

**VERMONT DEPARTMENT OF BANKING, INSURANCE, SECURITIES
AND HEALTH CARE ADMINISTRATION**

REGULATION C-2010-01

Rules for Risk Retention Groups Licensed as Captive Insurers

Section 1. Authority

This Regulation is promulgated under the authority granted the Commissioner of the Department of Banking, Insurance, Securities and Health Care Administration pursuant to 8 V.S.A. Sections 15 and 6015.

Section 2. Purpose and Scope

The purpose of this Regulation is to improve the Department's surveillance of the financial condition of Risk Retention Groups by 1) requiring compliance with detailed annual financial reporting requirements, and 2) requiring compliance with detailed disclosure and reporting procedures for insurers that are members of insurance company holding systems as defined herein. A further purpose of this regulation is to establish guidelines and minimum standards for permitted reinsurance of Risk Retention Groups.

This regulation is applicable to all Risk Retention Groups domiciled in Vermont (defined as granted a certificate of authority by the Department).

Section 3. Annual Financial Reporting Regulation

The provisions of Department Regulation I-2009-06, Annual Financial Reporting Regulation, shall apply to Risk Retention Groups domiciled in Vermont with the following exceptions or variances:

- 1) Risk Retention Groups having direct premiums written nationwide of less than \$1,000,000 in any calendar year and less than 1,000 policyholders or certificateholders of direct written policies, may apply for exemption from this regulation for the year (section 2);
- 2) Risk Retention Groups shall file an audited financial report with the Commissioner on or before June 30 for the year ended December 31 immediately preceding (section 4A);
- 3) Notes to the financial statements shall be those required by the accounting principles used by the Risk Retention Group (section 5F);
- 4) There shall be no fee associated with registering the independent certified public accountant retained to conduct the annual audit (section 6A);

Section 4. Insurance Holding Company Systems

Risk Retention Groups shall be subject to the reporting requirements and other applicable provisions of 8V.S.A Chapter 101, sections 3681-3694

Section 5. Reinsurance Guidelines for Risk Retention Groups Licensed as Captive Insurers

- I. Permitted Reinsurance
 - A. Risk retention groups shall not receive statement credit if all policies are ceded through one hundred percent (100%) reinsurance arrangements or another lesser percentage as required in the discretion of the Commissioner; and
 - B. Credit for reinsurance will be permitted if the reinsurer complies with Section 3634(a) of 8 V.S.A. Chapter 101; or
 - C. Credit for reinsurance may be permitted if the reinsurer maintains an A- or higher A.M. Best rating, or other comparable rating from a nationally recognized statistical rating organization, and the reinsurer maintains a minimum policyholder surplus in an amount acceptable to the Commissioner based upon a review of the reinsurer's most recent audited financial statements; and the reinsurer is licensed and domiciled in a jurisdiction acceptable to the Commissioner; or
 - D. Credit for reinsurance may be permitted if the reinsurer satisfies all of the following requirements and any other requirements deemed necessary by the Commissioner:
 - (1) The captive manager or risk retention group licensed as a captive insurer shall file annually, on or before June 30, or at the request of the Commissioner or if the captive manager or risk retention group thinks it appropriate to file more often, the reinsurer's audited financial statements, which shall be analyzed by the Commissioner to assess the appropriateness of the reserve credit or the initial and continued financial condition of the reinsurer;
 - (2) The reinsurer shall demonstrate to the satisfaction of the Commissioner that it maintains a ratio of net written premium, wherever written, to surplus and capital of not more than 3 to 1;
 - (3) The affiliated reinsurer shall not write third-party business without obtaining prior written approval from the Commissioner;
 - (4) The reinsurer shall not use cell arrangements without obtaining prior written approval from the Commissioner;
 - (5) The reinsurer shall be licensed and domiciled in a jurisdiction acceptable to the Commissioner; and

- (6) The reinsurer shall submit to the examination authority of the Commissioner.
- II. The Commissioner shall either require a reinsurer not domiciled in the US to include language in the reinsurance agreement that states that in the event of the reinsurer's failure to perform its obligations under the terms of its reinsurance agreement, it shall submit to the jurisdiction of any court of competent jurisdiction in the US or shall require compliance with section III below.
- III. For credit for reinsurance and solvency regulatory purposes, the Commissioner may require an approved funds-held agreement, letter of credit, trust or other acceptable collateral based on unearned premium, loss and LAE reserves, and IBNR.
- IV. Upon application, the Commissioner may waive either of the reinsurance requirements in sections I.D.(2) or I.D.(6) in circumstances where the risk retention group licensed as a captive insurer or reinsurer can demonstrate to the satisfaction of the Commissioner that the reinsurer is sufficiently capitalized based upon an annual review of the reinsurer's most recent audited financial statements, the reinsurer is licensed and domiciled in a jurisdiction satisfactory to the Commissioner, and the proposed reinsurance agreement adequately protects the risk retention group licensed as a captive insurer and its policyholders. Any such waiver should be included in the plan of operation, or any subsequent revision or amendment of the plan, pursuant to Section 3902(d)(1) of the Federal Liability Risk Retention Act of 1986 and the plan must be submitted by the risk retention group licensed as a captive to the Commissioner of its state of domicile and each State in which the risk retention group licensed as a captive intends to do business or is currently registered. Any such waiver of a section I.D. requirement constitutes a change in the risk retention group's plan of operation in each of those states.
- V. Upon application, the Commissioner may waive the requirement in section II above that a reinsurance arrangement must satisfy either section II or III in circumstances where the risk retention group licensed as a captive insurer or reinsurer can demonstrate to the satisfaction of the Commissioner that the reinsurer is sufficiently capitalized based upon an annual review of the reinsurer's most recent audited financial statements, the reinsurer is licensed and domiciled in a jurisdiction satisfactory to the Commissioner, and the proposed reinsurance agreement adequately protects the risk retention group licensed as a captive insurer and its policyholders. Any such waiver should be disclosed in Note 1 of the risk retention group's annual statutory financial statement.

- VI. Each approved captive manager or risk retention group licensed as a captive insurer shall assess the reinsurance programs of the risk retention groups licensed as captives under their management, and within 60 days of the effective date of these guidelines, submit a written report to the Commissioner indicating whether such risk retention groups licensed as captives are in compliance with these guidelines. All risk retention groups licensed as captive insurers that fail to submit the report in a timely manner shall be examined, at the risk retention group's expense, to determine compliance with these guidelines.
- VII. On and after the effective date hereof, these guidelines shall apply to risk retention groups licensed as captive insurers. Risk retention groups licensed as captive insurers who require additional time to comply with these guidelines shall be permitted to take credit for reinsurance for risks ceded to reinsurers not in compliance with these guidelines for a period not to exceed twelve (12) months from the effective date of these guidelines upon satisfactory demonstration to the Commissioner that such delay of implementation will not cause a hazardous financial condition or potential harm to its member policyholders.
- VIII. "Commissioner" refers to the commissioner of the Vermont Department of Banking, Insurance, Securities and Health Care Administration.

Section 6. Effective Date

This Regulation shall be effective January 1, 2011.