

Chapter 284-15 WAC

SURPLUS LINE INSURANCE

WAC

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DISPOSITION 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. WSR 92-24-062 (Order R 92-24), § 284-15-090, filed 11/30/92, effective 12/31/92.] Repealed by WSR 12-04-082 (Matter No. R 2011-10), filed 1/31/12, effective 3/2/12.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. WSR 93-19-008 (Order R 93-12), § 284-15-100, filed 9/1/93, effective 10/2/93.] Repealed by WSR 08-14-169 (Matter No. R 2008-04), filed 7/2/08, effective 8/2/08.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).

WAC 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.

(2) 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 48.020.060 [48.02.060], 48.15.015, 48.15.070, and 48.15.073. WSR 13-11-042 (Matter No. R 2012-32), § 284-15-010, filed 5/13/13, effective 6/13/13. Statutory Authority: RCW 48.02.060, 48.17.005. WSR 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). WSR 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. WSR 81-03-082 (Order R 81-1), § 284-15-010, filed 1/21/81.]

(8/14/13)

WAC 284-15-015 Procurement of insurance from an unauthorized insurer by an unlicensed person prohibited.

(1) "Procured" as used in chapter 48.15 RCW and chapter 284-15 WAC means the act or acts necessary to obtain insurance coverage.

(2) A surplus line broker licensed under chapter 48.15 RCW must not assist a person in complying with the requirements of RCW 48.15.040 if the person:

(a) Is not licensed under chapter 48.15 RCW;

(b) Obtains insurance coverage from an unauthorized insurer; and

(c) Fails to procure the insurance coverage through a surplus line broker licensed under chapter 48.15 RCW.

This subsection applies without limitation to the services of a courtesy filer.

[Statutory Authority: RCW 48.02.060 and 48.15.015. WSR 13-17-049 (Matter No. R 2012-27), § 284-15-015, filed 8/14/13, effective 7/1/14.]

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 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). WSR 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). WSR 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. WSR 81-03-082 (Order R 81-1), § 284-15-020, filed 1/21/81.]

WAC 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:

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Policy or Certificate No: Premium, including 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). WSR 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. WSR 06-12-077 (Matter No. R 2006-04), § 284-15-030, filed 6/6/06, effective 7/7/06; WSR 81-03-082 (Order R 81-1), § 284-15-030, filed 1/21/81.]

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 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). WSR 12-04-082 (Matter No. R 2011-10), § 284-15-035, filed 1/31/12, effective 3/2/12.]

WAC 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.

(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). WSR 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. WSR 06-12-

077 (Matter No. R 2006-04), § 284-15-040, filed 6/6/06, effective 7/7/06; WSR 81-03-082 (Order R 81-1), § 284-15-040, filed 1/21/81.]

WAC 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). WSR 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). WSR 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. WSR 89-03-060 (Order R 89-2), § 284-15-050, filed 1/17/89; WSR 81-03-082 (Order R 81-1), § 284-15-050, filed 1/21/81.]

WAC 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. WSR 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). WSR 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. WSR 91-23-032 (Order R 91-7), § 284-15-080, filed 11/13/91, effective 1/1/92.]

WAC 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). WSR 12-04-082 (Matter No. R 2011-10), § 284-15-110, filed 1/31/12, effective 3/2/12.]