

DEPARTMENT OF REGULATORY AGENCIES

DIVISION OF INSURANCE

3 CCR 702-5

PROPERTY AND CASUALTY

Amended Regulation 5-1-13

EXEMPTIONS FROM RATE AND FORM FILING REQUIREMENTS FOR INSURERS PROVIDING COVERAGE TO EXEMPT COMMERCIAL POLICYHOLDERS

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Section 1 Authority

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-109 and 10-4-1402, C.R.S.

Section 2 Scope and Purpose

The purpose of this regulation is to establish and implement rules concerning the definition and qualifications of an exempt commercial policyholder, the definition and qualifications of a risk manager, disclosure requirements for persons claiming status as exempt commercial policyholders, disclosure requirements for policies of Type II insurance issued to exempt commercial policyholders, and the data, documents, reports and other information to be maintained by insurers who are authorized to issue Type II insurance to exempt commercial policyholders. This regulation is made necessary by enactment into law of Colorado House Bill 99-1310, which requires the Commissioner to promulgate rules necessary to implement and administer § 10-4-1401 et. seq., C.R.S.

Section 3 Applicability

This regulation shall apply to all insurers authorized to issue Type II insurance (as defined below in Section 4.G.) to exempt commercial policyholders.

Section 4 Definitions

- A. "Affiliated group" means, for the purpose of this regulation, two or more persons who are owned or controlled, directly or indirectly, by one of the constituent members of the group. As used in this definition, the term "controlled" means possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of a person, whether through ownership of voting securities, or otherwise.
- B. "Anti-competitive conduct" means, for the purpose of this regulation, engaging in, attempting to engage in, or threatening to engage in any conduct to monopolize or attempt to monopolize or to

unreasonably restrain trade or commerce, or to combine or conspire with any other person to monopolize or attempt to monopolize or to unreasonably restrain trade or commerce in any part of the business of insurance.

- C. "Exempt commercial policyholder" means, for the purpose of this regulation, any person who applies for or procures any kind of Type II insurance, except any purchaser of title insurance, through the use of a risk manager employed or retained by such person, and who meets at least one of the following qualifications:
1. Purchased Type II insurance with aggregate premiums in the sum of at least fifty thousand dollars (\$50,000.00) during the most recently completed calendar year;
 2. Has a net worth of at least twenty five million dollars (\$25 million) as reported in the policyholder's most recently issued financial statement, reviewed or audited by an independent certified public accountant;
 3. Has annual net revenues or net sales of at least fifty million dollars (\$50 million) as reported in the policyholder's most recently issued financial statement, reviewed or audited by an independent certified public accountant;
 4. Employs at least one hundred (100) full-time employees, either individually or, if the policyholder is a member of an affiliated group, collectively with all members of the affiliated group;
 5. If the policyholder is a nonprofit organization, has an annual operating budget of at least ten million dollars (\$10 million) for the most recently completed calendar or fiscal year, whichever applies;
 6. If the policyholder is a public entity (as defined in § 24-75-601(1), C.R.S.), has an operating budget of at least twenty million dollars (\$20 million) for the most recently completed calendar or fiscal year, whichever applies; or
 7. If the policyholder is a municipality (as defined in § 31-1-101(6), C.R.S.), has a population of at least twenty thousand (20,000) as recorded in the latest Population of Municipalities and Counties published by the Division of Local Government, Colorado Department of Local Affairs.
- D. "Person" has the same meaning as found at § 2-4-401(8), C.R.S.
- E. "Policyholder" means, for the purpose of this regulation, an exempt commercial policyholder.
- F. "Risk manager" means, for the purpose of this regulation, an employee of the exempt commercial policyholder, or a third-party consultant retained by the policyholder who provides skilled services in loss prevention, loss reduction, or risk and insurance coverage analysis, and the purchase of insurance, and who possesses at least one of the following credentials:
1. A bachelor's or higher degree in risk management issued by an accredited college or university;
 2. A designation as a Chartered Property Casualty Underwriter (CPCU) issued by the American Institute for CPCU/Insurance Institute of America;
 3. A designation as an Associate in Risk Management (ARM) issued by the American Institute for CPCU/Insurance Institute of America;

4. A designation as a Certified Risk Manager (CRM) issued by the National Alliance for Insurance Education & Research;
 5. A designation as Fellow in Risk Management (FRM) issued by the Global Risk Management Institute/Risk & Insurance Management; or
 6. At least seven (7) years of experience in one or more of the following areas of commercial property and casualty insurance: (i) risk financing, (ii) claims administration, (iii) loss prevention; or (iv) risk and insurance coverage analysis.
- G. "Type II insurance" means, for the purpose of this regulation, insurance regulated by open competition between insurers, including fire, casualty, inland marine, and all other kinds of insurance subject to Part 4, Article 4, Title 10, C.R.S., but excluding insurance classified as Type I insurance by § 10-4-401(3)(a), C.R.S.

Section 5 Rules

A. Disclosure Requirements

1. At the time of soliciting an exempt commercial policyholder to purchase any kind of Type II insurance, the insurance producer, or the insurer in the case of a direct procurement from the insurer, shall disclose to the policyholder and the policyholder's risk manager, on a form created by the insurer, that a premium or rate may be quoted or a policy form may be used that is not subject to the rate and form filing requirements of the Colorado Division of Insurance.
2. If a third-party consultant is retained by the exempt commercial policyholder to act as the policyholder's risk manager, when a quote for any kind of Type II insurance is delivered to the policyholder, such consultant must disclose, in writing, the existence of any commission, fee, or contingency arrangement the third-party consultant has with the insurer.
3. Whenever a policy or binder of Type II insurance is initially delivered to an exempt commercial policyholder, the insurance producer, or the insurer in the case of a direct procurement from the insurer, shall obtain from the policyholder a written certification on a form created by the insurer, dated and signed by a senior officer or senior manager of the policyholder, and the policyholder's risk manager, containing the following information and making the following certifications:
 - a. The name of the insured;
 - b. The name of the insurer;
 - c. The name of the insurance producer who sold the policy or policies;
 - d. The policy number or numbers;
 - e. A brief description of the policy or policies of Type II insurance sold;
 - f. List the requirement set forth in Section 4.C. above that the policyholder meets in qualifying as an exempt commercial policyholder; and
 - g. Certification that the policyholder qualifies as an exempt commercial policyholder as defined pursuant to § 10-4-1402, C.R.S., and the rules of the Commissioner promulgated thereunder.

4. On any policy of Type II insurance sold to an exempt commercial policyholder, the insurer shall conspicuously place on the declaration page of the policy, and if a binder is issued, on the face of the binder, the following disclosure in at least ten-point, bold-faced type:

THE RATES, RATING PLANS, RESULTING PREMIUMS, AND THE POLICY FORMS FOR THIS POLICY ARE EXEMPT FROM THE FILING REQUIREMENTS UNDER COLORADO INSURANCE LAW AND THE RULES OF THE COLORADO INSURANCE COMMISSIONER.

5. Copies of the disclosures required in Section 5.A above shall be maintained by the insurer in the insurer's file for the exempt commercial policyholder. The insurer shall make such disclosures available for examination by the Commissioner or the Commissioner's delegatee at any reasonable hour.

B. Requirements for Maintaining Data, Documents, Reports, and Other Information

1. Any insurer who sells any kind of Type II insurance to an exempt commercial policyholder shall maintain records relating to such insurance sales as required by this rule. At a minimum, such records shall include: any data, statistics, rates, rating plans, rating systems, and underwriting rules used in underwriting and issuing such policies; claims-made policy forms; annual experience data on each risk insured, including, but not limited to, written premiums, written premiums at a manual rate, paid losses, outstanding losses, loss adjustment expenses, underwriting expenses, underwriting profits, and profits from contingencies.
2. The records described in Section 5.B. above shall be maintained by the insurer for five (5) years, and the insurer shall make such records available for examination by the Commissioner or the Commissioner's delegatee at any reasonable hour.

Section 6 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 the regulation shall not be affected.

Section 7 Enforcement

Noncompliance with this 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 8 Effective Date

This regulation shall become effective on February 14, 2018.

Section 9 History

New Regulation effective January 15, 2000.
Amended Regulation effective August 1, 2006.
Amended Regulation effective November 1, 2012.
Amended Regulation effective February 14, 2018.