

*****SURPLUS LINES PRODUCERS*****
*****OPTins REGISTRATION INSTRUCTIONS*****

Effective May 1, 2010, the New Hampshire Insurance Commissioner is transferring the electronic Surplus Lines submissions of forms and payment processing operations to OPTins (Online Premium Tax for Insurance), a product of the National Association of Insurance Commissioners (“NAIC”).

The steps to submit your monthly policy filings are very simple and require no formal training. Easy to follow instructions will be provided by the NAIC. There is a set up process at the NAIC which could take up to two weeks. You’ll log in, upload your filing forms and submit your payment online. Your payments will be handled electronically and will be processed through the NAIC. All Surplus Lines Producers will need to contact the OPTins Marketing Team optinsmktg@naic.org or 816.783.8787 with any questions and to register.

NH SURPLUS LINES

MONTHLY FILINGS:

If the producer has had no business during a month, the monthly reporting is **not** required.

OPTins has the feature for paying the premium tax with the monthly filing. In accordance with RSA 405.29, the premium tax due date is January 31st.

NH law regarding the monthly reporting requirements for surplus lines producers/entities:

405:25 Monthly Statements. – Every such licensee shall, **on or before the tenth day of each month**, execute and file with the commissioner, a statement under oath covering all insurance policies and contracts of insurance or suretyship procured by him under his said license during the calendar month next preceding, giving the name of the company issuing each of said policies, the name and residence of the insured and the amount, term and premium of each policy and contract and the kind of property or risk insured thereby, and that he was unable to procure in companies admitted to do business in the state the amount of insurance necessary to protect said property or risk.

PRODUCER OF RECORD:

If the agency is the entity producer of record for the policy transactions reported to the surplus lines company on the monthly report, the policies should be reported under the agency’s entity national producer’s number and reported on the monthly and uploaded under the agency’s registration on OPTins. The “Active Designated Responsible Licensee” for agency is ultimately responsible for the business filed under agency.

If the individual producer is the producer of record who places the policy with surplus lines company, the policy should be reported under the individual national producer number and uploaded under the individual’s registration on OPTins.

COURTESY FILINGS:

A filing must be submitted by a producer with surplus lines authority on their NH producer license. A policy can be filed as a courtesy filing (see RSA 402:16-b below) by entering the producer of record in the courtesy filing column of the monthly report.

402:16-b Insurance Referrals. – Notwithstanding other provisions of this title, a person who has not complied with all applicable state insurance licensing and appointment laws and regulations may refer a party to a person who has complied with all applicable state insurance licensing and appointment laws and regulations, if the person making such referral is compensated for such referral in an amount that does not exceed [a] the nominal amount of \$25 and such amount is not based on or related to the party’s purchase of insurance.

DUE DILIGENCE:

For surplus lines policies, the producer needs to document the due diligence with three denials from licensed carriers. RSA 405-24 paragraph III., "Such insurance or suretyship placed with an unadmitted surplus lines company shall be for such amount as the producer cannot place with an admitted company and shall not be placed until the producer has first satisfied the insurance commissioner that the producer cannot procure such an insurance in an admitted company." New Hampshire does not have a state specific form for the declinations, a standard form should be used.

FEES:

If the surplus lines insurance company includes the fee in the premium amount, it is taxable.

Surplus lines brokers may charge a fee in addition to the commission paid if the broker is providing services over and above the customary services provided in conjunction with the issuance of a policy. The broker may not charge a separate fee for service that are directly related to issuing the surplus line policy. The broker is compensated for these services through the commission. The broker may not impose a second charge to the insured for these services.

However, the broker may charge a fee for additional services provided to the insured.

For example, because the commission compensates the broker for assisting the insured in completing the application, the broker cannot charge a fee for this service. However, if a risk assessment is requested by the customer, the broker could charge a separate fee for completing the risk assessment (assuming the insurer does not require a risk assessment in order to issue the policy). All charges in addition to the commission must be fully disclosed in writing to the insured in order to avoid misrepresentations in violation of the unfair insurance trade practices act.

Section 417:4 Unfair Methods, Acts, and Practices Defined.

New Hampshire does not have a statute that states a limitation on the amount of the fee. Fees for services that are fully disclosed and are not included in the premium are not taxed.

If the surplus lines company includes a fee in the premium written amount, it is taxable.

HOME STATE Determination:

In accordance with the Frank-Dodd Act of 2010, Section 521(a) of the NERRA provides that no state other than the "home state" of an insured may impose a premium tax on nonadmitted insurance. "Home state" is generally defined in Section 527(6) of the NERRA as (i) the state in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence, or (ii) if 100% of the insured risk is located outside of that state, the state to which the greatest percentage of the taxable premium for that insurance contract is allocated. The NERRA streamlines the obligations of insureds to pay, and surplus lines brokers to collect, premium taxes on transactions where the insured risk is located in a different state than the insured's home state. Section 522(a) of the NERRA further provides that except as otherwise provided in the statute, the placement of nonadmitted insurance is only subject to the statutory and regulatory requirements of the insured's home state. Section 521(b) of the NERRA expresses an intent of Congress that each state adopt nationwide uniform procedures, such as an interstate compact, for reporting and paying premium taxes on nonadmitted insurance for allocating among the states the premium taxes paid to an insured's home state.

REFUNDS:

Refunds are not processed until after audits are completed between the surplus lines' producers with the surplus lines companies. Data calls from the companies are due to the NH Insurance Department May 1st of each year. There are no premium tax credits carried forward.

Special Filing Instructions

Amending Filings

If you are submitting an amended filing, please **only** include the changes in your form. All information that was originally filed does not need to be filed with the amendment as that creates a duplicate entry for you. The data on the original submission is not replaced or removed by submitting an amended report.

Note: Once a filing period has been submitted, you will not be able to submit an original filing for that period again. Filers can submit 12 filing periods per year or one per month.

Surplus Lines Producers & Business Entities

New Hampshire does not require a payment with the reporting of policies on a monthly basis. If you wish to pay taxes monthly, please enter the payment amount in the "Surplus Lines Tax" box. If you wish to pay tax on an annual basis, please click on the "No Payment Required" checkbox prior to clicking Submit on the final step in your filing.

You will need to complete all information in one cell per row. For instance, the Insured Name and Address field must be completed in the following format: John Doe 1234 Main Street Dover NH 03048. Please use the reference list that is attached for the appropriate code for the Reason for Placement, Transaction Type and Surplus Lines Company.

ANNUAL STATEMENT DIRECTIONS – NH Surplus Lines

There is only one Annual Statement form for filing the Surplus Lines taxes with risk in New Hampshire. The Annual Statement filing, and premium taxes are due no later than **January 31st** of each year. If the producer with surplus lines authority on their New Hampshire producer license (individual or entity) has had no business written with NH risk during the entire year, an Annual Statement still needs to be filed. The Annual Statement form and the signature page are available on OPTins.

The Surplus Lines producer number is the national producer number of the person or entity that is responsible for filing and paying the taxes. It is the broker of record that is responsible for reporting and paying the taxes. If the Producer or Entity submitted monthly filings under the NPN#, then it is required to submit the Annual Statement using the NPN#.

The Producer Name and Address need to be for the New Hampshire Producer that is responsible for paying the taxes.

If there are only single state policies (NH) written throughout the year, then only lines 1-3 and 7, 9 and 10 must be filled out. (Line 8 should report zero if there are not any Multi-State policies, and therefore, Schedule A would not have to be filled out.) If there are Multi-State policies, with New Hampshire as the home state, written during the year, then Schedule A needs to be completed and the amounts from the Schedule A summary must be reported on lines 4-6 and 8-10.

If there is a combination of policies, both single state and Multi-State (with NH as the home state), then the entire form and Schedule A need to be completed and filed. If there are policies written with New Hampshire risk, but New Hampshire is NOT the home state, then the taxes are due to the home state.

The premiums written and tax amounts submitted on the Annual Statement must reconcile to the total of the monthly statements filed during the year.

The tax payments paid amount must match the amount paid for the policies summarized on this Annual Statement. The Affidavit may be electronically signed or printed, signed then uploaded with the filing of the Annual Statement.

By signing the report, you swear or affirm that you are familiar with the information provided in the report, and that all information provided is true and accurate. You understand that submitting false information in a report may be prosecuted as unsworn falsification, pursuant to RSA 641:3.

405:29 Annual Statement; Tax. –

I. Each licensed producer shall file with the commissioner, **not later than January 31st of each** year, a sworn statement of the gross premiums charged for insurance procured or placed and the gross return premiums on such insurance cancelled under such license during the year ending on December 31 next preceding, and at the time of filing such statement shall pay to the state treasurer a sum equal to 3 percent of such gross premiums less such return premiums reported.

II. Any producer failing to file the report or failing to remit the proper tax within the time period for filing shall pay a penalty contingent upon the number of days that have passed since the due date. For late payments received 1-30 days after the due date, the penalty fee shall be 3 percent of the amount of tax due. For late payments received 31-60 days after the due date, the penalty fee shall be 6 percent of the amount of tax due. For late payments received more than 60 days after the due date, the penalty fee shall be 12 percent of the amount of tax due.

III. Each producer filing under this section shall be subject to the provisions of RSA 400-A:32-a.

REFUNDS:

Refunds are not processed until after audits are completed between the surplus lines' producers with the surplus lines companies. Data calls from the companies are due to the NH Insurance Department May 1st of each year. There are no premium tax credits carried forward.