

(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.

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.

“Policy,” “policy forms,” “insurance policy” or “contract” includes all forms, endorsements, exclusions and limitations.

“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-1 et seq., who is licensed pursuant to N.J.S.A. 17:22A-1 et seq., and who has property casualty authority.

“SLEO” means the Surplus Lines Examining Office.

SUBCHAPTER 33. SURPLUS LINES INSURANCE: PROCUREMENT PROCEDURE

Authority

N.J.S.A. 17:1-8.1, 17:22-6.43, 17:22-6.45 and 17:22-6.41.

Source and Effective Date

R.2003 d.37, effective February 3, 2003.
 See: 34 N.J.R. 641(a), 35 N.J.R. 612(a).

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, including those with surplus lines authority who file policy forms pursuant to N.J.S.A. 17:22-6.43(c), on behalf of surplus lines insurers.

"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 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.

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 each 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

Producer Name (Print or Type)

Date of Producer Signature

New Jersey Producer License Reference Number

(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)