

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. § 8201 et seq., as amended. This regulation also serves to 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 broker, procuring or assisting in the procurement of surplus lines insurance for an insured whose home state is Colorado, and any person that enters into an independent procurement for nonadmitted insurance.

Section 4 Definitions

A. “Broker” shall have the same meaning as found at § 10-5-101.2(3), C.R.S.

- B. "Export" shall have the same meaning as found at § 10-5-101.2(5), C.R.S.
- C. "Home state" shall have the same meaning as found at § 10-5-101.2(7), C.R.S.
- D. "Insurance producer" shall have the same meaning as found at § 10-2-103(6), C.R.S.
- E. "Nonadmitted Insurance" shall have the same meaning as found at § 10-5-101.2(10), C.R.S.
- F. "Nonadmitted insurers" shall have the same meaning as found at § 10-5-101.2(11), C.R.S.
- G. "Person" shall have the same meaning as found at § 10-5-101.2(12), C.R.S.
- H. "Surplus lines insurance" shall have the same meaning as found at § 10-5-101.2(13), C.R.S.

Section 5 Disclosure

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

"This contract is delivered as a surplus line coverage under the 'Nonadmitted Insurance Act'. The insurer issuing this contract is not licensed in Colorado but is an eligible nonadmitted insurer. There is no protection under the provisions of the 'Colorado Insurance Guaranty Association Act'."

The policy declaration page must also include the name of the individual broker who wrote and placed the policy directly with the eligible nonadmitted insurer.

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

"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 declaration page in bold font:

"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 a nonadmitted 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 in bold font:

"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 in Subsections A-D 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 6 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 7 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 attested to by the 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. If the broker can attest in writing that they are familiar with the insurance market and that a particular risk cannot be placed in the admitted market, or the broker has accepted an affidavit by the producer attesting to such, then the requirement to satisfy due diligence by documentation that the coverage required was not procurable after a comprehensive search was made from a minimum of three admitted insurers shall be waived.
- B. A written record documenting diligent search efforts shall be maintained by the broker 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, or attestation from a producer or broker as outlined in Section 7(A), 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 insurer 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 8 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 submit a quarterly report to the Division of Insurance in the Florida Surplus Lines Information Portal ("SLIP") system for each policy written and remit the surplus lines premium taxes for all nonadmitted insurance transacted during the quarter in SLIP. The report shall be submitted by the individual broker who wrote and placed the policy directly with the eligible nonadmitted insurer; the broker must include policies that the broker exported at the request of any other licensed producer or broker in the quarter. The report shall include the name of the insured, line of business, name of nonadmitted insurer, surplus lines premium, and policy

fees charged. If there are no policies sold during the quarter, then the quarterly report shall not be required.

- C. In accordance with § 10-5-109, C.R.S., a broker reporting a policy written with a nonadmitted insurer that is not listed on the Division of Insurance's eligible list is required to retain documentation verifying that the nonadmitted insurer meets the requirements of Section 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.

Section 9 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 Section 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 10 Filings

- A. A foreign or alien nonadmitted 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 §§ 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 11 Standards for Approval

- A. An alien insurer 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 ("IID") of the NAIC.
- B. A foreign insurer 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; the foreign insurer must be authorized to write the type of insurance in its domiciliary state and have capital & surplus of at least \$15,000,000.
- 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 12 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 13 Incorporated Materials

The Nonadmitted and Reinsurance Reform Act of 2010, published by the Government Printing Office shall mean 15 U.S.C. § 8201 et seq. as published on the effective date of this regulation and does not include later amendments to or editions of 15 U.S.C. § 8201 et seq. A certified copy of 15 U.S.C § 8201 et seq. may be examined during regular business hours at the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, Colorado 80202. A certified copy of the entire Nonadmitted and Reinsurance Reform Act of 2010 codified at 15 U.S.C. § 8201 et seq. may also be requested from the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, CO 80202. A charge for certification or copies may apply. A copy may also be obtained online at www.ecfr.gov.

Section 524 of the Nonadmitted and Reinsurance Reform Act of 2010, published by the Government Printing Office shall mean 15 U.S.C. § 8204 as published on the effective date of this regulation and does not include later amendments to or editions of 15 U.S.C. § 8204 may be examined during regular business hours at the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, Colorado 80202. A certified copy of 15 U.S.C. § 8204 may be requested from the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, CO 80202. A charge for certification or copies may apply. A copy may also be obtained online at www.ecfr.gov.

Sections 5A(2) and 5C(2)(a)(i) of the National Association of Insurance Commissioners' Non-Admitted Insurance Model Act published by the National Association of Insurance Commissioners shall mean sections 5A(2) and 5C(2)(a)(i) Model Law 870 as published on the effective date of this regulation and does not include later amendments to or editions of Model Law 870. This section may be examined during regular business hours at the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, Colorado 80202. A certified copy of National Association of Insurance Commissioners' Non-Admitted Insurance Model Act (Model Law 870) may be requested from the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, CO 80202. A charge for certification or copies may apply. A copy may also be obtained online at <https://content.naic.org/sites/default/files/model-law-870.pdf>.

Section 14 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 15 Effective Date

This amended regulation shall be effective January 1, 2025.

Section 16 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

Amended Regulation effective January 1, 2025.