

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

OFFICE OF SOLVENCY REGULATION

Exportable List

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

Authorized By: Kenneth E. Kobylowski, 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 2014-118.

Submit comments by September 5, 2014, 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 exist 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 January 8, 2014, the Department held its exportable list hearing for 2013. 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 the testimony received during this hearing.

The proposed amendment to N.J.A.C. 11:1-34.6(a) add flood insurance for primary and excess coverage as an exportable line of insurance. Testimony offered at the hearing regarding the addition of flood insurance indicated that flood insurance is currently difficult to obtain and is mainly available from the Federal Insurance Administration through the National Flood Insurance Program (NFIP) administered by the Federal Emergency Management Agency (FEMA). The testimony further noted that under the rules of the NFIP, insurers, some of which are “household names” in this State, that represent FEMA are not allowed to sell private flood insurance as an admitted carrier. Based upon the evidence and testimony adduced at the hearing, it has been determined that a reasonable and adequate market currently does not exist among authorized insurers for flood insurance for primary and excess coverage.

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 flood 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 flood insurance, which will benefit insureds in this State.

Economic Impact

The proposed amendment will have a beneficial economic impact on the owners of properties in designated flood zones and should not require insurers or surplus lines producers to add additional staff. Risks that cannot obtain flood insurance in the admitted market should be able to more easily obtain flood insurance coverage through a surplus lines insurer. Typically, lenders require all such properties to be covered by flood insurance as a condition of providing mortgage financing. Consequently, increasing the availability of flood insurance should enhance the marketability of such properties.

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.

The proposed amendment does not impose any additional reporting, recordkeeping or other compliance requirements on surplus lines producers, which are all “small businesses” as defined in N.J.S.A. 52:14B-16 et seq. In fact, the proposed amendment should reduce these requirements because, since this line of insurance is 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 amendment.

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 producer's business size. In order to ensure that New Jersey insureds under 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.

Housing Affordability Impact Analysis

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

Smart Growth Development Impact Analysis

The Department believes that there is an extreme unlikelihood that the proposed amendment would evoke a change in housing production in Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the proposed amendment addresses 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. – 32. (No change.)
33. Livestock Gross Margin Policies for Dairy Cattle; [and]
34. Gap Coverage for Private Passenger and Commercial Automobile[.]; **and**

35. Flood insurance for primary and excess coverage.

(b) – (d) (No change.)