COMMONWEALTH OF MASSACHUSETTS
Office of Consumer Affairs and Business Regulation
DIVISION OF INSURANCE

One South Station • Boston, MA 02110-2208
(617) 521-7794 • FAX (617) 521-7475
TTY/TDD (617) 521-7490
http://www.state.ma.us/doi

MITT ROMNEY
GOVERNOR

KERRY HEALEY
LIEUTENANT GOVERNOR

BETH LINDSTROM
DIRECTOR, CONSUMER AFFAIRS
AND BUSINESS REGULATION

JULIANNE M. BOWLER
COMMISSIONER OF INSURANCE

Bulletin 2004-08

TO: Insurers Offering Property and Casualty Policies in Massachusetts

FROM: Julianne M. Bowler, Commissioner of Insurance JBowler

DATE: September 2, 2004

RE: The Deregulation of Certain Commercial Contracts of Insurance Pursuant to Chapter 146 of the Acts of 2004

The purpose of this Bulletin is to inform insurers that issue property and casualty policies to large commercial entities in the Commonwealth of the recently enacted provisions of Chapter 146 of the Acts of 2004 (Chapter 146). The new sections allow licensed insurers to issue certain property and casualty contracts of insurance to "large commercial policyholders" without consideration of Massachusetts' statutory and regulatory restrictions on the content of policy forms or rate filings. That is, under certain conditions and for specific property-casualty policies, neither rates nor forms must be placed on file by the Division prior to the offering of such policies for sale to "large commercial policyholders."

This law was signed by Governor Romney on June 24, 2004, and is effective 90 days following the Governor's signature which is September 22, 2004. This law affects the filing requirements of policies that are to be offered to large commercial entities.

Legislation

Chapter 146 amends M.G.L. c. 175 to add §§ 224 & 225, effective September 22, 2004. Beginning on that date, carriers will not be required to make regulatory filings with the Division of Insurance for certain policies that will only be offered to large commercial policyholders. Any policies not listed below or any policies to be issued to policyholders who do not meet the legislative definition of a "large commercial policyholder" will not be subject to Chapter 146 and will continue to be subject to relevant filing requirements under M.G.L. c. 175.

Under M.G.L. c. 175 § 224(a), a "large commercial policyholder" is a corporation, partnership, trust, sole proprietorship or other business or public entity that certifies it has aggregate annual property and casualty insurance premiums (excluding workers' compensation premiums) of at

least $30,000. **If the large commercial policyholder does not meet this criterion, the policy is not exempt from the filing requirements of M.G.L. c. 175.**

In addition to meeting the noted premium requirements, the entity may be considered a large commercial policyholder, if the entity certifies in writing both that:

A) It elects to be treated as a large commercial policyholder and that it understands the limited regulatory oversight that this election connotes; and

B) It meets at least two of the following criteria:

(1) has a net worth of $10,000,000;

(2) has annual net revenue or sales of $5,000,000;

(3) either has more than 25 employees within each individual company or has more than 50 employees per holding company aggregate;

(4) is a nonprofit or public entity with an annual budget or assets of $25,000,000 or more;

(5) is a municipality with a population of 20,000 or more;

(6) employs or retains a full-time licensed risk manager who is either (i) a certified insurance counselor, (ii) a chartered property and casualty underwriter, (iii) an associate in risk management, (iv) a certified risk manager, or (v) a licensed insurance advisor in property and casualty insurance.

Carriers are responsible for the development and maintenance of records regarding each policyholder's certification both that it meets the standards for a "large commercial policyholder" and that policies exempt under Chapter 146 are offered only to those companies that qualify as "large commercial policyholders."

Certain Policy Forms that May be Exempt from Filing Requirements

Pursuant to M.G.L. c. 175 § 224(b), carriers are not required to submit policy forms or rate filings and are not subject to otherwise described processes associated with the approval or fixing and establishing rates for coverage provided to large commercial policyholders within certain property and casualty lines of insurance. The exemption would apply to the provisions of M.G.L. c. 174A §6; c. 175, including, but not limited to, §§22A, 157, 193F, 193G and 193H; c. 175A; c. 175B; c. 175C; c. 175D; and 176H. This will affect property and casualty forms and rates, including, for example, the following types of coverage that may be offered to large commercial policyholders:

Fire
Marine and Inland Marine
Liability
Fidelity and Surety
Commercial Auto
Steam Boiler
Professional Liability (incl. Medical Malpractice and Errors and Omissions)

Business Property
Business Interruption
Credit
Aviation Risk
Crop

Policies issued pursuant to these deregulation provisions of M.G.L. c. 175, §224 must contain the following disclosure notice to large commercial policyholders:

> "The policy applied for is not subject to all insurance laws that apply to other commercial lines products and may contain significant differences from a policy that is subject to all insurance laws."

This notice must also clearly set forth all policy conditions and endorsements, including, but not limited to perils, exclusions, location/territory limitations, defense within and outside of limits, and claims-made versus occurrence triggers. In addition, the disclosure notice must include the following policyholder acknowledgement statement:

> "I hereby acknowledge that I have read the above disclosure notice and have received a copy of the same."

The acknowledgement must be signed and dated by the first named insured before the effective date of the offered coverage. The first named insured must sign and date a similar notice before each renewal of the policy, unless there are no material changes to the coverage. The requirements for commercial risk policies issued pursuant to §224 shall only apply once, at the inception of the policy, unless at renewal there are material changes to the policy form. (It should be noted, however, that while no policyholder may sign such a notice without thereby asserting that the business entity meets the requirements of a large commercial policyholder as set forth above, a subsequent failure to continue to meet such criteria shall not invalidate the contract, or prohibit any subsequent contract with the same insurer, so long as such subsequent contract is sufficiently similar so as not to require an additional policyholder acknowledgement statement.)

Deregulated policies as described in this bulletin must either be delivered to large commercial policyholders at least ten days prior to the effective date of the coverage, or must permit the insured to terminate the policy on a pro-rata basis without penalty, within twenty days of the policyholder's receipt of the policy.

Surplus Lines Policies

Chapter 146 also amends M.G.L. c. 175, §168 to eliminate the requirement with respect to any large commercial policyholder that a surplus lines producer file an affidavit with the Commissioner attesting to the fact that the necessary coverage is not available from admitted companies for such risk, provided the large commercial policyholder acknowledges in writing its understanding that (1) the company from which insurance is procured is not admitted to transact business in Massachusetts, and (2) in the event of the insolvency of the insurer providing coverage, any loss will not be paid by the Massachusetts Insurers Insolvency Fund under

M.G.L. c. 175D. The surplus lines producer is required to maintain copies of all such acknowledgements with respect to all policies of insurance procured by the surplus lines producer for exempt commercial risks or policyholders for inspection by the Commissioner.

Maintaining Records and Market Conduct Review

Any insurer issuing a contract of insurance to a large commercial policyholder must maintain underwriting files, premium, loss and expense statistics, financial and other records with regard to the contract of insurance, any and all of which is subject to examination by the commissioner pursuant to M.G.L. c. 175, §4.

Carriers are responsible for maintaining all records regarding each company's eligibility as a "large commercial policyholder" including documents demonstrating that the company meets the required premium level to be eligible as such and copies of all company certifications that indicate that the company has elected to be considered a "large commercial policyholder" and meet the criteria to satisfy these provisions.

In the course of conducting market conduct reviews, the Division will coordinate reviews to examine whether carriers are properly enforcing the provisions of Chapter 146. Any violations to the requirements of this act are subject to all fines, penalties and other enforcement actions that are pertinent to the requirements of the Massachusetts General Laws.

If you have any questions involving the subject matter of this bulletin, please consider contacting Kevin Beagan, Director, State Rating Bureau at (617) 521-7323.