

**INSURANCE**

**DEPARTMENT OF BANKING AND INSURANCE**

**OFFICE OF SOLVENCY REGULATION**

**Formation of a Domestic Property and Casualty Insurance Corporation (Stock or Mutual) or a Reciprocal Insurance Exchange; Surplus Lines Insurer Eligibility; Fees and Special Purpose Apportionment; Surplus Lines Insurance: Procurement Procedure; Surplus Lines Insurance: Allocation of Premium Tax and Surcharge**

**Proposed New Rule: N.J.A.C. 11:1-28.4A**

**Proposed Amendments: N.J.A.C. 11:1-28.1, 28.2, 28.3, 31.2, 31.3, 31.4, 31.5, 31.6, 32.7, 33.1, 33.2, and 33.3**

**Proposed Repeal: N.J.A.C. 11:2-34**

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

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, and 17:22-6.40 et seq.; and 15 U.S.C. §§ 8201 et seq.

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

Proposal Number: PRN 2012-046.

Submit comments by May 4, 2012 to:

Robert J. Melillo, Chief

Legislation and Regulation

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The agency proposal follows:

### **Summary**

The Non-Admitted and Reinsurance Reform Act of 2010 (NRRA), 15 U.S.C. §§ 8201 et seq., effective July 21, 2011, revises various aspects of the regulation of surplus lines insurance (referred to as nonadmitted insurance in the NRRA) by the states. Specifically, the NRRA provides that only an insured's "home state" may require the payment of premium tax for nonadmitted insurance. "Home state" is defined by the NRRA to mean, in general, 1) the state in which an insured maintains its principal place of business, or in the case of an individual, the individual's principal residence; or 2) if 100 percent of the insured risk is located out of the state referred to in 1 above, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

Moreover, the NRRA subjects the placement of nonadmitted insurance solely to the statutory and regulatory requirements of the insured's home state, and provides that only the insured's home state may require a surplus lines broker to be licensed to sell, solicit, and negotiate nonadmitted insurance with respect to such insured.

The NRRA also prohibits states from requiring a diligent search from among the admitted market to place insurance in the surplus lines market in the case of an "exempt

commercial purchaser,” as defined in the NRRA, if: 1) the broker has disclosed to the exempt commercial purchaser that insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight; and 2) the exempt commercial purchaser has subsequently requested in writing that the broker procure from or place such insurance with a nonadmitted insurer.

The NRRA also limits the eligibility requirements a state may impose on nonadmitted insurers pursuant to 15 U.S.C. § 8204. This statute provides that a state may not:

(1) impose eligibility requirements on, or otherwise establish eligibility criteria for, nonadmitted insurers domiciled in a United States jurisdiction, except in conformance with such requirements and criteria in sections 5A(2) and 5C(2)(a) of the Non-Admitted Insurance Model Act, unless the State has adopted nationwide uniform requirements, forms, and procedures developed in accordance with 15 U.S.C. § 8201(b) that include alternative nationwide uniform eligibility requirements; or

(2) prohibit a surplus lines broker from placing nonadmitted insurance with, or procuring nonadmitted insurance from, a nonadmitted insurer domiciled outside the United States that is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the NAIC.

These requirements apply in this State as follows. For nonadmitted insurers domiciled in a United States jurisdiction, a producer is permitted to place nonadmitted insurance with such insurers provided they are authorized to write such business in their state of domicile and maintain minimum capital in surplus of \$15 million or the minimum capital in surplus amount required in this State pursuant to N.J.S.A. 17:17-1 et seq.,

whichever is greater. For a nonadmitted insurer domiciled outside the United States, a producer may place business with such an insurer, provided the insurer is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the National Association of Insurance Commissioners (NAIC).

The Department of Banking and Insurance (Department) issued Bulletin No. 11-11 on July 13, 2011 to advise insurers eligible to write nonadmitted insurance in New Jersey and licensed surplus lines producers of the changes effectuated by the NIRA. The Department now proposes amendments to and the repeal of existing rules to conform New Jersey's rules to the requirements set forth in the NIRA.

In addition, on March 22, 2011, P.L. 2011, c. 39 was enacted to provide for the designation of a domestic insurer as a domestic surplus lines insurer pursuant to N.J.S.A. 17:22-6.69a through 6.69c. This statute provides that, notwithstanding any other provision of law to the contrary, a domestic insurer possessing policyholder surplus of at least \$15 million may, pursuant to a resolution of its board of directors, and upon the written approval of the Commissioner of Banking and Insurance (Commissioner), be designated as a domestic surplus lines insurer. A domestic surplus lines insurer shall be considered an eligible, unauthorized insurer for purposes of writing surplus lines insurance coverage in this State. The statute further provides that a domestic surplus lines insurer shall only insure in this State a New Jersey risk procured from a surplus lines agent in accordance with the provisions of N.J.S.A. 17:22-6.40 et seq.; a domestic surplus lines insurer shall not issue policies of private passenger automobile insurance, workers' compensation insurance, or workers' occupational disease insurance; and insurance written by domestic surplus lines insurers shall be subject to tax on premiums

as set forth in N.J.S.A. 17:22-6.59. The Department is proposing a new rule and amendments as part of this proposal to implement N.J.S.A. 17:22-6.69.

A summary of the proposal follows:

### **Domestic Surplus Lines Insurance**

N.J.A.C. 11:1-28.1, relating to the formation of a domestic property/casualty insurer, is proposed to be amended to reflect that the subchapter also sets forth requirements for a domestic property/casualty insurer to be designated a domestic surplus lines insurer pursuant to N.J.S.A. 17:22-6.69b.

N.J.A.C. 11:1-28.2, which sets forth the scope of the subchapter, is proposed to be amended to provide that the subchapter also applies to any domestic property and casualty insurer seeking to be designated a domestic surplus lines insurer.

N.J.A.C. 11:1-28.3 is proposed to be amended to include the definition of “domestic surplus lines insurer.”

A new rule at N.J.A.C. 11:1-28.4A is proposed to set forth the requirements for designation as a domestic surplus lines insurer. The requirements in this rule track the requirements in N.J.S.A. 17:22-6.69a through 6.69c.

### **Surplus Lines Insurer Eligibility**

N.J.A.C. 11:1-32.2 is proposed to be amended to add a definition of “home state” consistent with the NRRA.

N.J.A.C. 11:1-31.3(a) is proposed to be amended to provide that, notwithstanding anything in the subchapter to the contrary, pursuant to the NRRA, no surplus lines

producer shall be prohibited from placing surplus lines insurance with, or procuring such insurance from, an alien insurer that is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the NAIC. This reflects 15 U.S.C. § 8204(2).

N.J.A.C. 11:1-31.3(b) is proposed to be amended to delete the existing requirements for eligibility and to provide that no alien insurer may provide surplus lines coverage with respect to an insured for which this State is the insured's "home state" unless such alien insurer is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the NAIC. This reflects 15 U.S.C. § 8204, which set forth the restrictions a state may impose for the eligibility of an insurer to write surplus lines insurance in that state. This also reflects the Department's existing eligibility requirements for alien insurers.

N.J.A.C. 11:1-31.3(c) is proposed to provide that no certificate of eligibility shall be issued to a foreign insurer (that is, an insurer domiciled in a jurisdiction of the United States other than this State) unless the applicant demonstrates: 1) that it is authorized to write the applicable type of insurance in its domiciliary jurisdiction; and 2) that it has capital and surplus or its equivalent under the laws of its domiciliary jurisdiction which equals either: 1) the minimum capital and surplus requirement for the type(s) of insurance under N.J.S.A. 17:17-1 et seq.; or 2) \$15 million, whichever is greater. This reflects the requirement in 15 U.S.C. § 8204(1), which provides that a state may not impose eligibility requirements on, or otherwise establish eligibility criteria for, nonadmitted insurers domiciled in a United States jurisdiction, except in conformance with such requirements and criteria in section 5A(2) and 5C(2)(a) of the NAIC Non-Admitted

Insurance Model Act. The requirements in proposed N.J.A.C. 11:1-31.3(c) track the requirements in the NAIC Model.

Existing N.J.A.C. 11:1-31.3(c) is proposed to be recodified as subsection (d) without change.

N.J.A.C. 11:1-31.4(a) is proposed to be deleted as no longer applicable. This subsection sets forth filing requirements for an insurer seeking to become an eligible surplus lines insurer. As discussed above, these requirements have been superseded by the NRRA.

N.J.A.C. 11:1-31.4(b) is proposed to be recodified as subsection (a) and amended to set forth the submissions which foreign insurers that apply for a certificate of eligibility will be required to provide. The proposed amendment also eliminates the reference to the requirements set forth in N.J.A.C. 11:1-31.4(a), which would no longer be applicable for the reasons set forth above. The specific requirements in proposed subsection (a) are: 1) a certificate of compliance from its state of domicile, filed annually thereafter; and 2) prior annual and quarterly financial statements in the NAIC format. In addition, the non-refundable filing fee set forth in N.J.A.C. 11:1-32.7(a)1 of \$3,500 is proposed to be deleted to reflect the reduced expense in reviewing the information. This proposed amendment thus retains those minimal requirements necessary to determine compliance with the standards for surplus lines eligibility for foreign insurers pursuant to the NRRA, and eliminates the existing filing fee, commensurate with the reduced time needed to review such information permitted under the NRRA.

Similarly, and for the reasons set forth previously, existing N.J.A.C. 11:1-31.4(c) is proposed to be deleted. This subsection sets forth specific filing requirements for alien insurers seeking to become eligible.

New N.J.A.C. 11:1-31.4(b) is proposed to provide that the requirement to file annual and quarterly financial statements may be satisfied by the applicant filing such information with the NAIC. This effectively eliminates the requirement that foreign applicants file financial statements with the Department, as all insurers domiciled in a United States jurisdiction file their financial statements with the NAIC.

Existing N.J.A.C. 11:1-31.4(d) is proposed to be recodified as subsection (c) without change.

N.J.A.C. 11:1-31.5(a) is proposed to be amended to delete the reference to N.J.S.A. 17:22-6.45, which has been preempted by the NRRRA, and to provide that if the applicant demonstrates compliance with the subchapter, the Commissioner shall issue a Certificate of Eligibility.

N.J.A.C. 11:1-31.5(a)1, which provides grounds upon which the Commissioner may condition approval of an application for surplus lines eligibility, is proposed to be deleted as no longer applicable for the reasons set forth above.

N.J.A.C. 11:1-31.6(a)1 and 3 are proposed to be deleted as no longer applicable as grounds to withdraw eligibility under the NRRRA. Existing N.J.A.C. 11:1-31.6(a)2 is proposed to be recodified as part of paragraph (a). Subsection (a) is also proposed to be amended to refer solely to failure to comply with the subchapter as grounds to withdraw eligibility to reflect the NRRRA as set forth above.



N.J.A.C. 11:1-31.6(b) is proposed to be amended to provide that any notification by the Department to licensed surplus lines agents of withdrawals of eligibility made pursuant to N.J.A.C. 11:1-31.6 may be made by posting such information on the Department's website, [www.njdobi.org](http://www.njdobi.org).

### **Fees and Special Purpose Apportionment**

N.J.A.C. 11:1-32.7(a)1 is proposed to be amended to eliminate the \$3,500 filing fee for an application for eligibility to reflect the reduced staff time and expense required for Department review of a foreign insurer's application for eligibility as a surplus lines insurer under the proposed changes to the rules to conform to the NRRA.

The annual statement filing fee in N.J.A.C. 11:1-32.7(a)2 is proposed to be deleted as no longer applicable for the reasons set forth above.

Existing N.J.A.C. 11:1-32.7(a)3 and 4 are proposed to be recodified as paragraphs (a)1 and 2.

### **Surplus Lines Insurance Procurement Procedures**

New N.J.A.C. 11:1-33.1(d) is proposed to provide that the procurement procedure rules shall not apply to the procurement of surplus lines insurance where this State is not the "home state" of the insured. This reflects 15 U.S.C. § 8202.

N.J.A.C. 11:1-33.2 is proposed to be amended to provide definitions of "exempt commercial purchaser" and "home state" as those terms are defined in 15 U.S.C. § 8206(5) and (6), respectively. N.J.A.C. 11:1-33.2 is also proposed to be amended to include a definition of "domestic surplus lines insurer."

N.J.A.C. 11:1-33.3(a) is proposed to be amended to provide that, subject to proposed N.J.A.C. 11:1-33.3(g), the “diligent search” requirements shall not apply with respect to the procurement of insurance for an “exempt commercial purchaser” to reflect the NRRA. Proposed N.J.A.C. 11:1-33.3(g) sets forth the exemption from the procurement procedures for an “exempt commercial purchaser” as set forth in the NRRA

N.J.A.C. 11:1-33.3(a)4 is proposed to be amended to provide that the notice required to be provided to policyholders by a domestic surplus lines insurer shall comply with N.J.A.C. 11:1-28.4A(f) to reflect the notice requirements to policyholders for insurance procured from such insurers pursuant to N.J.S.A. 17:22-6.69.

N.J.A.C. 11:1-33.3(b)4 is proposed to change the reference of “Department of Insurance” to “Department of Banking and Insurance” as a matter of form.

Finally, N.J.A.C. 11:2-34, which sets forth requirements for producers to allocate premium taxes based on premiums properly allocable to this State, is proposed to be repealed as no longer applicable. The NRRA at 15 U.S.C. § 8201 provides that no state other than the home state of an insured may require any premium tax payment for nonadmitted insurers, but that the states may enter into a compact or otherwise establish procedures to allocate among the states the premium taxes paid to an insured’s home state described in that statute. Consistent with the NRRA, N.J.S.A. 17:22-6.59 and 6.64 were amended effective July 21, 2011 to eliminate the references to computing tax on the portion of the premium which is properly allocable to the risks or exposures located in this State, and to provide that if the surplus lines policy covers risks or exposures in this State and other states, where this State is the home state, as defined in N.J.S.A. 17:22-

6.41, the tax payable pursuant to the statute shall be based on the total United States premium for the applicable policy.

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 and repeal conform the various rules governing surplus lines tax allocation, eligibility, and procurement to the NRRA. This will have a positive social impact by helping to avoid any confusion regarding the application of the Department's rules in light of the enactment of the NRRA.

Similarly, the proposed amendments to N.J.A.C. 11:1-28.1 and the new rule N.J.A.C. 11:1-28.4A reflect the ability of a domestic insurer to be designated as a domestic surplus lines insurer pursuant to N.J.S.A. 17:22-6.69a through 6.69c. These proposed changes thus will have a positive social impact by reflecting the state of current law, vis-à-vis surplus lines insurance in this State.

### **Economic Impact**

The proposed new rule, amendments, and repeal will impose little, if any, negative economic impact. As set forth in the proposal Summary, the proposed new rule, amendments, and repeal are intended to conform the Department's rules to the NRRA and State law governing domestic surplus lines insurers, and, in fact, reduce or eliminate filing requirements and eliminate fees. There are no additional reporting, recordkeeping,

or other compliance requirements established by the proposed amendments and repeal. With respect to domestic surplus lines insurers, such insurers will be required to meet the capitalization requirements and provide the notice set forth in proposed N.J.A.C. 11:1-28.4A. However, these requirements track verbatim the statutory requirements set forth in N.J.S.A. 17:22-6.69. Moreover, the decision whether to become a domestic surplus lines insurer is voluntary on the part of the insurer.

The Department believes that the changes ultimately will enhance the surplus lines market as envisioned by the NRRA and N.J.S.A. 17:22-6.69a through 6.69c by streamlining the process by which surplus lines insurance may be procured for certain purchasers, providing uniformity among the states for the regulation of surplus lines insurance and payment of premium taxes related thereto, and enabling domestic insurers to transact business as a domestic surplus lines insurer, provided they meet the minimum capitalization requirement of \$15 million as set forth in the statute. The Department does not believe that any new professional services will be required in order to comply with the proposed new rule, amendments and repeal. Professional services required would be those currently employed by such insurers, including legal and financial. The benefits as outlined above thus exceed any potential additional costs which, if any, should be negligible.

### **Federal Standards Statement**

As noted in the proposal Summary above, the proposed amendments and repeal are intended to conform these rules to the NRRA. The proposed amendments and repeal do not exceed any Federal requirements or standards but rather reflect such requirements

and standards. The proposed new rule relates to standards to become a domestic surplus lines insurer and is not subject to any Federal requirements or standards.

### **Jobs Impact**

The Department does not anticipate that any jobs will be generated or lost as the result of the proposed amendments, new rule, and repeal.

The Department invites comments to submit any data or studies on the potential jobs impact of the proposed amendments, new rule, and repeal along with their comments on other aspects of the proposal.

### **Agriculture Industry Impact**

The proposed amendments, new rule, and repeal will not have any impact on the agriculture industry in New Jersey.

### **Regulatory Flexibility Analysis**

The proposed amendments and repeal do not impose any new reporting, recordkeeping, or other compliance requirements on “small businesses,” as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. As noted above, the proposed amendments and repeal are intended to conform the Department’s rules governing surplus lines insurance eligibility, procurement, and allocation of premium tax with the requirements of the NRRA and recent changes to the New Jersey Surplus Lines Law, N.J.S.A 17:22-6.40 et seq. The proposed amendments and repeal actually eliminate or reduce filing requirements and fees, consistent with the NRRA.

In addition, the proposed amendments and new rule at N.J.A.C. 11:1-28 do not directly impose any reporting, recordkeeping, or other compliance requirements on “small business.” Rather, they reflect the requirements in N.J.S.A. 17:22-6.69a through 6.69c. These requirements relate to the minimum capitalization and notice requirements to policyholders for domestic surplus lines insurers. The Department believes that any domestic insurer seeking to transact this type of business should already have the requisite capitalization and be in a position to provide the minimal notice required by statute. Any additional costs of compliance for domestic insurers thus should be negligible. The Department also believes that few, if any, domestic insurers would qualify as a “small business.” In addition, the choice whether to become a domestic surplus lines insurer is voluntary on the part of the domestic insurer. Costs and professional services that may be required are set forth in the Economic Impact above.

As noted above, the proposed amendments, new rule, and repeal are designed to conform the Department’s rules to the NRRRA or to reflect the requirements in N.J.S.A. 17:22-6.69 related to designation as a domestic surplus lines insurer. These applicable statutes do not provide for variation in compliance requirements based on business size. Accordingly, the Department’s proposed amendments, new rule, and repeal do not provide for any variation in compliance requirements based on business size.

### **Housing Affordability Impact Analysis**

The proposed amendments, new rules and repeal will not have an impact on housing affordability in this State in that the proposed amendments, new rule, and repeal relate to surplus lines insurance.

### **Smart Growth Development Impact Analysis**

The proposed amendments, new rule, and repeal will not have an impact on smart growth in this State and there is an extreme unlikelihood that the 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 proposed amendments, new rule, and repeal relate to surplus lines insurance.

**Full text** of rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 11:2-34.

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

SUBCHAPTER 28. FORMATION OF A DOMESTIC PROPERTY AND  
CASUALTY INSURANCE CORPORATION (STOCK OR MUTUAL) OR  
RECIPROCAL INSURANCE EXCHANGE

11:1-28.1 Purpose

This subchapter sets forth the filing requirements for the granting of a certificate of authority to transact property and casualty insurance in this State, pursuant to N.J.S.A. 17:17-1 et seq., 17:46A-1 et seq., and 17:46B-1 et seq., and to transact business as a reciprocal insurance exchange, pursuant to N.J.S.A. 17:50-1 et seq. **This subchapter also sets forth the requirements for a domestic property and casualty insurer to be designated as a domestic surplus lines insurer pursuant to N.J.S.A. 17:22-6.69b.**

### 11:1-28.2 Scope

This subchapter applies to all persons seeking to form a property and casualty insurance corporation or reciprocal insurance exchange in this State. **This subchapter also applies to any domestic property and casualty insurer seeking to be designated a domestic surplus lines insurer pursuant to N.J.S.A. 17:22-6.69b.**

### 11:1-28.3 Definitions

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

...

**“Domestic surplus lines insurer” means a domestic property and casualty insurer formed pursuant to this subchapter designated as a domestic surplus lines insurer pursuant to N.J.S.A. 17:22-6.69b and this subchapter.**

...

### 11:1-28.4A Designation as a domestic surplus lines insurer

(a) Pursuant to N.J.S.A. 17:22-6.69b, a domestic property and casualty insurer possessing policyholder surplus of at least \$15,000,000 may, pursuant to a resolution of its board of directors, and upon approval by the Commissioner, be designated as a domestic surplus lines insurer. A domestic surplus lines insurer shall be considered an eligible, unauthorized insurer for purposes of writing surplus lines insurance coverage.



(b) A domestic surplus lines insurer shall only insure in this State a New Jersey risk procured from a surplus lines producer in accordance with the provisions of N.J.S.A. 17:22-6.40 et seq. This limitation with respect to New Jersey risks shall not be deemed to limit such insurer from transacting business as a surplus lines insurer in another state or jurisdiction pursuant to that state's or jurisdiction's requirements.

(c) A domestic surplus lines insurer shall not issue policies of private passenger automobile insurance, workers' compensation insurance, or workers' occupational disease insurance.

(d) Insurance written by a domestic surplus lines insurer shall be subject to a tax on premiums as provided by N.J.S.A. 17:22-6.59.

(e) A domestic insurer that is designated as a domestic surplus lines insurer shall only be approved to write the lines of surplus lines coverage that it is approved to write as a domestic insurer pursuant to its authority as a domestic insurer in this State, and may be considered as approved to write those lines by this State for purposes of seeking surplus lines eligibility in other states or jurisdictions.

(f) Whenever any insurance risk or any part thereof is placed with a domestic surplus lines insurer, the policy, binder, or cover note shall bear conspicuously on its face in boldface, the following notation:

**“Notice to policyholder: This policy is written by a domestic surplus lines insurer, an eligible unauthorized insurer pursuant to section 2 of P.L.2011, c.39 (C. 17:22-6.69b), and is not subject to the rate or form filing or approval requirements of the New Jersey Department of Banking and Insurance. This policy may contain**

**conditions, limitations, exclusions and different terms than a policy otherwise issued by a New Jersey authorized or admitted insurer. This policy is not covered by the New Jersey Property-Liability Guaranty Association. This policy may be covered by the New Jersey Surplus Lines Insurance Guaranty Fund, but only to the extent provided pursuant to section 2 of P.L.1984, c.101 (C. 17:22-6.71).”**

**(g) A foreign insurer that is currently admitted or eligible to transact business in this State that wishes to be designated as a domestic surplus lines insurer may seek to transfer its domicile to this State utilizing the procedures set forth in N.J.S.A. 17:17-20. An entity that will be a newly formed domestic insurer shall use the formation procedures set forth in N.J.A.C. 11:1-28. All information should be sent to:**

**New Jersey Department of Banking and Insurance**

**Office of Solvency Regulation**

**Attn: Domestic Surplus Lines Insurance**

**20 West State St.**

**P.O. Box 325**

**Trenton, NJ 08625-0325**

## **SUBCHAPTER 31. SURPLUS LINES INSURER ELIGIBILITY**

### **11:1-31.2 Definitions**

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

...

**“Home state” is as defined in 15 U.S.C. § 8206(6).**

...

11:1-31.3 General requirements

(a) No surplus lines agent shall place any coverage in this State with any unauthorized insurer which is not an eligible surplus lines insurer in this State, except for the placement of an insurance risk pursuant to N.J.S.A. 17:22-6.45(h), where insurance on a risk eligible for export is not procurable from eligible surplus lines insurers. No unauthorized insurer shall become an eligible surplus lines insurer unless made eligible by the Commissioner in accordance with N.J.S.A. 17:22-6.45 and this subchapter.

**1. Notwithstanding anything in this subchapter to the contrary, pursuant to the Nonadmitted and Reinsurance Reform Act of 2010 (NRRRA), 15 U.S.C. §§ 8201 et seq., no surplus lines producer shall be prohibited from placing surplus lines insurance with, or procuring such insurance from, an alien insurer that is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the NAIC.**

[(b) No certificate of eligibility shall be issued to an applicant unless it demonstrates the following:

1. That it is either:
  - i. Currently authorized in its state or country of domicile as to the kind or kinds of insurance proposed to be so placed for not less than one year preceding the application for eligibility; or

ii. The subsidiary of an admitted insurer or eligible surplus lines insurer that has been admitted or eligible for not less one year preceding the application for eligibility;

2. Satisfactory evidence of financial integrity. Satisfactory evidence of financial integrity may be demonstrated if the applicant satisfies all of the requirements for the issuance of a certificate of eligibility pursuant to N.J.S.A. 17:22-6.40 et seq. and this subchapter, and after review of the information required to be submitted pursuant to this subchapter or from any other available source (for example, the NAIC, A.M. Best and Standard and Poor's), the Commissioner does not find:

i. That any factors exist from which he or she may determine that the applicant is in a hazardous financial condition as set forth in N.J.A.C. 11:2-27; or

ii. That the applicant's condition or methods of operation are such as would render its operation hazardous to the public or policyholders in this State;

3. That it has capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction, of not less than twice the amount of the minimum capital and surplus required by this State for like admitted insurers;

i. An alien applicant shall also maintain in the United States an irrevocable trust fund in a state or federally chartered bank in an amount not less than \$2,500,000 for the protection of all of its policyholders in the United States. The trust fund shall conform to the requirements set forth in N.J.S.A. 17:22-6.45(d)(1);

4. In lieu of the capital and surplus requirements and trust fund requirements set forth in (b)3 and (b)3i above, any Lloyd's or other similar group of alien insurers, which group includes unincorporated individual insurers shall maintain a trust

fund of not less than \$50,000,000 as security to the full amount thereof for all policyholders and creditors in the United States of each member of the group. The trust fund shall conform to the requirements set forth in N.J.S.A. 17:22-6.45(d)(1);

5. An insurance exchange created by laws of another state may be approved by the Commissioner as an eligible surplus lines insurer. Such an insurance exchange shall comply with the applicable financial requirements set forth in N.J.S.A. 17:22-6.45(d)(1) in addition to the requirements set forth in this subchapter;

6. That it has complied with all of the requirements of N.J.S.A. 17:22-6.45 and this subchapter to entitle it to transact business as an eligible surplus lines insurer in this State;

7. That its condition or methods of operations are not such as would render its operation hazardous to the public or policyholders in this State;

8. That it is of good reputation as to providing service to the policyholders and the payment of losses and claims; and

9. That its management is not incompetent or untrustworthy, or so lacking in insurance company managerial experience as to make the proposed operation hazardous to the insurance buying public; and that it is not affiliated directly or indirectly through ownership, control, reinsurance transactions or other insurance or business relations, with any person or persons whose business operations are or have been detrimental to policyholders, stockholders, investors, creditors or to the public]

**(b) No alien insurer may provide surplus line coverage with respect to an insured for which this State is the insured's home state unless such alien insurer is**

listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the NAIC.

(c) No certificate of eligibility shall be issued to a foreign applicant unless it demonstrates:

1. That it is authorized to write the type of insurance in its domiciliary jurisdiction; and

2. Has capital and surplus or its equivalent under the laws of its domiciliary jurisdiction which equals the greater of:

i. The minimum capital and surplus requirements for the type(s) of insurance under N.J.S.A. 17:17-1 et seq.; or

ii. \$15,000,000.

[(c)] (d) (No change in text.)

11:1-31.4 Certificate of eligibility; filing requirements

(a) All applicants shall submit the following to the Commissioner:

1. A copy of the applicant's charter as currently in force, certified by the lawful custodian of the original document;

2. A copy of the applicant's bylaws as currently in force, certified by a senior officer of the applicant;

3. A certified copy of the applicant's current certificate of authority from the applicant's state or country of domicile;

4. A certified copy of a report of the most recent examination of the applicant's affairs by the department of insurance, or its equivalent, of the applicant's state or country of domicile;

5. An annual audited financial report conforming to the requirements of N.J.A.C. 11:2-26 or a certified copy of the applicant's most recent audited financial report required by the applicant's state or country of domicile which is substantially similar to the report required by N.J.A.C. 11:2-26. Additionally, the applicant shall ensure that its Management Discussion and Analysis is included, along with the Annual Statement. The Audited Financial Statement shall also be provided for the applicant's parent company, the ultimate controlling entity, and all other intermediate holding companies, if available.

6. Directors' and officers' biographical affidavits on a form provided by the Commissioner;

7. A statement of opinion by qualified actuary, relating to the applicant's loss and loss adjustment expense reserves for all lines of business written by the applicant, containing the information required by N.J.A.C. 11:1-21;

8. A summary of the applicant's assumed and ceded reinsurance business, indicating the treaty parties, retentions, maximum risks, types of contract (that is, prorata, facultative, etc.) and any other information which may be relevant to the applicant's reinsurance portfolio, including, but not limited to, such information necessary to demonstrate that any credit for reinsurance shown in the applicant's financial statements as either an asset or deduction from liability is allowed pursuant to N.J.S.A. 17:51B-1 et seq. and N.J.A.C. 11:2-28;

i. The Department may require that the applicant file a copy of any specific reinsurance treaty or contract to address questions or concerns based upon the Department's review of the summary of assumed and ceded reinsurance business;

9. If the applicant is a member of a holding company system, a certified copy of the information filed pursuant to the holding company act of the state, district, territory, commonwealth, possessions or country of domicile, supplemented as necessary to meet the requirements of N.J.S.A. 17:27A-3 and applicable Securities and Exchange Commission requirements pursuant to 15 U.S.C. 77a et seq. and 15 U.S.C. 78a et seq., including the names of all shareholders of record who control, either directly or indirectly, five percent or more of the applicant's outstanding shares;

10. A listing of all jurisdictions in which the applicant has applied for authorization to transact the business of insurance as a licensed insurer or surplus lines insurer during the preceding 10 years, including the dates and results of such application;

11. A listing of all jurisdictions from which the applicant has withdrawn during the preceding 10 years, including the reasons for withdrawal;

12. A listing of all administrative, civil or criminal actions, orders, proceedings and determinations thereof to which the applicant, its affiliates, or any of its directors or officers have been subject, due to an alleged violation of any law governing insurance operations in any jurisdiction during the preceding 10 years. Where the alleged violation is a felony or its equivalent, such criminal actions, orders, proceedings and determinations shall also include violations unrelated to insurance operations. If a license has been refused, suspended or revoked by any jurisdiction, the applicant shall furnish an explanation and a copy of any orders, proceedings and determinations related thereto;



13. A description of the applicant's present business plan or plans for conducting an insurance business, including, but not limited to:

- i. The geographical areas in which the applicant currently conducts business;
- ii. The kinds of insurance the applicant currently writes;
- iii. The applicant's current marketing methods;
- iv. A summary of the applicant's current methods for establishing premium rates; and
- v. A description of agency systems, including any managing general agency contracts;

14. A proposed plan for conducting insurance business in this State, including, but not limited to:

- i. The geographical area in which the applicant intends to conduct business;
- ii. The kinds of insurance the applicant intends to write;
- iii. The applicant's proposed marketing methods;
- iv. The applicant's proposed methods for the establishment of premium rates; and
- v. A three year forecast of anticipated premiums in this State by line of business;

15. A certification signed by an officer of the applicant that it will comply with the following conditions for continued surplus lines eligibility upon being issued a certificate:

i. For all applicants:

(1) Annually file with the Department a statement of opinion by a qualified actuary relating to the applicant's loss and loss adjustment expense reserves for all lines of business written by the applicant which meets the requirements of N.J.A.C. 11:1-21, on or before June 30 (for foreign applicants) or on or before July 31 or seven months after the end of the insurer's fiscal year (for alien applicants) of each year;

(2) Except insurance exchanges, submit a nonrefundable, one time payment of \$25,000 to the New Jersey Surplus Lines Insurance Guaranty Fund, pursuant to N.J.S.A. 17:22-6.75;

(3) Maintain a net premiums to surplus ratio for all jurisdictions of 3:1 or lower; and a gross premiums to surplus ratio for all jurisdictions of 6:1 or lower. Where the surplus lines insurer cedes 100 percent of its premium to an intercompany reinsurance pool within the same holding company as the insurer, the gross premiums to surplus ratio requirement set forth in this subchapter shall apply to the pool, provided that the Commissioner may evaluate the results of the individual participating insurer as necessary to determine whether its condition and methods of operation are such as would render its operation hazardous to the public or policyholders in this State;

(4) Advise the Department within 30 days of any changes in the applicant's chief administrative officers, including the president, senior vice president, secretary or treasurer; methods of operation, including the information set forth in (a)13 and (a)14 above; or assumed or ceded reinsurance agreements; and

(5) Deposit securities, or increase the amount of any existing deposit required pursuant to N.J.A.C. 11:1-31.5, if the Commissioner finds that

such deposit is necessary for the eligible surplus lines insurer to establish evidence of financial integrity, as required by N.J.S.A. 17:22-6.45(d), and to ensure that the condition or methods of operation of the insurer are not such as would render its operation hazardous to the public or its policyholders in this State. In determining whether a deposit, or increase in the amount of an existing deposit, is required, and the amount of such deposit or increase, the Commissioner shall consider:

(A) Any adverse change in the financial condition of the insurer as determined through a review of the information submitted pursuant to this subchapter;

(B) Any change in the amount of business written in this State;

(C) Any change in the lines of business written in this State;

(D) The extent to which the lines of business currently written by the insurer and amount thereof are covered under the Surplus Lines Insurance Guaranty Fund, pursuant to N.J.S.A. 17:22-6.70 et seq.; and

(E) Such other factors as the Commissioner deems relevant to determine whether a particular insurer has established satisfactory evidence of financial integrity and that the insurer's condition and methods of operation are not such as would render its operation hazardous to the public or its policyholders in this State.

ii. For foreign applicants only:

(1) Annually file with the Department on or before March 1, a copy of its NAIC Annual Statement filed with its state of domicile for the year ended immediately preceding, and a copy of the report of any examination of the insurer during the year covered by the Annual Statement;

(2) File NAIC quarterly financial statements within 45 days after the end of each calendar quarter;

(3) Issue an insurance policy not later than 90 days after the effective date of the corresponding insurance placement; and

(4) Annually file with the Department on or before June 1 of each year, a copy of its annual audited financial report conforming to the requirements of N.J.A.C. 11:2-26 or a certified copy of the applicant's most recent audited financial report required by its domiciliary jurisdiction which is substantially similar to the report required by N.J.A.C. 11:2-26; and

iii. For alien applicants only:

(1) Annually file with the Department on or before July 31 or seven months after the end of the insurer's fiscal year, a copy of its audited financial statement; a report of its independent auditor, if any; and the Standard NAIIO Financial Reporting Format filed with the NAIC Non-admitted Insurers Information Office for the year ended December 31 immediately preceding;

16. A written request, signed by a licensed surplus lines agent, that the Commissioner issue a Certificate of Eligibility to the applicant;

17. The nonrefundable application fee set forth in N.J.A.C. 11:1-32.7(a)1; and

18. Any additional information deemed necessary by the Commissioner to evaluate the applicant including, but not limited to, updated financial statements.]

[(b)] (a) Foreign applicants shall submit the following to the Commissioner [in addition to the requirements in (a) above]:

1. A certificate of compliance from its state of domicile, **which shall be filed annually thereafter;**

2. – 3. (No change.)

[(c) Alien applicants shall submit the following to the Commissioner in addition to the requirements in (a) above:

1. Two duly authenticated copies of its current annual financial statement; one in the language and monetary value of its country of domicile and one in the English language with all monetary values expressed in United States dollars at the current exchange rate shown in the statement;

i. The statement shall be for a calendar year ending not more than nine months prior to the date the filing of such statement in the applicant's country of domicile is due.

2. If the applicant is registered with the NAIC Non-Admitted Insurers Information Office, a copy of the Standard Financial Reporting Format submitted to the NAIC Non-Admitted Insurers Information Office;

3. A description of the deposits and amounts thereof for the benefit of all United States policyholders for all United States jurisdictions in which the applicant is currently transacting business; and

4. A copy of a duly executed trust fund agreement for the benefit of the applicant's United States policyholders in the amount of not less than \$2,500,000 or in the amount of \$50,000,000, as applicable, as required by N.J.S.A. 17:22-6.45(d)(1).]

**(b) The requirement to file financial statements pursuant to (a)2 and 3 above may be satisfied by the applicant filing such information with the NAIC.**

[(d)] (c) (No change in text.)

11:1-31.5 Certificate of eligibility; issuance

(a) If the applicant demonstrates that it fulfills the requirements for eligibility in [N.J.S.A. 17:22-6.45 and] this subchapter, the Commissioner shall issue a Certificate of Eligibility to the applicant.

[1. The Commissioner may condition approval of an application for surplus lines eligibility on the applicant depositing securities, as that term is defined in N.J.S.A. 17:20-1 and N.J.A.C. 11:2-32, in an amount determined by the Commissioner, if the Commissioner finds that such deposit is necessary for the applicant to establish satisfactory evidence of financial integrity, as required by N.J.S.A. 17:22-6.45(d), and to ensure that the condition or methods of operation of the applicant are not such as would render its operation hazardous to the public or its policyholders in this State. In determining whether a deposit is required, and the amount of such deposit, the Commissioner shall consider:

- i. The financial condition of the applicant as determined through a review of the information submitted pursuant to this subchapter;
- ii. The amount of business to be written in this State;
- iii. The lines of business to be written in this State;

iv. The extent to which the lines of business to be written by the applicant and the amount thereof are covered under the Surplus Lines Insurance Guaranty Fund, pursuant to N.J.S.A. 17:22-6.70 et seq.; and

v. Such other factors as the Commissioner deems relevant to determine whether the particular applicant has established satisfactory evidence of financial integrity and the applicant's condition or methods of operation are not such as would render its operation hazardous to the public or policyholders in this State.]

(b) (No change.)

#### 11:1-31.6 Withdrawal of eligibility

(a) The Commissioner may withdraw the eligibility of an insurer to insure surplus lines risks in this State if[:

1. The insurer fails to file the data required or otherwise comply with the requirements for continued surplus lines eligibility as certified by the insurer in its application for eligibility pursuant to N.J.A.C. 11:1-31.4(a)15;

2. The] **the** Commissioner has reason to believe that the eligible surplus lines insurer is [insolvent, in an unsound financial condition or] no longer in compliance with [N.J.S.A. 17:22-6.40 et seq. or] this subchapter.[]; or

3. The Commissioner finds, after a hearing thereon in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, of which notice was given to all licensed surplus lines agents, that an eligible surplus lines insurer has willfully violated the laws of

this State or does not make reasonably prompt payment of just losses and claims in this State.]

(b) The Commissioner shall notify all licensed surplus lines agents in this State of withdrawals of eligibility made pursuant to this section. **Such notification may be made by posting such information on the Department’s website, [www.njdobi.org](http://www.njdobi.org).**

(c) (No change.)

#### SUBCHAPTER 32. FEES AND SPECIAL PURPOSE APPORTIONMENT

11:1-32.7 Fees; [surplus lines insurers,] risk retention groups and purchasing groups

(a) The following fees are imposed for services provided by the Commissioner regarding submissions by or on behalf of [surplus lines insurers,] risk retention groups and purchasing groups:

1. Processing application for a Certificate of Eligibility – \$3,500;
2. Filing each Annual Statement filed by an eligible surplus lines

insurer - \$100.00;]

Recodify existing 3. and 4. as **1. and 2.** (No change in text.)

#### SUBCHAPTER 33. SURPLUS LINES INSURANCE: PROCUREMENT PROCEDURE

11:1-33.1 Purpose and scope

(a) – (c) (No change.)

**(d) These rules shall not apply to the procurement of surplus lines insurance where this State is not the “home state” of the insured.**



## 11:1-33.2 Definitions

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

...

**“Domestic surplus lines insurer” means a domestic property and casualty insurer formed pursuant to this subchapter designated a domestic surplus lines insurer pursuant to N.J.S.A. 17:22-6.69b and N.J.A.C. 11:1-28.**

**“Exempt commercial purchaser” is as defined in 15 U.S.C. § 8206(5).**

...

**“Home state” is as defined in 15 U.S.C. § 8206(6).**

...

## 11:1-33.3 Surplus lines insurance coverage procurement requirements

(a) Except for coverages on the Exportable List **or with respect to the procurement of insurance for an exempt commercial purchaser subject to (g) below**, 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. – 3. (No change.)

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. **This paragraph shall not apply to insurance procured from a domestic surplus lines insurer. The notice required to be provided with respect to insurance procured from a domestic surplus lines insurer is set forth in N.J.A.C. 11:1-28.4A(f).**

(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 5 below are fully satisfied at least five working days prior to the binding of insurance coverage.

1. – 3. (No change.)

4. The surplus lines agent shall file a certified copy of the ineligible unauthorized insurer's annual statement of financial condition, current as of the date of filing, which evidences net assets of at least \$5,000,000, consisting of at least \$1,500,000 liquid assets with:

Surplus Lines Examining Office (SLEO)

New Jersey Department of **Banking and Insurance**

20 West State Street

PO Box 325

Trenton, New Jersey 08625-0325

5. (No change.)

(c) – (f) (No change.)

**(g) The requirements in (a) above shall not apply with the respect to the procurement of insurance for an “exempt commercial purchaser” provided:**

**1. The surplus lines producer procuring or placing the surplus lines insurance has disclosed to the exempt commercial purchaser that such insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight; and**

**2. The exempt commercial purchaser has subsequently requested in writing the producer to procure or place such insurance from a nonadmitted insurer.**