

# Public Notice of Direct Final Rulemaking

## Rhode Island Government Register

---

**AGENCY:** Rhode Island Department of Business Regulation (“Department”)

**DIVISION:** Insurance

**RULE IDENTIFIER:** 230-RICR-20-50-1 (formerly Insurance Regulation 11)

**ORIGINAL ERLID:** 6218

**REGULATION TITLE:** Surplus Lines Brokers

**RULEMAKING ACTION:** Direct Final

**TYPE OF FILING:** Amendment

**TIMETABLE FOR ACTION ON THE PROPOSED RULE:**

Date of Public Notice: July 26, 2018  
End of Comment Period: August 25, 2018

**SUMMARY OF PROPOSED RULE:**

The regulation proscribes requirements for surplus lines brokers selling insurance in Rhode Island. While reformatting for incorporation into the RICR, the Department identified a number of technical non-substantive changes reflected in the attached proposal. In addition the following changes have been made:

Section 1.3 – The amendment proposes to change the various terms used in the regulation for the Division of Insurance and substitute a consistent use of the term “Department.” In accordance with this change the definition of “Insurance Commissioner” is proposed to be deleted.

Section 1.4(A) and (B) – The use of the National Insurance Producer Register (“NIPR”), which is the licensing system currently used, has been substituted for more generic language.

Section 1.4(D) – A sentence has been added specifying that residents of states that require Rhode Island surplus lines brokers to post bonds must post a bond in Rhode Island.

Section 1.4(G) – The sentence has been rewritten to state the biennial cost of a license based on the annual statutory fee.

Appendices referenced in Sections 1.5, 1.6 and 1.7 have been removed and moved to a bulletin.

The Department does not expect these proposed amendments to be controversial.

**WHERE AMENDMENTS MAY BE INSPECTED:**

A copy of the proposed amendments will be available for examination from July 26, 2018, through August 25, 2018 by mail or at the offices of the Department of Business Regulation, Attn: Elizabeth Dwyer, Esq., 1511 Pontiac Avenue, Cranston, Rhode Island 02920, or requested by emailing [elizabeth.dwyer@dbr.ri.gov](mailto:elizabeth.dwyer@dbr.ri.gov) or by calling Elizabeth Dwyer at (401) 462-9615. Electronic copies of the proposed amendment will also be available on the DBR website at [www.dbr.ri.gov](http://www.dbr.ri.gov)

and Secretary of State's at <http://sos.ri.gov/ProposedRules/>. A copy of the proposed annotated regulations is also found below in the body of this webpage.

**COMMENTS:**

Interested persons may submit written objections to the proposed amendment of this regulation. If no objection is received on or before August 25, 2018, the Department will file the regulation without opportunity for public comment and the regulation will be effective on August 25, 2018. Any written objections should be sent to the following addresses and must be received no later than 11:59 PM on August 25, 2018.

[elizabeth.dwyer@dbr.ri.gov](mailto:elizabeth.dwyer@dbr.ri.gov)

OR

Department of Business Regulation  
Insurance Division  
Attn: Elizabeth Dwyer  
1511 Pontiac Ave, Bldg 68-2  
Cranston, RI 02920

**FOR FURTHER INFORMATION CONTACT:**

Elizabeth Dwyer at (401) 462-9615, or at the email or mailing address listed above.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Analysis:**

These proposed amendments will result in no adverse impact for small businesses.

**Authority for This Rulemaking:** R.I. Gen. Laws Chapter 27-3

**Regulatory Findings:**

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.

**The Proposed Amendment:**

The Rhode Island Department of Business Regulation proposes to amend 230-RICR-20-50-1 (formerly Insurance Regulation 11) Surplus Lines Brokers as follows:

230-RICR-20-50-1

## TITLE 230 – DEPARTMENT OF BUSINESS REGULATION

### CHAPTER 20 –INSURANCE

#### SUBCHAPTER 50 – INSURANCE PRODUCERS AND OTHER NON-INSURER LICENSEES

Part 1 – Surplus Lines Brokers

##### 1.1 Authority

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

##### 1.2 Purpose

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

##### 1.3 Definitions

A. As used in this Part Regulation:

1. “Approved surplus line insurer” means an insurer which has satisfied the Insurance Commissioner Department’s requirements, pursuant to R.I. Gen. Laws § 27-3-40, and has been placed by the Insurance Commissioner Department on a list maintained by the Insurance Commissioner Department of Surplus Line Insurers which may issue policies in Rhode Island.
2. “Broker” means an individual who holds a valid and current Surplus Line Broker’s license issued by the Department Rhode Island Department of Business Regulation at the time the insurance is placed with an Approved Surplus Line Insurer.
3. “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.
4. “Department” means the Department of Business Regulation, Division of Insurance.

- ~~5.~~ “Insurance Commissioner” means the Director of the Department of Business Regulation.
- ~~6-5.~~ “Insurance producer” or “Producer” means an individual or entity licensed pursuant to R.I. Gen. Laws § Chapter 27-2.4-1 ~~et seq.~~
- ~~7-6.~~ “Licensed insurer” means an insurer who is licensed to issue insurance in Rhode Island pursuant to R.I. Gen. Laws §§ Chapters 27-1-1 ~~et seq~~ and 27-2-1 ~~et seq.~~
- ~~8-7.~~ “Procurable” means that the insurance can be obtained from a Licensed Insurer.
- ~~9 8.~~ “Tax administrator” means the governmental official charged with collecting tax from licensed surplus line brokers and/or insurers.
- ~~10 9.~~ “Unauthorized insurer” means an insurer that is neither licensed to issue insurance in Rhode Island nor on the ~~Insurance Commissioner Department~~’s list of Approved Surplus Line Insurers.

## 1.4 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 §§ Chapter 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 Part and R.I. Gen. Laws §§ Chapter 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 as prescribed by the Department and processed by the National Insurance Producer Register (“NIPR”).~~
- 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 as prescribed by the Department and processed by the National Insurance Producer Register (“NIPR”).~~
- C. 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 Department~~ a certificate from the General Treasurer that the resident Broker has filed said bond.

- D. Pursuant to R.I. Gen. Laws ~~§ Chapter~~ 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. If the nonresident state requires Rhode Island residents to post a bond in the licensee's home state, the licensee must post the bond required of residents in Rhode Island.
- ~~D E.~~ The bond ~~required by section (c) above~~ shall be continuously in effect while the Broker is licensed in Rhode Island. The bond may not be cancelled unless the ~~Insurance Commissioner~~ Department receives written notification, at least thirty (30) days prior to cancellation, from the surety.
- ~~E F.~~ Should the bond be cancelled as outlined above, the Broker's license shall be immediately suspended by the ~~Insurance Commissioner~~ Department. Said license shall not be reinstated until such time as a substitute bond meeting the requirements of this ~~Regulation Part~~ and R.I. Gen. Laws ~~§ Chapter~~ 27-3-39 is posted, the ~~Insurance Commissioner~~ Department is notified of the posting and all other requirements of the license are met.
- ~~F G~~ The ~~annual biennial~~ fee for a Broker's license is ~~fifty one hundred~~ dollars (~~\$50~~ 100). Fees for other services associated with licensing shall be set by regulation.

## 1.5 General Rules

- A. A licensed Broker may place policies of insurance with insurers who are on the ~~Insurance Commissioner~~ Department'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 provided in a bulletin promulgated for that purpose 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 § ~~Chapter~~ 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~~ Department'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 ~~Department 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 Department 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 declarations 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.

1. Brokers may comply with this section by including an endorsement as a second declarations page if the notice has not been included in the policy by the insurer.
2. The Requirement to include the notice in the front of the policy is complied with if the notice is included in a cover letter or on the first page of the policy.
3. The notice on the application must be included if the application is being made to a surplus lines insurer. If the producer has an application form completed by the insured to be presented to both the licensed market and, if declined, to the surplus line market the application does not fall under this requirement.

### 1.6 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 § 1.5(E) of this Regulation Part, placed with an Approved Surplus Line Insurer in a form substantially similar to that ~~attached hereto as Exhibit A~~ provided in a bulletin promulgated for that purpose.
- B. If the Affidavit ~~attached hereto as Exhibit A~~ provided in a bulletin promulgated for that purpose is modified to allow for electronic transactions all of the following must be included in the form provided ~~on Exhibit A in a bulletin promulgated for that purpose~~ 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 §§ 1.6(B)(1), (2) and (3) of this Part 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 Department and/or the Tax Administrator at all reasonable times. Records should be maintained in accordance with Insurance Regulation 67 Part 60-4 of this Chapter.
- 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.

### 1.7 Annual Report

- A. Annually each licensed surplus line broker shall report to the Insurance Commissioner Department the total number of policies and premium issued in the preceding calendar year in the form provided hereto as Exhibit B in a bulletin promulgated for that purpose.
- 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 Part which may subject the broker to discipline, up to and including revocation of the broker and insurance producer licenses.



## **1.8 Tax**

Prior to license renewal the Department will obtain confirmation from the Tax Administrator that the Broker has paid a tax of four per cent (4%) on the gross premiums charged the insured by the insurers for policies invoiced on or after July 1, 2010 and three percent (3%) for policies invoiced 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 Department will not renew the license of any Broker for whom the Tax Administrator does not provide such confirmation.

## **1.9 Severability**

If any section, term, or provision of this [Regulation Part](#) 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.

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.ri.gov](http://www.dbr.ri.gov)

**Insurance Regulation 11**

Annual Surplus Lines Report

Due April 1

**Calendar Year 2\_\_\_\_\_**

Name of Surplus Line Broker

\_\_\_\_\_

Address of Surplus Line Broker

\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Total Surplus Lines Insurance Policies Written in 2\_\_\_\_\_:

\_\_\_\_\_

Total Surplus Lines Written Premium in 2\_\_\_\_\_: \_\_\_\_\_

Risk Insured	Line of Business *	Amount of Insurance	Name of Surplus Lines Insurer	Policy Number	Term and Expiration Date	Premium

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