

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
OFFICE OF THE MONTANA STATE AUDITOR

In the matter of the amendment of) NOTICE OF PROPOSED
ARM 6.6.2804 pertaining to the) AMENDMENT
Collection of Stamping Fee)
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. The Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI) proposes to amend the above-stated rule.

2. CSI will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact CSI no later than 5:00 p.m. on August 16, 2022, to advise us of the nature of the accommodation that you need. Please contact Sam Loveridge, Communications Director, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2040 or 1-800-332-6148; fax (406) 444-3497; TDD (406) 444-3246; or e-mail csi@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

6.6.2804 COLLECTION OF STAMPING FEE (1) Pursuant to 33-2-321, MCA, the ~~department shall~~ Commissioner has determined that CSI will not collect a stamping fee on the base premium, including any monied endorsement, payable for each surplus lines insurance policy transacted in the state.

~~(2) The stamping fee is equal to:~~

~~(a) one percent of the base premium for paper (hard copy) submissions; and~~

~~(b) one-half percent of the base premium for electronically filed submissions via the surplus lines business portal via the department's web site.~~

~~(3) Effective January 1, 2012, the stamping fee is equal to:~~

~~(a) one-quarter percent of the base premium for paper (hard copy) submissions; and~~

~~(b) no charge for electronically filed submissions via the surplus lines business portal via the department's web site.~~

~~(4) The stamping fee on the underlying surplus lines insurance policy shall be earned in full as soon as any portion of the premium payable for the underlying policy is earned. For any monied endorsement, the stamping fee shall be earned in full as soon as any portion of the premium payable for the endorsement is earned.~~

~~(5) Because such stamping fee does not constitute "consideration for insurance" within the meaning of 33-15-102, MCA, and thus does not constitute part of the premium for surplus lines insurance, a surplus lines insurance producer may collect such stamping fee from the insured in addition to the premium payable in consideration for the insurance contract. Nothing in this rule shall operate to exclude~~

~~any other assessment, membership, inspection, or similar fee or charge from the definition of "premium" contained in 33-15-102, MCA.~~

~~(6) Both the base premium and the stamping fee of every policy of surplus lines insurance transacted in this state shall appear on the policy's declarations page and be clearly disclosed as such.~~

~~(7) For paper (hard copy) submissions, the stamping fee information on the declarations page of the surplus lines insurance policy will disclose that the stamping fee would be less, and the percentage of the base premium to calculate the stamping fee, if the submission were filed electronically:~~

~~(i) section (6) will be effective January 1, 2010.~~

~~(8) For the purposes of collecting this stamping fee only, any assessment, membership, inspection, or similar fee or charge payable separately by the insured in consideration of the policy shall be excluded from calculations of the base premium. Designation of a base premium for purposes of calculating the stamping fee shall not operate to exclude from the definition of "premium" contained in 33-15-102, MCA, any assessment, membership, inspection, or similar fee or charge in consideration of that surplus lines insurance policy.~~

~~(9) The department may collect a penalty from any surplus lines insurance producer, or any insured who independently procured insurance, and who does not pay the stamping fees by April 1 for all transactions during the preceding year. Such penalty shall equal 25 percent of the amount overdue plus 1.5 percent per month from the time of delinquency until the stamping fees are paid in full.~~

AUTH: 33-1-313, 33-2-216, MCA

IMP: ~~33-2-301, 33-2-302, 33-2-303, 33-2-305, 33-2-306, 33-2-307, 33-2-308, 33-2-310, 33-2-311, 33-2-312, 33-2-313, 33-2-316, 33-2-321, MCA~~

4. REASON: As part of the biannual review of CSI's rules as required by 2-4-314, MCA, Montana State Auditor Troy Downing (the Commissioner) identified the above rule for revision. The so-called stamping fee was previously collected to assist with the costs of processing certain forms as part of the regulation of surplus lines; the fee is permitted, in the commissioner's discretion, by 33-2-321, MCA. However, the forms at issue are now filed almost exclusively electronically (for which there currently is no fee) and the expenses associated with processing paper forms, as well as the amount of fees collected, are negligible. Thus, the Commissioner has determined that it is no longer in the public interest to require collection of this small fee and proposes to eliminate the rule.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Sam Loveridge, CSI Communications Director, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2040 or 1-800-332-6148; fax (406) 444-3497; TDD (406) 444-3246; or e-mail CSI@mt.gov, and must be received no later than 5:00 p.m., September 2, 2022.

6. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any

written comments to Sam Loveridge at the above address no later than 5:00 p.m., September 2, 2022.

7. If the agency receives requests for a public hearing on the proposed actions from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed actions; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be far in excess of 25 persons based on the fact that the number of surplus lines transactions in Montana in Tax Year 2021 was estimated to be in excess of 20,000.

8. CSI maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list must make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in ¶5 above or may be made by completing a request form at any rules hearing held by CSI.

9. An electronic copy of this proposal notice is available through the Secretary of State's website at <http://sosmt.gov/ARM/Register>.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. With regard to the requirements of 2-4-111, MCA, CSI has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Kirsten Madsen
Kirsten Madsen
Rule Reviewer

/s/ Ole Olson
Ole Olson
Chief Legal Counsel
Commissioner of Securities and Insurance,
Office of the Montana State Auditor

Certified to the Secretary of State July 26, 2022.