

**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 17.3 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](http://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](mailto: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 February 14, 2013 to Elizabeth Kelleher Dwyer, Department of Business Regulation, 1511 Pontiac Avenue, Cranston, Rhode Island 02920, [edwyer@dbr.state.ri.us](mailto:edwyer@dbr.state.ri.us). A public hearing to consider the proposed amendment shall be held on February 14, 2013 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.

Paul McGreevy  
Director, Department of Business Regulation

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**Concise Summary of Proposed Non-technical Amendments**  
**to**  
**Insurance Regulation Number 38 – Commercial Insurance Cancellation, Non-**  
**Renewal and Premium or Coverage Changes**

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 2 is amended to conform to the statutory changes concerning applicability.
2. Section 3 is amended to conform to statutory changes concerning notice to insurance producers.
3. Section 6 is amended to conform to statutory changes and clarify notice requirements.
4. Section 7 is amended to clarify proof of notice.

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**INSURANCE REGULATION 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.

**Section 2**     *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 aviation, and employers' liability insurance policies; and;~~
  - (3)     commercial ~~multi-peril insurance package~~ policies;
  - (4)     commercial excess or umbrella policies, and
  - (5)     commercial auto policies.
- C.     This regulation shall not apply to:

- (1) reinsurance, ~~residual market risks, aviation,~~ workers' compensation and employer liability insurance, multi-state location risks, ~~or~~ policies subject to retrospective rating plans ~~or excess or umbrella policies~~. 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 unless specifically provided for R.I. Gen Law 27-29-17 and section 2(B)(4) of this regulation.

### ***Section 3      Definitions***

For the purpose of this regulation:

- A. "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.
- C. "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. "Insurance Producer of Record" for purposes of notice under sections 4, 5 and 6 of this Regulation shall not include a producer who (i) is an employee of the insurer, ~~or~~ (ii) is a non-employee exclusive producer of the insurer, ~~or (iii) has waived the receipt of such notices in writing.~~
- E. "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.
- F. "Nonrenewal" shall mean termination of a policy at its expiration date.
- G. "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 4*      *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 4(A)(2) through 4(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 4(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.

***Section 5      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 sixty (60) days before the expiration date. If the notice is given, mailed or delivered less than sixty (60) days before expiration coverage shall remain in effect until sixty (60) 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.

**Section 6 Notice of Premium or Coverage Changes**

A. An insurer shall provide to the first-named insured at the mailing address shown on the policy, and, if applicable, to the insurance producer of record, written notice of any premium increase in excess of ten percent (10%) and shall also provide the exact renewal premium (or if the exact renewal premium is not available a reasonable estimate of the renewal premium), ~~change in deductible (unless the change is requested by the insured), reduction in limits or coverage changes~~ at least sixty (60) days prior to the expiration date of the policy. Notice does not have to be provided if the increase is a result of an audit or an increase in exposure requested by the insured.

B. Written notice of any coverage elimination, reduction, diminution or increased deductible must be given at least sixty (60) days prior to the expiration date of the policy. The notice must itemize and describe the coverage changes and shall be separate from the renewal policy. Notice does not have to be provided if the coverage change is at the request of the insured.

C. If the insurer fails to provide ~~such the~~ notice required by A or B above, 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 sixty (60) 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-D The requirement of this Section 6(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.~~

E. Notice under this section is not requested to be provided to an insurance producer of record that (1) is an employee of the insurer; or (2) is a non-employer exclusive agent of the insurer. Notice must be provided to the named insured in all applicable cases even if notice to the insurance producer is not required.

**Section 7**      **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~~Notice required under sections 5 and 6 above shall be effective 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. Notice may alternatively be given electronically if the insured consents and if the insurer has complied with the Electronic Transaction Act R.I. Gen. Laws § 42-127.1-1 *et seq.*
- 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 unless exempted by R.I. Gen. Laws § 27-29-17.3(c) or section 6(E) of this regulation. Notice may alternatively be given electronically if the insured consents and if the insurer has complied with the Electronic Transaction Act R.I. Gen. Laws § 42-127.1-1 et seq.

**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.

EFFECTIVE DATE:	August 1, 1986
AMENDED:	November 19, 1986
	March 4, 1987
	December 3, 2009
	<u>March _____, 2013</u>