

STATE OF ALASKA  
DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT  
DIVISION OF INSURANCE  
PO BOX 110805  
JUNEAU, AK 99811-0805

Order # TA 22-03 )  
In the Matter of Audit of )  
Marsh USA Inc )  
\_\_\_\_\_ )

FINDINGS OF FACT

1. An audit report of Marsh USA Inc, licensed in the State of Alaska, has been issued by the State of Alaska, Division of Insurance to Marsh USA Inc.
2. The audit report of Marsh USA Inc (TA 22-03) has been transmitted to Joellyn Phillips, Compliance Officer, Marsh USA Inc (Auditee), and Auditee has been accorded at least 30 days' opportunity to review and comment on this audit report.
3. The director of the Division of Insurance has fully considered and reviewed the report and any relevant portions of the auditor's work papers to the extent she considered necessary.

CONCLUSIONS OF LAW

1. The written audit report referred to in Finding of Fact No. 1 was issued in accordance with Alaska Statute (AS) 21.06.150(b).
2. The actions set forth in finding of Fact No. 2 were conducted in accordance with AS 21.06.150(b).
3. The director of the Division of Insurance has reviewed the audit report and any other relevant work papers as set forth in Finding of Fact No. 3 to the extent she considered necessary in accordance with AS 21.06.150(b).

ORDER

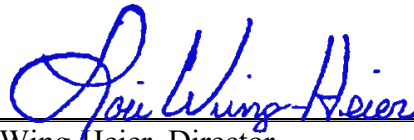
IT IS ORDERED

1. Pursuant to AS 21.06.150(b)(1), the audit report of Marsh USA Inc (TA 22-03) is approved as filed.

2. Pursuant to AS 21.06.060, the audit report shall be kept in the office of the director of the Division of Insurance and be open to public inspection.

This order is effective December 15<sup>th</sup>, 2022.

Dated this 15 day of December, 2022 at Anchorage, Alaska.



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Lori Wing-Heier, Director  
State of Alaska  
Division of Insurance

**PREMIUM TAX AUDIT OF**

**Marsh USA Inc  
New York, NY  
Alaska License #7782**

**TA 22-03**

**As of December 31, 2021**

**Issued by  
DIVISION OF INSURANCE  
DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC  
DEVELOPMENT  
STATE OF ALASKA**



**FINAL REPORT:  
December 15, 2022**

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December 15, 2022

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Pursuant to Alaska Statute (AS) 21.06.120, the Alaska Division of Insurance performed a limited and targeted premium tax audit of Marsh USA Inc. The audit was conducted by Rebecca Nesheim, tax auditor for the Alaska Division of Insurance.

## **Marsh USA Inc**

### **SCOPE OF AUDIT**

This premium tax audit was called to review compliance with the surplus lines statutes AS 21.34, and regulations 3 AAC 25, the premium tax regulations 3 AAC 21.550 – 570 and licensing statutes AS 21.27.350 and 21.27.810. This is the fourth premium tax audit of Marsh USA Inc conducted by the Alaska Division of Insurance (the division).

### **Subject Matters Audited**

Marsh USA Inc (the broker) is an Alaska licensed surplus lines broker based in New York, NY. The division elected to audit their quarterly filings, premium taxes and filing fees paid for accuracy and timeliness as well as required diligent search efforts, disclosures, notifications, and prompt delivery of material facts in evidence of insurance to the insured.

### **Time Frame**

The audit covered the broker's surplus lines business for policy effective dates occurring between January 1, 2020 and December 31, 2021.

## **METHODOLOGY**

The division sent the call letter and initial data requests to the broker's office in Location. A list of all Alaska business transactions with nonadmitted insurers was requested for the period to be audited. The broker complied on a timely basis with all data requests. The number of policies written during the audit period was 106, from which a sample of 50 files was selected for audit.

### **The following are the procedure steps for the audit:**

- 1) Verify that quarterly reports and accompanying forms were filed on time.
  - i) Audit steps taken:
    - (1) Reviewed the quarterly reports sent to the Alaska Division of Insurance and verified they were filed by the due date.
- 2) Verify the accuracy of the premium calculation.
  - i) Audit steps taken:
    - (1) Reviewed policy, binders, and invoices to determine how taxable premium was calculated.
    - (2) Verified the correct premium was reported on the reports as filed.
- 3) Verify the accuracy of quarterly reports filed.
  - i) Audit steps taken:
    - (1) Reviewed the policy, binder, and endorsement pages in each file.
    - (2) If the effective date did not match the quarterly filing, reviewed the correspondence to ensure the documentation in the file matched when the policy was booked. Most of these occurred with endorsements that often require additional information and sometimes company approval before it can be added to the policy. The invoice date determines in which quarter the endorsement is required to be filed.
    - (3) Verified the quarterly reports as filed with the division were accurately filled out to reflect the correct effective date, premiums, taxes and fees based upon the information in the files.
    - (4) Verified the policy was included in the quarterly filing based upon the effective date of the policy.
    - (5) Verified the insured name, insured address, insurance company, producer names and license numbers were accurate on the forms filed.
    - (6) Verified the descriptions of the subject and locations of risk were identified on the reports.
- 4) Verify if tax and filing fee payments were made on time and by ACH.
  - i) Audit steps taken:
    - (1) Confirmed when the payments were received by the Alaska Division of Insurance and the payment method.
- 5) Verify tax and filing fee payments were made accurately.
  - i) Audit steps taken:
    - (1) Confirmed if the tax and fee payments matched the quarterly reports as filed.
- 6) Confirm Alaska is the home state of the insured.
  - i) Audit steps taken:
    - (1) Verified where the principal place of business or residence of the insured is located.

- (2) Verified at least partial risk is located in Alaska or the highest % of premium in Alaska if headquarters not in Alaska with no risk in the headquarters state or in the case of individuals, the residence state.
- 7) Review effort made to place insured with an admitted insurer.
  - i) Audit steps taken:
    - (1) Verified the diligent search was documented prior to binding and received within 15 days from binding. If there were no declinations due to risk on the placement list, the list effective at the time of placement was reviewed to ensure the risk was on the list
- 8) Review prompt delivery of evidence of insurance AS 21.34.100(a) and 3 AAC 25.060.
  - i) Audit steps taken:
    - (1) Reviewed dates of binding and forwarding of evidence of insurance to insured.
- 9) Review required material facts are located on evidence of insurance AS 21.34.100(a).
  - i) Audit steps taken:
    - (1) Reviewed documents to confirm required material facts were located on the evidence of insurance when policy not available within 30 days of binding.
- 10) Review disclosures for use of non-admitted insurer.
  - i) Audit steps taken:
    - (1) Reviewed the evidence of insurance to ensure the broker's name and language required by statute AS 21.34.100(e) is present and legible and at least 10-point type.
- 11) Review notifications for use of non-admitted insurer.
  - i) Audit steps taken:
    - (1) Reviewed the correspondence and other documentation in the files to find a copy of the notification sent to the insured that meets the requirement in AS 21.34.110
- 12) Confirm coverage is placed with an eligible non-admitted insurer.
  - i) Audit steps taken:
    - (1) Reviewed the Alaska published white lists and NAIC Quarterly Listings of Alien Insurers to ensure the company was eligible at the time of placement.
- 13) Review notice regarding nonrenewal and premium increase
  - i) Audit steps taken:
    - (1) Verified there was an Alaska Policyholder Notice regarding nonrenewal and premium increase included with the policy in the format approved by the Director of the Alaska Division of Insurance.
- 14) Other issues not previously identified as a procedure step were included when not in compliance with Alaska laws.
  - i) Audit steps taken:
    - (1) Reviewed documents to ensure other surplus lines statutes and regulations requirements were met.

**Acceptable Error Rate:**

The Broker's acceptable error rate for the above referenced standards and tests must be less than 10%.

## **PREMIUM TAX AUDIT**

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|---|
| <b>1. Verify quarterly reports and accompanying forms were filed on time</b><br><b>AS 21.34.080 and .170, 3 AAC 25.090 and .100</b> |
|---|

*Comments:* The broker filed eight original quarterly reports and two annual tax reports. One quarterly report was filed late: 3<sup>rd</sup> Quarter 2021 was due 12/1/2021 but filed on 1/20/2022, two months late.

*Results:* Failed (9 reports passed, 1 failed, error rate 10%)

*Recommendation:* It is recommended the broker update their written procedures to include due dates for the quarterly report and annual tax report to ensure compliance with Alaska laws.

*The broker's response:* Consistent with the recommendation, Marsh's written procedures now include due dates for the quarterly report and annual tax report.

- |   |
|---|
| <b>2. Verify the accuracy of the premium calculation</b><br><b>AS 21.34.180</b> |
|---|

*Comments:* The premium was reported incorrectly for three policies in the audit files. The documentation in the files showed a different premium amount charged by the insurers than what was reported to Alaska. The reports were amended to correct the premium.

These errors affect two additional audit tests:

1. Accuracy of the Quarterly Reports
2. Accuracy of Tax and Fee Payments

*Results:* Passed (47 files passed & 3 failed, error rate 6%)

*Recommendations:* It is recommended the broker amend their Alaska specific written procedures to include a double check confirming the premiums invoiced with the premiums reported on the quarterly report.

*The broker's response:* Consistent with the recommendations, Marsh's written procedures now include an additional check of the premiums invoiced against the premiums reported on the quarterly report.

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|---|
| <b>3. Verify the accuracy of all quarterly reports filed</b><br><b>AS 21.34.080 and .170, 3 AAC 25.090 and .100</b> |
|---|

*Comments:* Three errors were noted on the Report of Surplus Lines Transaction forms and Quarterly Reports filed with the division. These errors have been corrected on amended reports.

- Transaction not filed; tax exempt so no effect on other audit tests – 1
- Policy start and end date incorrect – 1
- Location of risk – other states that were part of the risk were not identified – 1



*Results:* Passed (47 files passed & 3 failed, error rate 6%)

*Recommendations:* It is recommended the broker amend their Alaska specific written procedures to include instructions on how to fill out the transaction report. Procedures should include what data is entered into each field. It is also recommended to include which report to run to ensure all transactions are correctly identified as needing to be filed. A second individual reviewing the report before submission should reduce the number of errors received by the division.

*The broker's response:* Consistent with the recommendations, Marsh's written procedures now include instructions on how to complete the transaction report, including how to populate each data field, which report to run to capture all needed transactions, and a final check of the report.

**4. Verify if tax and filing fee payments were made on time and by ACH  
AS 21.34.180, AS 21.34.190, 3 AAC 21.550 - .570**

*Comments:* All payments were made on or before the required due date for the quarterly and annual payments and made by ACH.

*Results:* Passed (error rate 0%)

**5. Verify tax and filing fees payments were made accurately  
AS 21.34.180, 3 AAC 21.550 - .570**

*Comments:* All tax and fee payments made by the broker were accurate based upon the quarterly reports as filed. The errors found during the audit in the premium calculation affects the accuracy of the tax and fee payments. This flow-through finding is addressed in its respective audit test.

*Results:* Passed (error rate 0%)

**6. Verify the home state for insured is Alaska  
AS 21.34.180**

*Comments:* The broker writes some multi-state policies. The home state of the insured was evaluated for all policies and Alaska was the home state for them all.

*Results:* Passed (error rate 0%)

**7. Review diligent search effort made to place insured with an admitted insurer  
AS 21.34.020, 3 AAC 25.010 and .035**

*Comments:* The broker has elected to use the Affidavit of Due Diligence for documenting the diligent search within their office as they are both the producer and surplus lines broker in the transactions. There were four problems with the documentation. Three were created after the 15 days allowed from binding and one file had no documentation.

*Results:* Passed (46 files passed & 4 failed, error rate 8%)

*Recommendations:* It is recommended the broker ensure their Alaska specific written procedures are followed regarding the requirement for diligent search documentation.

*The broker's response:* Marsh has revised its written procedures to address this recommendation.

**8. Review prompt delivery of evidence of insurance**

**AS 21.34.100(a) and 3 AAC 25.060**

*Comments:* Seven files have documentation showing the first evidence of insurance was provided to the insured after the required 30 days from binding.

*Results:* Failed (43 files passed, 7 failed, error rate 14%)

*Recommendation:* It is recommended the broker amend their Alaska specific instructions to include the 30-day prompt delivery requirement for the first evidence of insurance provided to the insured.

*The broker's response:* Marsh has revised its written procedures to address this recommendation.

**9. Review required material facts located on evidence of insurance**

**AS 21.34.100(a)**

*Comments:* Three files had missing surplus lines broker license numbers and on one of those, the tax was also missing. If the binder was missing facts, the policy sent within the 30 days from binding was evaluated.

*Results:* Passed (47 files passed & 3 failed, error rate 6%)

*Recommendations:* It is recommended the broker amend their Alaska specific written procedures to include what material facts regarding the coverage, insured, insurer, and broker must be on evidence of insurance. Review statute for details.

*The broker's response:* Marsh has revised its written procedures to address this recommendation.

**10. Review disclosures on evidence of insurance for use of non-admitted insurer**

**AS 21.34.100(e)&(f)**

*Comments:* Nineteen files included problems with the required disclosure statement on the evidence of insurance. Where the insured's copy was unavailable, auditor relied upon the broker copy. Here are the different problems found in the files:

- No disclosure on binder – 1
- No disclosure on dec – 2
- Dec missing one word in disclosure – 1
- No disclosure on endorsement – 8
- No disclosure on certificates – 266

Total disclosure errors: 278 within 19 distinct files

*Results:* Failed (31 files passed & 19 failed, error rate 38%)

*Recommendations:* It is recommended the broker ensure written procedures are followed that all evidence of insurance have the post bind notice, which has the required disclosure statement. It is further recommended to revise the written procedures to include adding the post bind notice to certificates as they are also evidence of insurance.

*The broker's response:* Marsh has revised its written procedures to address this recommendation.

**11. Review notification for use of non-admitted insurer**

**AS 21.34.110**

*Comments:* The broker provides a pre-binding notice with the quotes with the required three points of the notification: the company does not have a certificate of authority, they are not regulated by the Alaska Division of Insurance and in the event of insolvency losses will not be covered by the Alaska Insurance Guaranty Association Act. Twelve files did not include the pre-binding notice or it was provided many months after binding and premium payment charged to the insured.

*Results:* Failed (38 files passed & 12 failed, error rate 24%)

*Recommendations:* It is recommended the broker ensure their Alaska specific written procedures are followed. They have written step-by-step guidance for how to process Alaska surplus lines transactions, which includes when the pre-binding notice is to be provided.

*The broker's response:* Marsh will reinforce its Alaska-specific written procedures concerning the timing of pre-binding notices in colleague training scheduled for Q1 2023.

**12. Confirm coverage is placed with an eligible non-admitted insurer**

**AS 21.34.050**

*Comments:* All policies in the audit were placed with eligible surplus lines companies.

*Results:* Passed (error rate 0%)

**13. Review notice regarding nonrenewal and premium increase**

**3 AAC 25.050**

*Comments:* Five policies had problems with Alaska Policyholder Notice of premium increase and nonrenewal. Here are the different problems:

- Not provided with policy – 1
- Notice is not accurate – 3
- Notice sent after the audit started – 1

*Results:* Failed (45 files passed & 5 failed, error rate 10%)

*Recommendations:* It is recommended the broker ensure they are following their Alaska specific written procedures of ensuring policies contain the Alaska Policyholder Notice. The broker should contact the insurance company to include the notice when it is missing or to revise the notice when it is incorrect. Bulletin 08-06 should be reviewed for the exact wording.

*The broker's response:* Marsh has revised its written procedures to address these recommendations.

## **SUMMARY AND SUBSEQUENT EVENTS**

### **Summary**

This was a premium tax audit of Marsh USA Inc. The auditor tested 13 standards focusing on the broker's filing of quarterly reports and the subsequent payment of premium taxes and filing fees as well as diligent search efforts, disclosure and notification requirements for using a non-admitted insurer, and prompt delivery of material facts to insured.

The audit was conducted in the auditor's office as she received electronic versions of the broker's files under audit. The broker responded quickly to all requests for additional information. The auditor appreciated this behavior.

Several significant issues did arise during the audit that affects the service to the insured and compliance with Alaska statutes and regulations.

- 1) One quarterly report was filed late subjecting the broker to penalties.
- 2) The initial evidence of insurance was not provided promptly to the insured in many files.
- 3) Many of the evidence of insurance were missing the disclosure language.
- 4) The required notification to the insured regarding the use of a nonadmitted insurer was not found in some files or provided late.
- 5) The Alaska Policyholder Notice was missing or incorrect in several files.

The auditor would like to review any new or revised procedures to help the broker ensure all problems identified in the audit were captured accurately.

### **Re-Audit**

In closing, the auditor's recommended actions and review of the procedures should help the broker correct the problems encountered. It is recommended that Marsh USA Inc be re-audited within the next three years to ascertain compliance.

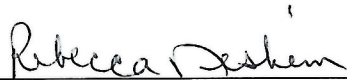
Submitted by:  
Rebecca Nesheim  
Tax Auditor

Affidavit

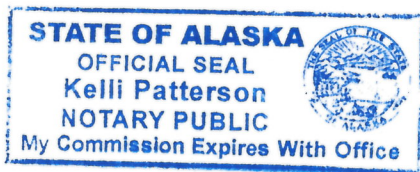
Marsh USA Inc  
As of December 31, 2021  
TA 22-03


Juneau, Alaska )  
December 15, 2022 )  
State of Alaska ) ss.  
First Judicial District )

I, being duly sworn, do verify that the report of premium tax audit as of December 31, 2021, of Marsh USA Inc is true to the best of my knowledge and belief.

  
\_\_\_\_\_  
Rebecca Nesheim  
Tax Auditor

SUBSCRIBED and SWORN to before me this 15 day of December, 2022



  
\_\_\_\_\_  
Notary Public in and for Alaska  
My Commission Expires with office