

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 § 27-29-4.4 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 108.

The purpose of this amendment is to remove language that was relevant only to the 2007 survey; clarify the obligations of insurers with less than 1% market share and update the regulation to comply with the amendments made to R.I. Gen. Laws § 27-29-4.4 by the legislature in 2015.

The proposed 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 elizabeth.dwyer@dbr.ri.gov 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 **January 11, 2016** to Elizabeth Kelleher Dwyer, Department of Business Regulation, 1511 Pontiac Avenue, Cranston, Rhode Island 02920, elizabeth.dwyer@dbr.ri.gov. A public hearing to consider the proposed amendment shall be held on **January 11, 2016** 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 dbr.DirOfficeInq@dbr.ri.gov at least three (3) business days prior to the hearing.

Macky McCleary
Director, Department of Business Regulation

Date posted: December 11, 2015

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Concise Summary of Non-technical Differences
Insurance Regulation 108

In accordance with the Administrative Procedures Act, Section 42-35-3(a)(5) of the General Laws of Rhode Island, following is a concise summary of non-technical differences between existing and proposed versions of Insurance Regulation 108:

1. Section 3 - While the existing rules do not explicitly address the statutory requirement that all insurers writing private passenger automobile insurance establish a prevailing labor rate, the addition to the section makes that clarification and provides the alternatives that an insurer writing less than 1% of the total premium volume may select.
2. Section 4 – Added language regarding adoption of a rate set by another insurer.
3. Section 5 – Language that was only relevant to the 2007 survey has been removed. Clarifying language has been added reflecting the current practice of determining market share on a group basis.
4. Section 6 - Language that was only relevant to the 2007 survey has been removed. Clarifying language, reflecting current practice, has been added to state that the Department will publish a list of carriers with more than 1% market share and a list of auto body shops to be surveyed prior to May 1 of each year. Language has been added in accordance with the 2015 amendment to R.I. Gen. Laws § 27-29-4.4 that requires that separate surveys be conducted of each motor vehicle classification. (See 2015 P.L. ch. 154).
5. Section 7 - Language that was only relevant to the 2007 survey has been removed. Language has been added in accordance with the 2015 amendment to R.I. Gen. Laws § 27-29-4.4 which requires that separate surveys be conducted of each motor vehicle classification and certain classes of rates be excluded from the prevailing labor rate formula. Additional clarification, consistent with section 3, has been added regarding carriers writing less than 1% of total market share.
6. Section 8 - Language that was only relevant to the 2007 survey has been removed.

State of Rhode Island and Providence Plantations
DEPARTMENT OF BUSINESS REGULATION
Division of Insurance

~~233 Richmond Street~~ 1511 Pontiac Avenue
Providence Cranston, RI 0290320

INSURANCE REGULATION 108

AUTO BODY LABOR RATE SURVEY

Table of Contents

| | |
|------------|---|
| Section 1 | Authority |
| Section 2 | Purpose |
| Section 3 | Applicability |
| Section 4 | Definitions |
| Section 5 | Determination of Market Share |
| Section 6 | Procedure and Deadlines |
| Section 7 | Report of Labor Rate Survey to the Department |
| Section 8 | Questionnaire |
| Section 9 | Severability |
| Section 10 | Effective Date |

Section 1 *Authority*

This Regulation is promulgated in accordance with R.I. Gen. Laws. §§ 27-29-4.4 and 42-14-17.

Section 2 *Purpose*

The purpose of this Regulation is to implement the provisions of R.I. Gen. L. §§ 27-29-4.4.

Section 3 *Applicability*

Each insurer that writes more than one percent (1%) of the total premium volume of Motor Vehicle Liability Insurance during the immediately preceding calendar year shall conduct an auto body labor rate survey in accordance with R.I. Gen. Laws. §§ 27-29-4.4 and this Regulation. Insurers writing less than one percent (1%) of the total premium volume of Motor Vehicle Liability Insurance during the preceding calendar year shall establish a prevailing labor rate either by voluntarily conducting a survey or adopting a prevailing labor rate filed by another insurer.

Section 4 *Definitions*

As used in this Regulation:

- A. "Auto body labor rate survey" is an analysis of information gathered from auto body repair shops regarding the rates of labor that repair shops charge in a certain geographic area.
- B. "Contract Rate" shall mean any labor rate to which an auto body repair facility and an insurer have agreed in a formal agreement and/or written contract.
- C. "Department" shall mean the Department of Business Regulation, Insurance Division.
- D. "Full Collision Repair Auto Body Facilities" are those facilities designated as such in Commercial Licensing Regulation 4.
- E. "Motor Vehicle Liability Insurance" shall mean those lines of insurance reported by the insurer in an insurers' annual statement as other private passenger auto liability, other commercial auto liability, private passenger auto physical damage, and commercial auto physical damage.
- F. "Insurance Group" shall mean a number of insurers within a holding company who are assigned a single group code by the National Association of Insurance Commissioners.
- G. "Prevailing auto body labor rate" means the rate determined and set by an insurer as a result of conducting an auto body labor rate survey, or adopting the rate set by another insurer if permitted by section 7(6) below, in a particular geographic area, and used by insurers as a basis for determining the cost to settle automobile property damage claims.

Section 5 **Determination of Market Share**

The percentage of premium volume of Motor Vehicle Liability Insurance for the preceding calendar year will be determined by the Department in accordance with the premium reported in an insurers' annual statement. ~~Prior to May 1 of the subsequent calendar year, the Department will publish on its website a list of those insurers who meet the applicability requirement. Insurers may choose to survey on an Insurance Group basis. If so, one questionnaire may be sent for the Insurance Group indicating all of the insurers within that group writing Motor Vehicle Liability Insurance in Rhode Island.~~ The one percent (1%) premium volume may be reached either by an individual insurer or by an Insurance Group whose writings reach one percent (1%) or more when combined. ~~For the 2007 report only, premium volume will be determined based upon calendar year 2005 data.~~

Section 6 Procedure and Deadlines

1. ~~Prior to February 1, 2007, each insurer that wrote more than one percent (1%) of the total premium for Motor Vehicle Liability Insurance in Rhode Island in 2005 shall send a questionnaire substantially in the form attached hereto as Exhibit A to Full Collision Repair Auto Body Facilities. In determining the facilities to which the questionnaire must be sent, insurers shall follow the direction in subsections (3), (5) and (6) below. Prior to May 1 of each calendar year, the Department will publish on its website a list of those insurers who meet the applicability requirement.~~
2. Each insurer to which this Regulation applies shall, prior to ~~June 1, 2008~~ and June 1 of each ~~subsequent~~ calendar year, send a questionnaire substantially in the form attached hereto as Exhibit A to Full Collision Repair Auto Body Facilities. Separate and distinct questionnaires shall be sent to each classification of auto body repair facilities as designated by the Commercial Licensing section of the Department.
- ~~3. With regard to the questionnaire to be sent in 2007 only, the Department's Commercial Licensing Division will post a partial list of Full Collision Repair Auto Body Facilities on its website which shall be updated (with indications on the list as to facilities added and deleted) up to and including January 21, 2007. Qualifying insurers must send questionnaires to the Facilities on this list prior to February 1, 2007.~~
4. ~~3.~~ Beginning in 2008, no later than sixty (60) days prior to conducting the survey, Concurrent with the posting of a list of insurers required to conduct a survey, the Department's Commercial Licensing Division will provide a list of Full Collision Repair Auto Body Facilities with identification of Classification A and B shops, which insurers must survey for that years' compliance. The list will be posted on the Department's website.
5. ~~4.~~ Insurers will omit ~~from the list obtained in subsections 3 and 4 above~~ all of those Full Collision Repair Auto Body Facilities with whom the insurer, or Insurance Group, if reporting on a group basis, has a formal agreement and/or written contract to pay contract rates in order to provide auto body repair services.
6. ~~5.~~ Insurers will send the questionnaire to all of the Full Collision Repair Auto Body Facilities that remain after deletion of those facilities indicated in subsection ~~5~~ 4 above.
6. ~~Insurers may choose to survey on an Insurance Group basis. If so, one questionnaire may be sent for the Insurance Group indicating all of the insurers within that group writing Motor Vehicle Liability Insurance in Rhode Island.~~

Section 7 **Report of Labor Rate Survey to the Department**

1. ~~The first report to the Department must be filed not later than June 1, 2007.~~
- ~~2.~~ The ~~second~~ report must be filed no later than ~~September 1, 2008.~~ ~~A report must thereafter be filed no later than~~ September 1 of each ~~subsequent~~ calendar year.
- ~~3.~~ 2. The Report of the Labor Rate Survey must include the following:
 - a. A list, including the name and address, of all Full Collision Repair Auto Body Facilities to which the labor rate survey was sent.
 - b. A list of the Full Collision Repair Auto Body Facilities that failed to respond to the questionnaire within the time specified by the insurer.
 - c. A list of questionnaires that were not taken into consideration by the insurer in its analysis of the survey, including the reason that each such questionnaire was rejected for consideration.
 - d. Results of the questionnaires considered by the insurer.
 - e. The total number of shops surveyed.
 - f. A description of the formula or manner in which the insurer has calculated or determined the prevailing labor rate which it pays to auto body repair facilities including a statement that rates paid to shops with whom the insurer has a formal agreement or contract, rates paid as a result of subrogation and rates obtained from auto body repair facilities in a different classification than that being surveyed have not been included in the calculation.
 - g. The separate prevailing labor rate established by the insurer for each classification of full collision licensed auto body repair facilities.
 - h. If the calculation or formula indicated in subsection f above is not based on the results of the questionnaires identified in subsection d above, a complete explanation as to why it is not so based.
- ~~4.~~ 3. Insurers should include, in detail, all costs associated with complying with this Regulation.
- ~~5.~~ 4. Insurers may choose to report on an Insurance Group basis. If so, one Labor Rate Survey may be filed with the Department for the Insurance Group indicating all of the insurers within that group writing Motor Vehicle Liability Insurance in Rhode Island.

5. The Department will publish the prevailing labor rates within a reasonable time after receipt and compilation of the surveys submitted by insurers.
6. Insurers writing less than one percent (1%) of the total premium volume of Motor Vehicle Liability Insurance during the immediately preceding calendar year shall either conduct a survey or adopt a prevailing labor rate filed by another insurer and file with the Department no later than October 1st.

Section 8 Questionnaire

1. Each insurer to which this Regulation applies shall utilize a survey based on the questionnaire attached hereto as Exhibit A. Insurers may customize the questionnaire with formatting; however, the substance must be in accordance with Exhibit A.
2. Insurers shall specify a date upon which the questionnaire must be returned to the insurer. The date specified must grant at least thirty (30) days notice for response.
3. Insurers may allow Full Collision Repair Auto Body Facilities to respond electronically (e.g. by email); however, insurers must allow response by hard copy if the Full Collision Repair Auto Body Facility does not consent to electronic submission.
- ~~4. With regard to the survey conducted in 2007, if an insurer finds that the response to a questionnaire is not properly completed or does not provide the full information requested, it shall notify the auto body facility in question of the deficiencies in the information provided.~~
- ~~5. Insurers may disregard the questionnaire if the further information identified, as indicated in subsection 4 above, is not provided within fourteen (14) days of the date of notification to the Full Collision Repair Auto Body Facilities of the additional information required.~~
- 6 ~~4.~~ With regard to all surveys conducted subsequent to 2007, insurers may reject any questionnaire that is not properly completed or does not provide the full information requested and are not required to provide notification to the Full Collision Auto Body Facility. Insurers shall keep detailed records for such rejection to allow audit by the Department. Insurers may be ordered by the Department to consider any questionnaire so “rejected” to be accepted if the Department finds that enough information has been provided to allow for consideration of the questionnaire. All questionnaires and all other information regarding the survey shall be maintained by the insurer for a minimum of five years.

Section 9 **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 10 **Effective Date**

This Regulation shall be effective as indicated below.

EFFECTIVE DATE: October 2, 2006

AMENDED: January 31, 2016

Exhibit A

LABOR RATE QUESTIONNAIRE

To: _____ (Auto Body Repair Facility)

From: _____ Insurance Company

Instructions: This questionnaire should be completed by the auto body repair facility to which it is addressed and returned to _____ Insurance Company at **[insert address]** no later than **[insert due date]**. If the information is not complete the survey may be rejected.

Hourly Rate Charged – Please indicate the hourly rate charged by your facility for auto body repair work. If the rate charged varies, please indicate each and every rate actually charged for all categories of customers, including but not limited to insurance related claims versus non-insurance related claims. The information on hourly rate charged must include all labor rate agreements other than those with insurance companies. This information must include, but is not limited to, labor rate agreements with any and all rental car companies for the repair of rental vehicles, labor rate agreements with any and all vehicle leasing companies for the repair of leased vehicles, labor rate agreements with the State of Rhode Island for the repair of state vehicles, and labor rate agreements made with the United States government for the repair of government vehicles.

Supporting Documentation: Please provide a full and complete description of all of the documents that evidence each actual rate charged (i.e. for each category of customer invoices, rates posted in shop, customer receipts, estimates or other applicable documentation). Please note that you may be requested to produce documentary evidence supporting your response to the Department of Business Regulation, Commercial Licensing Division.

Complete Description: Please describe the manner in which you calculate each labor rate charged, providing a complete description of the components, including, but not limited to salary costs, overhead (including a complete and detailed description of the costs you include in overhead) and margin for profit.

**FAILURE TO COMPLETE THIS QUESTIONNAIRE IN FULL MAY RESULT
IN ITS EXCLUSION FROM THE AUTO BODY LABOR RATE SURVEY FILED
WITH THE DEPARTMENT OF BUSINESS REGULATION.**

I declare under penalty of perjury that the information provided is true and correct.

Name: _____
Title: _____