



**INDEPENDENT REGULATORY REVIEW COMMISSION
COMMONWEALTH OF PENNSYLVANIA
333 MARKET STREET
14TH FLOOR
HARRISBURG, PA 17101**

**(717) 783-5417
Fax (717) 783-2664**

December 3, 1998

Honorable M. Diane Koken, Commissioner
Insurance Department
1326 Strawberry Square
Harrisburg, PA 17120

Re: IRRC Regulation #11-170 (#1988)
Insurance Department
Surplus Lines Insurance

Dear Commissioner Koken:

Enclosed are our Comments on your proposed regulation #11-170. They are also available on our website at <http://www.irrc.state.pa.us>.

The Comments list our objections and suggestions for your consideration when you prepare the final version of this regulation. We have also specified the regulatory criteria which have not been met. These Comments are not a formal approval or disapproval of the proposed version of this regulation.

If you want to meet with us to discuss these Comments, please contact Fiona Wilmarth at 783-5438.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert E. Nyce".

Robert E. Nyce
Executive Director

REN:kcg
Enclosure
cc: Pete Salvatore
Elaine M. Leitzel
Office of General Counsel
Office of Attorney General
Pete Tartline

COMMENTS OF THE INDEPENDENT REGULATORY REVIEW COMMISSION

ON

INSURANCE DEPARTMENT REGULATION NO. 11-170

SURPLUS LINES INSURANCE

DECEMBER 3, 1998

We have reviewed this proposed regulation from the Insurance Department (Department) and submit for your consideration the following objections and recommendations. Subsections 5.1(h) and 5.1(i) of the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) specify the criteria the Commission must employ to determine whether a regulation is in the public interest. In applying these criteria, our Comments address issues that relate to the reasonableness of and need for certain provisions in the regulation. We recommend that these Comments be carefully considered as you prepare the final-form regulation.

1. Section 124.5. Diligent search of admitted insurers. – Reasonableness, Need and Clarity.

Paragraph (1)(i) Number of declinations required.

This section of the proposed regulation requires a broker to conduct a diligent search among admitted insurers prior to procuring surplus lines insurance from a nonadmitted insurer. Paragraph (1)(i) contains a table which lists the number of declinations the broker must obtain from admitted insurers prior to using a nonadmitted insurer. The number of declinations is related to the number of agent appointments the broker holds.

In its comments, the Professional Insurance Agents Association of Pennsylvania, Maryland and Delaware (PIA) questions the basis of the table in Paragraph (1)(i) which ties a broker's agent appointments to the number of declinations required. For example, a broker with no agent appointments would be required to secure one declination prior to using a nonadmitted insurer; a broker with three appointments would be required to secure three declinations. The PIA also questions how an agent with no appointments could secure a declination from an admitted carrier.

It appears the table in Paragraph (1)(i) penalizes brokers and agents with three or more appointments because they are required to secure three declinations. Brokers and agents with less than three appointments are allowed to secure fewer declinations. Why should some agents be permitted to obtain less than three declinations and still meet the diligent search requirements?

Finally, the Department has not addressed the situation where a broker has three or more appointments, but the insurers with which the broker has appointments do not write coverage comparable to the coverage being sought. The final-form regulation should address what is required if a broker is unable to secure any declinations, or is unable to secure the required number of declinations from the broker's appointments.

Paragraph (1)(ii) Notarization requirement.

This paragraph requires a broker with less than three declinations to attach a notarized statement to the declarations form required by Section 1609(a) of the Insurance Company Law. The purpose of the statement is to affirm the number of appointments the producing broker holds. It is unclear, however, why the statement needs to be notarized. The Department should explain why this requirement is necessary.

Paragraph (3) Declination of coverage.

This paragraph identifies who may make a declination for an admitted insurer. The requirements for declinations are addressed in Paragraph (1)(i) – (v). To improve the clarity of the regulation, we suggest the Department include this provision as a subparagraph of Paragraph (1).