” means an individual licensed pursuant to N.J.S.A. 17:22A-[1 et seq.] **26 et seq.** and N.J.A.C. 11:17-2.2 to place insurance coverages with unauthorized insurers.

...

11:2-34.3 Allocation of premium tax and surcharge

(a) Each surplus lines agent shall [on or before] **within 45 calendar days after** the end of [the month next following] each [year] calendar quarter file with the Commissioner a verified report in duplicate of all surplus lines insurance transacted, or not transacted, during such calendar quarter as set forth in N.J.S.A. 17:22-6.58. The surplus lines agent shall collect from the insured and forward to the Commissioner the appropriate amount of tax collected for each quarterly period as set forth in N.J.S.A. 17:22-6.59 which shall be allocated as set forth in this subchapter when a surplus lines policy covers risks or exposures only partially located within this State.

(b) Premiums charged by eligible surplus lines insurers in this State [are] **may be** subject to a surcharge of up to four percent calculated in accordance with N.J.S.A. 17:22-6.75**a**(2). [The] **If a surcharge is imposed, the** surplus lines agent shall collect from the insured and forward to the Fund the amount of the surcharge on a quarterly payment basis.

(c) - (g) (No change.)