

(b) "Complications of pregnancy" shall mean:

1. Conditions (when the pregnancy is not terminated) whose diagnoses are distinct from pregnancy but are adversely affected by pregnancy or are caused by pregnancy, such as, acute nephritis, nephrosis, cardiac decompensation, missed abortion, and similar medical and surgical conditions of comparable severity, but shall not include false labor, occasional spotting, physician-prescribed rest during the period of pregnancy, morning sickness, hyperemesis gravidarum, preeclampsia, and similar conditions associated with the management of a difficult pregnancy not constituting a nosologically distinct complication of pregnancy; and

2. Nonelective caesarean section, ectopic pregnancy, which is terminated, and spontaneous termination of pregnancy, which occurs during a period of gestation in which a viable birth is not possible.

(c) General provisions include the following:

1. No person engaged in the business of life and health insurance in this State shall treat complications of pregnancy more restrictively than any other sickness or illness under any contract of insurance issued for delivery in New Jersey.

2. A contravention of the preceding paragraph shall be deemed evidence of an unfair trade practice in the conduct of business of insurance in this State in violation of N.J.S.A. 17B:30-1 et seq.

New Rule, R.1976 d.161, effective September 1, 1976.
See: 8 N.J.R. 196(b), 8 N.J.R. 300(b).

SUBCHAPTER 5. FIRE AND CASUALTY INSURANCE

11:1-5.1 FAIR Plan surcharge

(a) On August 3, 1988, the Commissioner of Banking and Insurance ascertained and determined that the net value of the New Jersey Insurance Development Fund, as of December 31, 1987, was more than five percent of the premiums written on basic property insurance in New Jersey in calendar year 1987. Accordingly, no further surcharge on said premiums and no further payments to said Fund shall be made.

(b) Application of surcharge when imposed by the Commissioner of Banking and Insurance shall be as follows:

1. A surcharge shall be imposed in an amount prescribed in an order of the Commissioner of Banking and Insurance on premiums of the following policies and endorsements effective on or after the date fixed by the Commissioner in his or her order.

i. All fire, extended coverage and other allied lines coverage (property damage and time element) written under the fire policy.

ii. All burglary and theft policies.

iii. Commercial multiple peril policies. For the purpose of this computation, 65 percent of the commercial multiple peril premium shall constitute the premium subject to the surcharge, except that on individual risks where such percentage appears unreasonable, a company may use actual division by line, provided the company maintains a separate record of those risks.

iv. Policies issued under the homeowners policy program. For the purpose of this computation, 85 percent of the homeowners premium shall constitute the premium subject to surcharge, except that on individual risks where such percentage appears unreasonable, a company may use actual division by line provided the company maintains a separate record on those risks.

2. The surcharge, if deemed necessary by the Commissioner of Banking and Insurance, shall apply to all new and renewal policies effective on or after the date fixed by the Commissioner in his or her order and to the additional premiums on all endorsements effective on or after that date.

3. Policies written for a term longer than one year with an effective date on or after the date fixed by the Commissioner in his or her order shall be charged, if deemed necessary by the Commissioner of Banking and Insurance, in accordance with this section.

4. Return of the surcharge, if any is charged by order of the Commissioner of Banking and Insurance, is permitted on policy activity such as endorsement decreasing premium and cancellations effective the date fixed by the Commissioner in his or her order.

5. For policies with an effective date on or after the date fixed by the Commissioner in his or her order, which are subject to audit, the surcharge, if any is charged by order of the Commissioner of Banking and Insurance, shall be based on the audited premium.

6. The surcharge, if deemed necessary by the Commissioner of Banking and Insurance, shall be charged in full. Rounding to the nearest whole dollar is not permitted.

7. If a surcharge is deemed necessary by the Commissioner of Banking and Insurance, commissions and premium taxes shall not be payable thereon, and the insurer is prohibited from absorbing such surcharge as an inducement for insurance or for any other reason.

(c) If a surcharge is deemed necessary by the Commissioner of Banking and Insurance, the surcharge shall be collected by each insurer and paid over to the State Treasurer.

er of New Jersey, not later than March 1 and September 1 of each year.

(d) The method of billing shall be as follows:

1. If a surcharge is deemed necessary by the Commissioner of Banking and Insurance, the surcharge shall be a separate charge to the insured in addition to the premium to be paid and shall be shown separately or combined with the Guaranty Association charge.

2. If a surcharge is deemed necessary by the Commissioner of Banking and Insurance, when the surcharge is combined with the Guaranty Association charge, it shall be identified as "Surcharges," and when it is shown separately, it shall be identified as "Surcharge."

New Rule, R.1977 d.231, effective July 1, 1977.

See: 9 N.J.R. 278(f), 9 N.J.R. 371(b).

Amended by R.1978 d.78, effective March 2, 1978.

See: 10 N.J.R. 67(a), 10 N.J.R. 165(a).

Amended by R.1984 d.426, effective October 1, 1984.

See: 16 N.J.R. 1689(a), 16 N.J.R. 2677(a).

This section was originally codified as 11:1-5.4. Section substantially amended.

Public Notice: Recertification to the Legislature of the need for continuation of the notice of cancellation and nonrenewal requirement applicable to fire and casualty insurance policies, excluding accident and health policies for the fiscal year commencing July 1, 1985.

See: 17 N.J.R. 1939(a).

Amended by R.1989 d.478, effective September 5, 1989.

See: 21 N.J.R. 1816(a), 21 N.J.R. 2796(a).

Provisions for surcharge and for payments to the New Jersey Insurance Development Fund deleted and replaced with references to orders of the Commissioner of Insurance.

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

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

Case Notes

The cost of use of money deposited by policyholder of insurance company in connection with its issuance of perpetual homeowner's policies held subject to both premiums tax and assessment under the NJ Insurance Premium Tax and the NJ Insurance Underwriting Association Act, respectively; cost of deposit money to be calculated by multiplying the deposit amount by the interest rate representing the cost of money. *Mutual Insurance Co., v. Gluck*, 9 NJ Tax 55 (TC 1987) affirmed 10 N.J.Tax 234.

11:1-5.2 Notice of cancellation and nonrenewal of fire and casualty coverage

(a) All fire and casualty policies of insurance, except accident and health policies, shall provide for the issuing company to give:

1. Thirty days' written notice to the insured of the cancellation of any policy;
2. Thirty days' written notice of cancellation of any policy to any mortgagee mentioned in said policy; and
3. Thirty days' written notice to the insured of said company's intent not to renew any policy.

(b) Provisions of policies to be effective on or after July 1, 1977, which are issued by any company doing business in New Jersey and provide for less than 30 days' notice of cancellation and nonrenewal shall be null and void, with the following exceptions:

1. Provisions for cancellations for nonpayment of premium or for "moral hazard" (such as insurance fraud) under N.J.S.A. 17:29C-2;

2. Provisions for cancellations and nonrenewal notice which are controlled by N.J.S.A. 17:29C-6 et seq., (Automobile insurance), 39:6A-3 and rules promulgated thereunder (No-fault insurance).

3. Provisions in New Jersey FAIR Plan policies for five day notice to the insured and 10 days notice to the mortgagee with respect to any of the following properties or in any of the following circumstances:

i. Buildings which are unoccupied and accessible to unauthorized persons.

ii. Buildings which have been subject to damage by a peril insured against and the damage is not repaired or remedied within a reasonable time after the damage occurred.

iii. Buildings which are in danger of collapse because of serious structural conditions.

iv. The insured has been indicted for or convicted of arson or burning with intent to defraud, or there is evidence of incendiarism or attempt threat by the insured or representative of the insured.

v. Buildings which have an exceptional degree of hazard, such as fire ruins or dilapidated condition.

vi. Buildings which have any of the following conditions existing:

(1) Repeated failure to furnish heat, water, sewer or public lighting;

(2) Failure to correct conditions dangerous to life, health or safety;

(3) Failure to maintain the building in accordance with applicable law;

(4) Failure to pay property taxes for two quarters.

vii. Building with any of the rental units in the building unoccupied and left unprotected against trespass. A rental unit will be deemed to be unprotected against trespass when an entrance door to such unit or an exterior door to a hall, stairway, or other common passage leading to such unit is missing, unlocked, not capable of being locked, or otherwise unsecured, or when a door or window in such unit which is accessible to entry has not been replaced or boarded up. If the owner remedies the condition that left the unit or units unprotected against trespass and so notifies the association within the 15-day time period for appeal to the association as provided by N.J.A.C. 11:1-5.3(c), then the association shall grant the appeal and the insurance shall continue without lapse.

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

Insurance Coverage _____
 (Type of Coverage) (Policy Limits)

 (Name of Surplus Lines Agent Representing Insured Above)

 (Title of Representative for Corporation or Partnership)

 (Name of Business, Corporation or Partnership)

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

The above named individual is duly licensed as an insurance producer with surplus lines authority pursuant to *N.J.S.A. 17:22-1 et seq.*

Name of Ineligible Unauthorized Insurer that business was placed with:

	<u>NAIC #</u>	<u>ISI#</u>
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____

Attach additional listings if needed.

The named ineligible unauthorized insurer has deposited with the Commissioner in accordance with N.J.A.C. 11:2-32, securities in the amount acceptable to the Commissioner, which are held by the Commissioner for the benefit of New Jersey policyholders; and

(I) (We) have procured from such ineligible unauthorized insurer and filed with the Commissioner a certified copy of its current annual statement of financial condition in accordance with N.J.S.A. 17:22-6.45(h).

(I) (We) do not know of this coverage(s) being offered by companies I represent or by other companies in the admitted market.

(I) (We) certify that the foregoing statements made by me are true. I am aware that if any of the statements are willfully false, I am subject to civil and criminal penalties.

 Name of Surplus Lines Agent

By: _____
 (Signature)

SUBCHAPTER 34. SURPLUS LINES: EXPORTABLE LIST

11:1-34.1 Purpose and scope

(a) The purpose of this subchapter is to identify the procedures concerning the creation and modification of an exportable list of certain classes of insurance coverages or risks and to promulgate the list as a rule, in implementation of N.J.S.A. 17:22-6.43.

(b) This subchapter shall apply to all surplus lines insurers and producers. Pursuant to N.J.S.A. 17:22-6.40, this subchapter shall not apply to life insurance companies, which may not become eligible surplus lines insurers.

11:1-34.2 Definitions

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

“Annuity” means a contract not coming within the definition of life insurance as set forth in N.J.S.A. 17B:17-3, or health insurance as set forth in N.J.S.A. 17B:17-4, under which an insurer obligates itself to make periodic payments for a specified period of time, such as for a number of years, or until the happening of an event, or for life, or for a period of time determined by any combination thereof. Such a contract which includes extra benefits of the kinds set forth in N.J.S.A. 17B:17-3 or 17B:17-4 shall nevertheless be deemed to be an annuity if such extra benefits constitute a subsidiary or incidental part of the entire contract.

“Authorized insurer” means a domestic or foreign insurer duly authorized by a Certificate of Authority issued by the Commission to transact the business of 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.

“Exportable list” means a list of any class or classes of insurance coverages or risks declared and promulgated by the Commissioner for which there is no reasonable or adequate market among authorized insurers in this State.

“Health insurance” means a contract or agreement whereby an insurer is obligated to pay or allow a benefit of pecuniary value with respect to the bodily injury, disablement, sickness, death by accident or accidental means of a human being, or because of any expense relating thereto, or because of any expense incurred in prevention of sickness, and includes every risk pertaining to any of the enumerated risks. Health insurance does not include workers’ compensation coverages.

“Life insurance” means a policy or contract whereby an insurer is obligated to pay or allow a benefit of pecuniary value with respect to the cessation of human life. Life insurance includes also the granting of endowment benefits and

optional modes of settlement of proceeds of life insurance as well as provisions for additional benefits in event of death by accident or accidental means or in event of dismemberment or loss of sight, or safeguarding such insurance against lapse or giving a special surrender value or special benefit or an annuity in the event that the insured shall become totally and permanently disabled, whether such provisions are incorporated in a policy or contract of life insurance or in a policy or contract supplemental thereto. Life insurance does not include workers' compensation coverages.

"State" means the State of New Jersey.

"Surplus lines insurer" means an eligible, unauthorized insurer with which an insurance coverage is placed or may be placed pursuant to N.J.S.A. 17:22-6.40 et seq. (see Appendix A to this subchapter, incorporated herein by reference).

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

11:1-34.3 Exportable list hearing

(a) In the month of November or December of each year, the Commissioner or his or her designee shall hold a hearing, pursuant to N.J.S.A. 17:22-6.43, for the purpose of determining the extent of the existence or a reasonable or adequate market among authorized insurers for certain classes of insurance coverages and risks. Additionally, the hearing shall provide interested parties the opportunity to present relevant information for the Commissioner's consideration as to why forms disapproved or withdrawn should be approved.

1. This hearing shall be preceded by a notice of hearing published in the New Jersey Register at least 30 days prior to the date of the hearing, which notice shall include information concerning the date by which, and the person to whom, written public comment may be made. Notice shall also be provided to persons who have previously requested receipt of such notice.

2. The notice published in the New Jersey Register and as otherwise provided pursuant to (a)1 above shall also request that persons who wish to testify at the hearing provide the Department with timely notice of this intention, including a brief summary of the subject matter of their testimony.

3. The notice shall indicate whether the hearing shall address the merits of maintaining all items currently on the list, or whether the hearing will consider only specific additions, deletions or clarifications regarding the list.

4. The notice shall provide a list of disapproved policy forms or contracts that have been disapproved or withdrawn by the Commissioner since the previous exportable list hearing was held.

(b) The hearing shall be conducted by a hearing officer designated by the Commissioner. The length of testimony permitted at the hearing and the receipt of questions from the floor shall be within the discretion of the hearing officer.

(c) Interested parties may present evidence to the Commissioner that the conditions of non-procurability have changed. Evidence of non-procurability should demonstrate that there exists no reasonable or adequate market among authorized insurers.

(d) A transcript of the hearing shall be made and a copy thereof shall be made available to any interested person upon request and payment of an appropriate fee.

Public Notice: Public hearing on the Exportable List.
See: 28 N.J.R. 4680(b).

Public Notice: Public hearing on the Exportable List.
See: 29 N.J.R. 5028(b).

Public Notice: Public hearing on the Exportable List.
See: 30 N.J.R. 4291(b).

Public Notice: Public hearing on the Exportable List.
See: 31 N.J.R. 3860(a).

Public Notice: Public hearing on the Exportable List.
See: 32 N.J.R. 4019(a).

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

Rewrote (a).

Public Notice: Public Hearing on the Exportable List.
See: 34 N.J.R. 315(a), 3994(a).

Public Notice: Public Hearing on the Exportable List.
See: 35 N.J.R. 5446(a).

Public Notice: Public Hearing on the Exportable List.
See: 36 N.J.R. 5173(a).

Public Notice: List of Special Risks.

See: 37 N.J.R. 2260(a).

Public Notice: Notice of Public Hearing on the Exportable List.
See: 37 N.J.R. 4477(b).

Public Notice: Public Hearing on the Exportable List.
See: 38 N.J.R. 5178(b).

Public Notice: Public Hearing on the Exportable List.
See: 39 N.J.R. 4963(a).

Public Notice: Public Hearing on the Exportable List.
See: 40 N.J.R. 7004(a).

11:1-34.4 Exportable list hearing record

(a) The record of the hearing shall include the following:

1. Timely-received written public comments;
2. The transcript of the hearing; and
3. Any other information which the hearing officer may deem relevant.

11:1-34.5 Promulgation and modification of exportable list

(a) Upon review of the exportable list hearing record, the Commissioner shall, by rule, declare eligible for export generally, and notwithstanding the provisions of N.J.S.A. 17:22-6.43(a), (b) and (c), any class or classes of insurance coverage or risk for which he or she finds there exists no reasonable or adequate market among authorized insurers; provided, however, that if adequate documentary evidence has been presented which satisfies the Commissioner that a reasonable or adequate market does exist among authorized insurers, he or she may, by rule, strike any class or classes of insurance coverage or risks from the exportable list.