

## Chapter 284-15 WAC Surplus line insurance

Last Update: 1/31/12

### WAC Sections

- 284-15-010 Brokers -- Surplus line brokers -- Qualifications and examination.
- 284-15-020 Surplus line broker -- Solvent insurer required.
- 284-15-030 Surplus line brokers' form to be filed -- Contract statement to be used.
- 284-15-035 Exempt commercial purchasers.
- 284-15-040 Form for surplus line insurer to designate person to receive legal process.
- 284-15-050 Surplus line -- Waiver of financial requirements.
- 284-15-080 Relationship between surplus line broker and insurance producer not acting as the agent of the insured.
- 284-15-110 Surplus line insurance premium tax.

### DISPOSITIONS OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

- 284-15-090 Financial requirements for unauthorized foreign and alien insurers increased. [Statutory Authority: RCW 48.02.060, 92-24-062 (Order R 92-24), § 284-15-090, filed 11/30/92, effective 12/31/92.] Repealed by 12-04-082 (Matter No. R 2011-10), filed 1/31/12, effective 3/2/12. Statutory Authority: RCW 48.02.060, 48.15.040(4), and 48.15.090 (2).
- 284-15-100 Surplus lines limited broker. [Statutory Authority: RCW 48.02.060 and 48.92.140, 93-19-008 (Order R 93-12), § 284-15-100, filed 9/1/93, effective 10/2/93.] Repealed by 08-14-169 (Matter No. R 2008-04), filed 7/2/08, effective 8/2/08. Statutory Authority: RCW 48.02.060, 48.15.040(4), 48.15.073(2), and 48.15.160(2).

---

### 284-15-010

#### **Brokers — Surplus line brokers — Qualifications and examination.**

(1) Each applicant for a resident surplus line broker's license must take and pass the required examination and pay the required fee prior to acting as a surplus line broker. The examination will test an applicant's qualifications and competence in all areas of surplus line insurance. Current information about testing procedures and examination dates is available on the commissioner's web site at: [www.insurance.wa.gov](http://www.insurance.wa.gov).

(2) Before the commissioner can issue a surplus line broker's license, the applicant must be licensed in this state as an insurance producer with both property and casualty lines of authority. This requirement may be satisfied if the licenses are issued simultaneously.

(3) The commissioner deems that a nonresident person holding a surplus line broker's license, or the equivalent, in the applicant's home state is qualified, competent and trustworthy and, therefore, meets the minimum standards of this state for holding a surplus line broker's license. For that reason, the commissioner will waive the Washington surplus line broker's examination for

a person who has and maintains a current resident surplus line broker's license, or the equivalent, in the applicant's home state.

[Statutory Authority: RCW 48.02.060, 48.17.005. 09-02-073 (Matter No. R 2008-06), § 284-15-010, filed 1/6/09, effective 7/1/09. Statutory Authority: RCW 48.02.060, 48.15.040(4), 48.15.073 (2), and 48.15.160(2). 08-14-169 (Matter No. R 2008-04), § 284-15-010, filed 7/2/08, effective 8/2/08. Statutory Authority: RCW 48.02.060. 81-03-082 (Order R 81-1), § 284-15-010, filed 1/21/81.]

**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 insurers must meet or exceed the minimum financial and other conditions required by RCW 48.15.090.

(2) A surplus line broker must substantiate the financial condition of 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.

(3) A surplus line broker may place insurance with an alien unauthorized insurer shown on the National Association of Insurance Commissioners (NAIC) Quarterly Listing of Alien Insurers. The financial condition of an insurer named on the listing is deemed to be adequately documented.

[Statutory Authority: RCW 48.02.060, 48.15.040(4), and 48.15.090 (2). 12-04-082 (Matter No. R 2011-10), § 284-15-020, filed 1/31/12, effective 3/2/12. Statutory Authority: RCW 48.02.060, 48.15.040(4), 48.15.073(2), and 48.15.160(2). 08-14-169 (Matter No. R 2008-04), § 284-15-020, filed 7/2/08, effective 8/2/08. Statutory Authority: RCW 48.02.060. 81-03-082 (Order R 81-1), § 284-15-020, filed 1/21/81.]

**284-15-030**

**Surplus line brokers' form to be filed — Contract statement to be used.**

(1) For the purpose of complying with the requirements of RCW 48.15.043 and 48.15.040, the date insurance is procured is the date coverage is bound or the date coverage is effective, whichever is later. The 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	Premium, including
Certificate No:	any policy fee:

---

1. Name and license number of filing Surplus Line

Broker:

2. Name and address of 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"):
  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.

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 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)

..... (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 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, as follows:

"This contract is registered and delivered as a surplus line coverage under the insurance code of the state of Washington, Title 48 RCW. It is not protected by any Washington state guaranty 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."

[Statutory Authority: RCW 48.02.060, 48.15.040(4), and 48.15.090 (2). 12-04-082 (Matter No. R 2011-10), § 284-15-030, filed 1/31/12, effective 3/2/12. Statutory Authority: RCW 48.02.060. 06-12-077 (Matter No. R 2006-04), § 284-15-030, filed 6/6/06, effective 7/7/06; 81-03-082 (Order R 81-1), § 284-15-030, filed 1/21/81.]

---

#### **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 and address of referring insurance producer (if any);
- (5) Name(s) of unauthorized insurer(s);
- (6) Name and address of insured;
- (7) Binding or effective date, whichever is later;
- (8) Brief statement of coverages (common terms may be used); and
- (9) Other information as required by the commissioner.

[Statutory Authority: RCW 48.02.060, 48.15.040(4), and 48.15.090 (2). 12-04-082 (Matter No. R 2011-10), § 284-15-035, filed 1/31/12, effective 3/2/12.]

---

**284-15-040****Form for surplus line insurer to designate person to receive legal process.**

(1) RCW 48.15.150 permits service of legal process against an unauthorized insurer to be made upon the commissioner. The commissioner will mail the documents of process to the insurer at its principal place of business last known to the commissioner, or to a person designated by the insurer for that purpose in the most recent document filed with the commissioner on a form prescribed by the commissioner. If an unauthorized insurer elects to designate a person to receive legal process from the commissioner, the designation must be in writing and filed with the commissioner in substantially the form set forth on the commissioner's web site at: [www.insurance.wa.gov](http://www.insurance.wa.gov).

(2) The person designated by the insurer to receive legal process may be an individual, firm or corporation.

(3) The process documents will be forwarded by the commissioner to the person designated in the most recent notice filed with the commissioner.

(4) As specified in RCW 48.15.150, each policy issued by an unauthorized insurer as a surplus line contract must designate the commissioner as the person upon whom service of process may be made.

[Statutory Authority: RCW 48.02.060, 48.15.040(4), 48.15.073 (2), and 48.15.160(2). 08-14-169 (Matter No. R 2008-04), § 284-15-040, filed 7/2/08, effective 8/2/08. Statutory Authority: RCW 48.02.060, 06-12-077 (Matter No. R 2006-04), § 284-15-040, filed 6/6/06, effective 7/7/06; 81-03-082 (Order R 81-1), § 284-15-040, filed 1/21/81.]

**284-15-050****Surplus line — Waiver of financial requirements.**

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

- (a) A detailed letter explaining the need to waive the financial requirements;
- (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;
- (c) Summary information showing the number of years the company has been writing the specific line of insurance;
- (d) A written acknowledgment signed by the proposed insured confirming all of the following:
  - (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;
  - (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
  - (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;

(e) For accounts requiring a multiplicity of insurers, in lieu of the requirements in (b) and (c) of this 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.

[Statutory Authority: RCW 48.02.060, 48.15.040(4), and 48.15.090 (2). 12-04-082 (Matter No. R 2011-10), § 284-15-050, filed 1/31/12, effective 3/2/12. Statutory Authority: RCW 48.02.060, 48.15.040(4), 48.15.073(2), and 48.15.160(2). 08-14-169 (Matter No. R 2008-04), § 284-15-050, filed 7/2/08, effective 8/2/08. Statutory Authority: RCW 48.02.060. 89-03-060 (Order R 89-2), § 284-15-050, filed 1/17/89; 81-03-082 (Order R 81-1), § 284-15-050, filed 1/21/81.]

#### **284-15-080**

##### **Relationship between surplus line broker and insurance producer not acting as the agent of the insured.**

When a surplus line broker accepts surplus line business from an insurance producer not acting as an agent of the insured, as permitted by RCW 48.15.080, acceptance of the business does not mean that the insurance producer has become the representative of the insured with respect to that business. In this circumstance:

(1) Return premiums or claim payments will not be deemed to have been paid to the insured or claimant until the payments are actually received by the insured or claimant.

(2) Delivery of notices involving the insurance, such as cancellation or renewal notices, will not be deemed to have been made until actually received by the insured.

[Statutory Authority: RCW 48.02.060, 48.17.005. 09-02-073 (Matter No. R 2008-06), § 284-15-080, filed 1/6/09, effective 7/1/09. Statutory Authority: RCW 48.02.060, 48.15.040(4), 48.15.073 (2), and 48.15.160(2). 08-14-169 (Matter No. R 2008-04), § 284-15-080, filed 7/2/08, effective 8/2/08. Statutory Authority: RCW 48.02.060, 48.05.310, 48.30.010 and 48.15.080. 91-23-032 (Order R 91-7), § 284-15-080, filed 11/13/91, effective 1/1/92.]

#### **284-15-110**

##### **Surplus line insurance premium tax.**

RCW 48.15.120 requires that surplus line brokers must, by the first day of March, remit to the state treasurer through the commissioner a premium tax on surplus line insurance transacted by the surplus line broker during the preceding calendar year. The date the insurance was transacted is the date coverage is bound or the date coverage is effective, whichever is later.



[Statutory Authority: RCW 48.02.060, 48.15.040(4), and 48.15.090 (2). 12-04-082 (Matter No. R 2011-10), § 284-15-110, filed 1/31/12, effective 3/2/12.]

**WAC 284-30-590**

**Unfair practices with respect to policy cancellations, renewals, and changes.**

(1) It is unfair practice to utilize a twenty-day notice to increase premiums by a change of rates or to change the terms of a policy to the adverse interest of the insured thereunder, except on a one time basis in connection with the renewal of a policy as permitted by RCW 48.18.2901(2), or to utilize such notice if it is not, by its contents, made clearly and specifically applicable to the particular policy and to the insured thereunder or does not provide sufficient information to enable the insured to understand the basic nature of any change in terms or to calculate any premium resulting from a change of rates.

(2) In the unusual situation where a contract permits a midterm change of rates or terms, other than in connection with a renewal, it is an unfair practice to effectuate such change with less than forty-five days advance written notice to the named insured, or to utilize a contract provision which is not set forth conspicuously in the contract under an appropriate caption of sufficient prominence that it will not be minimized or rendered obscure.

(3) It is an unfair practice to effectuate a change of rates or terms other than prospectively. Such changes may be effective no sooner than the first day following the expiration of the required notice.

(4) If an insured elects to not continue coverage beyond the effective date of any change of rates or terms, it is an unfair practice to refund any premium on less than a pro rata basis.

(5) The cancellation and renewal provisions set forth in chapter 48.18 RCW do not apply to surplus line policies. To avoid unfair competition and to prevent unfair practices with respect to consumers, it is an unfair practice for any surplus line broker to procure any policy of insurance pursuant to chapter 48.15 RCW that is cancelable by less than ten days advance notice for nonpayment of premium and twenty days for any other reason, except as to a policy of insurance of a kind exempted by RCW 48.15.160. This rule shall not prevent the cancellation of a fire insurance policy on shorter notice in accord with chapter 48.53 RCW.

(6) Except where the insurance policy is providing excess liability or excess property insurance including so-called umbrella coverage, it is an unfair practice for an insurer to make a common practice of giving a notice of nonrenewal of an insurance policy followed by its offer to rewrite the insurance, unless the proposed renewal insurance is substantially different from that under the expiring policy.

(7) Where the rate has not changed but an incorrect premium has been charged, if the insurer elects to make a midterm premium revision, it is an unfair practice to treat the insured less favorably than as follows:

(a) If the premium revision is necessary because of an error made by the insurer or its agent,

the insurer shall:

(i) Notify the applicant or insured of the nature of the error and the amount of additional premium required; and

(ii) Offer to cancel the policy or binder pro rata based on the original (incorrect) premium for the period for which coverage was provided; or

(iii) Offer to continue the policy for its full term with the correct premium applying no earlier than twenty days after the notice of additional premium is mailed to the insured.

(b) If the premium revision results from erroneous or incomplete information supplied by the applicant or insured, the insurer shall:

(i) Correct the premium or rate retroactive to the effective date of the policy; and

(ii) Notify the applicant or insured of the reason for the amount of the change. If the insured is not willing to pay the additional premium billed, the insurer shall cancel the policy, with appropriate statutory notice for nonpayment of premium, and compute any return premium based on the correct premium.

(c) This subsection recognizes that an insurer may elect to allow an incorrect premium to remain in effect to the end of the policy term because the insured is legally or equitably entitled to the benefit of a bargain made.

(8) If a policy includes conditions allowing the insured to cancel the policy, the insured may cancel the policy or binder issued as evidence of coverage.

(a) The insured may provide notice before the effective date of cancellation using one of these methods:

(i) Written notice of cancellation to the insurer or producer by mail, fax or e-mail;

(ii) Surrender of the policy or binder to the insurer or producer; or

(iii) Verbal notice to the insurer or producer.

(b) If the insurer receives notice of cancellation from the insured, it must accept and promptly cancel the policy or any binder issued as evidence of coverage effective the later of:

(i) The date notice is received; or

(ii) The date the insured requests cancellation.

(c) If an insured provides verbal notice of cancellation to the insurer, the insurer may require the insured to provide written confirmation of cancellation, but may not impose a waiting period for cancellation by requiring written confirmation from the insured.

(d) Insurers may retroactively cancel a policy to accommodate the insured.

(e) Insurers must establish safeguards to ensure the person requesting cancellation:

(i) Is authorized to do so; and

(ii) Is informed that the request to cancel the policy is binding on both parties.



[Statutory Authority: RCW 48.02.060. 10-01-074 (Matter No. R 2008-12), § 284-30-590, filed 12/14/09, effective 1/14/10. Statutory Authority: RCW 48.02.060, 48.44.050 and 48.46.200. 87-09-071 (Order R 87-5), § 284-30-590, filed 4/21/87.]

# Filing Information

All surplus line insurance coverages written by members of the Association on Washington risks (per RCW48.15.120) are to be submitted to the Association office for examination.

The following Rules shall apply to such submissions:

- (1) All submissions must be filed on forms prescribed and furnished by the Association.
- (2) The certification form must be filed within sixty (60) days of the effective or procurement date. Policy documents are to be filed with the certification form. If these policy documents are not available within 60 days, these policy documents must be sent upon receipt by the member. Policy documents required are:

- Policy declarations, certificate or covernote declarations
- Supplemental declarations
- Schedule of forms and endorsements
- Copy of the service of suit endorsement

- (3) Upon receipt of a complete submission, the Association office will either accept the same by registering the submission or will issue a "tag" for correction. Submissions "tagged" for amendment or correction must be corrected promptly.
- (4) When the Association office receives a certification form, the Association office will thereafter deliver a copy of the certification form to the Insurance Commissioner. Whether or not the submission is registered it will be considered filed with the Insurance Department for reporting and tax purposes. Changes to the certification form can be made until the account is registered. This will complete the surplus line broker's filing requirement under the Washington Insurance Code.
- (5) The policy will not be considered registered until the certification form and policy documents have been received and reviewed by the Association, any tags have been cleared, and registration confirmation has been sent to the broker.
- (6) The notice of a "Registered" certification form and a copy of coverages constitutes a complete copy of the filing for the broker's records.
- (7) Endorsements or other modifications of coverages previously submitted must be promptly filed with the Association where the endorsement or other modification involves any additional or return premium, changes in security, or a change of policy number.
  - (a) Endorsements having additional or return premiums must include details, e.g. premiums, state tax, stamping fee.
  - (b) Non-money endorsements need not be filed, except for changes of security or policy number.
  - (c) Certifications should not be submitted with an endorsement.

- (8) Itemization of Premium, Taxes and Fee: Each filing involving premium must include the following itemized charges:

- Premium
- Policy Fee
- Any other applicable fees charged
- State Tax - Refer to Rule 7
- Stamping Fee - Refer to Rule 6

State tax and stamping fee are based on the sum of all premiums and fees, including but not limited to policy, broker and/or inspection fees.

(9) Listing of Insurers in each Certificate of Coverage: In each submission filed with the Association there shall appear in full the names of all insurers assuming liability, and the percentage of such liability respectively assumed by them, said names to appear both in the certificate and also in Item 3 of the certification form so that the Insurance Commissioner will be advised.

(10) All documents submitted shall be confidential information to the Association office, and shall not be divulged to, or to be open to inspection by any third party, except the Insurance Commissioner or other governmental agency having legal authority therefore. Provided, however, that the Board of Directors may, by resolution adopted by a majority of its members, allow or require the Executive Director to disclose specific types or categories of information in accordance with the terms, conditions and limitations of such resolution.