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MEMORANDUM

TO: Micaela Fowler, AAC Contact
Department of Commerce, Community, & Economic Development

FROM: Scott Meriwether
Special Assistant 
907.465.3509

DATE: August 6, 2014

RE: Filed Permanent Regulations: Division of Insurance

Regulations re: surplus lines premium tax payments, surplus lines filing fee payments, surplus lines unauthorized insurers, alien surplus lines insurers fees, and fees for portable electronics limited producers licenses: 3 AAC 21.550; 3 AAC 21.560; 3 AAC 21.010; 3 AAC 25.035; 3 AAC 25.050; 3 AAC 25.060; 3 AAC 25.090; 3 AAC 25.100; 3 AAC 25.105; 3 AAC 25.110; 3 AAC 25.140; 3 AAC 25.900; 3 AAC 31.020(a)(2); 3 AAC 31.060(a)

Attorney General File:	JU2014200049
Regulation Filed:	8/5/2014
Effective Date:	9/4/2014
Print:	211, October 2014

cc with enclosures:

Linda Miller, Department of Law
Crystal Koeneman, Administrative Regulation Review Committee
Judy Herndon, LexisNexis

JU2014200049

ORDER RA 14-01A ADOPTING CHANGES TO
REGULATIONS OF THE DIVISION OF INSURANCE

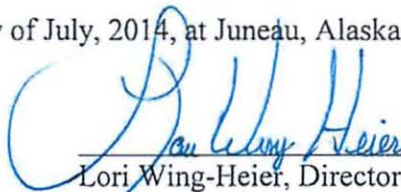
The attached 12 pages of regulations, dealing with surplus lines premium tax payments, surplus lines filing fee payments, surplus lines unauthorized insurers, alien surplus lines insurers fees, and fees for portable electronics limited producer licenses are hereby adopted and certified to be a correct copy of the regulation changes that the Division of Insurance adopts (3 AAC 21.550, 3 AAC 21.560, 3 AAC 25.010, 3 AAC 25.035, 3 AAC 25.050, 3 AAC 25.060, 3 AAC 25.090 – 3 AAC 25.110, 3 AAC 25.140, 3 AAC 25.900, 3 AAC 31.020, and 3 AAC 31.060) under the authority of AS 21.06.090; AS 21.06.250; AS 21.09.210; AS 21.27.025; AS 21.27.150; AS 21.27.350; AS 21.27.380; AS 21.34.020; AS 21.34.040; AS 21.34.060; AS 21.34.080; AS 21.34.100; AS 21.34.170 – AS 21.34.190; AS 21.34.250; AS 21.34.900; AS 21.36.195; and AS 21.96.080) after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

Although no public comments were received, the Division of Insurance paid special attention to the cost to private persons of the regulatory action being taken.

The regulations adopted under this order take effect on the 30th day after they have been filed by the lieutenant governor, as provided in AS 44.62.180.

DATED this 16th day of July, 2014, at Juneau, Alaska.



Lori Wing-Heier, Director
Division of Insurance
Department of Commerce, Community, and
Economic Development

FILING CERTIFICATION

I, Mead Treadwell, Lieutenant Governor for the State of Alaska, certify that on 5 August, 2014, at 10:10 a.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.


Lieutenant Governor

Effective September 4, 2014

Register 211, October 2014

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Title 3. Commerce, Community, and Economic Development.

Part 2. Division of Insurance.

Chapter 21. Insurer – Financial.

3 AAC 21.550 is amended to read:

3 AAC 21.550. Annual premium tax payment. Except as provided in 3 AAC 21.560, for a tax year ending December 31, an entity required to pay a tax under AS 21.09.210 [, AS 21.34.180,] or AS 21.66.110 shall pay the required tax to the director on or before March 1 of the following tax year. (Eff. 2/6/98, Register 145; am 9 / 4 / 2014, Register 211)

Authority: AS 21.06.090 [AS 21.34.180] AS 21.66.110
AS 21.09.210

The section heading of 3AAC 21.560 is changed to read:

3 AAC 21.560. Quarterly premium tax and filing fee payments.

3 AAC 21.560(b) is repealed and readopted to read:

(b) A surplus lines broker shall pay the director the premium tax under AS 21.34.180 and the filing fee under AS 21.34.190 for each corresponding three-month period as shown on the quarterly report required under AS 21.34.170 as follows:

Due date:

June 1

Quarterly three-month period:

January, February, March

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September 1

April, May, June

December 1

July, August, September

March 1 of the following year

October, November, December

3 AAC 21.560(d) is amended to read:

(d) If an authorized insurer [OR SURPLUS LINES BROKER] required to pay premium tax in four payments under (a) of this section can demonstrate that the authorized insurer's [ITS] premium receipts for a tax year are likely to decline to a level at which the authorized insurer [IT] will not pay at least \$10,000 in premium tax in that year, the authorized insurer [IT] may apply to the director for a waiver from (a) [OR (b)] of this section. The director may [WILL, IN THE DIRECTOR'S DISCRETION,] grant a waiver if the director finds that the authorized insurer [OR SURPLUS LINES BROKER] will materially overpay the authorized insurer's [ITS] premium tax for the tax year unless a waiver is granted.

3 AAC 21.560(e) is amended to read:

(e) A quarterly tax payment made under (a) [OR (b)] of this section must be reported on forms provided by the director, or the report may be filed electronically when the division notifies the payer that electronic filing is available. The report must be submitted on or before the date the corresponding quarterly tax payment is due. (Eff. 2/6/98, Register 145; am 7/25/2008, Register 187; am 9 / 4 / 2014, Register 211)

Authority: AS 21.06.090 AS 21.34.180 AS 21.66.110

AS 21.09.210 AS 21.34.190 AS 21.96.080

AS 21.34.170

Chapter 25. Surplus Lines – Unauthorized Insurers.

3 AAC 25.010(a) is repealed and readopted to read:

(a) Insurance may be procured through a surplus lines broker from an eligible nonadmitted insurer only if the producing broker

(1) determines through a diligent search that the particular policy terms or conditions that are material to the insured cannot be obtained from an insurer that is admitted to do business in this state;

(2) completes the search before the surplus lines broker binds the insurance contract; and

(3) provides documentation of the search to the surplus lines broker not later than 15 days after the binding of the insurance contract; the documentation must meet the requirements of 3 AAC 25.035.

3 AAC 25.010(b) is amended to read:

(b) Insurance may be procured through a surplus lines broker from a nonadmitted insurer that does not appear on the current published eligible list under AS 21.34.050 **or on the list described in AS 21.34.040(c)(7)** only if

(1) the producing broker complies with (a) of this section; and

(2) the surplus lines broker has documentation that

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(A) the director has the nonadmitted insurer's current annual statement required by AS 21.34.040(d); and

(B) the portion of the risk to be placed with the nonadmitted insurer cannot be obtained from a nonadmitted insurer that appears on the eligible list under AS 21.34.050 or on the list described in AS 21.34.040(c)(7). (Eff. 8/28/91, Register 119; am 6/11/2006, Register 178; am 9 / 4 / 2014, Register 211)

Authority: AS 21.06.090 AS 21.34.040 AS 21.34.250
AS 21.34.020 AS 21.34.060

3 AAC 25.035(a) is amended by adding a new paragraph to read:

(5) documentation that

(A) the broker procuring or placing the surplus lines insurance has disclosed to an exempt commercial purchaser that insurance may be available from the admitted market that may provide greater protection with more regulatory oversight; and

(B) the exempt commercial purchaser has requested in writing that the broker procure or place the insurance from a nonadmitted insurer.

3 AAC 25.035(c) is amended to read:

(c) To be an acceptable form of documentation under (a)(1) of this section, an oral declination must be documented in writing and include the name, business [OFFICE] location, and phone number of the insurer, the name and position of the person contacted, the date of contact, and the reason [THERE ON] for the declination.

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3 AAC 25.035 is amended by adding a new subsection to read:

(d) A producing broker shall include in the documentation required under (a) of this section a description of the kind of insurance that is adequate for the director to determine whether insurance coverage is available in the admitted market to cover the kind of insurance.

(Eff. 6/11/2006, Register 178; am 9 / 4 / 2014, Register 211)

Authority:	AS 21.06.090	AS 21.34.020	AS 21.34.250
	AS 21.27.350	AS 21.34.060	AS 21.36.195

3 AAC 25.050 is amended to read:

3 AAC 25.050. Required notice of nonrenewal and premium increase. An eligible surplus lines insurer shall include in each policy [, BINDER, AND COVER NOTE] an Alaska surplus lines policyholder notice regarding nonrenewal and premium increase, in a format approved by the director.

3 AAC 25.050 is amended by adding a new subsection to read:

(b) A licensed surplus lines broker shall ensure that the required notice is part of each policy. (Eff. 8/28/91, Register 119; am 6/11/2006, Register 178; am 7/25/2008, Register 187; am 9 / 4 / 2014, Register 211)

Authority:	AS 21.06.090	AS 21.34.100	AS 21.34.250
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3 AAC 25.060 is amended to read:

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3 AAC 25.060. Evidence of insurance. The prompt delivery of the evidence of insurance required by AS 21.34.100 means no later than 30 days after the effective date of the coverage or the date coverage is bound, whichever occurs first. **Evidence of insurance includes subsequent endorsements and company audits related to a policy.** (Eff. 8/28/91, Register

119; am 9 / 4 / 2014, Register 211)

Authority: AS 21.06.090 AS 21.34.100 AS 21.34.250

3 AAC 25.090(b)(3) is amended to read:

(3) the gross premiums **written** [CHARGED] for each type of insurance identified under (2) of this subsection;

3 AAC 25.090(c) is repealed:

(c) Repealed 9 / 4 / 2014.

(Eff. 8/28/91, Register 119; am 10/21/92, Register 124; am 6/11/2006, Register 178; am 7/25/2008, Register 187; am 9 / 4 / 2014, Register 211)

Authority: AS 21.06.090 AS 21.34.080 AS 21.34.250

3 AAC 25.100 is repealed and readopted to read:

3 AAC 25.100. Quarterly report. (a) The quarterly report required of a surplus lines broker by AS 21.34.170 may be filed electronically. Filing of the quarterly report must occur, or a paper filing must be postmarked, on or before the corresponding due date under AS 21.34.170.

The quarterly report must be signed by the surplus lines broker. If no transactions took place during the period, a report is not required for that period.

(b) The quarterly report must include

(1) the name of the surplus lines broker;

(2) the surplus lines broker's license number; and

(3) the quarterly period's total gross premiums written, less any return premium or any exempt premium, and the quarterly period's total resulting taxes and fees for all coverage where this state is the home state of the insured.

(c) The quarterly report must include the initial placement of coverage as well as changes in coverage during that period that result in an increase or decrease of premiums, taxes, or fees.

(d) A surplus lines broker shall use the date the endorsement is invoiced as the transaction date for an endorsement that generates an increase or decrease in premium.

(e) A surplus lines broker shall pay a penalty to the division for the late filing of a quarterly report according to the following rate schedule for filing after the due date requirement in AS 21.34.170 and (a) of this section:

(1) one through 30 days late, \$100;

(2) 31 through 60 days late, \$200;

(3) more than 60 days late, \$300.

(f) The penalty in (e) of this section does not apply to the filing of amended reports under 3 AAC 25.105, except for the filing of a new transaction not previously reported. (Eff. 8/28/91,

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Register 119; am 3/11/98, Register 145; am 6/11/2006, Register 178; am 7/25/2008, Register 187; am 12/28/2008, Register 188; am 9 / 4 / 2014, Register 211)

Authority:	AS 21.06.090	AS 21.34.170	<u>AS 21.34.190</u>
	<u>AS 21.34.080</u>	<u>AS 21.34.180</u>	AS 21.34.250

3 AAC 25.105 is repealed and readopted to read:

3 AAC 25.105. Amended quarterly reports. (a) If new information exists that will change a previously filed quarterly report under AS 21.34.170, the surplus lines broker shall file an amended quarterly report for the period in which the transaction occurred.

(b) A surplus lines broker who files an amended quarterly report for a period for which taxes and filing fees have already been paid shall pay any additional taxes and filing fees owing for that period on the next payment due date after the amended quarterly report is filed under (a) of this section.

(c) If a payment of additional taxes and filing fees is not received by the director by the next scheduled payment due date, the surplus lines broker is subject to late payment fees under AS 21.34.180 and 21.34.190. (Eff. 6/11/2006, Register 178; am 9 / 4 / 2014, Register 211)

Authority:	AS 21.06.090	AS 21.34.170	AS 21.34.190
	[AS 21.09.210]	AS 21.34.180	AS 21.34.250
	<u>AS 21.34.080</u>		

3 AAC 25.110 is repealed:

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3 AAC 25.110. Annual tax payment report. Repealed. (Eff. 8/28/91, Register 119; am 6/11/2006, Register 178; repealed 9 / 4 / 2014, Register 211)

3 AAC 25.140 is repealed and readopted to read:

3 AAC 25.140. Eligibility requirements for surplus lines insurers. (a) The director will place a foreign surplus lines insurer on the list of eligible surplus lines insurers if the insurer

(1) meets the requirements of AS 21.34.040(c)(1) or (2); and

(2) provides certification to the director that the insurer is authorized to write the kind of insurance in its domiciliary jurisdiction that the insurer intends to write in this state.

(b) The director will approve an alien insurer's application for eligibility if the alien insurer

(1) is not listed on the list described in AS 21.34.040(c)(7);

(2) meets the requirements under AS 21.34.040;

(3) pays the fee required under 3 AAC 31.060(a)(8); and

(4) submits on forms approved by the director

(A) a completed application;

(B) the appointment of the director to receive service of legal process; and

(C) the designation of a contact person for the insurer. (Eff. 6/11/2006,

Register 178; am 9 / 4 / 2014, Register 211)

Authority: AS 21.06.090 AS 21.34.040 AS 21.34.250

3 AAC 25.900 is repealed and readopted to read:

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3 AAC 25.900. Definitions. In this chapter,

(1) "exempt commercial purchaser" has the meaning given in AS 21.34.900;

(2) "home state" has the meaning given in AS 21.34.900. (Eff. 8/28/91, Register 119; am 6/11/2006, Register 178; am 7/25/2008, Register 187; am 9 / 4 / 2014, Register 211)

Authority: AS 21.06.090 AS 21.34.250 AS 21.34.900

Chapter 31. Miscellaneous.

Article 1. Fees.

3 AAC 31.020(a)(2) is amended to read:

(2) initial application or biennial renewal for each of the following limited producer resident or nonresident licenses for an individual or firm, including issuance of the license, if issued, \$75:

- (A) bail bond;
- (B) motor vehicle rental agency;
- (C) travel;
- (D) crop;
- (E) credit; [OR]
- (F) miscellaneous, as described in AS 21.27.150; or
- (G) portable electronics;**

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(Eff. 8/30/86, Register 99; am 6/2/88, Register 106; am 7/1/92, Register 123; am 4/20/97,

Register 142; am 9/24/99, Register 151; am 10/13/2011, Register 200; am

9 / 4 / 2014, Register 211)

Authority: AS 21.06.090 AS 21.27.150 AS 21.27.390

AS 21.06.250 AS 21.27.380

3 AAC 31.060(a)(7) is amended to read:

(7) filing of a certified annual financial statement by **an alien** surplus lines insurer **not on the list described in AS 21.34.040(c)(7)**, \$100;

3 AAC 31.060(a)(8) is amended to read:

(8) **initial** application for registration [OF A SURPLUS LINES INSURER] on the division's list of eligible surplus lines insurers **by an alien surplus lines insurer not on the list described in AS 21.34.040(c)(7)**, \$1,000;

3 AAC 31.060(a)(9) is amended to read:

(9) annual renewal **for registration on the division's** [OF] list of eligible surplus lines insurers **by an alien surplus lines insurer not on the list described in AS 21.34.040(c)(7)** [REGISTRATION], \$500;

3 AAC 31.060(a)(10) is amended to read:

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(10) late fee for reinstatement [OF A SURPLUS LINES INSURER] on the division's list of eligible surplus lines insurers **by an alien surplus lines insurer not on the list described in AS 21.34.040(c)(7)**, \$250;

(Eff. 6/2/88, Register 106; am 7/1/89, Register 110; am 7/1/92, Register 123; am 3/30/94, Register 129; am 3/15/97, Register 141; am 8/23/2001, Register 159; am 12/30/2006, Register 180; am 10/13/2011, Register 200; am 1/1/2014, Register 208; am 9 / 4 / 2014, Register 211)

Authority:	AS 21.06.090	AS 21.34.040	AS 21.66.210
	AS 21.06.250	AS 21.36.355	AS 21.75.045
	AS 21.27.025		