

PROPERTY AND CASUALTY MODEL RATE AND POLICY FORM REGULATION GUIDELINE

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Section 1. Authority

This regulation is adopted and promulgated by [title of supervisory authority] pursuant to Section [insert applicable section] of the [insert state] insurance code.

Section 2. Definitions

As used in this regulation:

- A. "Exempt commercial policyholder" means an entity that has sufficient insurance buying expertise to negotiate with insurers in a largely unregulated environment and that meets any two (2) of the following qualifying criteria:
- (1) Net worth of over \$50 million;
 - (2) Net revenues or sales of over \$100 million;
 - (3) More than 500 employees per individual company or 1,000 per holding company aggregate;
 - (4) Procures its insurance through use of a risk manager, employed or retained;
 - (5) Aggregate premiums of over \$500,000;
 - (6) Is a not for profit, or public entity with an annual budget or assets of at least \$45 million, or
 - (7) Is a municipality with a population of over 50,000.

Drafting Note—ECP Definition: The definition of exempt commercial policyholder (ECP) included here was taken from the NAIC white paper: *The Regulatory Re-engineering of Commercial Lines Insurance*. It should be noted that in legislative sessions subsequent to the white paper, some states adopted ECP criteria similar to or the same as those in the white paper, while other states opted to enact much lower ECP criteria, in some cases with exemption applying only to filing requirements and not rate and policy form standards. It should also be noted that the criteria for ECPs may include variations. For example, lower ECP criteria might be applied in connection with rates than are applied in connection with forms.

- B. "Principally located in another state" means that the commercial policyholder maintains its headquarters in another state and that its officers and senior management are physically located at its headquarters.
- C. "Risk manager" means a person whose primary economic activity consists of regularly and continuously identifying and analyzing loss exposures, selecting the technique or combination of techniques to be used to handle each exposure to loss, implementing the chosen techniques and monitoring the decisions made.

Drafting Note—"Risk Manager" Definition: To the extent the definition of an ECP in Subsection A is modified, it may also be desirable to modify the definition of "risk manager" and to include language prohibiting the risk manager from having a conflicting economic interest in the policy being negotiated or procured.

Section 3. Waiver of Filing Requirements for Insurers Providing Coverages to Certain Exempt Commercial Policyholders

An insurer providing insurance coverage for an exempt commercial policyholder shall be exempt from all of the following requirements only for those policies issued to exempt commercial policyholders:

- A. The rate standards specified in Section [insert appropriate reference].
- B. The rate filing requirements specified in Section [insert appropriate reference].
- C. The policy form standards specified in Section [insert appropriate reference].
- D. The policy form filing requirements specified in Section [insert appropriate reference].
- E. All laws of this state containing statutorily mandated policy language, except for those applying to workers' compensation policies or auto insurance policies.

Section 4. Record Retention Requirements Applicable to Certain Exempt Commercial Policyholders

An insurer providing insurance coverage for an exempt commercial policyholder shall maintain adequate records to document that the exempt commercial policyholder met the criteria set forth in this regulation. The insurer shall maintain the records to ascertain that the policyholder was an exempt commercial policyholder for a period of not less than three (3) years from the expiration of the policy to which the exemption applies. The commissioner may make such examination as is deemed advisable to ascertain whether the insurer is claiming exemption for policies issued to policyholders that do not meet the criteria for consideration as an exempt commercial policyholder.

Section 5. Form Approval Requirements Applying to Multistate Commercial Risks

To facilitate the ability of insurers to transact the business of insurance with commercial risks that operate in more than one state, the commissioner finds that it is appropriate to modify the requirements for filing of certain policy forms and adherence to certain laws in this state. The following requirements are modified as indicated:

- A. The commissioner hereby waives the policy form filing requirements specified in Section [insert appropriate reference] for those policy forms issued to a commercial risk that operates in two (2) or more states, provided that the business of the commercial risk is principally located in another state.

- B. The insurer providing coverage for a commercial risk whose business is principally located in another state is not required to comply with [insert statutory reference to cancellation, nonrenewal and notice requirements and other laws that should not apply], provided that the insurer adheres to the cancellation and nonrenewal, and other laws of the state where the commercial risk is principally located.
- C. The insurer providing coverage for the commercial risk whose business is principally located in another state is required to comply with the laws of this state with regard to workers' compensation and the mandatory provisions contained in this state's automobile insurance laws. If the insurer includes a conformity to statute clause in its policies, that clause shall be interpreted to provide the workers' compensation and automobile insurance coverage required in this state.

Section 6. Severability Provision

If any section or portion of a section of this regulation or the application of this regulation to any person, business or circumstance is for any reason held to be invalid by a court, the remainder of the regulation and the application of the provision to other persons, businesses or circumstances shall not be affected.

Section 7. Effective Date

This regulation shall be effective on [insert date].

Chronological Summary of Action (all references are to the Proceedings of the NAIC)

2010 Proc. 2nd Quarter, Vol. I 103, 124, 129-130, 360-388, 391-395 (adopted).