

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
OFFICE OF SOLVENCY REGULATION

Exportable list

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

Authorized By: Neil N. Jasey, Commissioner, Department of Banking and Insurance

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

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

Proposal Number: PRN 2009-299

Submit comments by December 4, 2009 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 list allows admitted or authorized insurers that choose to write commercial coverages included on the list to be exempt from the rate and form filing requirements of N.J.S.A. 17:29AA-1 et seq., and relieves insurance producers of the burden of

obtaining three declinations in cases where no reasonable or adequate market among authorized insurers exists. On January 14, 2009 the Department held its exportable list hearing for 2008. At the hearing, testimony was provided as to why items on the exportable list should be added or deleted. The proposed amendments are a result of testimony received during this hearing. Additionally, the U.S. Department of Agriculture Risk Management Agency has listed New Jersey as a state that can provide Livestock Gross Margin Policies for Dairy Cattle. On May 18, 2009, the Department issued Order No. A09-104, which approved the Hearing Officer's Report. That Report recommended adding "Special Risk Disability and Personal Accident Coverage" and "Livestock Gross Margin Policies" to the exportable list because it was found that there exists no reasonable or adequate market among authorized or admitted insurers for these types of coverages. The Department's proposed amendment at N.J.A.C. 11:1-34.6(a)33, "Livestock Gross Margin Policies for Dairy Cattle," provides protection against the loss of gross margin (market value of milk minus feed costs) on milk produced from dairy cows. The indemnity at the end of the 11-month insurance period is the difference, if positive, between the gross margin guarantee and the actual gross margin. The policy uses futures prices and state prices for corn and milk to determine expected and the actual gross margins. New Jersey is now one of the states where any producer (as that term is utilized by the U.S.D.A., this term does not refer to a New Jersey licensed insurance producer), who owns dairy cattle in New Jersey, is eligible for Livestock Gross Margin for Dairy Cattle insurance policy coverage.

The Department's amendment to N.J.A.C. 11:1-34.6(b) amends this subsection to clarify that Special Risk Disability and Personal Accident Coverage is eligible for export.

N.J.A.C. 11:1-34.6(b)1 is being amended to delete the requirements for requesting an exemption for the export of individual disability insurance because the Department does not believe it is necessary given the new provisions that address Special Risk Disability and Personal Accident Coverage found in proposed N.J.A.C. 11:1-34.6(b)3.

The proposed amendment to N.J.A.C. 11:1-34.6(b)3 concerning Special Risk Disability and Personal Accident Coverage is intended to better assure that high limit disability insurance is available for professional athletes, professional musicians and entertainers, and executives essential to an insured's business operations. The amendment would do so by allowing these coverages to be exported without the need for New Jersey insurance producers to make a diligent effort to procure coverage from authorized insurers prior to the placement of the coverage through policies written by unauthorized insurers that qualify as eligible surplus lines insurers in New Jersey.

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 proposal 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 Livestock Gross Margin Policies for Dairy Cattle and Special Risk Disability and Personal Accident Coverage for professional athletes, professional musicians, entertainers and essential executives 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 these coverages. The proposed amendments are beneficial to those who seek the above mentioned coverages but are unable to obtain them due to an inadequate market among authorized carriers in this State. Because the proposed amendments will open the surplus lines market to the above mentioned prospective insureds, the amendments should increase their ability to procure the coverage they need.

Economic Impact

The proposed amendments should not require insurers or surplus lines producers to add additional staff. In addition, those risks that cannot obtain individual disability coverage in the

admitted market may be able to obtain coverage through a surplus lines insurer. By procuring such coverage, such risks will be able to avoid the adverse economic affects that would result were they to be rendered disabled without coverage. The Department believes that the proposed amendments should help insureds avoid gaps in coverage and the disruption in consumers' businesses and their daily activities that can result from such gaps. The addition of Livestock Gross Margin Policies for Dairy Cattle to the exportable list will benefit members of the dairy industry by making such coverage more readily available, since the Department believes that there are only a limited number of authorized companies that write this coverage.

Federal Standards Statement

A Federal standards analysis is not required because although this coverage is subject to Federal requirements and standards 7 U.S.C. §1523(b), the U.S. Department of Agriculture Risk Management Agency has listed New Jersey as a state that can provide Livestock Gross Margin Policies for Dairy Cattle. The Department's proposed amendments place this coverage on the exportable list thereby making it eligible to be exported. There are no Federal Standards or requirements applicable to Special Risk Disability and Personal Accident Coverage.

Jobs Impact

The Department does not believe that the proposed amendments 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 amendments.

Regulatory Flexibility Statement

Surplus lines insurers are all non-domestic companies, therefore, none of these insurers are “small businesses” as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The proposed amendments do not impose any additional reporting, recordkeeping or other compliance requirements on surplus lines agents, which are all “small businesses” as defined in N.J.S.A. 52:14B-16 et seq. In fact, the proposed amendments should reduce these requirements because, since these lines of insurance are now exportable, the requirement that producers obtain three declinations from authorized insurers prior to placing the coverage with an eligible surplus lines insurer is no longer applicable. As noted in the Economic Impact above, the Department does not believe that any professional services will be needed in order to comply with the proposed amendments.

The Department notes that N.J.S.A. 17:22-6.40 et seq. does not provide exemptions or different compliance requirements based on a surplus lines agent’s or insurance producer’s business size. In order to ensure that New Jersey insureds on surplus lines policies receive the protections afforded to them by that law, the proposed amendments provide no differentiation in compliance requirements based on business size.

Smart Growth Impact

The proposed amendments will not have an impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Housing Affordability Impact

The proposed amendments will not have an impact on affordability because the proposed amendments relate to surplus lines insurance.

Smart Growth Development Impact

The Department believes that there is an extreme unlikelihood that these amendments 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 amendments address surplus lines insurance.

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

11:1-34.6 Exportable list

(a) The exportable list is as follows:

1. – 31. (No change.)

32. Employment Practices Liability; [and]

33. Livestock Gross Margin Policies for Dairy Cattle; and

[33.] **34.** (No change in text.)

(b) With the exception of [disability insurance as set forth in (b)1] **Special Risk Disability and Personal Accident Coverage as set forth in (b)3.** below, the following kinds of insurance, if sold by eligible surplus lines insurers, are specifically not eligible for export, since the Department has determined that they are procurable from authorized or admitted insurers after a diligent effort:

1. Health insurance, including specific excess or aggregate excess purchased by self-funded health benefit plans, as defined by N.J.S.A. 17B:17-4. [Insurance producers may, however request an exemption for the export of individual disability insurance.

Such requests, and any exemptions granted on the basis of such requests, shall be subject to the following provisions:

i. If a licensed new Jersey insurance producer, after making a diligent effort to procure an individual disability policy with an authorized insurer, finds that the coverage is unavailable in the admitted market, he may request an exemption to export disability insurance;

ii. The request shall include copies of at least three applications to and declinations from authorized insurers, a description of the specific coverage sought and an explanation as to why the Department should permit the coverage to be exported;

iii. If granted, such an exemption shall enable the producer to place an individual disability policy with an eligible surplus lines insurer which has a New Jersey certificate of eligibility which includes accident and health;

iv. Requests that are not granted within 30 days of receipt by the Department shall be deemed disapproved; and

v. All such requests shall be submitted to:

Department of Banking and Insurance

Life and Health Office

ATTN: Gale Simon, Assistant Commissioner

20 West State Street

PO Box 325

Trenton, NJ 08625; and]

2. (No change.)

3. “Special Risk Disability and Personal Accident Coverage” means insurance providing coverage on a professional athlete, a professional musician or entertainer, or an executive essential to the insured’s business operations obtained by a policyholder who procures insurance:

i. For risk of financial loss caused by the cessation of earned income due to disability from sickness, ailment or bodily injury;

ii. For risk of financial loss caused by a contractual requirement to pay an executive or other person essential to the insured's business operations who can no longer perform his or her duties due to disability from sickness, ailment or bodily injury;

iii. For risk of accidental death in an amount equal to or exceeding \$1,000,000 in face amount only and with a policy period not to exceed 24 months, where no reasonable or adequate market exists among admitted insurers; or

iv. For risk of financial loss caused by a contractual requirement to pay an executive or other person essential to the insured's business operations who can no longer perform his or her duties due to death. Such coverage, where no reasonable or adequate market exists among admitted insurers, must be purchased in an amount equal to or exceeding \$1,000,000 in face amount only.

(c) – (d) (No change.)

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