

State of Rhode Island and Providence Plantations
DEPARTMENT OF BUSINESS REGULATION
Division of Insurance
1511 Pontiac Avenue, Bldg. 69-2
Cranston, Rhode Island 02920

Public Notice of Proposed Rule-Making

Pursuant to the provisions of R.I. Gen. Laws § 27-29-17 through 17.4, 27-3-40 and 27-65-1 and in accordance with the Administrative Procedures Act Chapter 42-35 of the General Laws, the Department of Business Regulation hereby gives notice of its intent to amend Insurance Regulation 38 Commercial Insurance Cancellation, Non-Renewal and Premium or Coverage Changes.

The purpose of this amendment is to make changes required by updates to R.I. Gen. Laws § 27-29-17 through 17.4 and to clarify existing provisions of the regulation.

The proposed amended regulation and concise summary of non-technical amendments are available for public inspection at www.dbr.ri.gov, in person at Department of Business Regulation, 1511 Pontiac Avenue, Cranston, Rhode Island 02920, or by email edwyer@dbr.state.ri.us or by calling Elizabeth Kelleher Dwyer at (401) 462 9520.

In the development of the proposed amendment consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

All interested parties are invited to submit written or oral comments concerning the proposed amendments by November 10, 2009 to Elizabeth Kelleher Dwyer, Department of Business Regulation, 1511 Pontiac Avenue, Cranston, Rhode Island 02920, edwyer@dbr.state.ri.us. A public hearing to consider the proposed amendment shall be held on November 10, 2009 at 10:00 a.m. at 1511 Pontiac Avenue, Cranston, Rhode Island 02920 at which time and place all persons interested therein will be heard. The room is accessible to the disabled and interpreter services for the hearing impaired will be provided if requested 48 hours prior to the hearing. Requests for this service can be made in writing or by calling (401) 462 9520 or TDD 711.

A. Michael Marques
Director, Department of Business Regulation

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Concise Summary of Proposed Non-technical Amendments
to
Insurance Regulation Number 38

In accordance with the Administrative Procedures Act, Section 42-35-3(a)(1) of the General Laws of Rhode Island, following is a concise summary of proposed non-technical amendments:

1. Section 1 further clarifies the authority for the regulation.
2. Section 2 further clarifies the applicability of the regulation.
3. Section 3 alphabetizes the definitions and adds definition of Commissioner.
4. Section 4 clarifies that notice is to also go to the insurance producer as applicable and changes references as appropriate.
5. Section 5 clarifies that notice is to also go to the insurance producer as applicable, changes required notice in accordance with statutory changes and removes provision concerning policy extensions.
6. Section 6 clarifies that notice is to also go to the insurance producer as applicable, changes required notice in accordance with statutory changes and requires notice of the exact renewal premium.
7. Section 7 is completely rewritten to provide specification regarding the proof of notice provision.
8. Section 8 is added to clarify severability.
9. Section 9 is added to clarify the effective date.

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DEPARTMENT OF BUSINESS REGULATION
Division of Insurance

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INSURANCE REGULATION ~~XXXVIII~~(38)

COMMERCIAL INSURANCE CANCELLATION, NON-RENEWAL AND
PREMIUM OR COVERAGE CHANGES

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Section 1 Authority

This Regulation is promulgated in accordance with R.I. Gen. Laws §§ 27-29-17 through 17.4, 27-3-40, 27-65-1 and 42-14-17. In accordance with G.L. 1956 (1984 Reenactment) § 42-35-3(a), the following regulation relating to Commercial Insurance cancellation, Non-Renewal and Premium or Coverage Changes is hereby promulgated:

Section 12 Purpose and Applicability

A. The purpose of this Regulation is to govern cancellation, nonrenewal and notice of premium or coverage changes of commercial insurance policies

B. This regulation shall apply to:

- (1) commercial property insurance policies;
- (2) commercial liability insurance policies other than ~~automobile~~, aviation, and employers' liability insurance policies; and
- (3) commercial multi-peril insurance policies.

C. This regulation shall not apply to:

(1) reinsurance, ~~excess and surplus lines insurance,~~ residual market risks, workers' compensation insurance, multi-state location risks, policies subject to retrospective rating plans, ~~or excess or umbrella policies and such other policies which may in the future be exempted therefrom by the Commissioner of Insurance.~~ Nothing in this regulation is intended to abrogate or supersede statutory requirements relative to the policies delineated above.

(2) insurance policies issued pursuant to R.I. Gen. Laws § 27-3-40 by approved surplus lines insurers.

(3) insurance policies issued as commercial special risks pursuant to R.I. Gen. Laws § 27-65-1.

Section 23 Definitions

For the purpose of this regulation:

~~A.~~ "Renewal" or "to renew" shall mean the issuance of or the offer by an insurer to issue a policy succeeding a policy previously issued and delivered by the same insurer or an insurer within the same group of insurers, or the issuance of a certificate or notice extending the term of an existing policy for a specified period beyond its expiration date.

~~B.~~ "Nonpayment of premium" shall mean the failure or inability of a named insured to discharge any obligation in connection with the payment of premiums on a policy of insurance subject to this regulation, whether such payments are payable directly to an insurer or its agent or indirectly payable under a premium finance plan or extension of credit.

~~CA.~~ "Cancellation" shall mean termination of a policy at a date other than its expiration date.

B. "Commissioner" shall mean the Director of the Department of Business Regulation or his or her designee.

~~DC.~~ "Expiration date" shall mean the date upon which coverage under a policy ends. It shall also mean, for a policy written for a term longer than one year or with no fixed expiration date, each annual anniversary date of such policy.

D. "Nonpayment of premium" shall mean the failure or inability of a named insured to discharge any obligation in connection with the payment of premiums on a policy of insurance subject to this regulation, whether such payments are payable directly to an insurer or its agent or indirectly payable under a premium finance plan or extension of credit.

E. "Nonrenewal" shall mean termination of a policy at its expiration date.

F. "Renewal" or "to renew" shall mean the issuance of or the offer by an insurer to issue a policy succeeding a policy previously issued and delivered by the same insurer or an insurer within the same group of insurers, or the issuance of a certificate or notice extending the term of an existing policy for a specified period beyond its expiration date.

Section ~~43~~ Cancellation

A. Permissible Cancellations. If coverage has not been in effect for sixty (60) days and the policy is not a renewal, cancellation shall be effected by giving, mailing or delivering a written notice to the first-named insured at the mailing address shown on the policy and, if applicable, to the insurance producer of record, at least thirty (30) days before the cancellation's effective date. After coverage has been in effect for more than sixty (60) days or after the effective date of a renewal policy, no insurer shall cancel a policy unless the cancellation is based on at least one of the following reasons:

- (1) Nonpayment of premium;
- (2) Fraud or material misrepresentation made by or with the knowledge of the named insured in obtaining the policy, continuing the policy, or in presenting a claim under the policy;
- (3) Activities or omissions on the part of the named insured which increase any hazard insured against, including a failure to comply with loss control recommendations;
- (4) Change in the risk which increases the risk of loss after insurance coverage has been issued or renewed, including but not limited to an increase in exposure due to regulation, legislation, or court decision;
- (5) Loss or decrease of the insurer's reinsurance covering all or part of the risk or exposure covered by the policy;
- (6) Determination by the Commissioner of Insurance that the continuation of the policy would jeopardize a company's solvency or would place the insurer in violation of the insurance laws of this state;
- (7) Owner or occupant incendiarism;
- (8) Violation or breach by the named insured of any policy terms or conditions;
- (9) Constructive or actual total loss of the insured property;

- (10) Such other reasons as may be approved by the Commissioner of Insurance.

B. Notification of Cancellation

- (1) Notice of cancellation of insurance coverage by an insurer shall be in writing and shall be given, mailed or delivered to the first-named insured at the mailing address as shown on the policy and, if applicable, to the insurance producer of record. Notices of cancellation based on Sections ~~34~~(A)(2) through ~~34~~(A)(10) shall be given, mailed or delivered at least thirty (30) days prior to the effective date of the cancellation. Notices of cancellation based upon Section ~~34~~(A)(1) shall be given, mailed or delivered at least ten (10) days prior to the effective date of cancellation. The notice shall state the effective date of cancellation.
- (2) The insurer shall provide the first-named insured with a written statement setting forth the reason(s) for the cancellation where;
 - (a) the named insured requests such a statement in writing; and
 - (b) the named insured agrees in writing to hold the insurer harmless from liability for any communication giving notice of or specifying the reasons for a cancellation or for any statement made in connection with an attempt to discover or verify the existence of conditions which would be a reason for cancellation under this regulation.

- C. Nothing in this section shall require an insurer to provide a notice of cancellation or a statement of reasons for cancellation where cancellation for non-payment of premium is effected by a premium finance agency or other entity pursuant to a power of attorney or other agreement executed by or on behalf of the insured.

~~D. Where applicable, an insurer shall provide copies of all notices contemplated by this section to the agent of record.~~

Section ~~45~~ Notice of Nonrenewal

- A. An insurer may nonrenew a policy if it gives, mails or delivers to the first-named insured at the address shown on the policy and, if applicable, to the insurance producer of record, written notice it will not renew the policy. Such notice shall be given, mailed or delivered at least ~~thirty-sixty~~ (360) days before the expiration date. If the notice is given, mailed or delivered less than ~~thirty-sixty~~ (360) days before expiration coverage shall remain in effect until ~~thirty-sixty~~ (360) days after notice is given, mailed or delivered. Earned premium for any period of coverage that extends beyond the expiration date shall be considered pro-rata based upon

the previous year's rate. For purposes of this regulation, the transfer of a policyholder between companies within the same insurance group is not a refusal to renew. In addition, changing deductibles, changes in premium, changes in the amount of insurance or reductions in policy limits or coverage shall not be deemed to be refusals to renew.

- B. Notice of nonrenewal shall not be required where:
- (1) the insurer or a company within the same insurance group has offered to issue a renewal policy; or
 - (2) the named insured has obtained replacement coverage or has agreed in writing to obtain replacement coverage.
- ~~C. If an insurer provides the notice described in Section 4(A), and thereafter the insurer extends the policy for ninety (90) days or less, an additional notice of nonrenewal shall not be required with respect to the extension.~~
- ~~D. Where applicable, an insurer shall provide copies of all notices contemplated by this section to the agent of record.~~

Section 56 **Notice of Premium or Coverage Changes**

- A. An insurer shall provide to the first-named insured at the mailing address shown on the policy, ~~or and, if applicable,~~ to the agent insurance producer of record, written notice of any premium increase, ~~and shall also provide the exact renewal premium,~~ change in deductible, reduction in limits or coverage changes at least thirty-sixty (360) days prior to the expiration date of the policy, ~~in the case of notice to the insured or forty-five (45) days in the case of notice to the agent of record.~~ If the insurer fails to provide such notice, the coverage provided to the named insured shall remain in effect until notice is provided or until the effective date of replacement coverage obtained by the named insured, whichever first occurs. For the purposes of this regulation, notice is considered given thirty-sixty (360) days following date of giving of the notice. If the named insured elects not to renew, any earned premium for the period of extension of the terminated policy shall be calculated pro rata at the lower of the current or previous year's rate. If the insured accepts the renewal, the premium increase, if any, and other changes shall be effective the day following the prior policy's expiration or anniversary date.
- B. Section 56(A) shall not apply to:
- (1) Changes in a rate or plan filed and approved by the Commissioner and applicable to an entire class of business.
 - (2) Changes based upon the altered nature or extent of the risk insured.

- (3) Changes in policy forms filed and approved with the Commissioner and applicable to an entire class of business.

Section 6Z **Proof of Notice**

~~Proof of the giving, mailing or delivering of notice of cancellation, or of nonrenewal or of premium or coverage changes, to the first named insured at the address shown in the policy, shall be sufficient proof of notice.~~

- ~~A. A company issuing any policy of insurance which is subject to nonrenewal, a premium increase, a change in deductible, reduction in limits or changes in coverage shall effect the same by serving the notice of it as provided by the policy. The notice shall be delivered in hand to the named insured, or be left at his or her last address as shown by the company's records, or, if its records contain no last address, at his or her last business, residence, or other address known to the company. A company may alternatively forward notice to that address by first class mail and maintain proof of mailing of the notice to the insured by the United States Postal Service certificate of mailing in the ordinary course of the insurer's business, and this proof of mailing shall be sufficient proof of notice.~~
- ~~B. If a policy is made payable to a mortgagee or any person other than the named insured, notice shall be given as provided in subsection A of this section to the payee and to the named insured.~~
- ~~C. The insurance producer of record who placed the policy shall also be given notice of any nonrenewal or any premium increase, a change in deductible, or a change in coverage, in the same manner as provided in subsection A of this section.~~

Section 8 **Severability**

~~If any provision of this Regulation or the application thereof to any person or circumstances is held invalid or unconstitutional, the invalidity or unconstitutionality shall not affect other provisions or applications of this Regulation which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this Regulation are severable.~~

Section 9 **Effective Date**

~~This Regulation and the amendments thereto shall be effective as indicated below.~~

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|-----------------|----------------------------|
| EFFECTIVE DATE: | August 1, 1986 |
| AMENDED: | November 19, 1986 |
| | March 4, 1987 |
| | <u>December , 2009</u> |