

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-2

CORPORATE ISSUES

Amended Regulation 2-4-1

CONCERNING SURPLUS LINES INSURANCE ISSUED BY NONADMITTED INSURERS

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Section 1 Authority

This regulation is promulgated under the authority of §§ 10-1-109, and 10-5-117, C.R.S.

Section 2 Scope and Purpose

The purpose of this regulation is to establish standards regarding the placement of insurance by producers and the qualification of insurers pursuant to the Colorado Nonadmitted Insurance Act, § 10-5-101, et seq., C.R.S. and the "Nonadmitted and Reinsurance Reform Act of 2010", 15 U.S.C. sec 8201 et. seq., as amended. This regulation also serves to further protect Colorado insurance consumers by setting forth necessary disclosure requirements for surplus lines insurance contracts.

Section 3 Applicability

This regulation shall apply to any company eligible, or seeking to become eligible, to effect a contract of insurance pursuant to Colorado's Nonadmitted Insurance Act, to any producer or Colorado surplus lines broker, as defined by § 10-5-101.2(3), C.R.S., procuring or assisting in the procurement of surplus lines insurance for an insured whose home state, as defined in § 10-5-101.2(7), C.R.S., is Colorado, and any person that enters into an independent procurement for nonadmitted insurance.

Section 4 Disclosure

A. Every insurance contract procured and delivered as a surplus line coverage to an insured whose home state is Colorado must include the disclosure stated in § 10-5-104, C.R.S.

B. In accordance with Section 10-5-119, C.R.S., if the policy is written on a claims-made basis, the following shall also appear on the policy:

“This policy is a claims-made policy which provides liability coverage only if a claim is made during the policy period or any applicable extended reporting period.”

C. If an automobile policy does not provide the basic complying policy coverages in § 10-4-620, C.R.S. the following must appear on the policy:

“This policy does not meet the statutory requirements of this State’s financial responsibility laws. It does not provide liability coverage for bodily injury and property damage.”

D. The provisions of §10-5-101.5 (1)(b), C.R.S. shall apply to policies of property and casualty insurance issued or delivered in this state by an unauthorized insurer affording coverage only on property located temporarily or permanently, or operations conducted temporarily or permanently outside the boundaries of the United States of America, its territories or possessions when the policy is placed by licensed property and casualty producers or brokers of this state, who shall remain responsible for verifying that the insuring company is licensed or authorized by the appropriate regulatory bodies to transact the business of insurance in that jurisdiction, and contains the following disclaimer:

“This policy is issued by an insurance company that is not regulated by the Colorado Division of Insurance. The insurance company may not provide claims service and may not be subject to service of process in Colorado. If the insurance company becomes insolvent, insureds or claimants will not be eligible for protection under Colorado insurance law.”

E. These required disclosures shall be affixed to the declaration page of the contract given to the insured. A copy, bearing the disclosures, shall also be maintained by the broker, in the case of the issuance of a binder prior to the formal policy, such disclosure shall also appear on the binder.

Section 5 Premium Rates

The provisions of § 10-5-103, C.R.S. allow for the use of an eligible nonadmitted insurer if coverage is not available or affordable. In determining affordability, the rate quoted by each admitted insurer must exceed the rate quoted by the eligible nonadmitted insurer by 10% for comparable benefits and provisions.

Section 6 Procurement

Section 10-5-103, C.R.S. requires that a diligent effort be made to procure coverage with an admitted insurer before placing coverage with an eligible nonadmitted insurer.

- A. Due diligence shall be satisfied by documentation prepared by the producer, office of the producer or broker. The documentation must demonstrate that the coverage required was not procurable after a comprehensive search was made from a minimum of three admitted insurers authorized to and currently transacting that line of business in this state. If there are fewer than three admitted insurers in this state which are authorized and currently transacting the line of business needed, such diligent effort shall be met by searching this lesser market.
- B. A written record documenting diligent search efforts shall be maintained by the broker or producer for a period of not less than three years from the effective date of the coverage. The broker may rely upon representations made by a producer with regard to search efforts made by the producer.
- C. Given that availability and affordability of coverages is continually changing, the determination of placement and evidence of diligent search efforts must be made each policy period prior to placement of coverage with an eligible nonadmitted insurer.
- D. If the insurance transaction is primarily for automobile liability to meet the financial responsibility requirements in Colorado any eligible surplus lines carrier must comply with the provisions of § 10-4-601 et. seq, C.R.S., including § 10-4-633 C.R.S., and with the reporting requirements contained in § 10-4-615, C.R.S.

Section 7 Taxes on Premium

- A. Each broker shall treat all premium tax revenues received for surplus lines insurance written in Colorado in a fiduciary capacity.
- B. Each broker shall, no later than the 15th of each month for the prior month, submit a report to the Division of Insurance showing each policy written including those accepted from licensed producers. The report shall include the name of the insured, line of business, name of non admitted insurer, surplus lines premium, policy fees charged and surplus lines taxes due. Such report shall be on a form prescribed by the Commissioner.
- C. In accordance with §10-5-109, C.R.S., a broker reporting a policy written with a non admitted insurer that is not listed on the Division of Insurance's eligible list is required to retain documentation verifying that the non admitted insurer meets the requirements of Sec. 524 of the Nonadmitted and Reinsurance Reform Act of 2010, or the type of insurance is listed in § 10-5-101.5, C.R.S.
- D. In accordance with § 10-5-110(1), C.R.S, the reporting period will be the calendar year. On or before the first day of March each broker and every person that enters into an independent procurement for nonadmitted insurance shall file their statement of, and remit the premium taxes for, all nonadmitted insurance transacted during the preceding calendar year.

Section 8 Eligible List

- A. The Commissioner will prepare, at least annually, a listing of those nonadmitted insurers whose filings have been reviewed by the Division of Insurance and found to meet the qualification requirements of Sec. 524 of the Nonadmitted and Reinsurance Reform Act of 2010. Such list will be effective from July 1 of each year through June 30 of the following year unless otherwise amended.
- B. The Commissioner, within his/her discretion, may consider a filing received during the current approval period. If such filing is approved, such approval will expire on June 30 following acceptance.

Section 9 Filings

- A. A foreign or alien non admitted insurer that wants to be included on the Division of Insurance's eligible list shall, on or before March 1st of every year, submit to the Division a completed form approved by the Commissioner and the fees as prescribed by Sections 10-3-207 and 24-31-104.5, C.R.S.
- B. An Insurance Exchange; a Lloyds plan, or other similar unincorporated group of individual insurers or a combination of both unincorporated and incorporated insurers; or a group of incorporated insurers under common administration, shall annually file such other information necessary to determine compliance with the conditions contained in § 10-5-108, C.R.S.

Section 10 Standards for Approval

- A. A foreign company seeking inclusion on the eligible list of nonadmitted insurers must meet the qualification requirements and criteria contained in section 5A(2) and 5C(2)(a)(i) of the National Association of Insurance Commissioners' Non-Admitted Insurance Model Act unless Colorado has adopted nationwide uniform requirements, forms and procedures in accordance with section 521(b) of the Nonadmitted and Reinsurance Reform Act of 2010.
- B. An alien company seeking inclusion on the eligible list of nonadmitted insurers must be listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the NAIC.
- C. A foreign insurer with less than the minimum required capital and surplus may make formal request of the Commissioner that they be given consideration for approval as an Eligible Nonadmitted insurer. Companies applying for special consideration must demonstrate at a minimum: 1) that they primarily write risks for which they maintain a specialty; 2) exceptional expertise in these specialty risks; and 3) sufficient surplus for the potential volatility of the risks written. Applications should be accompanied by an actuarial opinion and a supporting report specifically addressing the sufficiency of reserves and surplus for the risks written and anticipated to be written. Additionally, the applicant shall provide a copy of the audited financial report of the parent and the ultimate controlling company (person), if any, and any other additional information requested by the Commissioner.

Section 11 Severability

If any provision of this regulation or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of this regulation shall not be affected.

Section 12 Enforcement

Noncompliance with the Regulation may result in the imposition of any of the sanctions made available in the Colorado statutes pertaining to the business of insurance or other laws which include the imposition of civil penalties, issuance of cease and desist orders, and/or suspensions or revocation of license, subject to the requirements of due process.

Section 13 Effective Date

This amended regulation shall be effective September 1, 2012.

Section 14 History

New Regulation 90-14, effective January 1, 1991
Amended Regulation effective February 1, 1996
Executive Order D0004-97 reviewed December 1998
Amended Regulation effective April 1, 2000
Amended Regulation effective March 2, 2002
Sections 4.C. and 6.D. amended effective February 1, 2004
Amended Regulation effective January 1, 2007
Amended Regulation effective January 1, 2009
Amended Regulation effective March 1, 2012
Amended Regulation effective September 1, 2012