

INSURANCE DIVISION[191]

Notice of Intended Action

Proposing rulemaking related to surplus lines, risk retention groups, and purchasing groups and providing an opportunity for public comment

The Insurance Division hereby proposes to rescind Chapter 21, “Requirements for Surplus Lines, Risk Retention Groups and Purchasing Groups,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 515I.15.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 515 and 2023 Iowa Acts, Senate File 549.

Purpose and Summary

The proposed chapter provides duties and procedures for insurance producers and nonadmitted insurers in order to provide excess and surplus lines insurance in Iowa.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any, pursuant to 191—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Division no later than 4:30 p.m. on February 15, 2024. Comments should be directed to:

Angela Burke Boston
Iowa Insurance Division
1963 Bell Avenue, Suite 100
Des Moines, Iowa 50315
Phone: 515.654.6543
Fax: 515.654.6500
Email: angela.burke.boston@iid.iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

February 15, 2024
10 to 11 a.m.

1963 Bell Avenue, Suite 100
Des Moines, Iowa

February 15, 2024
3 to 4 p.m.

1963 Bell Avenue, Suite 100
Des Moines, Iowa

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact Angela Burke Boston via email at angela.burke.boston@iid.iowa.gov or by telephone at 515.654.6543 and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 191—Chapter 21 and adopt the following **new** chapter in lieu thereof:

CHAPTER 21
REQUIREMENTS FOR SURPLUS LINES,
RISK RETENTION GROUPS AND PURCHASING GROUPS

191—21.1(515E,515I) Definitions. In addition to the definitions provided in Iowa Code chapters 515E and 515I, the following definitions apply to this chapter, unless the context clearly requires otherwise:

“*Division*” means the Iowa insurance division, supervised by the commissioner pursuant to Iowa Code section 505.8, in the division’s performance of the duties of the commissioner under Iowa Code chapters 515E and 515I.

“*Division’s website*” means the website of the Iowa insurance division, iid.iowa.gov.

“*Place*” means obtaining insurance for an insured with a specific insurer.

191—21.2(515I) Eligible surplus lines insurer’s duties.

21.2(1) Premium tax payment. Where, pursuant to Iowa Code chapter 515I, coverage is placed with an eligible surplus lines insurer, but the surplus lines insurance producer fails to pay to the division the premium tax required by Iowa Code section 515I.3(2) and rule 191—21.3(515I), the eligible surplus lines insurer must pay the premium tax required by Iowa Code chapter 515I and this chapter.

21.2(2) How premium tax quoted. An eligible surplus lines insurer or a surplus lines producer for an eligible surplus lines insurer is authorized to quote a premium that includes tax as is required by Iowa Code chapter 515I, 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 that included a premium tax component. Any fees collected from residents of this state are considered part of the premium and thus are subject to taxation.

191—21.3(515I) Surplus lines insurance producer’s duties.

21.3(1) Surplus lines insurance producer’s collection of tax. A surplus lines insurance producer who places insurance with an eligible surplus lines insurer must collect premium tax from the eligible surplus lines insurer by withholding the applicable percentage of premiums pursuant to Iowa Code section 432.1(3) and 432.1(4).

21.3(2) Electronic reporting of premium tax. A surplus lines insurance producer who places insurance with an eligible surplus lines insurer must file electronically the premium tax information

with the division, as instructed on the division's website, on or before March 1 for policies issued during the preceding calendar year.

21.3(3) Annual report. On or before March 1 of each year, every surplus lines insurance producer who has placed insurance with an eligible surplus lines insurer when the policies have been issued during the preceding calendar year must file electronically with the division, or as otherwise directed by the division, a sworn report and supporting documentation, as instructed on the division's website, which may include evidence of a diligent search required pursuant to Iowa Code section 515I.3, of all such business written during the preceding calendar year and must submit the amount to cover the taxes due on all such business. The manner of filing electronically and the content of the report and required supporting documentation are listed on the division's website. If no business was issued during the preceding calendar year, no report is required. Failure to file an annual report or pay the taxes imposed by Iowa Code chapter 515I will be deemed grounds for the revocation of a surplus lines insurance producer's license by the division, and failure to file an annual report or pay taxes within the time requirements of this rule will subject the surplus lines insurance producer to the penalties of Iowa Code section 515I.12.

191—21.4(515I) Surplus lines insurance producer's duty to insured. A surplus lines insurance producer who places coverage with an eligible surplus lines insurer must deliver to the insured, within 30 days of the date the policy is issued, a notice that states the following: "This policy is issued, pursuant to Iowa Code chapter 515I, by an eligible surplus lines insurer in Iowa and as such is not covered by the Iowa Insurance Guaranty Association." A surplus lines insurance producer may comply with this rule by verifying disclosure of this language in a clear and conspicuous position on the policy or by electronic delivery authorized by Iowa Code chapter 505B, if the method of delivery of the notice allows the division, the surplus lines insurance producer and the intended recipient to verify receipt of the specific notice.

191—21.5(515I) Procedures for qualification and renewal as an eligible surplus lines insurer.

21.5(1) Application and procedures for initial qualification as an eligible surplus lines insurer.

a. Any nonadmitted insurer or domestic surplus lines insurer who wishes to qualify under Iowa Code chapter 515I as an eligible surplus lines insurer must make an application with the division in a format prescribed by the division, as instructed on the division's website.

b. The application must include:

(1) The name of an Iowa resident surplus lines insurance producer whom the insurer is designating as the person to accept inquiries and notices on behalf of the insurer.

(2) Payment of the greater of a \$100 filing fee or a retaliatory fee, and an examination fee for all new applicants.

(3) Demonstrated maintenance of the capital and surplus required pursuant to Iowa Code chapter 515I.

21.5(2) Procedures for renewal of an insurer as an eligible surplus lines insurer. An eligible surplus lines insurer that was approved by the division as an eligible surplus lines insurer, except for an alien insurer under Iowa Code section 515I.2(8)"b," must by March 1 of each year following the year of approval:

a. Be in compliance with subparagraph 21.5(1)"b"(3);

b. Pay the greater of a \$100 renewal fee or a retaliatory fee; and

c. Submit to the division the documents and materials listed on the division's website.

21.5(3) Periodic reporting. An eligible surplus lines insurer, except for an alien insurer under Iowa Code section 515I.2(8)"b," must submit annual and quarterly financial statements to the division as instructed on the division's website.

21.5(4) Failure to comply with renewal procedures. An eligible surplus lines insurer that fails to timely file an application for renewal as an eligible surplus lines insurer or fails to provide requested information shall pay a late fee of \$500.

21.5(5) Failure to timely file financial statements. An eligible surplus lines insurer that fails to file a financial statement, as instructed on the division's website, shall pay a late fee of \$500. The commissioner

may give notice to an insurer that fails to timely file that the insurer is in violation of this subrule. If the insurer fails to file the required financial statements within ten days of the date of the notice, the insurer shall pay an additional late fee of \$100 for each day the failure continues.

21.5(6) *Failure to comply with this rule.* An eligible surplus lines insurer's authority to transact new business in this state shall immediately cease until the insurer has fully complied with this rule, including paying all applicable late fees.

21.5(7) *Suspension.* The commissioner may order the suspension of an eligible surplus lines insurer's authority to transact the business of insurance within the state, after notice and hearing pursuant to Iowa Code chapter 17A, if the eligible surplus lines insurer fails to fully comply with this rule within 90 days, including paying all applicable late fees.

191—21.6(515E) Procedures for qualification as a risk retention group.

21.6(1) Any insurer who wishes to register under Iowa Code chapter 515E as a risk retention group must:

- a. File with the division an application that contains information required by Iowa Code section 515E.4, which also is listed on the division's website; and
- b. Pay the greater of a \$100 filing fee or a retaliatory fee and, for all new applicants, an examination fee.

21.6(2) A risk retention group must pay a \$100 renewal fee by March 1 of each year following the year of registration. The risk retention group must annually provide information requested by the division for determination of continued registration.

191—21.7(515E) Risk retention groups. A risk retention group may utilize its producers to report and pay premium taxes or may pay the taxes directly. If producers are utilized, the producers must file the premium tax information electronically with the division through the division's website on or before March 1 for policies issued during the preceding calendar year.

191—21.8(515E) Procedures for registration as a purchasing group.

21.8(1) Prior to doing business in this state, a purchasing group must furnish to the division notice that includes:

- a. The information set forth in Iowa Code section 515E.8, which also is listed on the division's website;
- b. Designation of the commissioner for service of process, as set forth in Iowa Code section 515E.8(3); and
- c. Remittance of a \$100 filing fee.

21.8(2) A registered purchasing group must pay a \$100 renewal fee by March 1 of each year following the year of registration. The purchasing group must provide information requested by the division for determination of continued registration.

191—21.9(515E,515I) Failure to comply; penalties. Failure of a producer, surplus lines insurance producer, insurer, risk retention group or purchasing group to comply with this chapter or with Iowa Code chapters 515E and 515I may subject the producer, surplus lines insurance producer, insurer, risk retention group or purchasing group to penalties set forth in Iowa Code chapters 507B, 515E and 515I.

These rules are intended to implement Iowa Code chapters 515I and 515E.