

# DEPARTMENT OF REGULATORY AGENCIES

## Division of Insurance

### 3 CCR 702-5

#### PROPERTY AND CASUALTY

##### Emergency Regulation 20-E-10

##### 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 PUBLIC HEALTH ORDER 20-22

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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 Orders 20-22 and 20-28 (“Orders”) are 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. Due to the unprecedented and extraordinary impact of the COVID-19 emergency, the Colorado Department of Public Health and Environment issued the Orders. Pursuant to the Orders, effective March 17, 2020, all restaurants, food courts, cafes, coffeehouses and other similar places of public accommodation offering food or beverage for on-premises consumption are to close until April 30, 2020, unless otherwise extended in writing by the Executive Director. These Orders were extended multiple times and most recently certain businesses were required to close again. In an effort to permit these businesses to employ and maintain staff and serve their communities, the Orders encourage restaurants and other places of public accommodation to offer delivery service, window service, walk-up service, drive-through service or drive-up service. As a result, the Division anticipates that restaurants will 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 and bar employees are able to continue to work by using their own insured personal automobiles for commercial food delivery during the current response to COVID-19 and through the period of time in which PHO 20-22 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 the restaurant closure issued in the Orders.

#### **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 purposes of 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 under the 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 July 22, 2020.

**Section 8**                      **History**

Replaces Emergency Regulation 20-E-03 effective March 26, 2020.