

DEPARTMENT OF INSURANCE

OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 531, 2304, and 2312 (18 **Del.C.** §§531, 2304 & 2312)
18 **DE Admin. Code** 2102

FINAL

REGULATORY IMPLEMENTING ORDER

2102 Termination of Coverage for Policies of Commercial Governmental and Professional Liability Insurance [Formerly Regulation 54]

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

In the June 1, 2023 edition of the *Register of Regulations*, at 26 **DE Reg.** 1030, the Commissioner of the Delaware Department of Insurance (Commissioner) published a proposal to repeal Regulation 2102, expired by operation of law effective November 5, 1986.

The Department did not receive any comments regarding the proposed repeal of Regulation 2102.

II. FINDINGS OF FACTS

The Commissioner finds that the repeal of 18 **DE Admin. Code** 2102 as proposed in the June 1, 2023 *Register of Regulations*, having been properly noticed and open for public comment, should be adopted for the reasons set forth in the proposal.

III. DECISION TO ADOPT THE PROPOSED REPEAL

For the foregoing reasons, the Commissioner concludes that it is appropriate to repeal 18 **DE Admin. Code** 2102 as proposed on June 1, 2023.

IV. EFFECTIVE DATE OF ORDER

The effective date of this Order and the repeal of Regulation 2102 shall be ten days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED.

The 14th day of July, 2023.

Trinidad Navarro
Delaware Department of Insurance

2102 Termination of Coverage for Policies of Commercial Governmental and Professional Liability Insurance [Formerly Regulation 54]

4.0 Authority

1.1 This regulation is adopted pursuant to ~~29 Del.C. Ch. 101 and 18 Del.C. Sections 531, 2304 and 2312.~~

2.0 Scope

2.1 This regulation shall apply to all attempted mid-term cancellations of commercial, governmental, and professional liability insurance policies and to some attempted nonrenewals and requires minimum notice of proposed cancellations and terminations of coverage. This regulation applies to all companies licensed to do business in this State except policies of reinsurance, excess and surplus lines, residual market risks, workers' compensation, multi-state location risk policies subject to retrospective rating plans and excess or umbrella policies. This regulation shall not apply to policies covering private passenger automobiles as defined in 18 **Del.C.** Ch. 39, and its requirements are in addition to any imposed by other statutes or regulations.

3.0 Prohibition of Mid-Term Cancellations

- 3.1 No insurer licensed to do business in Delaware shall cancel mid-term any policy of governmental, commercial or professional liability except for the following reasons:
- 3.1.1 Nonpayment of premium;
 - 3.1.2 Material misrepresentation or nondisclosure to the company of a material fact at the time of acceptance of the risk;
 - 3.1.3 Increased hazard or material change in the risk assumed which could not have been reasonably contemplated by the parties at the time of assumption of the risk;
 - 3.1.4 Substantial breaches of contractual duties, conditions or warranties that materially affect the nature and/or insurability of the risk;
 - 3.1.5 Fraudulent acts against the company by the insured or its representatives that materially affect the nature of the risk insured;
 - 3.1.6 Lack of cooperation from the insured on loss control matters affecting insurability of the risk;
 - 3.1.7 Bona fide loss of or substantial changes in applicable reinsurance provided, however, the insurer shall give sixty days written notice to both the insured and the Insurance Commissioner and submit a statement outlining the measures taken by the insurer to retain reinsurance and to obtain alternative sources of reinsurance in the form provided (Exhibit 1);
 - 3.1.8 Material increase in exposure arising out of changes in statutory or case law subsequent to the issuance of the insurance contract (provided that the insurer give sixty days written notice to the insured and the Insurance Commissioner); and
 - 3.1.9 Bona fide loss of or reduction in available insurance capacity (provided that the insurer give sixty days written notice to the insured and the Insurance Commissioner).
- 3.2 Nothing in this regulation shall prohibit an insurer from issuing a notice of cancellation with respect to any policy which has been in effect for less than 60 days at the time the notice is mailed or delivered.
- 3.3 No insurer shall effect or attempt to effect a mid-term premium increase and/or a reduction in the amount and/or type of coverage provided under the policy unless mutually agreed to by the insurer and the insured after good faith negotiations or unless prior written approval therefore has been obtained from the Commissioner.

4.0 Notice of Cancellation or Nonrenewal

- 4.1 No cancellation or nonrenewal notice other than a cancellation based upon nonpayment of premium shall be valid unless notice is mailed or delivered by the insurer to the insured, and to any person entitled to notice under the policy, not more than 120 days nor less than sixty days prior to the proposed effective date. The notice shall state the effective date of the cancellation.
- 4.1.1 A policy shall not be cancelled for nonpayment of premium unless the insurer, at least ten days prior to the effective cancellation date, has mailed or delivered to the insured notice as required in this regulation of the amount of premium due and the due date. The notice shall clearly state the effect of nonpayment by the due date.
 - 4.1.2 No cancellation for nonpayment of premium shall be effective if payment of the amount due is made prior to the effective date set forth in the notice.
 - 4.1.3 A policy shall not be cancelled other than for nonpayment of premium under Section 3 of this regulation unless the insurer, at least sixty days prior to the effective termination date, has mailed or delivered to the insured notice as required in this regulation.
 - 4.1.4 The insurer shall provide the first named insured with a written statement setting forth the reasons for cancellation or nonrenewal where the named insured agrees in writing to hold the insurer harmless from liability for any communication giving notice of or specifying a reason for a cancellation or nonrenewal, or for any statement made in connection with an attempt to discover or verify the existence of conditions which would be a reason for a cancellation or nonrenewal under this regulation.
- 4.2 All notices of cancellation, except those for nonpayment of premium, must contain a statement which shall be clearly and prominently set out in boldface type or other manner which draws the reader's attention advising the insured that the insured may file a written complaint about the cancellation with the Delaware Insurance Department. The statement also shall advise the insured to contact the Insurance Department immediately, in the event he or she wishes to file a complaint.
- 4.3 No cancellation or nonrenewal shall be valid unless notice thereof is sent:
- 4.3.1 By certified mail; or
 - 4.3.2 By first class mail, if at the time of mailing the insurer has obtained from the Post Office Department a date stamped proof of mailing showing the name and address of the insured, and the insurer has retained a duplicate copy of the mailed notice which is certified to be a true copy.

4.4 For the purposes of this regulation, if an insurer fails to send a notice of cancellation or nonrenewal as required by this regulation, the insured shall be entitled to continue the expiring policy at the same terms and premium until such time as the insurer shall send appropriate notice of termination under this regulation. Nothing in this regulation shall prohibit an insurer from replacing its policy with a policy issued by another insurer with which it is under common management and control.

4.5 An insurer shall not be required to provide notice of cancellation or nonrenewal as specified in this regulation if the insured has replaced coverage elsewhere or has otherwise specifically requested termination. The insurer must, however, maintain in its file properly documented proof that termination was made at the request of the insured.

5.0 Policy Provisions

5.1 No policy shall contain provisions which are inconsistent with the applicable requirements of this regulation.

6.0 Separability

6.1 If any provision of this regulation or the application thereof to any person, or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of such provision to other persons or circumstances shall not be affected thereby.

7.0 Penalties

7.1 In addition to any other penalty authorized by law, the Commissioner may order the immediate reinstatement without lapse of any policy which has been terminated in violation of the provisions of this regulation and may, after notice and a hearing, impose penalties as prescribed by 18 ~~Del.C.~~ §334 and 18 ~~Del.C.~~ §2312.

8.0 Effective Date

8.1 This regulation shall become effective upon signature. (May 27, 1986)

8.2 Exhibit 1

8.2.1 Name of company

8.2.2 Address

8.2.3 Contact person

8.2.4 Total amount of company's net retention for the risks intended to be cancelled

8.2.5 Name of reinsurer

8.2.5.1 Contact person

8.2.5.2 Telephone no.

8.2.5.3 Type of treaty

8.2.5.4 Proposed date of cancellation of reinsurance treaty

8.2.5.5 Reason given for cancellation

8.2.5.6 Total risk ceded to reinsurer

8.2.5.6.1 Portion no longer available

8.2.5.6.2 Percentage this represents in relation to total reinsurance ceded

8.2.6 Identify by company name, address, contact person, and telephone number at least three companies contacted in an effort to obtain replacement reinsurance:

8.2.6.1 Name of reinsurer

8.2.6.2 Address

8.2.6.3 Contact person

8.2.6.4 Telephone number

8.2.6.5 Name of reinsurer

8.2.6.6 Address

8.2.6.7 Contact person

8.2.6.8 Telephone number

8.2.6.9 Name of reinsurer

8.2.6.10 Address

8.2.6.11 Contact person

8.2.6.12 Telephone number

~~8.2.7 Explain how the loss or reduction in reinsurance affects the company's risks throughout the entire line or category of insurance proposed for cancellation or termination of coverage~~

~~8.2.7.1 Percentage of that line or category written in Delaware~~

~~8.2.8 Explain how the cancellation or termination of coverage will be implemented with respect to individual risks~~

~~8.2.9 Please provide the names and addresses of Delaware policyholders who will be cancelled on a separate sheet.~~

~~8.3 I swear under the penalty of perjury that the above statements are true and correct to the best of my knowledge and belief.~~

Contact Person

Title

Dated: _____

27 DE Reg. 114 (08/01/23) (Final)