

Tony Knowles, Governor



Division of Insurance

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BULLETIN B 00-13

To: All Licensed Insurance Producers and Surplus Lines Brokers

Re: Subscription Policies

Surplus Lines Requirements in AS 21.34 Apply to Subscription Policies that Combine Admitted Insurance with Surplus Lines or Unauthorized Insurance.

The purpose of this bulletin is to point out to insurance producers and surplus lines brokers the effect of AS 21.34.025 on subscription policies.

Alaska Statute 21.34.025 provides that subscription policies, or jointly underwritten policies, are treated as surplus lines placements in their entirety if written by a combination of authorized and nonadmitted insurers. Nonadmitted insurers include "eligible" or "white-listed" surplus lines insurers and chapter 33 unauthorized insurers. Therefore, if at least one surplus lines or unauthorized insurer participates, the entire policy, including any admitted insurance portion, is subject to the requirements of chapter 34 of the Alaska Insurance Code.

Licensing

When a subscription policy is considered surplus lines under AS 21.34.025, every person placing the policy must be licensed as required by AS 21.27. The insurance producer must be a licensed surplus lines broker, or must involve a licensed surplus lines broker to place the coverage.

Taxes and Surplus Lines Fee

Under AS 21.09.210, premium tax on admitted insurance is paid by the insurer. But when admitted insurance is part of a subscription policy subject to chapter 34, AS 21.34.180(a) makes the surplus lines broker responsible for collection of premium tax "as specified by the director." However, nothing in the statutes or the legislative history indicates that the legislature intended the admitted portion of a subscription policy to be double taxed.

Therefore, a surplus lines broker who places a subscription policy that includes admitted insurance must verify that the admitted insurer pays the tax, but does not again collect tax that the policyholder has already paid through the admitted portion of the premium. The surplus lines broker is not required to collect tax on the admitted portion of a subscription policy if the broker

- determines that the admitted company or companies reports that portion of the premium and pays the tax to the state;
- obtains a certificate from the admitted company that it reports the premium and pays the tax; and
- attaches the certificate to the surplus lines broker's monthly transaction report.

The surplus lines broker is responsible to collect and pay the premium tax on surplus lines and unauthorized portions of a subscription policy. The surplus lines broker's monthly transaction report must show the gross premium charged for the subscription policy, and use the exemption page to explain that premium tax on the admitted portion is paid by the admitted insurer. "See attached certificate" may be shown as the reason for the

exemption.

The surplus lines broker is also responsible for collection of the 1% surplus lines filing fee imposed by AS 21.34.190. This fee applies to the total amount of the premium charged, including both the admitted **and** non-admitted portions of the placement.

Participation of an unlisted nonadmitted insurer

If a portion of a subscription policy is placed with a nonadmitted insurer (also referred to as unauthorized) that does not appear on the list of eligible surplus lines insurers published under AS 21.34.050 (also referred to as the "white list"), additional chapter 34 requirements apply. The surplus lines broker and the unauthorized insurer must comply with the applicable requirements of AS 21.34.040, including furnishing the nonadmitted insurer's current annual statement to the director, and AS 21.34.060 and 3 AAC 25.010(b). Within 30 days after placing the coverage, the surplus lines broker must also

- notify the director in writing of the name of each unlisted nonadmitted insurer with which placements are intended, and of the amount and percentage of each risk to be placed with that insurer;
- send written notice to the insured and the producing broker that the insurance, or a portion of it, has been placed with the unlisted nonadmitted insurer.

Other Chapter 34 Requirements

Other chapter 34 requirements that apply when a subscription policy is considered surplus lines under AS 21.34.025 include the following:

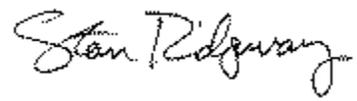
- The insurance producer must comply with the due diligence requirements of AS 21.34.020(3).
- The surplus lines broker must comply with the reporting requirements of AS 21.34.170.
- The policy, including the admitted insurance portion, must provide information required in chapter 34, including the surplus lines stamp, the taxes and fees charged, and the notices required by various provisions of AS 21.34.

However, the whole placement is exempted from the Guarantee Association coverage and is not subject to rate and form filings, even for the portion of the risk that is placed with admitted insurer(s).

The Division of Insurance intends to enforce strict compliance with the statutes and regulations because public protection requires no less. The division will also act to ensure that financial obligations to the State of Alaska are satisfied. For questions regarding this bulletin, please contact the Division of Insurance, P.O. Box 110805, Juneau, AK 99811-0805; (907) 465-2515, fax (907) 465-3422; or the Anchorage office at (907) 269-7900; fax (907) 269-7910; or via electronic mail at:

Date: November 27, 2000

Robert A. Lohr
Director

A handwritten signature in black ink that reads "Stan Ridgeway". The signature is written in a cursive style with a prominent loop at the end of the word "Ridgeway".

By: Stan Ridgeway
Deputy Director