

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-2

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, 10-5-108(l)(c)(l), 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. 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 and to any producer or Colorado surplus lines broker, as defined by § 10-5-101.2(1), C.R.S., procuring or assisting in the procurement of surplus lines insurance.

Section 4 Disclosure

A. All surplus lines insurance contracts procured or delivered in Colorado must include the following:

“This contract is delivered as surplus line insurance under the ‘Nonadmitted Insurance Act’. The insurer issuing this contract is not admitted in Colorado but is an approved nonadmitted insurer. There is no protection under the provisions of the ‘Colorado Insurance Guaranty Association Act’.”

- B. 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 approved 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 approved 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 approved 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 approved nonadmitted insurer.
- D. If the insurance transaction is primarily for automobile liability to meet the financial responsibility requirements in Colorado any approved 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 Brokers' Association

The brokers' association (Association) authorized in § 10-5-115, C.R.S., among other duties, shall be required to:

- A. Develop and maintain projects and programs dedicated to the continuing education of the insurance community, insurance buying public and the technical and managerial skills of the Association members.
- B. Maintain and follow Association procedures to actively communicate with Association members regarding member obligation to comply with the provisions of the Colorado Revised Statutes and other applicable rules and regulations adopted by the Division of Insurance.
- C. Cooperate with the Colorado Division of Insurance to resolve inquiries regarding the availability of coverage with admitted insurers and to provide assistance in placement of coverage with an approved nonadmitted insurer, as necessary.

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, 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 as courtesy filings under Section 12. The report shall include the name of the insured, line of business, name of approved 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. The report is to be accompanied by an affidavit as described in § 10-5-103(c), C.R.S.

Section 9 Approved List

- A. The Commissioner will prepare a listing of those nonadmitted insurers which are approved to accept surplus lines risks at least annually. Such list will be effective from July 1 of each year through June 30 of the following year unless otherwise amended. Surplus lines insurance coverage, or extensions to existing coverages, placed with approved nonadmitted insurers on this list shall not be considered to be unauthorized insurance transactions in violation of §§ 10-3-105 & 10-3-903, C.R.S.
- B. An approved nonadmitted insurer which has been notified in writing that it has not met the requirements of Article 5 of Title 10, C.R.S., shall not issue any policy, binder or extension of coverage, excluding extensions provided for in a claims made policy contract within thirty days after receipt of such written notification, unless otherwise approved in writing in advance by the Commissioner.
- C. Complete applications, including all information required by § 10-5-108, C.R.S., must be submitted to the Division of Insurance to be eligible for inclusion on the approved list. Any

application received which is incomplete or unacceptable shall receive written notification that the application does not qualify for approval.

- D. The Commissioner, within his/her discretion, may consider an application received during the current approval period. If such application is approved, such approval will expire on June 30 following acceptance.

Section 10 Filings

- A. In addition to the requirements of § 10-5-108, C.R.S., foreign insurers shall file annually the following additional material with the Division of Insurance for consideration as an approved nonadmitted insurer each year:
1. A fully completed and executed application form available from the Division of Insurance.
 2. A copy of the company's audited financial report for the prior year ending December 31 complying with the standards of Colorado Regulation 3-1-4, 3 CCR 702-3, filed no later than June 1.
 3. The most recent examination reports (financial and market conduct), if not previously filed.
 4. A detailed report of all Colorado premiums written by the company including named insured, policy number, date of placement and amount of premium and broker or agent name.
- B. Alien insurers which appear on the NAIC International Insurance Department's Quarterly Listing shall file annually the following required material as outlined in § 10-5-108, C.R.S., directly with the Division for consideration as an approved nonadmitted insurer each year:
1. A fully completed and executed application form available from the Division of Insurance.
 2. A statement from the trustee of the market value of the irrevocable trust, which must be in a Qualified United States Financial Institution for the benefit of U.S. policyholders, in an amount at least equal to \$5,400,000. In addition, a list of securities comprising the trust must be submitted.
 3. A detailed report of all Colorado premiums written by the company including named insured, policy number, date of placement and amount of premium and broker or agent name.
 4. Other items determined to be necessary by the Commissioner as warranted by any special circumstances.
- C. 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. A company seeking approval must be authorized to write the type(s) of insurance being requested in its domiciliary state and demonstrate that it does possess the expertise necessary to write and service such insurance. An applicant who is also increasing its marketing to include new products is required to demonstrate the necessary expertise. The Commissioner may waive

this requirement if the company is affiliated with a company licensed in Colorado and writing the same type of insurance being requested. A guaranty may be required to be provided, on a form prescribed by the Commissioner, to maintain surplus at the amount required by statute.

- B. The review of the application for approval of a foreign insurer includes a review of the annual statement. The minimum capital and surplus requirements are those outlined in § 10-5-108, C.R.S., and apply to a going concern. The company must demonstrate the ability to maintain this minimum level not only at the time of initial approval but also at all times during which the company is approved. This includes the ability to fund for product development and other causes of surplus strain that results from increasing business writings or from new business ventures. An amount in excess of the statutory minimum capital and surplus may be necessary at the time of approval to ensure that the company has a sufficient cushion to absorb any increased surplus strain. Under unique situations, and upon the demonstration of public need, the Commissioner may re-evaluate the applicant based upon interim financial information.
- 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 Approved 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 Courtesy Filings

Licensed brokers, or the Executive Director of the Association (being a licensed surplus lines broker), may forward to the Colorado Division of Insurance filings for premium taxes on behalf of licensed, non-resident producers. The Broker or Executive Director of the Association may accept an affidavit executed by such producer as evidence that such insurance was eligible for export under § 10-5-103, C.R.S.

Section 13 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 14 Enforcement

Noncompliance with the Regulation may result, after proper notice and hearing, 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 fines, issuance of cease and desist orders, and/or suspensions or revocation of license. Among others, the penalties provided for in § 10-3-1108, C.R.S. may be applied.

Section 15 Effective Date

This amended regulation shall be effective January 1, 2007.

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.