

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

OFFICE OF SOLVENCY REGULATION

Exportable List

Proposed Amendment: N.J.A.C. 11:1-34.6

Authorized By: Richard J. Badolato, Commissioner, Department of Banking and Insurance.

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

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

Proposal Number: PRN 2016-158.

Submit comments by November 18, 2016, to:

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The agency proposal follows:

Summary

N.J.S.A. 17:22-6.43 provides that the Commissioner of the Department of Banking and Insurance (Department) may declare eligible for export certain lines or classes of insurance for

which, after a hearing, he or she determines that there exists no reasonable or adequate market among authorized carriers in this State. This list of lines or classes of insurance is known as the exportable list. Pursuant to N.J.S.A. 17:22-6.43(c), the Department annually holds a hearing on the list.

Among other things, the inclusion of a line of coverage on the list relieves insurance producers of the burden of obtaining three declinations of coverage from authorized insurers to establish that no reasonable or adequate market among authorized insurers exists. On December 18, 2014, the Department held its exportable list hearing for 2014. At the hearing, testimony was provided as to whether items on the exportable list should be added or deleted. The proposed amendment is a result of the testimony received during this hearing.

The proposed amendment to N.J.A.C. 11:1-34.6(a) adds transportation company contingent liability for workers compensation as an exportable line of insurance coverage. Testimony offered at the hearing indicated that a void exists in the New Jersey market for this type of coverage.

The testimony at the hearing indicated that the coverage is intended for the trucking industry, specifically, independent contractors. Typically, trucking companies hire independent contractors to drive trucks or engage in the trade. Independent contractors are not required to be covered by workers compensation, and they generally are not covered. When independent contractors are injured in the course of employment, they often apply for workers compensation benefits even though they are not entitled to such benefits. Also, if the trucking company has workers compensation coverage for its employees, the company often reports workers compensation 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 any workers compensation claims by independent contractors for which a court and/or adjudicating body may later determine that the company should be liable. Currently, this contingent coverage for this risk is only available in the excess and surplus lines marketplace, as it is not currently offered in New Jersey by an admitted carrier. Based on the evidence presented at the hearing, it was determined that a reasonable or adequate market does not exist among authorized insurers for transportation company contingent liability for workers compensation.

A 60-day comment period is provided for this notice of proposal and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the notice is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

As a result of placing transportation company contingent liability for workers compensation insurance on the exportable list, insurance producers are able to go directly to unauthorized insurers that qualify as eligible surplus lines insurers in New Jersey to place this coverage. The proposed amendment is beneficial to those who seek this type of coverage, but are unable to obtain it due to an inadequate market among authorized carriers in this State. The proposed amendment should open the surplus lines market to more insurers writing transportation company contingent liability for workers compensation insurance, which will benefit insureds in this State.

Economic Impact

The Department anticipates that the proposed amendment will have a beneficial economic impact on the trucking industry, specifically independent contractors. This should

have a positive economic benefit on independent contractors that may not be covered under workers compensation coverage. Consequently, increasing the availability of transportation company contingent liability for workers compensation should fill a void in the transportation industry for this type of coverage.

Federal Standards Statement

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

Jobs Impact

The Department does not believe that the proposed amendment will cause any jobs to be generated or lost. However, to the extent that the rules in this subchapter help promote a healthy insurance marketplace in New Jersey, the climate for business and job growth is improved.

The Department invites interested parties to submit any data or studies concerning the job impact of the proposed amendment together with their written comments on other aspects of the proposal.

Agriculture Industry Impact

The Department does not expect any agriculture industry impact from the proposed amendment.

Regulatory Flexibility Statement

Currently, there are no surplus lines insurers that are “small businesses” as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Housing Affordability Impact Analysis

The proposed amendment will not have an impact on the affordability of housing because the proposed amendment relates to placing contingent workers compensation insurance coverage

on the exportable list, so that coverage may be more easily obtained from surplus lines insurance carriers.

Smart Growth Development Impact Analysis

The Department believes that there is an extreme unlikelihood that this amendment would evoke a change in housing production in Planning Areas 1 and 2, or with the designated centers, under the State Development and Redevelopment Plan in New Jersey because the proposed amendment addresses placing contingent workers compensation coverage on the exportable list, so that coverage may be more easily obtained from surplus lines insurance carriers.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 34. SURPLUS LINES: EXPORTABLE LIST

11:1-34.6 Exportable list

(a) The exportable list is as follows:

1. – 33. (No change.)

34. Gap Coverage for Private Passenger and Commercial Automobile; [and]

35. Flood insurance for primary and excess coverage[.]; **and**

36. Transportation company contingent liability for workers compensation.

(b) – (d) (No change.)