

Q&A: Hurricane Matthew Emergency Regulation 69-78 and Data Call

Emergency Regulation 69-78

1. **Please clarify the number of days that the Emergency Regulation (moratorium) is in effect. The Emergency Regulation is stated to be in effect for 120 days unless otherwise extended. However, Section 4 outlines a 60-day moratorium.**

The Emergency Regulation itself is in effect for 120 days. The moratorium found in Section 4 is only a portion of the Emergency Regulation and is in effect from 10/8/16 to 12/7/16 (or beginning 10/4/16 for insureds displaced by the evacuations or directly impacted by Hurricane Matthew).

2. **Does the amendment to the Emergency Regulation affect its effective dates?**

No. The consumer protections set forth in Emergency Regulation 69-78 apply to the counties set forth in this amendment as of the effective dates specified in the original document. **Nothing in this amendment should be construed or interpreted as altering any of the effective dates in the original Emergency Regulation 69-78.**

3. **On the SCDOI website (doi.sc.gov/storm), Chesterfield is listed as one of the counties where federal aid is available. The amended Emergency Regulation does not include Chesterfield in its Impacted Area definition. Which is correct?**

Chesterfield is included in the list on our Hurricane Matthew page (doi.sc.gov/storm) because it was added for Individual Assistance on 10/25/16. The amendment to the definition of "impacted counties" specifies all of the counties that had been designated as of 10/21/16 (along with all of the eight coastal counties in the regulation as originally filed) but notes that it also includes "any other counties designated for individual assistance by the Federal Emergency Management Agency by amendment to the major disaster declaration for the State of South Carolina (FEMA-4286-DR) after the effective date of this amendment to Emergency Regulation 69-78."

4. **Does the moratorium only apply to policies in force at the effective date of the Emergency Regulation, or does it apply to new policies written during the moratorium period as well?**

The Emergency Regulation is applicable to all policies falling within its scope and definitions, regardless of written date.

5. **If we have a policy that will cancel for nonpayment on 10/17/16, do we have to give a 60-day moratorium from that date or just extend all nonpayment cancellations to 12/7/16?**

The latter – 12/7/16 is the last day of the moratorium period, regardless of when the cancellation due to nonpayment of premium was originally scheduled to be effective. Note the part of the Emergency Regulation regarding working with your directly impacted insureds after 12/7/16 that may need a payment plan or something else worked out to get their outstanding premiums from the moratorium period paid.

- 6. A policy has a balance due stemming from an endorsement that was invoiced on 8/16/16 and due 8/26/16. The notice of cancellation due to nonpayment was issued on 9/27/16, which is prior to the 10/4/16 date of notices being sent for cancellation per the moratorium to be rescinded. Please advise if this policy may remain cancelled or if we need to issue a reinstatement.**

If the effective date of the nonpayment cancellation was during the moratorium period, then the policy should not have been cancelled. If the effective date of the cancellation was prior to the moratorium period, then you are in compliance. Any noncompliance issues should be rectified as quickly as possible.

- 7. What if a customer purchased the policy after 10/8/16, they live in an affected area and then failed to make a payment. Can we continue to cancel those customers for nonpayment since they have exhibited an ability to transact insurance business post storm and were not existing customers at the time of the regulation's publication? With a monthly payment plan, they could fail to make the second payment, and their cancellation could fall within the moratorium window.**

While we can appreciate the rationale behind wanting to exclude these from the moratorium, we do not believe it to be appropriate to assume that someone that successfully made a payment during the moratorium period does not need the benefit of the moratorium when the time comes for their next payment. The moratorium on cancellations due to nonpayment of premium should be applied to all insureds in the counties subject to the emergency regulation.

- 8. Can an insured who could have prevented policy cancellation by paying premiums due between 10/4/16 and 10/7/16 now make that payment to have the policy reinstated?**

In the case of an insured displaced as a result of or directly impacted by Hurricane Matthew, the moratorium period essentially ranges from 10/4/2016 to 12/7/2016. If the insured in your proposed scenario falls into this category, then the moratorium would apply and disallow the cancellation during the grace period. Furthermore, the Emergency Regulation directs insurers to work with directly impacted insureds that may request or require additional time to pay premiums that would have been due during the moratorium (e.g., payment plan or further extension of the date by which the amount due must be paid in full).

- 9. A policy was set up for nonrenewal months ago, and the nonrenewal is set to take place in November 2016. The insured calls in and requests continuation of coverage. Do we just have to renew coverage until the next renewal or only extend coverage to 12/7/16?**

You're only required to extend coverage to December 7th (subject to payment of pro-rated premium for the November through 12/7/16 extra coverage), but we certainly wouldn't object to a full renewal.

- 10. What about new business that is written after 10/4/16? So, let's say a customer buys a policy on 10/10/16. Can that customer get cancelled for nonpayment on 11/25/16?**

No. Section 4 of the Emergency Regulation states, "There is a 60-day moratorium on the cancellation of any insurance contract attributed to a failure to pay premium(s) by insureds."

11. What about a policy that simply expires during the moratorium period?

Section 4 of the Emergency Regulation states, "In the case of an insurance contract for which a nonrenewal takes effect during the moratorium period, coverage shall be continued at the request of the insured for the duration of the moratorium period. An insured requesting a temporary extension of coverage under this provision is responsible for any additional premium owed during the time period for which coverage is extended." This situation is self-explanatory. If a policy simply expires with no scheduled renewal or renewal request by the insured, then the policy expiration would take place as described in the insurance contract.

12. Does the insured have to request continued coverage prior to the nonrenewal effective date? If not, could they wait to ask for an extension until after they have an accident (e.g., policy nonrenewed on 10/9 and had an accident on 11/30, they could call in and request continued coverage to have the claim paid; of course, they would be billed for the earned premium between 10/9 and 11/30)?

The intent of the moratorium is not to allow insureds to "game the system." Rather, it is to aid insureds while recovering from the impact of Hurricane Matthew. As such, an insured's request to continue coverage could be made at any point during the moratorium period. Section 16 of the Emergency Regulation states, "Insurers, as defined in this regulation, should take into consideration the difficulties related to this weather event that citizens of this state have suffered and continue to suffer and should take such consideration into account when dealing with matters relating to collection of premium, cancellation, nonrenewal, documentation and other requirements or policy provisions, including, but not limited to: notifications of hospital admissions; due dates relating to claims; premium payments; optional service fees; prior authorization requirements; and limitations on prescription refills. The Department will review allegations or disputes, and if warranted, direct the insurer to work with the insured by providing the relief required in this regulation or to take other corrective action. If the insurer fails to comply, the matter will be referred for further investigation."

13. If the insured can retroactively ask for coverage, can an insurance company activate the renewal for all of the nonrenewals in this timeframe and then cancel for nonpayment after the moratorium expires and require the payment of premium for the additional coverage provided during the moratorium?

No. This action could result in an unknowing insured being negatively and unfairly impacted from an underwriting, tiering, rating, etc. standpoint in the future

14. If the insured ends up paying the premium, is an insurance company allowed to cancel mid-term, essentially enforcing the nonrenewal mid-term, or is the insurance company on the hook for another term? What if the insurance company was nonrenewing for too many accidents in a 36 month period and the policy no longer meets that threshold at the next renewal?

The insurer would be able to cancel mid-term after honoring the renewal request pursuant to Section 4 of the Emergency Regulation. In this case, coverage would have to extend to the end of the moratorium period. Furthermore, Section 4 states, "After the moratorium, insurers shall work with insureds directly impacted by the disaster event that may request or require additional time to pay premiums that would have been due during the moratorium (e.g., payment plan or further extension of the date by which the amount due must be paid in full)." As stated in Section 16, "The benefits, entitlements, and protections

of this regulation shall be liberally construed to effectuate the intent and purposes expressed herein and to afford maximum consumer protection for the insureds of South Carolina...The Department will review allegations or disputes, and if warranted, direct the insurer to work with the insured by providing the relief required in this regulation or to take other corrective action. If the insurer fails to comply, the matter will be referred for further investigation.” In short, the purpose of the Emergency Regulation is to “protect the interests of South Carolina insureds in light of” Hurricane Matthew, and the Department intends to do just that.

- 15. We understand that the Order is designed to provide relief for South Carolina residents affected by Hurricane Matthew. Our question is related to the trigger date of October 4, 2016 and how that would be applied to nonpayments and nonrenewals that predate October 4, 2016. Here is the basic fact pattern that I would appreciate your office addressing: “Insured A ceases making his health insurance premium payments in June 2016. His 90 day grace period ends on or before September 30, 2016. Insured A is also in the class of insureds covered by the Emergency Order. Insured A's insurance carrier does not mail out the termination letter until October 4 or later.” Is Insured A's insurance carrier required to give Insured A an additional grace period even though the nonpayment/non-renewal had nothing to do with Hurricane Matthew? The only event that occurred on or after October 4 is the mailing of final termination.**

The scenario you’ve provided appears to apply specifically to QHP enrollees that qualify for federal subsidies. In this case, the insured is already receiving a grace period that is more advantageous than the 60-day moratorium provided for under ER 69-78. Further, the cancellation notice that is mailed out in October is simply a notice of the termination of coverage as required under 45 CFR 156.270(b). The termination of coverage (i.e., the cancellation for nonpayment of premium) is not occurring during the moratorium as it is applied retroactively to a prior date, so the moratorium would not apply. We cannot think of a scenario where the 3-month grace period provided for in federal regulation would not provide at least the same protections we’re providing under Section 4 of this emergency regulation for individuals with federal subsidies. As such, QHP issuers should continue to apply the 3-month grace period for these individuals.

Data Call

- 1. We just filed our first submission with nothing to report. We don’t anticipate having any claims due to Hurricane Matthew. Do we need to file null reports each reporting cycle?**

In the event a company has no claims to report and does not anticipate any claims to be reported, only one report is required indicating that there are no claims and none are expected. If the company has relevant claims at a later date, then it should begin reporting in the subsequent report cycle.

- 2. What should the start and end dates of loss be for the Hurricane Matthew Data Call?**

There is not a particular date range. We are asking companies to use their best judgment to determine what should be considered a catastrophe claim related to Hurricane Matthew. While this may seem vague, we want to ensure that no relevant claims are excluded based on a date.

- 3. Should I be entering the data for YTD or just period to date? For example, if the report is for the period of 10/20/16 to 10/26/16, should I only include claims data for those dates or include claims data from the first report as well?**

The latter; the submitted data should be cumulative.

Example: For the 5th report, it would include all Hurricane Matthew claims reported from the beginning of October through December 7.

- 4. I have a question regarding the ZIP code. Do you want this broken out by the 9 digit or the 5 digit zip code (Example: 29501-1209 or 29501)?**

Due to the aggregation programming, only five digit zip codes may be used.

- 5. We do not know the zip codes for some of the reported claims. What do we input in the spreadsheet?**

As directed in the Instructions tab of the data call template, "If you have claims data where the zip code is unknown, provide that on a separate row where the zip code and city/town columns are labeled as 'UNKNOWN.'"

- 6. Do you want the NFIP data at all with our submission? I see it is excluded under "Flood" but wanted to make sure you don't want it under the "All Other" category.**

No. NFIP data should be excluded in its entirety as this information will be collected directly from FEMA/NFIP.

- 7. If the claim reported is damage from flood and has both a property damage and business interruption component, do you want both the property damage and business interruption shown under the flood column, or do you want the property damage shown under flood and the business interruption shown under business interruption?**

If you have the ability to break out the case incurred and paid amounts by coverage, then please include the claim under both coverage categories with the relevant portion of the claim amount in each category. In other words, a \$100 total claim amount may include a \$60 property claim and a \$40 business interruption claim. If you cannot break out the amounts by coverage, then please include everything as a single claim under whichever category makes up the largest portion of the total claim amount. In the example above, you would show a single \$100 commercial property claim.