



RULE-MAKING ORDER

CR-103E (May 2009)
(Implements RCW 34.05.360)

Agency: Office of the Insurance Commissioner

Emergency Rule Only

Effective date of rule:

Emergency Rules

- Immediately upon filing.
- Later (specify) July 21, 2011

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes No If Yes, explain:

Purpose: Chapter 31, Laws of 2011 (HB 1694) amended RCW 48.15.040 and RCW 48.15.090. The Commissioner no longer requires an affidavit of due diligence to be filed by surplus line brokers, and instead receives a certification. Unauthorized insurers must meet the minimum financial requirements before business can be placed with the insurer. These emergency rules will amend the existing rules to conform to these statutory changes. The permanent rule is scheduled for completion by: October 31, 2011.

Insurance Commissioner Matter No. R 2011-13

Citation of existing rules affected by this order:

Repealed: WAC 284-15-090
 Amended: WAC 284-15-020, WAC 284-15-030, and WAC 284-15-050
 Suspended:

Statutory authority for adoption: RCW 48.02.060 and RCW 48.15.015

Other authority : Chapter 31, Laws of 2011

EMERGENCY RULE

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.
- That in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this finding: The Nonadmitted and Reinsurance Reform Act (NRRA) was enacted by Congress as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010. The NRRA included sections on Surplus Lines insurance which preempt state laws. These provisions become effective July 21, 2011., Chapter 31, 2011 (HB 1694) was enacted to conform state law to the NRRA and made certain provisions effective on July 21, 2011 to coincide with the effective date of the NRRA.

Date adopted:

July 20, 2011

NAME (TYPE OR PRINT)

Mike Kreidler

SIGNATURE

TITLE

Insurance Commissioner

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: July 20, 2011

TIME: 8:24 AM

WSR 11-15-083

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	<u>1</u>	Repealed	<u>1</u>
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	<u>3</u>	Repealed	<u>1</u>

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	<u>1</u>	Amended	_____	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	<u>1</u>	Amended	<u>3</u>	Repealed	<u>1</u>

AMENDATORY SECTION (Amending Matter No. R 2008-04, filed 7/2/08, effective 8/2/08)

WAC 284-15-020 Surplus line broker--Solvent insurer required.

(1) A surplus line broker must not knowingly place surplus line insurance with financially unsound insurers. Foreign (~~and alien~~) insurers must meet or exceed the minimum financial and other conditions required by RCW 48.15.090 (~~and WAC 284-15-090~~).

(2) A surplus line broker must substantiate the financial condition of (~~an~~) a foreign unauthorized insurer before placing insurance with the insurer. The broker must also maintain evidence of the financial condition of the insurer for at least five years.

~~((a) If)~~ (3) A surplus line broker may place(~~s~~) insurance with an alien unauthorized insurer shown on the National Association of Insurance Commissioners (NAIC) Quarterly Listing of Alien Insurers (~~dated within three months after placement of the risk, it will be deemed that the insurer meets the financial requirements of RCW 48.15.090 and WAC 284-15-090 and that the financial condition of the insurer is~~). The financial condition of an insurer named on the listing is deemed to be adequately documented.

~~((b) If a surplus line broker places insurance with an alien unauthorized insurer that is not shown on the NAIC Quarterly Listing of Alien Insurers, the broker must maintain information for at least five years adequate to show that the requirements of subsection (1) of this section have been met or exceeded. This documentation shall include at least the following:~~

~~(i) A copy of the unauthorized insurer's most recent available annual financial statement, in English with United States dollar equivalents;~~

~~(ii) Any other information obtained by the broker that verifies the financial condition of the alien unauthorized insurer; and~~

~~(iii) The current NAIC annual statement or its equivalent on file for any alien unauthorized insurer used.))~~

AMENDATORY SECTION (Amending Matter No. R 2006-04, filed 6/6/06, effective 7/7/06)

WAC 284-15-030 Surplus line brokers' form to be filed--Contract ((stamp)) statement to be used. (1) ~~((RCW 48.15.040 requires that a surplus line broker execute an affidavit at the time of procuring insurance from an unauthorized insurer, and to~~

~~file such affidavit with the commissioner within thirty days after the insurance is procured.)~~ For the purpose of complying with the requirements of section 5, chapter 31 (HB 1694), Laws of 2011, and RCW 48.15.040, the date insurance is procured is the date coverage is bound or the date coverage is effective, whichever is later. The ((form for filing such affidavit shall)) certification required by RCW 48.15.040 must be in substantially the following form, and may include additional information to satisfy requirements of the Surplus Line Association of Washington:

Policy or Certificate No: Premium, including any policy fee:

1. Name and license number of filing Surplus Line Broker:
2. Name and address of ~~((producing agent or broker))~~ referring insurance producer (if any):
3. Name(s) of unauthorized insurer(s):
4. Name and address of insured:
5. Binding or effective date, whichever is later:
6. Brief statement of coverages (common trade terms may be used, e.g. "furrier's block"):

((STATE OF WASHINGTON }
COUNTY } SS. SURPLUS LINE
BROKER'S
AFFIDAVIT))

7. Certification:

I have procured insurance from an unauthorized insurer or insurers, in accordance with the laws and regulations of the state of Washington under my surplus line broker's license. Details of such transaction are set forth above.

~~((Such))~~ The insurance could not be procured, after diligent effort was made to do so from among a majority of the insurers authorized to transact that kind of insurance in this state, and placing the insurance in such unauthorized insurer(s) was not done for the purpose of securing a lower premium rate than would be accepted by any authorized insurer.

I certify that I am duly authorized to place this coverage on behalf of the insured, that the risk has been duly accepted by the insurer(s), and that ~~((ascertained))~~ the financial condition of the unauthorized insurer(s) before placing the insurance therewith meets or exceeds the financial requirements provided by law.

I certify that under the penalty of the suspension or revocation of my surplus line broker's license that the facts contained in this certification are true and correct.

.....
(Signature of Surplus Line Broker)

~~((Subscribed and sworn to before me this
day of, 20...))~~

.....
Notary Public in and for the State of
Washington, residing at) (Date)

(2) Every insurance contract, including those evidenced by a binder, procured and delivered on or after January 1, 2012, as a surplus line coverage (~~(pursuant to)~~) under chapter 48.15 RCW (~~(shall)~~) must have a conspicuous statement (~~(stamped)~~) upon its face, which (~~(shall)~~) must be initialed by or bear the name of the surplus line broker who procured it, as follows:

"This contract is registered and delivered as a surplus line coverage under the insurance code of the state of Washington, enacted in 1947. It is not (~~issued by a company regulated by the Washington state insurance commissioner and is not~~) protected by any Washington state guaranty (~~fund~~) association law."

(3) Every insurance contract, including those evidenced by a binder, procured and delivered on or before December 31, 2011, as a surplus line coverage under chapter 48.15 RCW must have a conspicuous statement upon its face, which must be initialed by or bear the name of the surplus line broker who procured it, either as set forth in subsection (2) of this section, or as follows:

"This contract is registered and delivered as a surplus line coverage under the insurance code of the state of Washington, enacted in 1947. It is not issued by a company regulated by the Washington state insurance commissioner and is not protected by any Washington state guaranty fund law."

NEW SECTION

WAC 284-15-035 Exempt commercial purchasers. A surplus line broker who has procured insurance with an unauthorized insurer for an exempt commercial purchaser must file with the commissioner within sixty days of the procurement (binding or effective date, whichever is later) of the insurance a report of the insurance. The report must be in a format acceptable to the commissioner. The report must include the following information:

- (1) Policy or certificate number;
- (2) Premium, including any policy fee;
- (3) Name and license number of the filing surplus line broker;
- (4) Name(s) of unauthorized insurer(s);
- (5) Name and address of insured;
- (6) Binding or effective date, whichever is later;
- (7) Brief statement of coverages (common terms may be used);

and

- (8) Other information as required by the commissioner.

AMENDATORY SECTION (Amending Matter No. R 2008-04, filed 7/2/08, effective 8/2/08)

WAC 284-15-050 Surplus line--Waiver of financial requirements. (1) The commissioner may waive the financial requirements specified in RCW 48.15.090 (~~and WAC 284-15-090~~) in circumstances where insurance cannot be otherwise procured on risks located in this state. Except as set forth in (e) of this subsection (~~((5) of this section)~~), at least the following information must be submitted when a surplus line broker requests the commissioner to waive the financial requirements:

~~((1))~~ (a) A detailed letter explaining the need to waive the financial requirements;

~~((2))~~ (b) Documentation of the financial condition of the proposed insurer as reported in its annual statement as of the end of the preceding calendar year;

~~((3))~~ (c) Summary information showing the number of years the company has been writing the specific line of insurance;

~~((4))~~ (d) A written (~~acknowledgement~~) acknowledgment signed by the proposed insured confirming all of the following:

~~((a))~~ (i) The insured has been informed that the coverage will be issued by an insurer (or insurers) that is not an authorized insurer in the state of Washington;

~~((b))~~ (ii) The insured understands that financial requirements for surplus line insurers must be waived by all parties concerned to enable this coverage to be obtained; and

~~((c))~~ (iii) The insured understands that there is no protection for the insured under the Washington Insurance Guaranty Association because the coverage will be issued by an unauthorized insurer;

~~((5))~~ (e) For accounts requiring a multiplicity of insurers, in lieu of the requirements in (~~subsections (2))~~ (b) and (~~((3))~~) (c) of this (~~section~~) subsection, the commissioner may accept certification from a surplus line broker that the broker has investigated the financial condition of the prospective insurers and is satisfied that they are capable of underwriting the specified risks. Records and documents supporting the broker's certification must be maintained by the broker for the term of the policies and as long thereafter as a claim may be litigated, but in no case less than five years after completion of the transaction.

(2) In no event will the commissioner waive the financial requirements when the insurer's capital and surplus is less than four million five hundred thousand dollars.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 284-15-090

Financial requirements for unauthorized foreign and alien insurers increased.