

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: Donald Bryan, Acting 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 2005-320

Submit written comments by November 5, 2005 to:

Douglas A. Wheeler, Assistant Commissioner
Department of Banking and Insurance
Legislative and Regulatory Affairs
20 West State Street
P.O. Box 325
Trenton, NJ 08625-0325
Fax: (609) 292-0896
E-mail: legsregs@dobi.state.nj.us

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 December 20, 2004, the Department held its Exportable List Hearing for 2004. 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 March 3, 2005, issued Order No. A05-109, which approved the Hearing Officer's Report approving policies providing Physical Damage Coverage for private passenger and commercial vehicles with an original cost new of \$60,000 for inclusion on the list. Based upon its review of the information and testimony received at the hearing, the Department is proposing to amend N.J.A.C. 11:1-34.6(a)20 by permitting the export of the physical damage coverage for private passenger and commercial vehicles with an original cost new of \$60,000, which represents an increase from the current \$40,000 amount.

The proposed amendment to N.J.A.C. 11:1-34.6(b)1 reflects the determination made in Order No. A04-131, issued on May 28, 2004, in which the Department recommended to permit licensed insurance producers to request an exemption from the general prohibition on the export of health insurance after making a diligent effort to procure an individual disability policy. The Order provided that the request shall include the applications, three declinations, the specific coverage sought and an explanation as to why the Department should permit the coverage to be exported. The Department notes that an exemption request that is not granted within 30 days of receipt by the Department shall be deemed disapproved. Thereafter, concerns had been raised that providing such an exemption is not explicitly supported by applicable law. As a result, the Department did not include that recommendation as part of its October 18, 2004 proposal (see 36

N.J.R. 4622(a)) to amend N.J.A.C. 11:1-34.6(b)3. After further review, the Department is now proposing to amend the rule to reflect this exemption.

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 believes that by amending the rule to include policies providing physical damage coverage for private passenger and commercial vehicles with an original cost new of \$60,000, rather than \$40,000, more higher priced vehicles will be permitted to be written in the admitted market.

Additionally, the Department's amendment at N.J.A.C. 11:1-34.6(b)1 permits licensed insurance producers the opportunity, after making a diligent effort to procure an individual disability policy, to request an exemption from the export prohibition on such a policy. As a result, those individual disability risks that cannot obtain individual disability coverage in the admitted market may be able to obtain coverage through a surplus lines insurer. Opening the surplus lines market to such prospective insureds will increase their ability to procure the coverage they need.

Economic Impact

The proposed amendment does not require insurers or surplus lines producers to add additional staff. The change in the original cost new provision for physical damage should permit more higher priced vehicles to be written in the admitted market, which should generally result in increased competition for and lower premium rates on policies written on such vehicles.

Additionally, the Department's amendment at N.J.A.C. 11:1-34.6(b)1 permits licensed insurance producers the opportunity to request an exemption from the export prohibition after making a diligent effort to procure an individual disability policy. As a result, 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 detrimental economic effects that would result were they to be rendered disabled without coverage. Producers that request an exemption may incur minimum costs associated with administrative expenses involving the mailing and making of the three copies for submission to the Department. Because the cases in which individuals may need this particular type of coverage are rare, the Department anticipates that the number of requests for such an exemption will be minimal.

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 Analysis

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 Department’s amendment to the Exportable List which revises the original cost new for physical damage coverage for private and commercial vehicles will have no effect on the 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’s amendment for an exemption for individual disability policies increases reporting and recordkeeping requirements for surplus lines agents, which are all “small businesses” as defined in N.J.S.A. 52:14B-16 et seq. In order for the Department to consider an exemption request, the surplus lines agent must submit to the Department copies of the application, the three declinations, and an explanation as to why the coverage should be exported. The Department does not believe that any professional services will be needed in order to comply with these amendments. The only costs associated with this amendment are the costs for copying and mailing the information to the Department, should the surplus lines agent seek an exemption.

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 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 (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

11:1-34.6 Exportable list

(a) The exportable list is as follows:

1. – 19. (No change.)

20. Physical Damage Coverage for Private Passenger and Commercial Vehicles with an original cost new of [\$40,000] **\$60,000** or above;

21. - 33. (No change.)

(b) [The] **With the exception of disability insurance as set forth in (b)1 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[; and], **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; and
Trenton, NJ 08625; and

2. (No change.)

(c) - (d) (No change.)