

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
OFFICE OF SOLVENCY REGULATION

Surplus Lines
Exportable List

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

Authorized By: Holly C. Bakke, Commissioner, Department of Banking and Insurance

Authority: N.J.S.A. 17:1-8.1 and 17:22-6-43

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

Proposal Number: PRN 2004 –394

Submit comments by December 17, 2004 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 insurers writing commercial coverages to be exempt from the rate and form filings 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 exist. On Wednesday, January 7, 2004, the Department held its Exportable List Hearing for 2003. At the hearing testimony was provided as to why items on the Exportable List should be added or deleted. The proposed amendment is a result of testimony received during this hearing. The Department, on May 28, 2004, issued Order No. A04-131, which approved the Hearing Officer's Report and added commercial automobile liability insurance for limousines to the Exportable List. The Hearing Officer's Report also recommended that licensed insurance producers be permitted to make a request to the Department for an exemption from the general export prohibition upon health insurance in order to export individual disability policies after making a diligent effort. The Attorney General's office has advised the Department that the providing of such an exemption is not explicitly supported by applicable law see N.J.S.A. 17B:17-4 and N.J.A.C. 11:4-42.2. As a result, the Department is not including that recommendation as part of this proposal. The Department has reviewed the information and testimony received at the hearing and hereby proposes the following amendment to the exportable list.

The Department is proposing to amend N.J.A.C. 11:1-34.6(a)29 to add commercial automobile liability insurance for limousines, provided that the certificate of eligibility of the eligible surplus lines insurer who will issue the policy states that they are permitted to write this risk.

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

The Department is adding commercial automobile liability insurance for limousines to the Exportable List because there does not appear to exist a reasonable or adequate market among

admitted insurers in this State for these types of risks based on the testimony and information received by the Department at the most recent annual hearing on the list.

The Department believes that the best interests of New Jersey's policyholders will be served by this amendment because these changes may permit additional carriers to provide this difficult-to-procure coverage.

Economic Impact

The proposed amendment does not require insurers or surplus lines producers to add additional staff. The proposed amendment may have an impact on limousine operators in that they may be able to obtain coverage from insurers at more competitive, as opposed to prohibitive, rates.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendment relates to the business of insurance and 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

Pursuant to P.L. 1998, c.48, the Right to Farm Act, and N.J.S.A. 52:14B-4(a) of the Administrative Procedures Act, the Department does not expect any agriculture industry impact from the proposed amendment.

Regulatory Flexibility Statement

Surplus lines insurers are all non-domestic companies, therefore, none of these insurers are “small business” as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Consequently, it is unnecessary to establish different standards for any surplus lines insurer based on company size.

The proposed amendment does not impose any additional reporting or recordkeeping requirements. The addition of commercial liability insurance to the Exportable List lessens reporting and recordkeeping requirements for surplus lines agents and insurance producers which are “small businesses” as defined in N.J.S.A. 52:14B-16 et seq. 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 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 amendment provides no differentiation in compliance requirements based on business size.

Smart Growth Impact

The proposed amendment will have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (addition indicated in boldface **thus**):

11:1-34.6 Exportable list

(a) The exportable list is as follows:

1. – 28. (No change.)

29. Commercial auto liability for taxicabs **and limousines**; (Eligible Surplus Lines insurer's certificate of eligibility must state that they are permitted to write this risk.)

30. – 33. (No change.)

(b) – (d) (No change.)

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