

Regulation 2801
Subchapter gg
FINAL PROVISIONS

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Part 2801. Surplus Line Business Requirements

§ 2801.10 Policies or contracts of insurance

Policies or contracts of insurance may not be placed with companies not authorized to do business in Illinois other than through surplus line producers licensed pursuant to Section 445 of the Illinois Insurance Code (the Code).

§ 2801.20 License expiration

A surplus line producer license issued pursuant to Section 445 of the Illinois Insurance Code shall expire twelve (12) calendar months after its issuance unless the license is renewed as permitted by Section 2801.100 of this Part.

§ 2801.30 Unauthorized companies

- a) A surplus line producer may procure insurance from an unauthorized company:
- 1) Which based upon information available to the surplus line producer has a policyholders' surplus of not less than \$15,000,000 determined in accordance with accounting rules as set forth in the Illinois Insurance Code which are applicable to authorized companies (Section 445 of the Code); and
 - 2) Which has standards of solvency and management which are adequate for the protection of policyholders (Section 445 of the Code).
- b) Information available to the surplus line producer at the time of procurement includes financial information published by the unauthorized company, the financial information and quarterly listing of alien insurers published by the National Association of Insurance

Commissioners' Non-Admitted Insurers Office¹ and information published by Best's Insurance Reports or other independent market reporting agencies.

- c) In determining whether the standards of solvency and management of an unauthorized company at the time of procurement are such that meet requirements necessary for the protection of policyholders, the surplus line producer shall consider the financial condition of the company, the ready acceptance of the company in responsible commercial markets, the general reputation of the company, and the company's past and current performance of its obligations.
- d) When an unauthorized company does not meet the standards set forth in subsection (a)(1) or (a)(2) of this Section or a surplus line producer is unable to verify such facts, the surplus line producer may procure insurance from that company only if prior written warning of such fact or condition is given to the insured by the insurance producer or surplus line producer. Evidence of the warning and its delivery shall be maintained by the insurance producer and surplus line producer, together with the evidence of coverage. Such written warning shall be in a form substantially similar to the sample warning set forth in Illustration A of this Part.
- e) If the Director at any time determines that the further assumption of risks might be hazardous to the policyholders of an unauthorized company, the Director shall order the Surplus Line Association of Illinois not to countersign insurance contracts evidencing insurance in such company. Said determination will be made by examining the criteria contained in the Illinois Insurance Code for authorized companies. In such event the Director shall also direct all surplus line producers to cease procuring insurance from such company.

§ 2801.40 Maintenance of funds in Illinois

Nothing contained in this Part shall be construed to prohibit an unauthorized company from maintaining funds in Illinois to service its business.

§ 2801.50 Procurement of policies or contracts

- a) The Surplus Line producer must exert diligent effort to procure the policies or contracts required by the insureds from companies which are authorized to transact business in Illinois (Section 445 of the Code). Diligent effort by the Surplus Line producer shall be deemed to have been exercised if the Surplus Line producer or the referring insurance producer shall submit a risk to three or more authorized companies, which are engaged in writing in Illinois the type of coverage sought, or if there are no companies actually engaged in writing such coverage, the risk shall be submitted to companies which, in the Surplus Line producer's or the insurance producer's professional judgment, are the most likely to accept the risk.
- b) Submission of insuring contracts to the Surplus Line Association of Illinois constitutes a certification by the surplus line producer or by the insurance producer who presented the risk to the surplus line producer for placement as a surplus line risk that after diligent effort

¹ Now known as the International Insurers Department (IID). This regulation has not been updated to reflect the name change.

the required insurance could not be procured from companies which are authorized to transact business in this State and that such procurement was otherwise in accordance with the surplus line law.

§ 2801.60 Record of efforts to procure policies or contracts

The surplus line producer must maintain with the copy of the insurance that was placed a record of such diligent effort which must state the name of the authorized companies and the individuals contacted at each company who declined the risk. If the diligent effort was made by the insurance producer, the surplus line producer must maintain a written record signed by the insurance producer that the insurance producer made such diligent effort, and the insurance producer must maintain a record that states the name of the authorized companies and the individuals contacted at each company who declined the risk.

§ 2801.70 Declinations of artificial coverage not acceptable

- a) Declinations by authorized companies for the following reasons do not qualify insurance to be placed under the surplus line law:
 - 1) Artificial division of one coverage into two or more proposed contracts;
 - 2) Differential in premium or rate quoted between an authorized company and an unauthorized company.
- b) Declinations by authorized companies for the following reasons do qualify insurance to be placed under the surplus line law:
 - 1) Underwriting reason pertaining to the risk or the class;
 - 2) Size of the risk;
 - 3) Coverage is not available except in combination with other coverage not required by the insured;
 - 4) Required coverage is not acceptable in part to the authorized company although part of the coverage is acceptable and the unauthorized company will accept only the entire risk and not solely the rejected portion; and
 - 5) Authorized companies will accept less than the amount of coverage required and the entire amount and not just part thereof will be accepted by unauthorized companies.

§ 2801.80 Surplus Line Association of Illinois

- a) All surplus line insurance placed on Illinois risks must be submitted to the Surplus Line Association which will process and countersign the insurance policies or contracts, keep records of the business written and report to the surplus line producers and to the Director pursuant to Sections 445 and 445.1 of the Code. The Surplus Line Association shall report to the surplus line producers and the Director by July 15 each year the business processed by each surplus line producer during the six month period ending June 30, and by January 15 each year the business processed by each surplus line producer during the six month period ending December 31 of the previous year.

- b) The Surplus Line Association is authorized to charge a fee to cover its cost of operations. The fee is payable by the surplus line producer based on the same gross premiums which are subject to the surplus line tax. The fee schedule is subject to the Director's approval. The Director's approval of the fee schedule shall be determined from the annual audited financial report submitted to the Director by the Surplus Line Association.

§ 2801.90 Separate records and accounts

Each Surplus Line producer must keep separate accounts and records of the business transacted under his Surplus Line license, and these separate accounts and records shall be open at all times to the inspection of the Illinois Director of Insurance or the members of his staff.

§ 2801.100 License rejection or renewal refusal

Application for a surplus line producer license shall be rejected, or renewal thereof refused, for failure:

- a) To pay the tax required by Section 445 of the Illinois Insurance Code and by Section 12 of the Fire Investigation Act (425 ILCS 25/12); or
- b) to pay the annual license fee to the Director of Insurance pursuant to Section 445(2)(b) of the Code; or
- c) to maintain the surety bond required by Section 445; or
- d) to pay the fee due the Surplus Line Association; or
- e) to exert diligent effort to secure the business required by an insured in duly authorized companies; or
- f) to procure surplus line policies or contracts or coverage from companies that have at least \$15,000,000 in policyholders surplus and have the standards of solvency or management necessary for the protection of policyholders; or
- g) to process all surplus line business on Illinois risks through the Surplus Line Association; or
- h) to maintain records and accounts pursuant to Section 445 of the Code; or
- i) to maintain membership in the Surplus Line Association of Illinois; or
- j) to comply with the requirements of the Illinois Insurance Code or 50 Ill. Adm. Code.

§ 2801.110 Service of process

- a) Service of process relating to any surplus line insurance which the Surplus Line Association receives from the Director shall be delivered to the surplus line producer for delivery to the unauthorized company. The surplus line producer shall promptly forward any such process by the fastest, most reliable means to the unauthorized company or its designated representative for service of process.
- b) Any unauthorized company which elects to do so may file a written request with the Surplus Line Association that service of process be forwarded directly to the company in

which case the Surplus Line Association shall forward a copy of such process directly to the company and a copy to the surplus line producer.

2801.120 Required surplus line policy notice¹

Each policy or contract for insurance issued in conformity with Section 445 shall have stamped or imprinted on the first page thereof in not less than 12-pt. bold face type the following legend:

"Notice to Policyholder"

"This contract is issued, pursuant to Section 445 of the Illinois Insurance Code, by a company not authorized and licensed to transact business in Illinois and as such is not covered by the Illinois Insurance Guaranty Fund."

§ 2801.130 Taxes

- a) The surplus line producer shall pay to the Director as a surplus line tax a sum equal to 3%² of the gross premiums less returned premiums upon all surplus line insurance. The payment is due on or before February 1 of each year for the business processed through the Surplus Line Association during the six month period ending December 31 of the previous year and on August 1 of each year for the six month period ending June 30. The Surplus Line Association will report to each surplus line producer and to the Director the business processed during each six month period.
- b) The surplus line producer shall pay to the Director as a Fire Marshal Tax a sum equal to 1% of the gross premiums less returned premiums on all surplus line insurance subject to the tax required by Chapter 127 1/2, par. 16 of the Illinois Revised Statutes. The payment is due in the month of March for the business processed through the Surplus Line Association for the preceding calendar year. The Surplus Line Association prior to March 1 will report to each surplus line producer and to the Director the business subject to this Fire Marshal Tax processed during each calendar year.
- c) The surplus line tax and the Fire Marshal tax, where applicable, shall be due and payable on all surplus line business processed by the surplus line producer through the Surplus Line Association.

§ 2801.140 Classes not subject to surplus line law

Sections 445 and 445.5 inclusive of the Illinois Insurance Code (Ill. Rev. Stat. 1987, ch. 73, pars. 1057-1057.5) do not apply to insurance of property and operations of railroads or aircraft engaged in interstate or foreign commerce, insurance of vessels, crafts or hulls, cargoes, marine builders risks, marine protection and indemnity, or other risks including

¹ There is a separate notice required for domestic surplus line insurers. See Procedures Manual, Page 5.

² The tax rate is now 3.5%. This regulation has not been updated to reflect the change.

strikes and war risks insured under ocean or wet marine forms of policies. Surplus line producers should not submit the above types of insurance to the Surplus Line Association for processing.

§ 2801. Illustration A Written warning to insureds

TO: _____

RE: (Name of Unauthorized Company)
(Type of Coverage)

In accordance with Section 445 of the Illinois Insurance Code, I hereby provide you with a written WARNING that the above-captioned unauthorized company with which I propose to place the captioned coverage does not or I am unable to verify that it does, (checked as applicable):

- _____ Have a policyholder surplus of \$15,000,000 or more;
- _____ meet minimal standards of solvency and management which are adequate for your protection.

Sincerely,
