

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 § 42-14-16 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 11 – Surplus Line Brokers.

The purpose of this amendment is to update the regulation to reflect recent statutory changes, remove the requirement that a non-resident hold a property & casualty insurance producers license and to simplify the licensing process.

The proposed amendments to the 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 regulations by September 9, 2010 to Elizabeth Kelleher Dwyer, Department of Business Regulation, 1151 Pontiac Avenue, Cranston, Rhode Island 02920, edwyer@dbr.state.ri.us. A public hearing to consider the proposed amendment shall be held on September 9, 2010 at 10:00 am at 1511 Pontiac Avenue, Cranston, Rhode Island 02920 at which time and place all persons interested therein will be heard.

All are welcome at the Rhode Island Department of Business Regulation ("DBR"). If any reasonable accommodation is needed to ensure equal access, service or participation, please contact DBR at 401-462-9551, RI Relay at 7-1-1, or email directorofficeinquiry@dbr.state.ri.us at least three (3) business days prior to the hearing.

A. Michael Marques
Director, Department of Business Regulation

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Concise Summary of Proposed Non-technical Amendments
to
Insurance Regulation Number 11

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 3(i) adds a definition of “Tax Administrator” to assist in clarification of the licensees tax payment obligations.
2. Sections 4(a) and 5(a) are amended and 4(b) is added to clarify that, in accordance with R.I. Gen. Laws § 27-2.4-10(d), a non-resident surplus lines broker does not have to hold a property & casualty insurance producer license.
3. Section 5(j) is added to set forth the requirements of R.I. Gen. Laws § 27-3-38(f) that the notice be included on all applications, affidavits and policies.
4. Section 8 is rewritten to eliminate the necessity for a hard copy affidavit from the Tax Administrator. The Department confirms that licensees have paid taxes by electronic means eliminating the need for this hard copy document.

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INSURANCE REGULATION 11

SURPLUS LINE BROKERS

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Section 1 **Authority**

This Regulation is promulgated pursuant to R.I. Gen. Laws §§ 27-3-38 through 27-3-42, 42-14-17 and 42-35-3.

Section 2 ***Purpose***

The purpose of this Regulation is to outline requirements for Rhode Island Surplus Line Brokers. This Regulation should be read in conjunction with the requirements contained in R.I. Gen. Laws §§ 27-3-38 through 27-3-42.

Section 3 **Definitions**

As used in this Regulation:

- (a) “Approved Surplus Line Insurer” means an insurer which has satisfied the Insurance Commissioner’s requirements, pursuant to R.I. Gen. Laws § 27-3-40, and has been placed by the Insurance Commissioner on a list maintained by the Insurance Commissioner of Surplus Line Insurers which may issue policies in Rhode Island.

- (b) “Broker” means an individual who holds a valid and current Surplus Line Broker’s license issued by the Rhode Island Department of Business Regulation at the time the insurance is placed with an Approved Surplus Line Insurer.
- (c) “Diligent Effort” means submission of the risk(s) by the Broker, or a licensed Producer working with the Broker, to no fewer than three (3) Licensed Insurers.
- (d) “Department” means the Department of Business Regulation.
- (e) “Insurance Commissioner” means the Director of the Department of Business Regulation.
- (f) “Insurance Producer” or “Producer” means an individual or entity licensed pursuant to R.I. Gen. Laws § 27-2.4-1 *et seq.*
- (g) “Licensed Insurer” means an insurer who is licensed to issue insurance in Rhode Island pursuant to R.I. Gen. Laws §§ 27-1-1 *et seq* and 27-2-1 *et seq.*
- (h) “Procurable” means that the insurance can be obtained from a Licensed Insurer.
- (i) “Tax Administrator” means the governmental official charged with collecting tax from licensed surplus line brokers and/or insurers.
- (j) “Unauthorized Insurer” means an insurer that is neither licensed to issue insurance in Rhode Island nor on the Insurance Commissioner’s list of Approved Surplus Line Insurers.

Section 4 *Licensing Requirements*

- (a) A resident Broker’s license may only be held by a person who holds a Property & Casualty Insurance Producer license issued pursuant to R.I. Gen. Laws §§ 27-2.4-1 *et seq.* Brokers are subject to all provisions applicable to licensed Insurance Producers in Rhode Island as well as the additional requirements contained in this Regulation and R.I. Gen. Laws §§ 27-3-38 through 27-3-42. In order to obtain a Broker’s license a resident Producer licensed in Rhode Island must submit an application for a Broker’s license to the Insurance Commissioner in a form prescribed by the Insurance Commissioner.
- (b) In accordance with R.I. Gen. Laws § 27-2.4-10(d) any person licensed as a surplus line broker in his or her home state shall be eligible for a nonresident surplus line broker license. Nonresident surplus line brokers must submit an application to the Insurance Commissioner in a form prescribed by the Insurance Commissioner.

- (bc) Brokers who are residents of the State of Rhode Island shall file with the General Treasurer of Rhode Island a bond in the penal sum of twenty-five thousand dollars (\$25,000) executed by the Broker as principal and by a surety company licensed to transact business in Rhode Island as surety. The resident Broker shall deposit with the Insurance Commissioner a certificate from the General Treasurer that the resident Broker has filed said bond. Pursuant to R.I. Gen. Laws § 27-2.4-1 *et seq.*, a non-resident seeking to be licensed as a Surplus Line Broker must comply with the statutes and Regulations of his or her state of residence regarding bond requirements.
- (ed) The bond required by section (bc) above shall be continuously in effect while the Broker is licensed in Rhode Island. The bond may not be cancelled unless the Insurance Commissioner receives written notification, at least thirty (30) days prior to cancellation, from the surety.
- (de) Should the bond be cancelled as outlined above, the Broker's license shall be immediately suspended by the Insurance Commissioner. Said license shall not be reinstated until such time as a substitute bond meeting the requirements of this Regulation and R.I. Gen. Laws § 27-3-39 is posted, the Insurance Commissioner is notified of the posting and all other requirements of the license are met.
- (ef) The annual fee for a Broker's license is fifty dollars (\$50). Fees for other services associated with licensing shall be set by regulation.

Section 5 General Rules

- (a) A ~~Producer who holds a licensed~~ Broker's license may place policies of insurance with insurers who are on the Insurance Commissioner's list of Approved Surplus Line Insurers only when the specific conditions of R.I. Gen. Laws § 27-3-38(c) exist. Under no circumstances shall life, health, accident or disability insurance be placed with any insurer not licensed in Rhode Island, including an Approved Surplus Line Insurer.
- (b) A Broker shall not place risks with or effect insurance with Unauthorized Insurers. A Broker who places a risk with an Unauthorized Insurer will be subject to penalty, including but not limited to revocation of license pursuant to R.I. Gen. Laws § 42-14-16, and will be personally liable on the insurance contract pursuant to R.I. Gen. Laws § 27-16-1.2(d).
- (c) Submission of risks to Licensed Insurers is always required prior to placement with an Approved Surplus Line Insurer. The Broker must undertake a Diligent Effort to procure the full amount of insurance from Licensed Insurers. The Diligent Effort requires that the Broker identify the Licensed Producers or officers of the Licensed Insurers which have declined the specific risk.

- (d) A form substantially similar to that attached hereto as Exhibit A must be completed in its entirety, prior to coverage being obtained from the Approved Surplus Line Insurer and prior to signature by the Broker and the insured, with all required information provided. The form may be modified to allow for electronic signatures in accordance with the Electronic Transactions Act R.I. Gen. Laws § 42-127.1-1 *et seq.*
- (e) For any policy renewed, continued, or extended by the same insurer, no affidavit shall be required to be completed for any policy of insurance or coverage under a policy procured by the Broker, for which the Broker has previously completed an affidavit; provided however, prior to renewing, continuing, or extending any policy, the Broker must confirm that the insurer is on the Insurance Commissioner's list of Approved Surplus Line Insurers in this state.
- (f) No insurance will be deemed not procurable from a Licensed Insurer, and therefore eligible for placement with an Approved Surplus Line Insurer, if the proposed form of contract cannot be lawfully issued by Licensed Insurers.
- (g) Mere rate differential shall not be grounds for placing a particular risk with an Approved Surplus Line Insurer when a Licensed Insurer would accept such risk at a different rate.
- (h) The fact that a Broker does not hold an agent's agreement with a Licensed Insurer that will accept the risk is not sufficient justification for placing the risk with an Approved Surplus Line Insurer.
- (i) Brokers may charge fees in addition to commissions only when such fees are not included in premium, provided that such fees are reasonable and appropriate in order to cover underwriting expenses that are unique to a surplus lines agency. Such fees must be fully disclosed in detail to the insured, whether directly or through another licensed producer, in writing prior to the sale. Documentation evidencing the disclosure of fees must be retained by the Broker or licensed producer for a period of three (3) years following the expiration of the policy sold. The Director may, at the expense of the Broker, examine the operations of a Broker to determine that fees charged are reasonable and appropriate for the services performed or the expenses incurred. This provision shall not be construed to limit the authority of the Director with respect to examination of insurers or any other licensee of the Department, granted in this or any other statute or Regulation of the State of Rhode Island.
- (j) Pursuant to R.I. Gen Laws § 27-3-38(f), every application form for insurance from a surplus lines insurer, every affidavit form executed by the insured, and every policy (on its front and declaration pages) issued by the surplus lines insurer, shall contain in ten (10) point type the following notice:

NOTICE

THIS INSURANCE CONTRACT HAS BEEN PLACED WITH AN INSURER NOT LICENSED TO DO BUSINESS IN THE STATE OF RHODE ISLAND BUT APPROVED AS A SURPLUS LINES INSURER. THE INSURER IS NOT A MEMBER OF THE RHODE ISLAND INSURERS INSOLVENCY FUND. SHOULD THE INSURER BECOME INSOLVENT, THE PROTECTION AND BENEFITS OF THE RHODE ISLAND INSURERS INSOLVENCY FUND ARE NOT AVAILABLE.

Section 6 Affidavits

- (a) The Broker and the insured shall execute affidavits on each risk, other than those risks exempted by R.I. Gen. Laws § 27-3-38(c) and Section 5(e) of this Regulation, placed with an Approved Surplus Line Insurer in a form substantially similar to that attached hereto as Exhibit A.

- (b) If the Affidavit attached hereto as Exhibit A is modified to allow for electronic transactions all of the following must be included in the form provided on Exhibit A or the affidavit will not be considered substantially similar:
 - (1) A statement by the surplus line broker that (s)he has conducted a diligent search and has been unable to place the insurance with a licensed insurer;
 - (2) A statement by the surplus line broker identifying the three insurers that declined the risk;
 - (3) A statement by the surplus line broker identifying the risk insured, the company issuing the policy, the amount of insurance, the line of business, the policy number, term and expiration date and the premium. The line of business shall be identified as one of the following: automobile, homeowner, commercial property, commercial automobile, medical malpractice, workers compensation, other personal and other commercial;
 - (4) A statement from the insured indicating that he has been provided with all of the information in (1), (2) and (3) above and containing the following in all caps, minimum 10 point type, immediately before the insured's signature:

NOTICE

THIS INSURANCE CONTRACT HAS BEEN PLACED WITH AN INSURER NOT LICENSED TO DO BUSINESS IN THE STATE OF RHODE ISLAND BUT APPROVED AS A SURPLUS LINES INSURER. THE INSURER IS NOT A MEMBER OF THE RHODE ISLAND INSURERS INSOLVENCY FUND. SHOULD THE INSURER BECOME INSOLVENT, THE PROTECTION AND BENEFITS OF THE RHODE ISLAND INSURERS INSOLVENCY FUND ARE NOT AVAILABLE.

- (c) The Broker's record shall be open to the examination of the Insurance Commissioner and/or the Tax Administrator at all reasonable times. Records should be maintained in accordance with Insurance Regulation 67.
- (d) Rhode Island does not accept "courtesy filings." The Broker who places or procures the insurance shall be the signatory on the Affidavit. All persons, regardless of state of residence, may apply to be a Broker.

Section 7 Annual Report

- (a) Annually each licensed surplus line broker shall report to the Insurance Commissioner the total number of policies and premium issued in the preceding calendar year in the form provided hereto as Exhibit ~~CB~~.
- (b) Said reports shall be filed no later than April 1 of the next calendar year beginning on April 1, 2010.
- (c) Failure to file said report will constitute violation of this regulation which may subject the broker to discipline, up to and including revocation of the broker and insurance producer licenses.

Section 8 Tax

~~The Broker shall file with the Insurance Commissioner, not later than April 1 of the year of its~~Prior to license renewal,~~a certificate the~~ Department will obtain confirmation from the Tax Administrator,~~on the form attached to this Regulation as Exhibit B, certifying~~ that the Broker has paid ~~to the Tax Administrator during the preceding calendar year(s) since the license was issued or renewed,~~ a tax of ~~three-four~~ per cent (3.4%) on the gross premiums charged the insured by the insurers for policies effective on or after July 1, 2010 and three percent (3%) for policies effective prior to July 1, 2010, less the amount of such premiums returned to such insureds for risks placed pursuant to the Broker's license. ~~The completed certificate must be filed with the Insurance Commissioner~~Department will not prior to renewal of the license of any Broker for whom the Tax Administrator does not provide such confirmation.

Section 9 Severability

If any section, term, or provision of this Regulation should be adjudged invalid for any reason, that judgment should not effect, impair, or invalidate any remaining section, term, or provision, which shall remain in full force and effect.

Section 10 *Effective Date*

This Regulation shall be effective as indicated below.

EFFECTIVE DATE:	March 15, 1963
REFILED:	December 19, 2001
AMENDED:	January 1, 2003
REFILED:	December 19, 2006
AMENDED:	December 15, 2008
<u>AMENDED:</u>	<u>September , 2010</u>

Exhibit A

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

AFFIDAVIT BY BROKER

I _____ swear under penalty of perjury as follows. I am a Surplus Line Broker licensed pursuant to R.I. Gen. Laws §§ 27-3-1 *et seq.* with an office at:

(street) (city or town) (state) (zip code)

The following information is true and correct and made in conjunction with my responsibilities as a licensed Surplus Line Broker.

On _____, 2____, as a licensed Surplus Lines Broker, I was engaged by the insured named herein, either directly or by a licensed Rhode Island producer, to obtain insurance against the risk(s) described below. Said insured or his(her) producer was unable to obtain the required insurance with insurers licensed to transact business in the State of Rhode Island. A diligent effort has been made on behalf of the insured to procure the insurance from insurers licensed to insure these risks in the State of Rhode Island. The following insurers, licensed to write the type of insurance which is the subject of this affidavit within the State of Rhode Island, have declined the coverage referenced above (please note that the name of the officer of the insurer or the producer that declined risk must be identified):

	Insurer	Name of Officer or Producer that Declined Risk
1.	_____	_____
2.	_____	_____
3.	_____	_____

As a licensed Surplus Line Broker I have obtained the insurance from certain approved surplus lines insurer(s) as indicated at the bottom of the second page of this form.

I hereby certify under penalty of perjury that the foregoing is true and correct.

Surplus Line Broker

AFFIDAVIT BY INSURED

I (We) _____ of

(street) (city or town) (state) (zip code)

state that on _____, 2____, I(we) directed

_____, a licensed Rhode Island insurance producer, to obtain insurance against the risk(s) as described below. He(she) informed me(us) that the required insurance could not be obtained from insurers licensed to transact business in the State of Rhode Island. He(she) informed me(us) that he(she) made a diligent effort to procure the insurance from licensed insurers, but was(were) unable to do so. I(we) therefore directed (my)our insurance producer to obtain said insurance from such approved Surplus Lines Insurers through the office of

_____ a licensed Rhode Island Surplus Line Broker.

NOTICE

THIS INSURANCE CONTRACT HAS BEEN PLACED WITH AN INSURER NOT LICENSED TO DO BUSINESS IN THE STATE OF RHODE ISLAND BUT APPROVED AS A SURPLUS LINES INSURER. THE INSURER IS NOT A MEMBER OF THE RHODE ISLAND INSURERS INSOLVENCY FUND. SHOULD THE INSURER BECOME INSOLVENT, THE PROTECTION AND BENEFITS OF THE RHODE ISLAND INSURERS INSOLVENCY FUND ARE NOT AVAILABLE.

Insured

Risk(s) Insured: _____

Line of Business: _____

Amount of Insurance: _____

Name of Approved Surplus Lines Insurer(s): _____

Policy Number, Term and Expiration Date: _____

Premium: _____

Surplus Lines Broker License Number: _____

Exhibit B

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION**

Division of Insurance
**1511 Pontiac Blvd., Bldg. 69-2
Cranston, Rhode Island 02920
www.dbr.state.ri.us**

**Certificate of the Tax Administrator
of Tax Payment by Surplus Line Broker**

This is to certify that _____
(Name of Surplus Line Broker)

has paid the three percent (3 %) Tax on Gross Premiums for policies effective prior to July 1, 2010 and four percent (4%) for policies effective on or after July 1, 2010 for the three (3) most recent

calendar years, as applicable, Calendar Year(s) 2 through 2.

SIGNED:

Tax Administrator
State of Rhode Island

Dated: _____, 2_____

Pursuant to R.I. Gen. Laws § 27-3-38 this form must be filed with the Division of Taxation no later than April 1st of the year in which your license is renewed.

Mail to: _____ *Division of Taxation*
_____ *One Capitol Hill*
_____ *Providence, Rhode Island 02908*

ONCE THIS FORM HAS BEEN COMPLETED BY THE DIVISION OF TAXATION, PLEASE RETURN IT TO THE RHODE ISLAND INSURANCE DIVISION AT THE TIME OF YOUR LICENSE RENEWAL.

* Line of Business to be reported as automobile, homeowner, commercial property, commercial automobile, medical malpractice, workers compensation, other personal or other commercial lines automobile (please specify other)