

CHAPTER 21
SURPLUS LINES REQUIREMENTS

[Prior to 10/22/86, Insurance Department[510]]

191—21.1(515) Definitions.

21.1(1) “*Agent*” when used herein is defined to be that person who ultimately delivers the policy to the policyholder or the person who places the policy with the insurance company. The agent may be either a resident or nonresident of this state and must be licensed to sell insurance classified as excess and surplus lines.

21.1(2) “*Surplus lines carrier*” when used herein is defined to be certain nonadmitted insurers qualified to provide surplus lines coverage as set out in Iowa Code section 515.147, but in no event shall the term include those insurers described in Iowa Code section 515.148.

191—21.2(515) Nonadmitted insurer’s duties.

21.2(1) *Insurer liable.* Where, pursuant to section 515.147, coverage is placed with a nonadmitted insurer, such insurer shall be liable for the premium tax required by section 515.147.

21.2(2) *How premium tax quoted.* A nonadmitted insurer or broker therefor is authorized to quote a premium which includes tax as is required by section 515.147 and thereafter no additional tax amount may be charged or collected. Premium tax may be stated in the contract of insurance as a separate component of the total premium only when the premium is not based upon rates or premiums which included a premium tax component when promulgated. Policy fees collected from residents of this state are considered part of the premium and thus are subject to taxation.

191—21.3(515) Agents’ duties.

21.3(1) *Agent collection of tax.* A licensed agent who procures or places insurance in nonadmitted insurers shall collect premium tax from the nonadmitted insurer by withholding 2 percent of the premiums for such tax. A nonresident agent shall submit the 2 percent premium tax to a resident agent licensed for surplus lines who shall be responsible for remitting the premium tax to the commissioner of insurance.

21.3(2) *Affidavits required.*

a. A resident agent who places insurance shall within 30 days subsequent to the date of delivery of a policy issued by a nonadmitted insurer cause to be filed with the commissioner of insurance a sworn statement on Form No. SL163A. In lieu of filing affidavits for each policy issued by a nonadmitted insurer, the agent may file a diskette with the commissioner on a monthly basis for multiple affidavit filings. The agent shall include with the diskette filed with the commissioner a sworn statement on Form No. SL163B. Copies of Form SL163A and Form SL163B are on file in the insurance division office and by reference are made a part of these rules.

b. A nonresident agent who places insurance shall within 30 days subsequent to the date of delivery of a policy issued by a nonadmitted insurer submit to a resident agent licensed for surplus lines a sworn statement on Form No. SL164. A copy of Form SL164 is on file in the insurance division office and by reference is made a part of these rules. The resident agent shall countersign and file the statement with the insurance commissioner within 10 days of receipt of the statement from the nonresident agent. Nonresident agents placing insurance in risk retention groups are exempt from the countersignature requirements of this paragraph.

21.3(3) *Annual report.* On or before March 1 of each year, every agent who has placed insurance in nonadmitted insurers during the preceding calendar year shall file with the commissioner of insurance a sworn report of all such business written during the preceding calendar year. Said report shall be accompanied by a remittance to cover the taxes due on said business and shall be filed on Form No. SL263, a copy of which is attached* hereto, and by reference made a part hereof. Failure to file said return or pay the taxes imposed by sections 515.147 et seq., will be deemed grounds for the revocation of all licenses issued to the agent by the insurance division.

*See forms at end of Chapter 21

191—21.4(515) Agents' duty to insured; evidence of coverage. Each agent placing coverage in nonadmitted insurers as defined herein shall deliver to the insured, within 30 days of the date of delivery of the policy, one of the following:

1. Language which states as follows: "This policy is issued, pursuant to Iowa Code section 515.147, by a nonadmitted company in Iowa and as such is not covered by the Iowa Insurance Guaranty Association." Such requirement may be complied with by typing or stamping a verbatim copy of this language in a clear and conspicuous place on the policy;
2. A copy of the affidavit filed with the division.

191—21.5(515) Procedures for qualification as a nonadmitted insurer. Any insurer who wishes to qualify under Iowa Code section 515.147 as a nonadmitted insurer shall make an application. The application shall contain the following information:

1. A certificate of compliance from the state of domicile.
2. An executed power of attorney. This document shall be in a form which is found in the appendix to this chapter.*
3. A biographical affidavit of directors and principal officers. This document shall be in a form which is found in the appendix to this chapter.*
4. A copy of the insurer's annual statement for the last preceding calendar year. Applications received between November 1 and December 31 will not be examined until an annual statement for the current calendar year is available.
5. The insurer's most recent calendar year quarterly financial statement.
6. A certified copy of the most recent state of domicile examination report.
7. A current certified public accountant audit report.
8. A marketing plan of operation.
9. A designation of a licensed Iowa resident agent qualified to write excess and surplus lines insurance.
10. A synopsis of current reinsurance treaties in force.
11. Remittance of a \$50 filing fee.

In addition to the above requirements, the insurer shall have minimum capital and surplus of \$5 million and have been actively in operation for at least three years without significant changes in ownership or management during the three-year period. These financial and management requirements may be waived by the commissioner upon a finding that the insurer will be offering coverage in a line of insurance for which there is an unavailability of capacity and an extraordinary need for coverage in this state. The commissioner may require other information as deemed necessary.

191—21.6(515) Risk retention groups. A risk retention group as defined in Iowa Code chapter 515E may utilize its agents or brokers to report and pay premium taxes or may pay the taxes directly. If agents and brokers of the group are utilized, they shall follow the procedure set forth in subrule 21.3(2), paragraph "a," but need not be residents of this state. In the event that the group desires to pay the premium tax directly, it shall file with the commissioner a sworn statement on Form No. SL264. A copy of Form SL264 is on file in the insurance division office and by reference made a part of these rules.

Rules 21.1(515) to 21.6(515) are intended to implement Iowa Code sections 515.147 to 515.149.

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*Note: See forms on following pages

STATE OF IOWA
SURPLUS LINES AFFIDAVIT

(Each agent should number affidavits consecutively commencing with number one at the beginning of each calendar year.)

I, _____, of _____, _____, Iowa
(City) (County)
being duly sworn on oath, depose and say:

That affiant is a resident insurance agent, qualified and licensed under the provisions of Iowa Code chapter 522 to write the kind of insurance herein referred to.

That affiant has made a diligent effort to place this insurance in authorized insurers and has either exhausted the capacity of authorized insurers or has been unable to obtain the desired coverage.

That the amounts of insurance shown are required for this risk:

1. Name and address of risk: _____

2. Perils insured against: _____

3. Amount of insurance procurable from licensed insurers: _____

4. Additional amount of coverage necessary and names and addresses of nonadmitted insurers: _____

5. Licensed companies who refused to accept risk: _____

6. Term and effective date: _____

7. Total premium for surplus lines coverage: _____

That affiant agrees to escrow all amounts due the State of Iowa for premium tax on this insurance and understands that failure to pay said tax on or before March 1 of the next calendar year will result in the loss of any and all agent licenses issued by the Iowa Insurance Division.

Subscribed and sworn to before
me this _____ day of _____, 19____.

(Agent)

Notary Public

(Address)

County State

(Agent's Qualification #)

