

# STATE OF ALASKA

DEPARTMENT OF COMMERCE AND  
ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

TONY KNOWLES, GOVERNOR

P.O. BOX 110805  
JUNEAU, ALASKA 99811-0805  
PHONE: (907) 465-2615  
FAX: (907) 465-3422  
TDD: (907) 465-5437

## BULLETIN 95-04

**TO: ALL RISK RETENTION GROUPS, PURCHASING GROUPS, ADMITTED PROPERTY/CASUALTY INSURERS, PROPERTY/CASUALTY PRODUCERS, SURPLUS LINES BROKERS, AND INTERESTED PARTIES.**

### **INTERPRETATIVE STATEMENT FOR RISK RETENTION GROUPS AND PURCHASING GROUPS OPERATION**

The Division of Insurance has received a number of inquiries concerning the regulation of Risk Retention Groups and Purchasing Groups that seek to transact insurance business in the State of Alaska. The Product Liability Risk Retention Act of 1981 (hereinafter LRRRA 1981), as amended, prescribes the extent to which states may license, regulate, and tax each Risk Retention Group (RRG) and Purchasing Group (PG). The following is a summary outline addressing applicable state statutes and regulations with which these groups must comply. It is advisable that this outline be used as a guide only, and the specific state statutes mentioned herein should always be reviewed. The purpose of this bulletin is to advise RRGs and PGs as to how the State of Alaska, Division of Insurance, exercises the regulatory and taxation powers reserved to the states under LRRRA.

#### **I. RISK RETENTION GROUPS DOMICILED ("CHARTERED") IN THE STATE OF ALASKA**

RRGs chartered under the laws of the State of Alaska must be organized, regulated, and taxed as a domestic liability insurance company under Title 21 of the Alaska Insurance Code. RRGs are exempt and excluded from the Alaska Insurance Guaranty Association Act (Alaska Statute (AS) 21.80), pursuant to 15 U.S.C. 3902(a)(2) of the LRRRA. Therefore, all policies issued by a domestic RRG must provide the notice set forth in 15 U.S.C. 3902(a)(1)(1) of the LRRRA.

RRGs chartered in this state must also comply with 15 U.S.C. 3902(d)(1), (2), and (3) of the LRRRA.

For the purpose of this bulletin and to be consistent with the LRRRA, chartered in Alaska means domiciled in Alaska.

#### **II. RISK RETENTION GROUPS NOT CHARTERED IN THIS STATE**

A. Registration:

The RRGs must register with the Division of Insurance on a form prescribed by the director; pay a registration fee to cover the costs of processing; reviewing; and updating registration forms, annual and quarterly statements; and maintain an adequate file system. Regulations (3 AAC 24.010-.290) have been promulgated and were first effective on August 23, 1989, and were amended in 1991 and 1992. The fee schedule for RRGs is contained in Alaska Regulation 3 AAC 31.060(a). Currently, the initial registration fee is \$1,000 and the annual continuation of registration fee is \$200.

#### B. Laws Relating to the Procurement of Coverage for RRG Members:

In accordance with 15 U.S.C. 3902(c), the division requires a person acting or offering to act as an agent or broker for insurance written or placed with an RRG upon a subject or a risk resident, located, or to be performed in Alaska to be a properly licensed Alaska Property/Casualty Lines Producer or Surplus Lines Broker. Alaska issues both resident and nonresident licenses.

Because Alaska law does not require nondomestic RRGs to maintain minimum surplus and capital, AS 21.34.040(c) respecting financial responsibility requirements of nonadmitted insurers does not apply. Therefore, according to federal law, a properly licensed Alaska Property/Casualty Lines Producer or Surplus Lines Broker (either resident or nonresident) may place coverage with an RRG lacking the surplus and capital required in AS 21.34.040(c). However, it is always advisable for the Surplus Lines Broker or the Producer to check to see if the RRG meets the capital and surplus requirements of the respective state of domicile of the RRG. Producers are also advised that if they do place business with an RRG which does not meet the standards of AS 21.34.040(c), they do so at their own risk of liability.

The above only applies to RRGs who have met all of the registration requirements as set forth in the regulations, and have met the requirements of their state of domicile as a chartered/licensed liability insurer authorized to do business as a liability insurer in any state. In order to meet the required definition of an RRG as defined in 15 U.S.C. 3901(a)(4)(C)(i), an RRG that has formed under the special captive laws of a state must still meet the requirements for doing business as a liability insurer in that state.

#### C. Examination Statutes:

Subject to the exceptions and limitations outlined in 15 U.S.C. 3902(a)(1)(E), all of the laws of the State of Alaska pertaining to the examination of admitted insurers apply to the examination of RRGs whether domiciled in this state or not. Specific laws of interest to RRGs are AS 21.06.080 and AS 21.06.120-.170.

Any person acting or offering to act as Producer for an RRG not domiciled in Alaska is subject to the examination, reporting and recordkeeping provisions outlined in AS 21.06, AS 21.27, and AS 21.34 and must hold a valid Alaska Property/Casualty Lines Producer's or Surplus Lines Broker's license. If a placement is made by a person acting for or offering to act for an RRG who does not hold a valid Alaska Property/Casualty Lines Producer or Surplus Lines Broker license, and who is not an employee of the RRG, that person is subject to fines and penalties under

Alaska law including, but limited to, those contained in AS 21.27, AS 21.33, AS 21.34, AS 21.36, and AS 21.90.

#### D. Taxes:

The RRG is responsible for the reporting and payment of premium taxes pursuant to AS 21.09.200 and AS 21.09.210. Currently, that rate is 2.7 percent. However, where the RRG provides documentation to the division verifying the proper collection, reporting, and payment of applicable taxes by a properly licensed Alaska Surplus Lines Broker pursuant to AS 21.34.180, the liability for the payment of that portion of tax is transferred to the Alaska Surplus Lines Broker.

#### E. Annual Report:

The filing of an annual report, as prescribed by 15 U.S.C. 3902(d)(3), is required pursuant to AS 21.09.200 and/or AS 21.34.040.

### III. PURCHASING GROUPS

#### A. Registration:

PGs must register with the Division of Insurance on a form prescribed by the director; and pay a registration fee to cover the costs of processing, reviewing, and updating the registration forms, and maintain an adequate file system. Regulations (3 AAC 24.300-.590) have been promulgated and were first effective on August 23, 1989, and were amended in 1991 and 1992. Registration forms for purchasing groups are available upon request from the division. Registration forms provided by the National Association of Insurance Commissioners (NAIC) may also be submitted, although supplemental information will be required. The fee schedule for PGs is contained in 3 AAC 31.060(a). An initial registration fee of \$500 is required. Thereafter, the annual continuation fee is \$200.

#### B. Laws Relating to the Procurement of Insurance Coverage by or for PGs on Subjects Resident, Located, or to be Performed in Alaska:

The following requirements must be met regarding the procurement of insurance by a PG whether it is self-purchased by the PG or placed through a properly licensed Alaska Property/Casualty Lines Producer (either resident or nonresident).

1. If the purchase is made from an **Admitted** or **Domestic Insurer**, the person acting or offering to act or aiding in the procurement, whether an employee or member of the PG or not, must have a valid resident or nonresident Alaska Property/Casualty Lines Producer license.

2. If the purchase is made from a **Nonadmitted Insurer**, the purchase can only be from an "eligible" insurer meeting the requirements of AS 21.34.040 and AS 21.34.050. This type of placement can only be made through a properly licensed resident or nonresident Alaska Surplus Lines Broker.

The purchase of liability insurance from a noneligible or unauthorized insurer that does not meet the requirements of AS 21.34.040-.050 is **not legal** and is subject to the requirements of AS 21.33.037 and all applicable penalties including those outlined in AS 21.33.065. Penalties contained in AS 21.36 may also apply.

3. If the purchase is made from a **Risk Retention Group Domiciled In Alaska**, the purchase must be made as outlined in Section II(B) of this bulletin.

4. If the purchase is made from a **Risk Retention Group Not Domiciled in Alaska**, the purchase must be done through a properly licensed Alaska Surplus Lines Broker as outlined in Section II(B) of this bulletin.

#### C. Taxes:

The method of payment for taxes on policies issued by a PG on risks located, resident, or to be performed in Alaska, shall be determined by the method of procurement of the coverage. If the coverage was placed with a domestic or admitted insurer, or a domestic RRG, the appropriate taxes shall be paid by the insurer or RRG. If the method of procurement is through a nonadmitted but "eligible" insurer, or an RRG not domiciled in Alaska, the appropriate taxes shall be paid by the Surplus Lines Broker placing the business.

#### D. Form and Rate Filings for Purchasing Groups Using Admitted Insurers:


Alaska laws governing the rate and form filings of admitted insurers **are not** preempted by the LRA.

Alaska is a prior approval state and, as such, requires the rate and form filings for Purchasing Group offerings be filed with, and approved by, the State of Alaska, before any coverage is written or solicited. Filings must comply with the requirements set out in Bulletin 93-03 and the recently adopted rate and form filing regulations which became effective December 4, 1994.

#### FOR FURTHER INFORMATION

Write to Cathy Isadore, Insurance Analyst, Alaska Division of Insurance, P.O. Box 110805, Juneau, Alaska 99811-0805 for **PG** information. Write to John Talley, Financial Examiner, Alaska Division of Insurance, 800 East Dimond Boulevard, Suite 560, Anchorage, Alaska 99515 for **RRG** information.

DATED this 1st day of February 1995, in Juneau, Alaska.

  
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Thelma Snow Walker, Acting Director  
Division of Insurance

COMMERCE AND  
ECONOMIC DEVELOPMENT

CHAPTER 24.  
RISK RETENTION GROUPS AND PURCHASING GROUPS

Article

1. Risk Retention Groups (3 AAC 24.010 - 3 AAC 24.290)
2. Purchasing Groups (3 AAC 24.300 - 3 AAC 24.590)

Article 1.

RISK RETENTION GROUPS.

Section

010. Purpose
015. Compliance
020. Filing of registration forms
030. Payment of fee

040. Operations

050. Term of initial registration

060. Continuation of registration

290. Definitions

3 AAC 24.010. PURPOSE The purpose of 3 AAC 24.010 - 3 AAC 24-.290 is to establish, consistent with 15 U.S.C. 3901 -- 3906, as amended as of October 27, 1986 (Liability Risk Retention Act), a procedure for the registration of risk retention groups that seek to transact the business of insurance in Alaska, or relative to a subject or risk that is resident, located, or to be performed in Alaska, and to provide for the payment of fees for the administrative cost of the registration process. (Eff. 8/23/89, Reg. 111)

Authority: AS 21.03-010

AS 21.06.090

3 AAC 24.015. COMPLIANCE. A person transacting the business of insurance as or on behalf of a risk retention group formed under and in compliance with 15 U.S.C. 3901 -- 3906, as amended as of October 27, 1986 (Liability Risk Retention Act), shall, at all times, transact business in compliance with federal and state insurance law. Failure to comply with federal or state insurance law is an unfair and deceptive act under AS 21.36.150. (Eff. 10/24/92, Register 124)

Authority: AS 21.03.010

AS 21.06.090

AS 21.36.150

3 AAC 24.020. FILING OF REGISTRATION FORMS. Before transacting business of insurance in this state, a risk retention group shall submit to the director

(1) a completed registration form that shall include the following information:

(A) each state in which the risk retention group is chartered or licensed to do business as a liability insurer;

(B) the date of its charter or license;

(C) the state in which it is domiciled;

(D) the complete physical address and mailing address of

(i) its offices in its state of domicile;

(ii) its principal place of business; and

(iii) its directors and principal officers;

(E) the complete name, firm name, physical address and mailing address of all persons acting, or offering to act, an agent, broker, or surplus lines broker for the risk retention group, and identification of all types of licenses held by each person and firm, including the state in which each license is held;

(F) all classes or lines of insurance the risk retention group intends to offer; and

(G) such other information, including information concerning its membership, that the director requires to establish its qualification as a risk retention group to transact business in Alaska;

(2) a copy of its plan of operation and the feasibility study submitted to its state of domicile, including all revisions;

(3) a complete copy of the financial statement submitted to its state of domicile, certified by an independent public accountant, including a statement of opinion on its reserves for loss and its reserves for loss adjustment expenses prepared by a member of the American Academy of Actuaries or by another qualified specialist in such reserves;

(4) a copy of each examination of the risk retention group, certified by the commissioner or other public officer conducting the examination, except that if no examination has been conducted or if one is pending, a statement to that effect, signed by an officer of the risk retention group, shall be submitted in its place;

(5) upon a form prescribed by the director, a statement appointing the director as its agent for the purpose of receiving service of legal documents or process; and

(6) such other information as the director requires to verify its qualification and continuing qualification as a risk retention group transacting or seeking to transact business in Alaska. (Eff. 8/23/89, Reg. 111)

Authority: AS 21.03.010

AS 21.06.090

3 AAC 24.030. PAYMENT OF FEE. The initial registration fee set by 3 AAC 31.060(a)(14) must accompany each registration form. The annual continuation fee set by 3 AAC 31.060(a)(15) must accompany each continuation application. (Eff. 8/23/89, Reg. 111)

Authority: AS 21.03.010

AS 21.06.090

AS 21.06.250

3 AAC 24.040. OPERATIONS. (a) A risk retention group may only transact the business of liability insurance.

(b) At least 30 days before a domestic risk retention group may transact business in this state, any other state, or upon a subject or risk that is resident, located, or to be performed in this or any other state, a plan of operation or feasibility study must be filed with and approved by the director in writing. At least 30 days before a domestic risk retention group implements a material change or revision to a previously approved plan of operation or feasibility study the domestic risk retention group must file those changes with and secure written approval of the director. A domestic risk retention group may not transact an additional kind or class of liability insurance in this state, another state, or upon a subject or risk that is resident, located, or to be performed in this or any other state, before a change or revision to the plan of operation or feasibility study has been approved by the director. (Eff. 8/23/89, Register 111, am 10/24/92, Register 124)

Authority: AS 21.03.010

AS 21.06.090

3 AAC 24.050. TERM OF INITIAL REGISTRATION. The initial registration is valid until December 31 of the year in which it was made. An annual continuation application must be filed with the director in accordance with 3 AAC 24.060 to maintain the registration in force. (Eff. 4/12/91, Register 118)

Authority: AS 21.03.010

AS 21.06.090

3 AAC 24.060. CONTINUATION OF REGISTRATION. (a) A registration is valid from January 1 through December 31 of each year. In order to continue the registration for the next year, the following must be filed with the director by December 31:

- (1) a continuation application on a form prescribed by the director;
- (2) the annual continuation fee established in 3 AAC 31.060(a)(15);
- (3) other information the director may require.

(b) Failure to submit the continuation application and fee by January 31 of the year for which registration is sought will result in the discontinuation of the registration as of the prior December 31. A registrant that submits the continuation application and fee after January 31 will be required to reapply as a new registrant under 3 AAC 24.020 and pay the initial registration fee set out in 3 AAC 31.060(a)(14).



(c) A risk retention group that is not in compliance with 15 U.S.C. 3901-3906, as amended as of October 27, 1986 (Liability Risk Retention Act), is not eligible for registration or annual continuation of its registration. (Eff. 4/12/91, Register 118; am 10/24/92, Register 124)

Authority: AS 21.03.010

AS 21.06.090

3 AAC 24.290. DEFINITIONS. As used in 3 AAC 24.010 – 3 AAC 24.290,

(1) "risk retention group" means any entity meeting the definition of a risk retention group in 15 U.S.C. 3901(a)(4), as amended as of October 27, 1986 (Liability Risk Retention Act);

(2) "domestic risk retention group" means a risk retention group that has been issued a certificate of authority from the director and is in compliance with all provisions of 15 U.S.C. 3901 – 3906, as amended as of October 27, 1986 (Liability Risk Retention Act);

(3) "transact" means the same as in AS 21.90.900;

(4) "transacting insurance" means to transact as defined in AS 21.90.900 relative to a subject or risk that is resident, located, or to be performed in this state;

(5) "liability" means legal liability for damages, including costs of defense, legal costs and fees, and other claims expenses, because of injury to another person, damage to property, or other damage or loss to a person resulting from or arising out of a business, trade, product, service, including a professional service, premises, or operation; or any activity of a state or local government, or an agency or political subdivision of a state or local government; "liability" does not include personal risk liability or employer's liability with respect to its employees other than legal liability under the Federal Employers' Liability Act (45 U.S.C. 51)

(6) "personal risk liability" means liability for damages because of injury to a person, damage to property, or other loss or damage resulting from a personal, familial, or household responsibility or activity, rather than from a responsibility or activity referred to in (5) of this section. (Eff. 8/23/89, Register 111; am 10/24/92, Register 124)

Authority: AS 21.03.010

AS 21.06.090

## Article 2

### PURCHASING GROUPS

#### Section

#### 300. Purpose

305. Compliance

310. Filing of registration forms

320. Payment of fee

330. Existing operation; compliance

350. Continuation of registration'

590. Definitions

3 AAC 24.300. PURPOSE. The purpose of 3 AAC 24.300 – 3 AAC 24.590 is to establish, consistent with 15 U.S.C. 3901 – 3906, as amended as of October 27, 1986 (Liability Risk Retention Act), a procedure for the registration of purchasing groups that seek to transact the business of insurance in Alaska, or relative to a subject or risk that is resident, located, or to be performed in Alaska, and to provide for the payment of fees for the administrative cost of the registration process. (Eff. 8/23/89, Reg. 111)

Authority: AS 21.03.010

AS 21.06.090

3 AAC 24.305. COMPLIANCE. A person transacting the business of insurance as or on behalf of a purchasing group formed under and in compliance with 15 U.S.C. 3901 – 3906, as amended as of October 27, 1986 (Liability Risk Retention Act), shall, at all times transact business in compliance with federal and state insurance law. Failure to comply with federal or state insurance law is an unfair and deceptive act under AS 21.36.150. (Eff. 10/24/92, Register 124)

Authority: AS 21.03.010

AS 21.06.090

AS 21.36.150

3 AAC 24.310. FILING OF REGISTRATION FORMS. (a) Before transacting the business of insurance in this state, a purchasing group shall submit to the director

(1) a completed registration form that shall include the following information:

(A) the state of domicile

(B) the dates of its incorporation and formation as a purchasing group;

(C) the complete physical address and mailing address of

- (i) its offices in its state of domicile;
- (ii) its principal place of business; and
- (iii) its directors and principal officers;
- (iv) all persons acting, or offering to act, as an agent, broker, or surplus lines broker for the purchasing group, including all types of licenses held by each person and the states in which each license is held;

(D) all classes or lines of insurance the purchasing group intends to purchase;

(E) the insurance company or risk retention group from which it intends to purchase insurance; and

(F) such other information including information concerning its membership, that the director requires to establish its qualification and continuing qualification as a purchasing group;

(2) upon a form prescribed by the director, a statement appointing the director as the purchasing group's agent for the purpose of receiving service of legal documents or process (except where exempted by 15 U.S.C. 3903(e), as amended as of October 27, 1989).

(b) The registration requirements set out in (a) of this section do not apply to a purchasing group which is excepted under Section 4(e) of the Product Liability Risk Retention Act of 1981, as amended October 27, 1986 by P.L. 99-563, (15 U.S.C. 3903(e)) from the registration requirement of the subsection. (Eff. 8/23/89, Register 111, am 4/12/91, Register 118)

Authority: AS 21.03.010

AS 21.06.090

3 AAC 24.320. PAYMENT OF FEE. The initial registration fee set by 3 AAC 31.060(a)(16) must accompany the registration forms. The annual continuation fee set by 3 AAC 31.060(a)(17) must accompany each continuation application. (Eff. 8/23/89, Reg. 111)

Authority: AS 21.03.010

AS 21.06.090

AS 21.06.250

3 AAC 24.330. EXISTING OPERATION; COMPLIANCE. A purchasing group transacting insurance before 8/23/89 on a risk or subject resident, located or to be performed in Alaska, has 30 days after that date in which to comply with 3 AAC 24.300 – 3 AAC 24.590. (Eff. 8/23/89, Reg. 111)

Authority: AS 21.03.010

AS 21.06.090

3 AAC 24.340. TERM OF INITIAL REGISTRATION. The initial registration is valid until December 31 of the year in which it was made. An annual continuation application must be filed with the director in accordance with 3 AAC 24.350 to maintain the registration in force. (Eff. 4/12/91, Register 118)

Authority: AS 21.03.010

AS 21.06.090

3 AAC 24.350. CONTINUATION OF REGISTRATION. (a) A registration is valid from January 1 through December 31 of each year. In order to continue the registration for the next year, the following must be filed with the director by December 31:

- (1) continuation application on a form prescribed by the director;
- (2) the annual continuation fee established in 3 AAC 31.060(a)(17); and
- (3) other information the director may require.

(b) Failure to submit the continuation application and fee by January 31 of the year for which registration is sought will result in the discontinuation of the registration as of the prior December 31. A registrant that submits the continuation application and fee after January 31 will be required to reapply as a new registrant under 3 AAC 24.340 and pay the initial registration fee set out in 3 AAC 31.060(a)(16).

(c) A purchasing group that is not in compliance with 15 U.S.C. 3901 -- 3906, as amended as of October 27, 1986 (Liability Risk Retention Act), is not eligible for registration or annual continuation of its registration. (Eff. 4/12/91, Register 118; am 10/24/92, Register 124)

Authority: AS 21.03.010

AS 21.06.090

3 AAC 24.590. DEFINITIONS. As used in 3 AAC 24.300 -- 3 AAC 24.590,

- (1) "purchasing group" means any entity meeting the definition of a purchasing group in 15 U.S.C. 3901(a)(5), as amended as of October 27, 1986 (Liability Risk Retention Act);
- (2) "transact" means the same as in AS 21.90.900.

(3) "transacting insurance" means to transact as defined in AS 21.90.900 relative to a subject or risk that is resident, located, or to be performed in this state. (Eff. 8/23/89, Register 111; am 10/24/92, Register 124)

Authority: AS 21.03.010

AS 21.06.090