

DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-5

PROPERTY AND CASUALTY

Emergency Regulation 21-E-05

CONCERNING RESTRICTIONS ON COVERAGE FOR USE OF A PERSONAL AUTOMOBILE OR AS AN ADDITIONAL UNNAMED DRIVER ON A RESTAURANT COMMERCIAL AUTOMOBILE POLICY FOR FOOD DELIVERY DURING PENDENCY OF ANY PUBLIC HEALTH ORDERS RELATED TO COVID-19 THAT IMPACT RESTAURANT SERVICES

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Section 1 Authority

This emergency regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-108(7), 10-1-109, 10-4-601.5, C.R.S.

Section 2 Scope and Purpose

The purpose of this emergency regulation is to ensure restaurant employees are able to continue to work by using their own insured personal automobiles for commercial food delivery during the current COVID-19 emergency and through the period of time in which Public Health Order 20-36, or any subsequent order that restricts or limits restaurant occupancy and in-person dining, or on-premise consumption, is in effect.

The Division of Insurance (“Division”) finds, pursuant to § 24-4-103(6)(a), C.R.S., that immediate adoption of this regulation is imperatively necessary for the preservation of public health, safety, or welfare. This emergency regulation replaces Colorado Emergency Regulation 20-E-15, which became effective on November 19, 2020, in its entirety.

Pursuant to Executive Order D 2021 063, which is subject to extension by further executive order, Colorado remains under a disaster state of emergency due to the presence of COVID-19. Due to the unprecedented and extraordinary impact of the COVID-19 emergency, the Colorado Department of Public Health and Environment has issued multiple public health orders, including Public Health Order 20-36, which implements levels of restrictions for individuals, businesses, and activities to prevent the spread of COVID-19 further in Colorado. Under Public Health Order 20-36, restaurants remain encouraged to continue curbside pickup and delivery and must take certain measures regarding in-person services, or on-premise consumption. Further, restaurant occupancy may be limited or restricted as provided in Public Health Order 20-36. The restaurant industry is one of the hardest hit industries with significant layoffs and

cutbacks to hours and staff. As a result, the Division anticipates that some restaurants will continue to rely upon employees who typically do not deliver food to temporarily provide food delivery services using their own insured personal automobiles or have unnamed drivers drive commercial vehicles. The issuance of this Emergency Rule is imperative to continue preserving the public health, safety and welfare of the citizens of Colorado. Therefore, compliance with the requirements of § 24-4-103, C.R.S., would be contrary to the public interest.

Section 3 Applicability

To ensure restaurant employees and employees of bars eligible for delivery service are able to continue to work by using their own insured personal automobiles for commercial food delivery during the COVID-19 emergency and through the period of time in which Public Health Order 20-36, or any subsequent order that restricts or limits restaurant occupancy and in-person dining, or on-premise consumption, is in effect, this regulation shall apply to all insurers that issue or renew personal automobile coverage pursuant to Part 6 of Article 4 of Title 10 of the Colorado Revised Statutes.

To the extent a restaurant maintains a named driver commercial automobile policy, this regulation shall apply to all insurers that issue or renew the named driver commercial automobile policy. If the restaurant has an existing commercial automobile policy that provides coverage to all employees regardless of whether the employee typically delivers food as part of his or her job duties, the commercial policy shall be primary over any personal automobile coverage of the employee.

This regulation shall not apply to persons who regularly deliver food as part of their employment, persons working for food delivery services, catering services or other services not impacted by Public Health Order 20-36, or any subsequent order that restricts or limits restaurant occupancy and in-person dining, or on-premise consumption.

Section 4 Removing Restrictions on Coverage for Use of a Personal Automobile or as an additional unnamed driver on a Restaurant commercial auto policy for Food Delivery

- A. For a claim made involving a restaurant employee driving for the purpose of delivering food to restaurant patrons, the insurer shall conduct a reasonable investigation and, if all of the following conditions are met, waive or suspend the commercial use exclusion/exception from a personal automobile policy in the manner chosen by the insurer:
 1. The employee was driving their own insured personal automobile, or was driving a non-owned automobile with express permission of the named insured and is not specifically excluded from coverage pursuant to Section 10-4-630, C.R.S.
 2. The employee was directly delivering or returning from the delivery of food to a patron of the restaurant;
 3. The employee was operating within the course and scope of their employment with the restaurant, even though food delivery by vehicle is not within their usual duties but, given the public health orders, it has become a substitute job duty; and
 4. Coverage is not available under subsection (B) of this section.
- B. If an employee is lawfully operating a vehicle, within the scope of employment, that is insured under a restaurant's commercial automobile policy, and to the extent the policy is limited to specific named drivers, the insurer shall waive any exclusion related to drivers that are not named under the policy.

- C. If the conditions outlined in subsection (A) are met, the coverages available under the personal automobile policy are equal to the coverage limits stated on the declarations page of the personal automobile policy.
- D. If an employee is driving a non-owned automobile with the express permission of the named owner of the automobile, the coverage limits may be reduced, pursuant to the policy terms, to minimum limits of liability in accordance with Regulation 5-2-17 Concerning Private Passenger Automobile Coverage Limitations.

Section 5 Severability

If any provision of this regulation or the application of it to any person or circumstances is for any reason held to be invalid, the remainder of this regulation shall not be affected.

Section 6 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 7 Effective Date

This emergency regulation shall be effective March 22, 2021.

Section 8 History

This emergency regulation replaces emergency regulation 20-E-15, which became effective November 19, 2020.

This emergency regulation shall be effective March 22, 2021.