

**INSURANCE**

**DEPARTMENT OF BANKING AND INSURANCE**

**OFFICE OF SOLVENCY REGULATION**

**Exportable List**

**Adopted Amendment: N.J.A.C. 11:1-34.6**

Proposed: September 19, 2016, at 48 N.J.R. 1899(a).

Adopted: June 22, 2017, by Richard J. Badolato, Commissioner, Department of Banking and Insurance.

Filed: June 22, 2017, as R.2017 d.143, **without change**.

Authority: N.J.S.A. 17:1-8.1, 17:1-15.e, and 17:22-6.43.

Effective Date: August 7, 2017.

Expiration Date: October 24, 2018.

**Summary of Public Comment and Agency Response:**

The Department of Banking and Insurance (Department) received one timely written comment from New Jersey Manufacturers Insurance Group.

COMMENT: The commenter contends that workers' compensation policies are readily available for purchase in the voluntary market for independent contractors including truckers. Additionally, the commenter stated that "transportation company contingent liability for workers' compensation" policies are being sold as a substitute for workers' compensation coverage, which they are not. The commenter further contends that these policies are not filed with the Compensation Rating and Inspection Bureau (CRIB) and are not recognized as workers' compensation policies. They differ in that they have coverage limits not permitted in workers' compensation policies (see N.J.S.A. 34:15-87 prohibiting limitation of liability in workers'

compensation policies) and only provide limited coverage in the event of a serious accident. Furthermore, the commenter stated that their classifications and rates are not developed by CRIB as required by N.J.S.A. 34:15-88 for workers' compensation policies. Finally, the commenter contends that many who purchase these policies are under the impression that they are the equivalent of a workers' compensation policy and will provide the same unlimited coverage, which is not the case.

RESPONSE: The Department's decision to include transportation company contingent liability for workers' compensation on the Exportable List is based on information summarized in the August 24, 2015 Hearing Officer's Report. The information gathered in 2014 indicated that there is not a reasonable or adequate market among authorized carriers in the admitted market in this State. Specifically, "transportation company contingent liability for workers compensation" is designed to fill a void in the transportation industry related to trucking independent contractors that are not required to be covered by workers' compensation, and are generally not covered. Such independent contractors injured in the course of employment often apply for workers' compensation benefits even though they are independent contractors and are not entitled to such benefits. If the trucking company has workers' compensation coverage for its employees, the company reports such claims by independent contractor drivers to the company's workers' compensation carrier and the carrier will defend and seek recoupment at some point for the legal fees and/or any paid benefits. If there is no workers' compensation carrier in place, then the employer may be left without insurance coverage for workers' compensation claims by independent contractors for which a court and/or adjudicating body may later determine that the company is liable. This addition to the Exportable List only applies to policies sold to transportation network companies that provide contingent liability coverage for unanticipated

workers' compensation benefits payable to non-employee, independent contractor drivers. This contingent coverage is available only in the excess and surplus lines marketplace, as it is not currently offered in New Jersey by an admitted carrier. The Department notes that its information indicated that the companies that write this coverage in New Jersey are surplus lines companies.

### **Federal Standards Statement**

A Federal standards analysis is not required because the adopted amendment is not subject to any Federal requirements or standards.

**Full text** of the adoption follows:

TEXT