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**IDAPA 18
TITLE 06
CHAPTER 06**

18.06.06 – RULES FOR THE SURPLUS LINE REGULATION

000. LEGAL AUTHORITY.

The statutory authority of this rule is Title 67, Chapter 52, Idaho Code and Title 41, Chapters 2 and 12, Idaho Code. (1-1-94)

001. TITLE AND SCOPE.

01. Title. This rule is titled IDAPA 18.06.06, "Rules for the Surplus Line Regulation." (6-30-19)T

02. Scope. The purpose of this rule is to provide procedures for the placement of surplus line insurance. (5-3-03)

002. WRITTEN INTERPRETATIONS.

The Department of Insurance has or relies upon written interpretive statements of the rule chapter in accordance with Section 67-5201(19)(b)(iv), Idaho Code. (1-1-94)

003. ADMINISTRATIVE APPEALS.

All administrative appeals shall be governed by Chapter 2, Title 41, Idaho Code, and the Idaho Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, and IDAPA 04.11.01, Idaho Rules of Administrative Procedure, Idaho Rules of Administrative Procedure of the Attorney General - General Provisions. (6-30-19)T

004. DEFINITIONS.

01. Open Lines for Export. The term "Open Lines for Export" shall mean the class or classes of business which the Director by order or by, rule, bulletin, or by publishing on the Department of Insurance website, has declared eligible for export in accordance with Section 41-1216, Idaho Code, and for which there appears to be no reasonable or adequate market among authorized insurers, either to acceptance of risk, contract terms, or premium or premium rate. (6-30-19)T

02. Lines Other Than Open Lines for Export. The term "Lines Other Than Open Lines for Export" shall mean the class of classes of business not on the list of open lines for export which are to be offered to eligible surplus lines insurers in accordance with Sections 41-1214, and 41-1215, Idaho Code. (6-30-19)T

03. Diligent Search. Diligent search or effort by the Surplus Line producer, for purposes of Section 41-1214(2), Idaho Code, shall be deemed to have been exercised if the Surplus Line producer or the referring insurance producer shall submit a risk to at least three authorized companies, which are engaged in writing in Idaho the type of coverage sought, or if there are no companies actually engaged in writing such coverage, the risk shall be submitted to at least three companies which, in the Surplus Line producer's or the insurance producer's professional judgment, are the most likely to accept the risk. (6-30-19)T

005. DELEGATION OF RESPONSIBILITY TO SURPLUS LINES ASSOCIATION.

The Idaho Department of Insurance delegates the following activities to the Surplus Lines Association of Idaho ("Association"): (6-30-19)T

01. Eligibility for Export. Under the general supervision of the Idaho Department of Insurance, the Association will be responsible for determination of eligibility for export of particular proposed coverages to eligible unauthorized insurers. (6-30-19)T

02. Broker Compliance. The Association is to examine all submissions from licensed resident and non-resident Idaho Surplus Lines Brokers to assure compliance with Section 41-1217, Idaho Code - Eligible Surplus Lines Insurers. (6-30-19)T

03. Requirements of Surplus Lines Association. That the Association, in addition to the

responsibilities outlined above, shall: (6-30-19)T

a. For the protection of all concerned have its Articles, By-Laws, Rules, and Procedures approved by the Director. Any changes made therein should receive prior approval before being put into effect. However, any submitted change, if not acted on within sixty (60) days of receipt by the Director, will be deemed approved. (6-30-19)T

b. File with the Director, and keep current, a list of its members. (6-30-19)T

c. Keep complete records of all transactions concerning Surplus Lines to the end that proper tax may be collected on surplus lines policies and that proper reports will be forwarded to the Director as concerns all submissions. Submissions are to be made by licensed Idaho Surplus Lines Brokers through the Association to the Director on forms approved by the Director, and shall comply with requirements of Chapter 12, Idaho Code. (6-30-19)T

d. Make its records available at any time for examination by the Director. (6-30-19)T

e. Report through its manager to the Director any known violations of the Surplus Lines Law as cited in Title 41, Chapter 12, Idaho Code. (6-30-19)T

006 -- 010. (RESERVED)

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011. BIENNIAL LICENSE.

The Idaho license of a resident or non-resident Surplus Line Broker must be renewed every two (2) years. Both the original license fee and the renewal fee are prescribed in the Rules of the Idaho Department of Insurance ("Department"), IDAPA 18.01.02, "Schedule of Fees, Licenses, and Miscellaneous Charges." Producers are in violation of the Insurance Code if they solicit surplus line business before they are licensed as a Surplus Line Broker. If a broker decides not to renew his license in any particular year, he should notify the Licensing Division of the Department of his intention prior to his license renewal date. The Director may, in his discretion, allow the

continuation of a license which is not timely renewed, if, within one (1) year after the renewal date, the licensee submits the appropriate renewal request and a continuation fee which is twice the amount otherwise required as provided by Section 41-1008(3), Idaho Code. (5-3-03)

012. ANNUAL REPORT.

Each Surplus Line Broker shall file an annual report with the Director by March 1st of each year, of Surplus Line business transacted during the previous calendar year on forms approved by the Director. (6-30-19)T

013. PAYMENT OF STATE TAX.

01. Tax Due March 1. On or before March 1st of each year, all Idaho licensed Surplus Line Brokers shall pay to the Department the premium tax on business written during the preceding calendar year. The Surplus Line Broker must collect this tax from the insured, in addition to the stamping fee. (5-3-03)

02. Tax Summary. By February 1st of each year the Surplus Lines Association will provide to each Surplus Line Broker a summary of records showing the state tax due the Department for the preceding year. The broker must pay to the Department the exact amount of tax indicated on the Surplus Lines Association summary. A flat percentage of the gross premium written during the year is not acceptable since tax was collected on each individual policy and that full amount must be paid to the Department. (5-3-03)

014. PAYMENT OF STAMPING FEES.

01. Application. The stamping fee shall be charged on all premiums and policy fees written on Idaho business at a rate established by the Board of Directors of the Surplus Line Association and approved by the Department. This rate will be adjusted from time to time in order to obtain the objectives of the Association. The stamping fee cannot be refunded except where there are extenuating circumstances, reported to, and approved by the Surplus Lines Association. (5-3-03)

02. Association Summary. Within ten (10) days following the month during which the surplus line insurance was handled through the Association office, the Manager will submit to each Surplus Line Broker an invoice summarizing the premium, Idaho tax, and Stamping Fee for each submission processed. (5-3-03)

03. Payable on Receipt. The Stamping Fee of the Surplus Line Association is payable upon receipt of billing. It is delinquent if not paid within thirty (30) days after the last day of the month in which the business was reported. (1-1-94)

015. COLLECTION OF TAXES.

01. Idaho Premium Taxes. Idaho Premium Tax must be collected from the insured. This tax is charged on the premium paid. Policy fees, service fees, and other like fees are considered part of the premium and subject to premium tax. State premium taxes must be refunded to the taxpayer upon cancellation of the policy or return of premium for any reason. (5-3-03)

02. Purchasing Groups. Purchasing groups that obtain insurance from an unauthorized or authorized surplus lines insurer must use a surplus lines broker licensed in the state of Idaho. The Surplus Lines Broker is responsible to collect and submit all taxes and fees to the Surplus Lines Association. (5-3-03)

016. REPORTING TAXES AND STAMPING FEES.

Brokers must report premium taxes and stamping fees in increments of not less than one year. If a broker elects to collect quarterly or monthly payments of premiums from the insured, he may do so, providing he reports the premium tax and stamping fee in the initial submission or renewal for a full year. (1-1-94)

017. PLACEMENT AND COMMISSIONS.

01. Basic Requirement. All surplus line business whether produced from within the state of Idaho or outside, must be placed through a licensed Surplus Line Broker. Each producer of surplus line business must hold a resident or non-resident producer license for Idaho. (5-3-03)

02. Idaho Producer. When a producer requests placement by a licensed Surplus Line Broker the commission received and paid shall be based on the mutual written agreement of the parties concerned. (6-30-19)T

018. SUBMISSION TIME PERIODS.

All affidavits, submissions, certificates, endorsements and other documents for insurance written for Open Lines for Export and Other Than Open Lines for Export must be received at the Surplus Lines Association within thirty (30) days of receipt by the broker of the certificate, endorsement or other policy document. If the complete submission cannot be made within this time period, then the information with submission form and affidavit, if applicable, will be forwarded. The broker is responsible for meeting this requirement and the burden of compliance is upon him. (6-30-19)T

019. OPEN LINES FOR EXPORT.

A list of approved classes of insurance coverage or risks shall be published by the Director and a copy of which shall be delivered to and maintained by a delegated association, if one has been delegated. These classes are recognized by the Department and the Association as eligible for export since it has been previously determined that an adequate market among authorized insurers does not exist in Idaho. Under this provision, brokers are not required to comply with sections 41-1214(2), (3) and 41-1215 of the Idaho Insurance Code, but proper submission must be provided to the Director or to a delegated association, if one has been delegated pursuant to Section 41-1232(c), Idaho Code, within thirty (30) days after the insurance policy is received by the Idaho broker. If a risk does not appear on this list, then the broker must file the normal submission forms and documents and he must execute the broker's affidavit. (6-30-19)T

020. BROKERS RECORDS.

Each broker shall keep in his office a full and true record of each surplus line coverage procured by him as outlined in section 41-1227 of the Idaho Insurance Code. Reports of all documents processed by the Surplus Lines Association will be provided on a monthly basis to the broker. These reports, in addition to the broker's copy of policies and endorsements, must be kept for a period of five (5) years and are subject to examination by the director. (5-3-03)

021. APPROVED LIST OF INSURERS.

A list, commonly known as the "white" list, containing the only non-admitted companies authorized to write surplus line business in this state will be issued from time to time by the Director. While this list is in effect, a broker may place surplus line business with those companies only. After receiving the updates from the Director, the association will keep brokers informed of additions and changes through timely notice. (7-1-98)

022. -- 999. (RESERVED)

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