

## ADMINISTRATION

Subchapter 46, Stock Workers' Compensation Security Fund, was re-named Workers' Compensation Security Fund by R.2007 d.365, effective December 3, 2007. See: 39 N.J.R. 3275(a), 39 N.J.R. 5083(a).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 1, Administration, was scheduled to expire on July 30, 2013. See: 43 N.J.R. 1203(a).

Chapter 1, Administration, was readopted as R.2011 d.284, effective October 24, 2011. See: Source and Effective Date. See, also, section annotations.

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## SUBCHAPTERS 26 THROUGH 27. (RESERVED)

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.

**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.

**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.

“Actuary” means a person who is a fellow in good standing of the Casualty Actuarial Society with three years recent experience in loss reserving or an associate in good standing of the Casualty Actuarial Society with five years recent experience in loss reserving.

“Annual statement” means the form of statement that is described in N.J.S.A. 17:23-1.

“Applicant” means a domestic corporation seeking to obtain a certificate of authority to transact property and casualty insurance in this State or the attorney in fact representing a proposed reciprocal insurance exchange seeking to obtain a certificate of authority to transact business pursuant to N.J.S.A. 17:50-1 et seq.

“Attorney in fact” or “attorney” means a person or corporation possessing the power of attorney to act on behalf of a reciprocal insurance exchange.

“Capital” means par value per share multiplied by the number of issued shares, or in the case of no-par shares, the total stated value.

“Certificate of authority” means a certificate issued by the Commissioner evidencing the authority of a corporation to transact insurance in this State.

“Commissioner” means the Commissioner of the New Jersey Department of Banking and Insurance.

“Department” means the New Jersey Department of Banking and Insurance.

“Domestic insurer” means an insurer formed under the laws of this State.

“Property and casualty insurance” means all lines of business for which an insurance company may be formed to transact, pursuant to N.J.S.A. 17:17-1, and includes mortgage guarantee insurance and title insurance pursuant to N.J.S.A. 17:46A-1 et seq. and 17:46B-1 et seq., respectively.

“Surplus” means the net worth of an insurer as reported in its annual statement. For a stock insurer, surplus means net worth less minimum capital. For a mutual insurer, surplus means its net worth.

Amended by R.2001 d.75, effective March 5, 2001.

See: 32 N.J.R. 4184(a), 33 N.J.R. 794(a).

Amended by R.2005 d.350, effective October 17, 2005.

See: 37 N.J.R. 2285(a), 37 N.J.R. 4026(a).

Added definitions “Capital” and “Surplus”.

**11:1-28.4 Types of insurance**

(a) The following are the types of insurance which a company may be formed to transact under the stated paragraphs of N.J.S.A. 17:17-1:

1. Paragraph “a” means fire and allied lines, earthquake and growing crops;
2. Paragraph “b” means ocean marine, inland marine, automobile physical damage and aircraft physical damage;
3. Paragraph “e” means worker’s compensation and employer’s liability, automobile liability (bodily injury), automobile liability (property damage) and other liability;
4. Paragraph “f” means boiler and machinery;
5. Paragraph “g” means fidelity and surety;
6. Paragraph “i” means credit;
7. Paragraph “j” means burglary and theft;
8. Paragraph “k” means glass;
9. Paragraph “l” means sprinkler leakage and water damage;
10. Paragraph “m” means livestock;
11. Paragraph “n” means smoke and smudge; and
12. Paragraph “d” means accident and health insurance as defined in N.J.S.A. 17B:17-4.

(b) The following are the miscellaneous coverages allowed under N.J.S.A. 17:17-1, paragraph “o”:

1. All loss to buildings and structures, including consequential loss, and against loss or damage to property of others, caused by an insured;

2. The perils of radioactive contamination and all other perils causing physical loss to nuclear energy installations and facilities including consequential loss; and

3. All other miscellaneous coverage, including, but not limited to, the following:

- i. Loss or damage to property by epidemic;
- ii. Loss or damage to property by power failure or mechanical breakdown;
- iii. Loss or damage to property or any insurable interest therein caused by insects or by radiation resulting from atomic fission;
- iv. Engine breakdown;
- v. Loss or damage to property of the assured caused by falling of tanks or equipment for protecting property against fire, by explosion other than steam boilers, pipes, engines, motor, and machinery connected therewith (except fire);
- vi. Loss resulting from the right to participate in associations or pools, such as NEPIA and NELIA, which associations or pools are authorized to write "All Risks" insurance involving nuclear fuel exposure;
- vii. Economic security; and
- viii. All other liability not covered under N.J.S.A. 17:17-1(e), including voluntarily assumed liability.

(c) A stock insurance company may be formed to transact solely the following lines of business:

1. Mortgage guarantee insurance, pursuant to N.J.S.A. 17:46A-1 et seq.; and
2. Title insurance, pursuant to N.J.S.A. 17:46B-1 et seq.

#### 11:1-28.5 Feasibility study

(a) In order for an applicant to be granted a certificate of authority to transact property and casualty insurance in this State or, in the case of reciprocal insurance exchanges, to be issued a permit to solicit pursuant to N.J.S.A. 17:50-10, the requirements of this section shall be satisfied in addition to any other requirements in this subchapter or any other provision of law.

(b) Any applicant seeking to obtain a certificate of authority to transact property and casualty insurance in this State or, in the case of reciprocal insurance exchanges, seeking to obtain a permit to solicit pursuant to N.J.S.A. 17:50-10, shall first submit a feasibility study to the Commissioner which shall include, but not be limited to, the following:

1. A detailed plan of operation of the applicant which shall:
  - i. Include and explain its plans of operation;

- ii. Explain its source of funding;
- iii. Describe its marketing strategy;
- iv. Describe its underwriting procedures and guidelines;
- v. Explain the administrative and legal arrangements to be made for the adjustment of claims and the recovery of salvage and subrogation;
- vi. Describe its territory of operation;
- vii. Describe the qualifications of the senior officers of the applicant responsible in the areas of claims, underwriting and investment;
- viii. Describe the proposed maximum amount of coverage by line of business;
- ix. Describe the proposed retention by line of business;
- x. Describe the proposed reinsurance arrangements;
- xi. Describe the proposed methods for the handling of consumer complaints;
- xii. Include the applicant's proposed organization chart; and
- xiii. Describe the proposed dividend policy;

2. A summary of the applicant's initial rating system to the extent its proposed operations are regulated which shall include:

- i. Rates by lines of business;
- ii. Proposed statistical agents (if any);
- iii. Independent filings; and
- iv. The rating bureau (if any);

3. A five year projection of the following certified by a qualified actuary and accompanied by a narrative explaining the sources of anticipated premium and all assumptions made in developing the entire projection:

- i. Assets, liabilities and surplus and other funds in the format of the Assets page and the Liabilities and Surplus and Other Funds page in the Annual Statement representing the start-up year of the applicant and the five successive year-ends;
- ii. Underwriting and investment income in the format of the Underwriting and Investment Exhibit, Statement of Income in the Annual Statement for each of the five years;
- iii. The following information by line of business for each of the five years (the line of business classifications shall be those set forth in the Underwriting and Investment Exhibit, Part Two in the Annual Statement):

(1) Premiums earned;

- (2) Losses incurred;
- (3) Loss expenses incurred; and
- (4) Ratios of the sum of the losses and loss expenses to premium earned; and
- iv. The projected values required in the Underwriting and Investment Exhibit, Part Four—Expenses in the Annual Statement; and

4. The name of the proposed insurer or reciprocal insurance exchange which shall be reviewed for acceptability by the Commissioner, and if acceptable, shall be reserved for the time that such proposed insurer's or reciprocal insurance exchange's application is pending.

(c) In addition to the requirements in (b) above, the Commissioner may require any additional information he or she deems necessary in order to make an adequate evaluation of the applicant.

(d) Each applicant shall submit a non-refundable filing fee in the amount set forth in N.J.A.C. 11:1-32.6(a)1 with the filing of the information required by (b) above to cover costs of Department review of such information.

(e) Within 60 days from the receipt of a complete feasibility study and filing fee required by (b) and (d) above, the Commissioner shall notify the applicant in writing that he or she either accepts or rejects the applicant's feasibility study. If the Commissioner notifies the applicant that the feasibility study is accepted, the applicant shall comply with the additional information requirements set forth in N.J.A.C. 11:1-28.6.

Amended by R.1996 d.484, effective October 7, 1996.  
See: 28 N.J.R. 3223(a), 28 N.J.R. 4482(a).

#### 11:1-28.6 Additional information requirements

(a) After review and acceptance of the feasibility study pursuant to N.J.A.C. 11:1-28.5, an applicant seeking to obtain a certificate of authority or a permit to solicit in the case of reciprocal insurance exchanges, shall submit the following to the Commissioner:

1. The corporation's original certificate of incorporation, which the Department will submit for review and certification by the State Attorney General of New Jersey.

i. A suggested form for the preparation of a certificate of incorporation is appended to this subchapter as Appendix A, which is hereby incorporated by reference as part of these rules.

ii. After approval and certification by the State Attorney General of New Jersey, the corporation shall submit the certificate of incorporation to the county clerk of the county of the corporation's domicile for recording. The corporation shall then file the original recorded certificate of incorporation with the Commissioner.

iii. In the case of proposed reciprocal insurance exchanges, in lieu of the requirements in (a)1i and ii above, the attorney in fact, if a corporation, shall file with the Commissioner a copy of its certificate of incorporation. The attorney in fact shall also file a declaration containing the information required in N.J.S.A. 17:50-3 and an instrument authorizing service of process on the Commissioner, pursuant to N.J.S.A. 17:50-4;

2. Biographical affidavits for each incorporator, officer and director of the proposed insurance corporation or attorney in fact, as applicable, in the format of Appendix B appended to this subchapter, which is hereby incorporated by reference as part of these rules; and a criminal history record check request pursuant to N.J.A.C. 11:1-28.7; and

3. The by-laws of the proposed insurer or reciprocal insurance exchange, as applicable.

(b) All filings required by this subchapter or other information reasonably deemed necessary by the Commissioner or otherwise required by law shall be sent to:

New Jersey Department of Banking and Insurance  
Financial Exams Division  
PO Box 325  
Trenton, New Jersey 08625-0325  
Attention: Formation of domestic companies

Amended by R.2001 d.75, effective March 5, 2001.  
See: 32 N.J.R. 4184(a), 33 N.J.R. 794(a).

#### 11:1-28.7 Criminal history record check

(a) The applicant shall submit New Jersey State Police Requests for Criminal History Record Information and the fee required to pay for their processing, for each officer, director, incorporator or stockholder with controlling interest of the proposed insurer or attorney in fact and for each member of the board of trustees, as applicable.

(b) Upon request by the Commissioner, each officer, director, incorporator or stockholder with controlling interest of the proposed insurer or attorney in fact and each member of the board of trustees, as applicable, shall have impressions taken and submit them to the Commissioner on a New Jersey State Police fingerprint card with the fee required to pay for their processing.

(c) Upon request by the Commissioner, an applicant shall submit copies of any complaint, indictment, judgment of conviction or other related documents.

#### 11:1-28.8 Permit to solicit

In the case of reciprocal insurance exchanges only, after review and evaluation of the information filed pursuant to N.J.A.C. 11:1-28.5, 28.6 and 28.7, the Commissioner may issue a permit to solicit to such reciprocal exchange as provided in N.J.S.A. 17:50-10. After such permit is issued, such proposed reciprocal exchange shall comply with the remaining sections of this subchapter.

## SUBCHAPTERS 29 THROUGH 30. (RESERVED)

SUBCHAPTER 31. SURPLUS LINES INSURER  
ELIGIBILITY**11:1-31.1 Purpose and scope**

(a) This subchapter sets forth the filing requirements and procedures for unauthorized insurers which seek to become eligible surplus lines insurers in this State in accordance with the Surplus Lines Law, N.J.S.A. 17:22-6.40 et seq.

(b) This subchapter applies to unauthorized insurers which seek to become eligible surplus lines insurers in this State and currently eligible surplus lines insurers.

**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:

“Alien applicant” means an applicant which is an unauthorized insurer formed under the laws of any country other than the United States, its states, districts, territories, commonwealths, possessions or the Panama Canal Zone.

“Applicant” means an unauthorized foreign or alien insurer applying for a certificate of eligibility in this State.

“Certificate of eligibility” means a certificate issued to an unauthorized insurer by the Commissioner pursuant to N.J.S.A. 17:22-6.45 evidencing that it is an eligible surplus lines insurer in this State.

“Commissioner” means the Commissioner of the New Jersey Department of Banking and Insurance.

“Department” means the New Jersey Department of Banking and Insurance.

“Eligible surplus lines insurer” or “surplus lines insurer” means an unauthorized foreign or alien insurer in which an insurance coverage is placed or may be placed pursuant to N.J.S.A. 17:22-6.40 et seq.

“Foreign applicant” means an applicant which is an unauthorized insurer formed under the laws of a jurisdiction of the United States other than this State.

“NAIC” means the National Association of Insurance Commissioners.

“Surplus lines agent” means a person licensed pursuant to N.J.S.A. 17:22A-1 et seq. and N.J.A.C. 11:17 with the authority to place insurance coverages on behalf of unauthorized insurers.

“Unauthorized insurer” means a foreign or alien insurer that is not duly authorized to transact business in this State by

a current certificate of authority issued pursuant to the laws of this State.

Amended by R.2001 d.75, effective March 5, 2001.  
See: 32 N.J.R. 4184(a), 33 N.J.R. 794(a).

**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.

(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.

(c) All information submitted pursuant to this subchapter shall be sent to:

New Jersey Department of Banking and Insurance  
Office of Solvency Regulation  
Attention: Surplus Lines Insurer Eligibility  
PO Box 325  
Trenton, New Jersey 08625-0325

Amended by R.2001 d.75, effective March 5, 2001.

See: 32 N.J.R. 4184(a), 33 N.J.R. 794(a).

Amended by R.2006 d.307, effective September 5, 2006.

See: 37 N.J.R. 4156(a), 38 N.J.R. 3586(a).

In the address in (c), substituted "Office of Solvency Regulation" for "Financial Exams Division".

#### 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) 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;

2. Statements of the applicant's financial condition as of and for the two immediately preceding calendar years;

i. The annual statements shall be submitted on NAIC annual statement blanks, including fully completed and executed jurat pages subscribed and sworn to by the applicant's president, secretary and treasurer;

ii. The statement submitted for the most recent year shall be for a calendar year ending not more than nine months prior to the date of submission of the application; and

3. The applicant's quarterly financial statements for the current year in the NAIC format.

(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).

(d) The Commissioner shall notify the applicant within 60 days whether the application is complete. If the application is incomplete, the notice shall specify the items or information necessary to cure the deficiency.

Amended by R.2001 d.75, effective March 5, 2001.  
See: 32 N.J.R. 4184(a), 33 N.J.R. 794(a).

In (a)5, added the last two sentences; and in (a)15i(1) and (a)15iii(1), substituted "July 31 or seven months after the end of the insurer's fiscal year" for "September 1".

**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) The Certificate of Eligibility shall remain continuously in effect unless the Commissioner withdraws eligibility as set forth in N.J.A.C. 11:1-31.6.

**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 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 Administra-

tive 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.

(c) Except as otherwise specified by the Commissioner, an insurer whose eligibility has been withdrawn pursuant to (a) above shall be prohibited from writing any new business or renewing existing business, but shall continue to service existing business through expiration of each policy.

**11:1-31.7 Failure to comply with subchapter; denial of certificate of eligibility**

Failure to submit the information required by this subchapter completely and accurately may result in the denial of a certificate of eligibility to transact business as an eligible surplus lines insurer in this State.

**SUBCHAPTER 32. FEES AND SPECIAL PURPOSE APPORTIONMENT****11:1-32.1 Purpose and scope**

(a) This subchapter sets forth specific fees charged for various services provided by the Department. For services not included in this subchapter, the Department shall charge such other fees as may be provided by applicable statute or rule. This subchapter also sets forth procedures for the collection of the special purpose apportionment imposed pursuant to N.J.S.A. 17:1C-19 et seq.

(b) This subchapter applies to insurers licensed to transact business in this State, eligible surplus lines insurers, dental plan organizations, dental service corporations, medical service corporations, hospital service corporations, health service corporations, fraternal benefit societies, reciprocal insurance exchanges, risk retention groups, purchasing groups, health maintenance organizations, and to any other person to whom a service is provided as set forth in this subchapter.

(c) Any insurance company, as that term is defined in N.J.S.A. 17:33A-3, or health maintenance organization (HMO) doing business pursuant to N.J.S.A. 26:2J-1 et seq., that has net written premium and thus is subject to payment of a special purpose apportionment pursuant to N.J.A.C. 17:1C-19 et seq., shall not be subject to payment of fees imposed pursuant to this subchapter or any other statute or rule, except as follows:

1. All entities shall pay amounts for copying and mailing of public records set forth in N.J.A.C. 11:1-32.4(b)5 and (b)7 when the request exceeds an amount expected for the normal course of business;

2. Domestic insurers shall continue to pay fees assessed by the Department for the periodic examination of such insurers pursuant to N.J.S.A. 17:23-22;

3. All entities shall continue to pay assessments for the costs of experts to analyze rate applications and to appear as witnesses at hearings, pursuant to N.J.S.A. 52:27E-60; and

4. All entities shall continue to pay fees required for an insurance company or HMO to commence business, including, but not limited to, fees for application for a certificate of authority, certificate of eligibility, or registration.

Amended by R.1996 d.484, effective October 7, 1996.  
See: 28 N.J.R. 3223(a), 28 N.J.R. 4482(a).

#### Case Notes

Taxing surplus lines insurers by imposing special purpose assessment or apportionment on them to cover the cost of regulation constitutional. In re Markel Insurance Companies, 319 N.J.Super. 23, 724 A.2d 848 (N.J.Super.A.D. 1999)

#### 11:1-32.2 Definitions

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

“Annuity” is as defined in N.J.S.A. 17B:17-5.

“Certificate of eligibility” means a certificate issued to an unauthorized insurer by the Commissioner pursuant to N.J.S.A. 17:22-6.45 evidencing that it is an eligible surplus lines insurer in this State.

“Commissioner” means the Commissioner of the New Jersey Department of Banking and Insurance.

“Dental plan organization” means any person who undertakes to provide directly or to arrange for or administer one or more dental plans providing dental services pursuant to N.J.S.A. 17:48D-1 et seq.

“Dental service corporation” is as defined in N.J.S.A. 17:48C-2(a).

“Department” means the New Jersey Department of Banking and Insurance.

“Domestic insurer” means an insurer or reciprocal insurance exchange formed under the laws of this State pursuant to N.J.S.A. 17:17-1 et seq., 17:46A-1 et seq., 17:46B-1 et seq., 17:50-1 et seq. and 17B:18-1 et seq.

“Fraternal benefit society” is as defined in N.J.S.A. 17:44A-1.

“Form A filing” means a statement filed by every person who is directly or indirectly the beneficial owner of more than 10 percent of any class of any equity security of a New Jersey stock insurance company or who is a director or officer of such a company, in the acquisition of control of or merger with a domestic insurer pursuant to N.J.S.A. 17:27A-1 et seq.

“Health insurance” is as defined in N.J.S.A. 17B:17-4.

“Health service corporation” is as defined in N.J.S.A. 17:48E-1e.

“Hospital service corporation” is as defined in N.J.S.A. 17:48-1.

“Joint insurance fund” means a joint fund formed by two or more entities to insure against specified coverages and which organization or operations are subject to review and approval by the Department pursuant to N.J.S.A. 17:49A-1 et seq., 40A:10-36 et seq., 18A:18B-1 et seq., 18A:64A-25.33 et seq., or any other similar law.

“Legal insurance” is as defined in N.J.S.A. 17:46C-3c.

“Life and health insurer” means an insurer authorized or admitted pursuant to the provisions in Title 17B of the Revised Statutes to transact solely the business of life insurance, health insurance or annuities in this State.

“Life insurance” is as defined in N.J.S.A. 17B:17-3.

“Medical service corporation” is as defined in N.J.S.A. 17:48A-1.

“Private passenger automobile insurance” means direct insurance on private passenger automobiles as defined in N.J.S.A. 39:6A-2.

“Property and casualty insurer” means an insurer or reciprocal insurance exchange authorized or admitted to transact the kinds of insurance specified in N.J.S.A. 17:17-1, 17:46A-2 and 17:50-1 et seq.

“Purchasing group” is as defined in 15 U.S.C. 3901(a)(5).

“Reciprocal insurance exchange” means an individual, partnership, trustee, or corporation authorized to exchange reciprocal or interinsurance contracts pursuant to N.J.S.A. 17:50-1 et seq.

“Risk retention group” is as defined in 15 U.S.C. 3901(a)(4).

“Special risks” is as defined in N.J.S.A. 17:29AA-3.

“Surplus lines insurer” means an unauthorized insurer in which an insurance coverage is placed or may be placed pursuant to N.J.S.A. 17:22-6.40.

“Title insurer” means any domestic company organized pursuant to N.J.S.A. 17:46B-1 et seq. for the purpose of insuring title to real estate, and any title insurer organized under the laws of another state or foreign government and licensed to insure titles to real estate within this State pursuant to N.J.S.A. 17:46B-25.

Amended by R.1996 d.484, effective October 7, 1996.  
See: 28 N.J.R. 3223(a), 28 N.J.R. 4482(a).

Amended by R.2001 d.75, effective March 5, 2001.  
See: 32 N.J.R. 4184(a), 33 N.J.R. 794(a).

**11:1-32.3 General procedures**

(a) All fees set forth in this subchapter, excluding the fees set forth in N.J.A.C. 11:1-32.9, shall be paid at the time of the filing or application or the request for service.

(b) All fees set forth in this subchapter shall be paid by check and made payable to the State Treasurer of New Jersey.

**11:1-32.4 Fees; general**

(a) On filing with the Department any certificate or other filing specified in this section by an insurer, fraternal benefit society, medical service corporation, hospital service corporation, health service corporation, dental service corporation or dental plan organization authorized to transact business in this State, or by any other person, there shall be paid to the Commissioner fees as follows:

1. Filing a certificate of incorporation of a domestic insurer—\$1,500;
2. Filing a certificate of an increase of capital stock of a domestic insurer—\$250.00;
3. Filing a certificate of consolidation and merger involving a domestic insurer—\$2,500;
4. For each Form A filing in connection with the acquisition or control of a domestic insurer—\$2,500;
5. Upon the scheduling of a hearing in connection with a Form A filing—\$2,500;
6. Filing a certificate of dissolution of insurer, change of name, change of nature of business, amended certificate of incorporation (other than those authorizing increase in capital stock of a domestic insurer), decrease of capital stock, or increase or decrease of par value of shares—\$250.00;
7. Processing application and renewal of certificate of authority to transact business as a dental plan organization—\$1,000; and
8. Filing all certificates not otherwise provided for—\$50.00.

(b) The following fees shall be paid for services provided by the Commissioner in addition to those set forth in (a) above as follows:

1. Filing each annual statement of an insurer, including title insurers—\$100.00;
2. Providing certificate of valuation of policies (life and health insurers only)—\$25.00;
3. Providing certificate of the condition or qualification of an insurer—\$25.00; each additional copy for same company—\$5.00;
4. Filing service of lawful process upon the Commissioner as attorney—\$30.00;
5. Providing copy of Statutory Annual Statement pages—\$2.00 per page;
6. Certifying copy of any paper filed with the Department—\$15.00; certifying a company document—\$50.00;
7. Providing copy of any paper filed with the Department (except Statutory Annual Statements)—\$0.75 each for the first 10 pages; \$0.50 each for the next 10 pages; \$0.25 per page thereafter;

8. Filing each annual statement of a fraternal benefit society formed pursuant to N.J.S.A. 17:44A-1 et seq.—\$100.00;

9. Filing each annual statement of a dental plan organization—\$100.00;

10. Filing each annual statement of a dental service corporation, medical service corporation, hospital service corporation or health service corporation—\$100.00;

11. Filing an application for a certificate of authority to transact business as a dental service corporation, medical service corporation, hospital service corporation or health service corporation—\$5,000;

12. Processing an application for the issuance of a Certificate of Registration pursuant to N.J.A.C. 11:3-3—\$1,000; processing an application of renewal of Certificate of Registration—\$250.00; and

13. Processing an application for issuance or renewal of a Certificate of Order Granting Exemption from Insuring Liability for Compensation pursuant to N.J.A.C. 11:2-33—\$1,000; in the case of affiliated companies filing the same consolidated financial report as part of an initial application or renewal—\$1,000 for the parent company or lead affiliate, and \$250.00 for each additional affiliate;

14. Each submission or resubmission for review of payment of an extraordinary dividend or distribution pursuant to N.J.S.A. 17:27A-4—\$1,000; each submission or resubmission for review of payment of an ordinary dividend or distribution pursuant to N.J.S.A. 17:27A-4—\$500.00;

15. Filing an application for a special permit to provide "charitable annuities" pursuant to N.J.S.A. 17B:17-13.1—\$100.00;

16. Filing each annual statement by a holder of a special permit issued pursuant to N.J.S.A. 17B:17-13.1—\$50.00;

17. Processing an application for redomestication by a foreign or alien insurer or eligible surplus lines insurer—\$1,000;

18. Review of bylaws, plan of risk management or risk management program, or any other similar documents required to be submitted to the Department for approval to operate as a joint insurance fund—\$1,500;

19. Researching, retrieving and compiling public records—actual staff time rounded to the nearest quarter hour at the rate of \$50.00 per hour. The Department may require a deposit not exceeding the estimated cost prior to commencing work; and

20. The costs to the Department for investigation and prosecution of violations of the New Jersey Insurance Producer Licensing Act pursuant to N.J.S.A. 17:22A-17—actual staff time rounded to the nearest quarter hour at the rate of \$50.00 per hour; and

21. Providing or processing any certificate or document not otherwise provided for—\$25.00.

Amended by R.1992 d.371, effective September 21, 1992.

See: 24 N.J.R. 519(a), 24 N.J.R. 3414(a).

Fee for LAD registration added at (b)12.

Amended by R.1993 d.157, effective April 5, 1993.

See: 24 N.J.R. 1944(a), 24 N.J.R. 2708(b), 25 N.J.R. 1526(a).

Added (b)13.

Emergency Amendment, R.1993 d.445, effective August 16, 1993 (expired October 15, 1993).

See: 25 N.J.R. 4275(a).

Adopted Concurrent Proposal, R.1993 d.554, effective October 15, 1993.

See: 25 N.J.R. 4275(a), 25 N.J.R. 5170(b).

Amended by R.1996 d.116, effective March 4, 1996.

See: 27 N.J.R. 4121(a), 28 N.J.R. 1382(a).

Amended by R.1996 d.484, effective October 7, 1996.

See: 28 N.J.R. 3223(a), 28 N.J.R. 4482(a).

### 11:1-32.5 Fees; life and health insurance; legal insurance

(a) The following fees shall be paid for services provided by the Commissioner regarding submissions by or on behalf of life and health insurers and fraternal benefit societies in addition to any other applicable fees imposed by this subchapter with respect to life and health insurance as follows:

1. Processing application for a certificate of authority to transact business in this State—\$5,000.

(b) The following fees shall be paid for services provided by the Commissioner regarding submissions by or on behalf of persons transacting legal insurance in this State, in addition to any other applicable fees imposed by this subchapter:

1. Processing application for a certificate of authority to transact business in this State—\$500.00; and

2. Reviewing all policy forms—\$100.00.

Amended by R.1996 d.484, effective October 7, 1996.

See: 28 N.J.R. 3223(a), 28 N.J.R. 4482(a).

### 11:1-32.6 Fees; property and casualty insurance

(a) The following fees shall be paid for services provided by the Commissioner regarding submissions by or on behalf of property and casualty insurers, reciprocal insurance exchanges, or title insurers, in addition to any other applicable fees imposed by this subchapter with respect to property and casualty or title insurance as follows:

1. Processing application for a certificate of authority to transact business in the State—\$3,500.

Amended by R.1996 d.484, effective October 7, 1996.

See: 28 N.J.R. 3223(a), 28 N.J.R. 4482(a).

### 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;

3. Filing each Annual Statement filed by a risk retention group—\$100.00; and

4. Registration of new risk retention group or new purchasing group—\$100.00.

Amended by R.1996 d.484, effective October 7, 1996.

See: 28 N.J.R. 3223(a), 28 N.J.R. 4482(a).

### 11:1-32.8 Applicability of fees imposed by insurance laws of this State

(a) The fees set forth in this subchapter supersede fees set forth in N.J.S.A. 17:33-1, 17B:21-7, 17:48-14, 17:44A-34, 17:48A-21, 17:48C-23, 17:48D-3, 17:48D-5, 17:48C-38 and 17:50-4, to the extent such fees are inconsistent with the fees set forth herein. The fees set forth in this subchapter are in addition to the following fees imposed by the laws and regulations of this State:

1. Application and renewal for certificate of self-insurance of motor vehicles (N.J.S.A. 39:6-52, N.J.A.C. 11:3-30);

2. Application for hospital workers' compensation group self-insurance (N.J.A.C. 11:15-1.3);

3. Producer licensing and insurance education program fees (N.J.A.C. 11:17);

4. Custodial deposit fees (N.J.S.A. 17:20-3.1 and 17B:18-39.1, and N.J.A.C. 11:2-32);

5. All fees set forth in N.J.S.A. 17:33-1 and 17B:21-7 to the extent such fees are not inconsistent with the fees set forth in this subchapter; and

6. Any and all fees which are imposed as of October 7, 1996 or which may be imposed by the laws and regulations of this State in the future.

(b) Notwithstanding anything in (a) above to the contrary, to the extent that the laws of any other State or foreign country impose fees for services specified in this subchapter upon domestic insurers or reciprocal insurance exchanges which are in excess of the fees set forth in this subchapter, such fee shall be imposed upon the insurer or reciprocal exchange of such other state or foreign country doing business in New Jersey, pursuant to N.J.S.A. 17:32-15 and 17B:23-5, as applicable.

Recodified from 11:1-32.10 and amended by R.1996 d.484, effective October 7, 1996.

See: 28 N.J.R. 3223(a), 28 N.J.R. 4482(a).

Former section, "Fees; withdrawals, transfer of business", repealed.

**11:1-32.9 Special purpose apportionment; de minimis amounts**

For purposes of collecting the special purpose apportionment pursuant to N.J.S.A. 17:1C-19 et seq., the Commissioner shall not collect de minimis amounts less than \$20.00. Amounts not so collected pursuant to this section shall be reallocated among the remaining companies in accordance with N.J.S.A. 17:1C-20.

Repeal and New Rule, R.1996 d.484, effective October 7, 1996.  
See: 28 N.J.R. 3223(a), 28 N.J.R. 4482(a).

Former section, "Miscellaneous fees", repealed.

**11:1-32.10 Penalties**

(a) Failure to pay an applicable filing or application fee at the time of filing or application may result in the filing or application being rejected as incomplete.

(b) Failure to pay the applicable fee at the time of making a request for service may result in the Department's refusal to provide such service.

(c) Failure to pay a special purpose apportionment when due pursuant to N.J.S.A. 17:1C-19 et seq., shall result in the imposition of penalties as authorized by law.

Recodified from 11:1-32.11 and amended by R.1996 d.484, effective October 7, 1996.

See: 28 N.J.R. 3223(a), 28 N.J.R. 4482(a).

Former section, "Applicability of fees imposed by insurance laws of this State", recodified as 11:1-32.8.

**11:1-32.11 (Reserved)**

Recodified to 11:1-32.10 by R.1996 d.484, effective October 7, 1996.

See: 28 N.J.R. 3223(a), 28 N.J.R. 4482(a).

Section was "Penalties".

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**SUBCHAPTER 33. SURPLUS LINES INSURANCE:  
PROCUREMENT PROCEDURE**
**11:1-33.1 Purpose and scope**

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

(b) These rules apply to all New Jersey licensed insurance producers licensed pursuant to N.J.S.A. 17:22A-26 et seq.

(c) These rules apply to surplus lines insurers and ineligible unauthorized insurers in accordance with N.J.S.A. 17:22-6.45(i).

Amended by R.2005 d.104, effective April 4, 2005.

See: 36 N.J.R. 2144(a), 37 N.J.R. 1065(a).

Rewrote the section.

Amended by R.2006 d.307, effective September 5, 2006.

See: 37 N.J.R. 4156(a), 38 N.J.R. 3586(a).

Rewrote (b).

**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:

"Authorized insurer" means a domestic, foreign or alien insurer duly authorized by a Certificate of Authority issued by the Commissioner of the Department of Banking and Insurance of the State of New Jersey to transact the business of insurance in this State.

"Commissioner" means the Commissioner of the New Jersey Department of Banking and Insurance.

"Diligent effort" means a process by which a licensed New Jersey insurance producer places coverage on behalf of a New Jersey insured with a surplus lines insurer after the risk has been declined by three authorized insurers, each of which is authorized in New Jersey to write insurance of the kind requested and is an insurer that the producer has a good faith reason to believe might consider writing the type of coverage or class of insurance involved.

"Export" or "exported" means to place with a surplus lines insurer pursuant to the New Jersey Surplus Lines Law, N.J.S.A. 17:22-6.40 et seq., insurance covering all or part of a subject of insurance resident, located, or to be performed in New Jersey.

"Exportable list" means a list of any class or classes of insurance coverages or risks declared and promulgated by the Commissioner pursuant to N.J.A.C. 11:1-34 for which there is no reasonable or adequate market among authorized insurers in this State.

"Ineligible unauthorized insurer" means a foreign or alien insurer that is not duly authorized to transact business in this State by a current certificate of authority issued pursuant to the laws of this State and is not a surplus lines insurer.

"Producer" means a person engaged in the business of an insurance agent, insurance broker or insurance consultant pursuant to N.J.S.A. 17:22A-26 et seq., who is licensed pursuant to N.J.S.A. 17:22A-26 et seq., and who has property casualty authority.

"SLEO" means the Surplus Lines Examining Office.

"Surplus lines agent" means a person licensed pursuant to N.J.S.A. 17:22A-26 et seq. and N.J.A.C. 11:17 with the authority to place insurance coverages on behalf of surplus lines insurers.

"Surplus lines insurer" means a foreign or alien insurer that is eligible to transact surplus lines business in this State, pursuant to N.J.S.A. 17:22-6.40 and N.J.A.C. 11:1-31.

Amended by R.2006 d.307, effective September 5, 2006.

See: 37 N.J.R. 4156(a), 38 N.J.R. 3586(a).

Deleted definition "Policy"; in definition "Producer", substituted "17:22A-26" for "17:22A-1" two times; and in definition "Surplus lines agent", substituted "17:22A-26" for "17:22A-1".

### 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. If a licensed producer has a bona fide written renewal quote or coverage exists from an authorized insurer for any class or risk that is on the exportable list and that coverage is placed in the surplus lines market, the surplus lines agent shall stamp the policy as "Exportable."

2. The surplus lines agent shall maintain the records of each surplus lines contract and shall make these records available for inspection by the Commissioner for a period of at least five years.

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

1. The producer shall complete form SLPS-6 CERT1, incorporated herein by reference as Exhibit B in the Appendix to this subchapter, file it with the surplus lines agent and retain a copy.

2. The surplus lines agent shall complete form SLPS-8 AFF3 Supplemental Certification, incorporated herein by reference as Exhibit C in the Appendix to this subchapter, and attach form SLPS-6 CERT1 from the producer pursuant to (b)1 above.

3. The ineligible unauthorized insurer shall have made a deposit or deposits with the Commissioner as follows:

i. The amount of the deposit must be 125 percent of expected losses, but not less than \$100,000, in United States Government Bonds pursuant to the instructions set forth in N.J.A.C. 11:2-32, including all supporting documents and calculations used to determine the amount of the deposit; and

ii. The deposit set forth in (b)3i above shall be separately made for each individual policy; in the case of a group or plan of insurance, a deposit shall be separately made for each individual New Jersey citizen or resident who is insured through such policy or plan or who has received a certificate or other evidence of coverage under such policy or plan; and

iii. Upon good cause shown, the amount of the deposit provided in (b)3i above shall be reduced or waived, in the Commissioner's discretion. A showing of good cause requires:

(1) A rating in one of the four highest rating categories from a company listed in N.J.A.C. 11:1-41.3; except that a Weiss Rating must be in its highest category;

(2) Domicile in a National Association of Insurance Commissioners (NAIC) accredited jurisdiction; and

(3) No more than five new or renewal placements per year.

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 Insurance  
20 West State Street  
PO Box 325  
Trenton, New Jersey 08625-0325

5. The surplus lines agent shall maintain the records of each placement with an ineligible unauthorized insurer and shall make these records available for inspection by the Commissioner for a period of at least five years.

(c) When an insurance risk or any part thereof is placed with an ineligible unauthorized insurer pursuant to (b) above, the policy, binder or cover note shall be clearly stamped in boldface type with the following:

“All or part of the insurers participating in this risk have not been admitted to transact business in the State of New Jersey, nor have they been approved as surplus lines insurers by the Commissioner of Banking and Insurance of New Jersey. The placing of such insurance by a duly licensed surplus lines agent in this State, shall not be construed as approval of such insurer by the Commissioner of Banking and Insurance of the State of New Jersey and insurance coverage provided by such insurer is not protected by either the New Jersey Guaranty Fund or by the New Jersey Surplus Lines Insurance Guaranty Fund.”

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

1. The surplus lines agent shall, in accordance with N.J.A.C. 11:1-33.3(b)1, complete forms SLPS-6-Certl and SLPS-8-AFF3, prior to each renewal;
2. The most recent certified annual statement of the insurer’s financial condition shall be filed with the SLEO; and
3. The policy shall be stamped clearly in boldface type with the filing “All or part of the insurers participating in this risk have not been admitted to transact business in the State of New Jersey, nor have they been approved as a surplus lines insurer by the Commissioner of Banking and Insurance of New Jersey. The placing of such insurance by a duly licensed surplus lines agent in this State, shall not be construed as approval of such insurer by the Commissioner of Banking and Insurance of the State of New Jersey and insurance coverage provided by such insurer is not protected by either the New Jersey Insurance Guaranty Fund or by the New Jersey Surplus Lines Guaranty Fund.”

(e) The New Jersey Surplus Lines Insurance Guaranty Fund Act, N.J.S.A. 17:22-6.70 et seq., does not provide protection for New Jersey insureds who are insured by policies procured from ineligible unauthorized insurers as described in (b) and (c) above. Therefore, no Guaranty Fund surcharge shall be charged or added to premiums related to these policies.

(f) A surplus lines agent may receive a commission for his or her services rendered on behalf of an ineligible unauthorized insurer, pursuant to insurance placements which conform to (b) and (c) above.

Recodified from N.J.A.C. 11:1-33.8 and amended by R.2005 d.104, effective April 4, 2005.  
See: 36 N.J.R. 2144(a), 37 N.J.R. 1065(a).  
Rewrote (a) and (b); in (d), amended N.J.A.C. reference. Former N.J.A.C. 11:1-33.3, Policy form filings, repealed.

**11:1-33.4 Penalties**

Failure to comply with the provisions of this subchapter shall subject producers and surplus lines agents to penalties as provided in N.J.S.A. 17:22-6.61 and 17:22A-17.

Recodified from N.J.A.C. 11:1-33.9 by R.2005 d.104, effective April 4, 2005.  
See: 36 N.J.R. 2144(a), 37 N.J.R. 1065(a).  
Former N.J.A.C. 11:1-33.4, Policy form standards, repealed.

**11:1-33.5 (Reserved)**

Repealed by R.2005 d.104, effective April 4, 2005.  
See: 36 N.J.R. 2144(a), 37 N.J.R. 1065(a).  
Section was “Exclusions”.

**11:1-33.6 (Reserved)**

Repealed by R.2005 d.104, effective April 4, 2005.  
See: 36 N.J.R. 2144(a), 37 N.J.R. 1065(a).  
Section was “List of disapproved or withdrawn forms or contracts; exportable list hearing”.

**11:1-33.7 (Reserved)**

Repealed by R.2005 d.104, effective April 4, 2005.  
See: 36 N.J.R. 2144(a), 37 N.J.R. 1065(a).  
Section was “Refiling policy forms”.

**11:1-33.8 (Reserved)**

Recodified to N.J.A.C. 11:1-33.3 by R.2005 d.104, effective April 4, 2005.  
See: 36 N.J.R. 2144(a), 37 N.J.R. 1065(a).

**11:1-33.9 (Reserved)**

Recodified to N.J.C. 11:1-33.4 by R.2005 d.104, effective April 4, 2005.  
See: 36 N.J.R. 2144(a), 37 N.J.R. 1065(a).

**APPENDIX  
EXHIBIT A-1**

Form to be used at the time of quotation:

The undersigned 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 different terms than a policy issued by an insurer granted a Certificate of Authority by the New Jersey Department of Banking and Insurance.

\_\_\_\_\_  
Applicant’s Signature

\_\_\_\_\_  
Applicant’s Name (Print or Type)

\_\_\_\_\_  
Date of Applicant’s Signature

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

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

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

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

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

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

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.

**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:

The following insurers are among those that I contacted relative to this risk, or to substantially similar risks within the past 30 days:

Insurer	Representative	Telephone No.	Date	Result Code*
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

\*Result Codes: (enter appropriate code(s) for each insurer listed above)

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 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.

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

AND/OR

B— 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)

Amended by R.2005 d.104, effective April 4, 2005.  
See: 36 N.J.R. 2144(a), 37 N.J.R. 1065(a).

**EXHIBIT B**

Form No. SLPS-6-CERT1  -  -

Transaction #  
STATE OF NEW JERSEY  
DEPARTMENT OF BANKING AND INSURANCE  
SURPLUS LINES EXAMINING OFFICE  
PO 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 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.

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

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

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

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

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

**EXHIBIT C**

Form No. SLPS-8-AFF3  -  -

Transaction #  
STATE OF NEW JERSEY  
DEPARTMENT OF BANKING AND INSURANCE  
THE SURPLUS LINES EXAMINING OFFICE  
PO Box 325 TRENTON, NEW JERSEY 08625-325

**SUPPLEMENTAL CERTIFICATION BY SURPLUS LINES AGENT FOR PROCUREMENT OF INSURANCE FROM INELIGIBLE UNAUTHORIZED INSURER**

Name of Insured \_\_\_\_\_

\_\_\_\_\_  
(Street Address) (City or Town) (State) (Zip Code)

Location of Risk \_\_\_\_\_