



THE SURPLUS LINE ASSOCIATION
OF CALIFORNIA

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August 30, 1991

Bulletin #497

BULLETIN TO ALL MEMBERS:

Re: Regulation Section 2174, Title 10, California Code of Regulations ("CCR"), Placement of Insurance with Alien Nonadmitted Insurers.

For your information and guidance, enclosed is a copy of a "Notice of Proposed Action and Notice of Public Hearing" dated August 19, 1991 regarding the captioned.

The date and location are as follows:

October 16, 1991 9:30 A.M.
Department of Insurance Hearing Room -- 22nd Floor
45 Fremont Street
San Francisco, California 94105

A. D. Freeman, Jr.
Manager

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
100 Van Ness Avenue
San Francisco, California 94102

August 19, 1991
RH-293

NOTICE OF PROPOSED ACTION AND
NOTICE OF PUBLIC HEARING

Subject of Hearing:

Regulation Section 2174, Title 10, California Code of Regulations ("CCR"), Placement of Insurance with Alien Nonadmitted Insurers.

Authority and Reference:

Notice is hereby given that the Insurance Commissioner, pursuant to authority vested in him by California Insurance Code Section 1763 to make and publish reasonable rules and regulations, consistent with Chapter 6 of the California Insurance Code, in respect to transactions governed thereby and the basis or bases for his determinations thereunder, proposes to adopt regulation Section 2174 of Title 10 of the California Code of Regulations regarding Placement of Insurance with Alien Nonadmitted Insurers.

Hearing Date and Location:

Notice is hereby given that a public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to this proposal, at the following date, place and time:

October 16, 1991 - 9:30 a.m.
Department of Insurance Hearing Room
22nd Floor
45 Fremont Street
San Francisco, California 94105

Information Digest:

Introduction and Statement of Facts Showing the Need for Immediate Action.

This regulation was originally filed with OAL on December 20, 1990. The regulation was approved on December 29, 1990 and was to be effective January 28, 1991. This regulation lapsed May 17, 1991. After the filing and approval, the Department received some comments which suggested modifications were necessary. We also had a public hearing on another regulation on February 4th, and received many comments related to alien nonadmitted carriers. After due consideration of these new factors, the Department filed this modified version of the original regulation with OAL. This regulation is needed to provide adequate policing of alien nonadmitted carriers which are selected by surplus line brokers.

At the present time the Department has no regulations setting forth criteria for acceptable nonadmitted alien carriers. Furthermore, the Department does not have a formalized procedure by which it requires the surplus line broker to proffer documents on the financial stability, reputation and integrity of the nonadmitted alien carrier to the Department before use.

Without such guidance and formalized procedure, the brokers have used this void to select any carrier they want. The Department often finds out through its Investigation Unit about unacceptable carriers after placements have already been made. The result is that the public is exposed to the danger of having coverage from a carrier with poor financial stability, integrity and reputation. This void must be filled immediately to protect the public from unacceptable companies and properly protect the public before placements are made instead of afterward.

This regulation is needed on an emergency basis not only because of the sheer volume of business done in nonadmitted alien insurers but also because the volume is growing rapidly. The total premium volume of exportations for nonadmitted alien insurers (excluding United Kingdom and Lloyds of London) in the fourth quarter of 1990 was roughly \$79,035,094 and that of the first quarter of 1991 was roughly \$100,711,203. The total nonadmitted alien premium volume (excluding United Kingdom and Lloyds of London) for 1990 was \$203,299,555. Thus, the first quarter of 1991 indicates that the business is already half of what it was in 1990. As can be seen, this area cannot remain unregulated. To let this void continue would mean additional exportations of millions of dollars in premiums in companies which may or may not be solvent.

The emergency nature of this area is also shown by the fact that the Department issued nine letters of unacceptability pursuant to Insurance Code Section 1765.1 on nonadmitted alien insurers in 1990; five of those letters were issued in October alone. As of July 1991, we have already issued twenty-two unacceptable letters on nonadmitted alien insurers. These monthly and annual totals are at an all-time high.

The emergency is exhibited by the fact that the Department in 1991 sought and received two conservatorships of alien nonadmitted carriers to protect California residents.

The emergency is further exhibited by the fact that unless the Department sets the standards no one else will protect the public. Nonadmitted alien insurers are subject to regulation in their domiciliary country but the level of regulation in other countries varies so widely that some insurers may enter California with virtually no scrutiny of their ability to conduct a solvent insurance business. Although England and some other countries do regulate insurance in a pervasive fashion, other countries do little or nothing. The result is that some alien nonadmitted insurers can enter the state with financial statements which are questionable and assets which are not verifiable.

In addition, some countries in fact require no licensing of a carrier. For example, an insurer may act as a reinsurer in its home country and as a reinsurer does not require licensing in that country. This nonadmitted alien insurer could enter California to write insurance on a primary surplus line basis at the present time with virtually no regulation.

The Department has tried to stem the tide of placements into unacceptable nonadmitted alien insurers by Cease and Desist Orders and unacceptable letters, but these efforts do not fully address the larger problems, and an emergency regulation is needed to do so.

Local Mandate/Reimbursement Costs:

This regulation does not impose a mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the California Government Code would require reimbursement.

Cost or Savings to State Agencies:

The matters proposed herein will not result in any cost or savings to state agencies.

Cost or Savings and Mandate to Local Agencies and School Districts:

The Insurance Commissioner has determined that there will be no cost savings or increase, nor will there be any new programs mandated on any local agency or school district, as a result of this regulation. The proposed action will not mandate any programs upon local agencies or school districts.

Nondiscretionary Cost or Savings:

The matters proposed herein will not result in any cost or savings to local agencies.

Federal Funding to the States:

The matters proposed herein will not affect any federal funding.

Impact on Small Business:

The matters proposed herein will not have an adverse impact on small business (Government Code Section 11342(e)(2)(B).) No studies/data were relied upon to make this determination.

Cost Impact on Private Persons or Entities:

Compliance by private persons or entities with the matters proposed herein will not generate additional costs.

Impact on Housing Costs:

The matters proposed herein will not effect any housing costs.

Alternatives:

The Insurance Commissioner must determine that no alternative considered by the agency would be more affective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

Comparable Federal Law:

There are no existing federal regulations or statutes comparable to the proposed regulations.

Access to Hearing Rooms:

The facilities to be used for the public hearing and accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person for the hearing in order to make special arrangements, if necessary.

Presentation of Oral and/or Written Comments:

All persons are invited to submit written comments on the proposed regulation to the Insurance Commissioner prior to or at the public hearing. Such comments should be addressed to:

California Department of Insurance
Attn: Carol A. Fistler
100 Van Ness Avenue, 17th Floor
San Francisco, California 94102

No written comments may be submitted by facsimile (FAX) transmission.

Any interested person may present oral and/or written testimony at the scheduled public hearing.

Deadline For Written Comments:

All written materials, unless submitted at the hearing, must be received by the Insurance Commissioner at the address listed above, no later than 5:00 p.m. on October 18, 1991.

Availability of Text of Regulation and Statement of Reasons:

The Insurance Commissioner has prepared an initial statement of reasons for the proposed regulation, in addition to the informative digest included in this notice. The express terms of the proposed regulation, and the statement of reasons, will be made available for inspection or provided upon written request. The Department will also make available all the information upon which the proposed action is based and the express terms of the proposed action.

Access to Copies of Proposed Regulation and Statement of Reasons:

Any interested person may inspect a copy of or direct questions about the proposed regulation, the statement of reasons therefor, and any supplemental information contained in the rulemaking file. The rulemaking file is available for inspection at 100 Van Ness Avenue, 17th Floor, San Francisco, California 94102, between the hours of 9:00 a.m. and 4:30 p.m. Monday through Friday.

Requests for copies of the proposed regulation, the statement of reasons, supplemental information contained in the rulemaking file and specific questions should be directed to:

California Department of Insurance
Attn: Carol A. Fistler
100 Van Ness Avenue, 17th Floor
San Francisco, California 94102
Telephone: (415) 557-3840

Automatic Mailing:

A copy of this notice, including the informative digest which contains the general substance of the proposed regulations, automatically will be sent to all persons on the Insurance Commissioner's mailing list.

Adoption of Regulation:

Following the hearing, the Insurance Commissioner may adopt the regulation substantially as described in the notice and informative digest. Copies of the regulation as adopted will be sent to all persons on the Insurance Commissioner's mailing list and to all persons who testified at the public hearing or submitted written comments during the comment period or at the public hearing, and to those persons who have requested copies of information regarding the regulation.

Additional Public Comment--Substantive Changes:

As a result of public comment (oral or written), the Insurance Commissioner may determine that changes to the proposed regulation are appropriate. Pursuant to Government Code Section 11346.8, these changes may be (1) nonsubstantial or solely grammatical in nature or, (2) sufficiently related to the original text that the public was adequately placed on notice that the changes could result from the originally proposed regulation action. If a sufficiently related change is made, copies of the revised proposed regulation will be sent to all persons who testified at the public hearing or submitted written comments during the comment period or at a public hearing and to those who have requested copies of information regarding the regulations. The text will also be available at least 15 days prior to the date on which the agency adopts, amends or repeals the resulting regulation.

Thereafter, the Insurance Commissioner will accept written comments, arguments, evidence and testimony for a period of at least 15 days after the date upon which the changes were made available. At least 45 days notice will be given if the changes are not sufficiently related.

If adopted, the regulations will appear in Title 10, CCR Section 2174.

DATED: August 19, 1991

JOHN GARAMENDI
Insurance Commissioner

By


JANICE E. KERR
Deputy Insurance Commissioner

Doc. #3636s



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September 18, 1991

Supplement to Bulletin #497

BULLETIN TO ALL MEMBERS:

Re: Regulation Section 2174, Title 10, California Code of Regulations ("CCR"), Placement of Insurance with Alien Nonadmitted Insurers.

CHANGE OF HEARING DATE

For your information and guidance, the hearing date has been changed from October 16, 1991 to November 6, 1991. The hearing will now be the following date, place and time:

November 6, 1991 at 9:30 A. M.
Department of Insurance Hearing Room, 22nd Floor
45 Fremont Street
San Francisco, California 94105

EXTENSION OF PUBLIC COMMENT PERIOD

The original notice closed the public comment period on October 18, 1991. The public comment period will be extended to November 8, 1991. All comments must be received no later than 5:00 P. M. on November 8, 1991, at the following address:

California Department of Insurance
Attention: Carol A. Fistler
100 Van Ness Avenue, 17th Floor
San Francisco, California 94102

No written comments may be submitted by facsimile (FAX) transmission.

A. D. Freeman, Jr.
Manager