

<h1>Regulatory Analysis Form</h1> <p>(Completed by Promulgating Agency)</p> <p>(All Comments submitted on this regulation will appear on IRRC's website)</p>		<p>INDEPENDENT REGULATORY REVIEW COMMISSION</p>	
<p>(1) Agency Insurance Department</p>		<p>2013 FEB 22 PM 3:16</p>	
<p>(2) Agency Number: Identification Number: 11-251</p>		<p>IRRC Number: 2985</p>	
<p>(3) PA Code Cite: 31 Pa. Code, Chapter 124</p>			
<p>(4) Short Title: Surplus Lines Insurance</p>			
<p>(5) Agency Contacts (List Telephone Number and Email Address):</p> <p>Primary Contact:</p> <p>Peter J. Salvatore, Regulatory Coordinator 1326 Strawberry Square, Harrisburg, PA 17120, (717) 787-4429 psalvatore@pa.gov</p> <p>Secondary Contact:</p>			
<p>(6) Type of Rulemaking (check applicable box):</p> <p><input checked="" type="checkbox"/> Proposed Regulation <input type="checkbox"/> Final Regulation <input type="checkbox"/> Final Omitted Regulation</p>		<p><input type="checkbox"/> Emergency Certification Regulation; <input type="checkbox"/> Certification by the Governor <input type="checkbox"/> Certification by the Attorney General</p>	
<p>(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)</p> <p>The purpose of this rulemaking is to update Chapter 124 in accordance with amendments made to the "Surplus Lines Law" (40 P.S. §§ 991.1601-991.1626) in 2002, 2010, and 2011. See, Act 2002-119 (H.B. 599), P.L. 749, approved July 10, 2002 ("2002 Amendments"); Act 2010-14, (S.B. 237), P.L. 147, approved March 22, 2010 ("2010 Amendments"); and Act 2011-28 (S.B. 1096), P.L. 194, approved June 30, 2011 ("2011 Amendments"). Chapter 124 was initially adopted on March 17, 2000, and sets forth duties and requirements relating to surplus lines agents, writing producers, and surplus lines insurers transacting business in this Commonwealth.</p>			
<p>(8) State the statutory authority for the regulation. Include <u>specific</u> statutory citation.</p> <p>Sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412) relating to the general rulemaking authority of the Department and Article XVI of The Insurance Company Law of 1921 (40 P.S. §§ 991.1601-991.1626) relating to Surplus Lines.</p>			
<p>(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there</p>			

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any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

The amendments update the regulation based upon statutory changes passed by the legislature in 2002, 2010, and 2011. The 2011 Amendments were enacted in response to changes in federal law. In July of 2010, Congress enacted the Nonadmitted and Reinsurance Reform Act of 2010 ("NRRA") as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The NRRA implemented reforms for surplus lines insurance, independently procured insurance and reinsurance.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The Regulation sets forth duties and requirements relating to surplus lines agents, writing producers, and surplus lines insurers transacting business in this Commonwealth. It is in the public interest to clarify and update the regulatory requirements to ensure consistency and clarify requirements for compliance by the industry which will result in the protection of consumers.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

No.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

In 2011, 45 states introduced legislation to comply with the NRRA or amend their surplus lines tax provisions. Forty-three states and Puerto Rico enacted surplus lines legislation relating to NRRA or tax provisions. As the amendments to the regulation are necessitated by the statutory changes, the amendments to the regulation will not affect Pennsylvania's ability to compete with other states.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

The Department circulated preliminary drafts of the regulation to the Insurance Agents and Brokers of Pennsylvania (IAB) and the Pennsylvania Surplus Lines Association (PSLA). The IAB is an organization representing the majority of independent property and casualty producers in Pennsylvania. The PSLA serves as an advisory organization under contract with the Department for purposes of advising and consulting on matters concerning the surplus lines marketplace in Pennsylvania and is also a voluntary membership organization for resident and non-resident surplus lines licensees and supporting membership for producers, insurance carriers and other interested parties. Comments from both the PSLA and IAB were carefully considered and incorporated into the proposed amendments.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

This proposed rulemaking would apply to all surplus lines agents, writing producers and surplus lines insurers transacting business in this Commonwealth. The Department reviewed the standards set forth by 13 CFR § 121.201 and the U.S. Small Business Administration Table of Small Business Size Standards Matched to North American Industry Classification System Codes to determine the applicability of this rulemaking to small businesses. As per these standards, entities classified as "Insurance Agencies and Brokerages" (# 524210) with annual receipts of less than \$7 million and "Direct Property and Casualty Insurance Carriers" (#524126) with fewer than 1500 employees are considered to be small businesses.

As there currently are no surplus lines insurers domesticated in the Commonwealth, no Pennsylvania small business would be subject to those proposed amendments that pertain to surplus lines insurers.

The Department does not collect specific information regarding the annual receipts generated by producers or agencies. However, based upon the most recently available industry data gathered by the

U.S. Census Bureau regarding insurance agencies and brokerages, the Department concluded that it is possible that several of the surplus lines licensees in Pennsylvania would fall within the definition of "small business."

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

There are approximately 131 Foreign Eligible Surplus Lines Insurers and 46 Alien Eligible Surplus Lines Insurers. There are no Surplus Lines Insurers domesticated in Pennsylvania.

There are approximately 601 resident and 1,554 nonresident individuals licensed as surplus lines licensees and 213 resident and 865 nonresident agencies licensed as surplus lines licensees in Pennsylvania. As stated above, it is possible that some of these licensees would be small businesses.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

The proposed amendments to the Surplus Lines Regulations fall within three categories: (1) editorial amendments made throughout the regulation to standardize terminology and make other non-substantive changes; (2) updates to the regulation necessitated by statutory amendments enacted within the past several years; and (3) revisions that recognize existing business practices and/or modernize and streamline administrative requirements to the benefit of Pennsylvania's surplus lines agents and agencies (collectively "licensees"). For the reasons set forth below, an adverse financial, economic, or social impact is not expected with regard to any of these categories.

The amendments necessitated by the conflict between the prior regulatory requirement and the newly-revised statute are found primarily in sections 124.3, 124.5, 124.8, 124.9, and 124.10. These amendments would have no adverse impact because licensees are already complying with the statutory requirements as enacted by the legislature. Additionally, it is in the public interest to update the regulatory requirements to ensure consistency between the statute and regulation to eliminate any possible confusion among the regulatory community.

The projected impact of the amendments modernizing and streamlining administrative requirements (primarily found in sections 124.5, 124.6 and 124.11) will be neutral or positive. Specifically:

- a. The Department does not expect that the proposed amendments would cause small

businesses to incur costs related to compliance or a loss of business opportunities.

- b. The proposed amendments do not impose new or additional recordkeeping requirements upon licensees; to the contrary, they streamline and modernize recordkeeping requirements.
- c. It is not expected that a licensee would need to engage professional expertise to comply with the new requirements.
- d. The amendments do not impose costs or fees upon licensees; nor would they result in lost sales or profits.
- e. The amendments would not have an adverse effect on the ability of licensees to compete in the market.

The proposed changes to these sections and their applicability to small businesses are summarized as follows:

- A writing producer is statutorily required to declare that a diligent effort to procure the desired coverage from admitted insurers was made. (40 P.S. §991.1609). The proposed amendments in section 124.5 restructure the requirements currently found in existing subparagraphs (i) through (iv) of this section, which specify the manner in which such efforts are documented. However, at the suggestion of the IAB, a new option is proposed to be added to paragraph (1), which would allow a writing producer to attest that the risk does not meet the underwriting guidelines of the admitted insurer. It is believed that the inclusion of this option would provide the licensee flexibility and thereby serve to simplify the administrative requirements imposed by the statute.
- The proposed amendments to section 124.6 would modernize current procedural filing requirements and accommodate electronic filings consistent with current practices and with other filing types required by the statute and regulation. Specifically, instead of filing “a copy of the declaration page of the policy, cover note, binder or other evidence of insurance delivered by the surplus lines licensee with the word ‘EXPORT’ stamped in red letters in the upper right hand corner,” a surplus lines licensee would simply file a written declaration reporting the transaction involving the placement of coverage on a form prescribed by the Department. Because such form could be filed electronically, efficiencies will be enhanced in that PSLA will no longer have to manually enter data into their database from the export filing.
- Likewise, the proposed addition of section 124.11 does not impose any new administrative requirements, but merely recognizes long-established industry procedure. This section, which would memorialize the requirement for a surplus licensee to file a written declaration reporting transactions involving exempt commercial purchasers, is reflective of the current practice (in effect since 1993) of filing a 1610-A form, used for reporting placements in which the insured satisfied the required criteria under the law.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

There are no anticipated adverse effects or costs associated with the rulemaking.

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with

compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The amended requirements in Chapter 124 will impose no significant costs and/or savings on surplus lines licensees, writing producers, or surplus lines insurers transacting business in this Commonwealth.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are no costs or savings to local governments associated with this rulemaking.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

The regulation updates, clarifies and strengthens existing requirements; there are no material costs or savings to state government associated with this rulemaking.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

The rulemaking reflects but does not change current reporting requirements established under the Department's statutory authority.

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

N/A

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings						

COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(23a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

As stated above, the regulation will not have an adverse impact on small businesses.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

N/A

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

No other regulatory schemes were considered. The rulemaking is the most efficient means to clarify the requirements established by the Surplus Lines Law.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

As stated above, the proposed amendments to the regulation will not have an adverse affect on small businesses. To the contrary, the proposed amendments reflect existing statutory requirements and streamline and modernize administrative requirements.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

N/A

(29) Include a schedule for review of the regulation including:

- A. The date by which the agency must receive public comments: _____
- B. The date or dates on which public meetings or hearings will be held: _____
- C. The expected date of promulgation of the proposed regulation as a final-form regulation: _____
- D. The expected effective date of the final-form regulation: _____
- E. The date by which compliance with the final-form regulation will be required: _____
- F. The date by which required permits, licenses or other approvals must be obtained: _____

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The Department reviews each of its regulations for continued effectiveness on a triennial basis.

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(Pursuant to Commonwealth Documents Law)

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Copy below is hereby approved as to
form and legality. Attorney General

By *Angela M. Elliott*
(Deputy Attorney General)

DEC 31 2012

Date of Approval

→ Check if applicable.
Copy not approved. Objections
attached.

Copy below is hereby certified to be a true and correct
copy of a document issued, prescribed or promulgated
by:

Insurance Department

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 11-251

DATE OF ADOPTION

BY: *Michael F. Considine*

Michael F Considine
Insurance Commissioner

TITLE:

(EXECUTIVE OFFICER, CHAIRMAN OR
SECRETARY)

Copy below is hereby approved as to form and
legality. Executive or Independent Agencies

Shawn E. Smith
BY: SHAWN E. SMITH

NOV 08 2012

DATE OF APPROVAL

(DEPUTY GENERAL COUNSEL)
(~~CHIEF COUNSEL, INDEPENDENT AGENCY~~)
(STRIKE INAPPLICABLE TITLE)

→ Check if applicable. No Attorney General
approval or objection within 30 days after
submission.

NOTICE OF PROPOSED RULEMAKING

INSURANCE DEPARTMENT

31 Pa. Code, Chapter 124 §§ 124.1-124.10

SURPLUS LINES INSURANCE

Preamble

The Insurance Department (Department) proposes to amend Chapter 124 of the Department's regulations (31 Pa. Code Ch. 124) (relating to Surplus Lines Insurance) to read as set forth in Annex A, under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412) relating to the general rulemaking authority of the Department and Article XVI of The Insurance Company Law of 1921 (40 P.S. §§ 991.1601-991.1626) relating to Surplus Lines ("Surplus Lines Law").

Purpose

The purpose of this rulemaking is to update Chapter 124 in accordance with amendments made to the Surplus Lines Law in 2002, 2010, and 2011. See, Act 2002-119 (H.B. 599), P.L. 749, approved July 10, 2002 ("2002 Amendments"); Act 2010-14, (S.B. 237), P.L. 147, approved March 22, 2010 ("2010 Amendments"); and Act 2011-28 (S.B. 1096), P.L. 194, approved June 30, 2011 ("2011 Amendments"). Chapter 124 was initially adopted on March 17, 2000, and sets forth duties and requirements relating to surplus lines agents, writing producers, and surplus lines insurers transacting business in this Commonwealth.

Explanation of Regulatory Requirements

The following is a description of the changes contained in the proposed rulemaking:

Section 124.3 is proposed to remove the requirement in subsection (b) that an executed copy of a written contract shall be maintained by the surplus lines licensee in its office "in this Commonwealth" in accordance with the 2010 Amendments to section 1610 of the Surplus Lines Law, which deleted such requirement.

Sections 124.4 and 124.5 are proposed to be revised to change the term "producing broker" to "writing producer" in accordance with the nomenclature change as per the 2010 Amendments, which were precipitated to ensure consistency of terminology with the Producer Licensing Modernization Act (Act 147 of 2002).

Section 124.5 is proposed to be amended to clarify the documentation necessary to deem that a diligent search was made and to set forth the procedure for obtaining and recording declinations from admitted carriers. Section 124.5 also contains editorial and structural amendments to accommodate the new requirements therein.

Section 124.6 is proposed to revise the procedural filing requirements to accommodate electronic filings consistent with current practices. Specifically, a surplus lines licensee would file a written declaration reporting the transaction involving the placement of coverage which appears on the most recent export list on a form prescribed by the Department.

Section 124.7 is proposed to be revised to accommodate an editorial change to make the language consistent with section 124.6.

Section 124.8 is proposed to be revised to eliminate the surplus lines licensee bond requirements in accordance with the 2002 Amendments' elimination of the bonding and residency requirements for surplus lines agents.

Section 124.9 is proposed to be revised to eliminate the requirements to qualify as an eligible surplus lines insurer as per the 2011 Amendments to section 1605, which were based upon federal law, i.e., the Nonadmitted and Reinsurance Reform Act of 2010 ("NRRA") requirements, which set forth standards for eligibility of nonadmitted insurers.

Section 124.10 is proposed to be revised to modify required elements of foreign insurer's request to be considered for placement on the Department's eligible surplus lines insurer list in accordance with the revisions to section 1605 made by the 2011 Amendments.

A new section, 124.11, is proposed to be added to require a surplus lines licensee to file with the Department a written declaration reporting transactions involving exempt commercial purchasers pursuant to the requirements of 40 P.S. §991.1610(a.1), as added by the 2011 Amendments.

Affected Parties

This proposed rulemaking would apply to all surplus lines agents, writing producers and surplus lines insurers transacting business in this Commonwealth.

Fiscal Impact

State Government

The rulemaking will strengthen and clarify existing regulatory requirements. There will be no material increase in cost to the Department as a result of this rulemaking.

General Public

While the chapter has no immediate fiscal impact on the general public, the general public will benefit to the extent that adoption of the chapter enhances the efficiency and effectiveness of the Commonwealth's regulation of surplus lines insurance under Article XVI of the act.

Political Subdivisions

The rulemaking will not impose additional costs on political subdivisions.

Private Sector

The amended requirements in Chapter 124 will impose no significant costs on surplus lines licensees, writing producers, or surplus lines insurers transacting business in this Commonwealth.

Paperwork

The rulemaking would not impose additional paperwork on the Department.

Effectiveness/Sunset Date

The rulemaking will become effective within thirty (30) days after published in final form in the *Pennsylvania Bulletin*. The Department continues to monitor the effectiveness of regulations on a triennial basis; therefore, no sunset date has been assigned.

Contact Person

Questions or comments regarding the proposed rulemaking may be addressed in writing to Peter J. Salvatore, Regulatory Coordinator, Insurance Department, 1326 Strawberry Square, Harrisburg, PA 17120, within 30 days following the publication of this notice in the *Pennsylvania Bulletin*. Questions and comments may also be e-mailed to psalvatore@state.pa.us or faxed to (717) 705-3873.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. §745.5(a)), on 2/22/13, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Banking and Insurance Committee and the House Insurance Committee. In addition to the submitted proposed rulemaking, the Department has, as required by the Regulatory Review Act, provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department. A copy of that material is available to the public upon request.

The IRRC will notify the Department of any objections to any portion of the proposed rulemaking within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria that have not been met by that portion. The Regulatory Review Act specifies detailed procedures for the Department, the Governor, and the General Assembly to review these objections before final publication of the regulations.

Michael F. Consedine
Insurance Commissioner

CHAPTER 124. SURPLUS LINES INSURANCE

Sec.

- 124.1. Definitions.
- 124.2. Notice to insured.
- 124.3. Conditions of binding authority.
- 124.4. Evidence of insurance.
- 124.5. Diligent search of admitted insurers.
- 124.6. Export list coverages.
- 124.7. Unique forms of coverages.
- 124.8. [Surplus lines licensee bond requirements] **Reserved.**
- 124.9. [Requirements to qualify as an eligible surplus lines insurer] **Reserved.**
- 124.10. Eligible surplus lines insurer filing requirements.
- 124.11 Exempt commercial purchaser.**

§ 124.1. Definitions

(a) The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act -- Article XVI of The Insurance Company Law of 1921 (40 P. S. §§ 991.1601 -- 991.1625).

Alien insurer -- An insurer incorporated or organized under the laws of a foreign nation or of a province or territory other than a state or a territory of the United States or the District of Columbia.

Binding authority -- The authority delegated to a surplus lines licensee by an eligible surplus lines insurer to obligate the eligible surplus lines insurer to accept a particular risk.

Commissioner -- The Insurance Commissioner of the Commonwealth.

Department -- The Insurance Department of the Commonwealth.

Eligible surplus lines insurer list -- The most recent list of eligible surplus lines insurers published by the Department under section 1605(b) of the act (40 P. S. § 991.1605(b)).

Foreign insurer --

(i) An insurer, other than an alien insurer, not incorporated or organized under the laws of the Commonwealth.

(ii) For purposes of this chapter, the term also includes a United States branch of an alien insurer which branch is not entered through and licensed to transact insurance or reinsurance in this Commonwealth.

(b) Unless the context otherwise requires, other terms found in this chapter are used as defined in the act.

§ 124.2. Notice to insured

The written notice required to be given to the insured under section 1608 of the act (*40 P. S. § 991.1608*) shall be:

- (1) Substantially similar in content to that set forth in section 1608(1) and (2) of the act.
- (2) Prominently printed on the first page of the quotation.

§ 124.3. Conditions of binding authority

(a) A surplus lines licensee may not exercise binding authority in this Commonwealth on behalf of an eligible surplus lines insurer unless there is in force a written contract executed by all parties to the contract setting forth the terms, conditions and limitations governing the exercise of binding authority by the surplus lines licensee. The written contract shall, at a minimum, contain the following:

- (1) A description of the classes of insurance for which the surplus lines licensee holds binding authority.
- (2) The geographical limits of the binding authority.
- (3) The maximum dollar limitations on the binding authority for any one risk for each class of insurance.
- (4) The maximum policy period for which the surplus lines licensee may bind a risk.
- (5) A prohibition against delegation of binding authority by the surplus lines licensee or, if the binding authority is delegable by the surplus lines licensee, a prohibition against delegation of binding authority by the surplus lines licensee without the prior written approval of the eligible surplus lines insurer.
- (6) A provision in the following or substantially similar language:

It is understood and agreed that all insurance placed pursuant to this agreement on risks resident, located, or to be performed in this Commonwealth, shall be effected and written in accordance with Article XVI of the act of May 17, 1921 (P.L. 682, No. 284) (*40 P. S. §§ 991.1601 - 991.1625*).

(b) An executed copy of the written contract shall be maintained by the surplus lines licensee in its office [in this Commonwealth]. The copy shall be available at all reasonable times for examination by the Department without notice for at least 5 years following termination of the contract.

(c) If a surplus lines licensee, who is qualified under this chapter to exercise binding authority on behalf of the eligible surplus lines insurer, delegates binding authority to any other surplus lines licensee, the instrument delegating binding authority shall specifically identify the binding authority agreement between the delegating surplus lines licensee and the eligible surplus lines insurer. An executed copy of the instrument delegating binding authority shall be maintained by both the surplus lines licensee delegating binding authority and the surplus lines licensee to whom the authority is delegated in their offices [in this Commonwealth]. The copy shall be available at all

reasonable times for examination by the Department without notice for at least 5 years following termination of the contract.

§ 124.4. Evidence of insurance

(a) Section 1612 of the act (*40 P. S. § 991.1612*) requires the surplus lines licensee, upon placing surplus lines insurance, to deliver the contract of insurance to the insured or to the [producing broker] **writing producer**. A cover note, binder or other evidence of insurance shall be delivered by the surplus lines licensee if the contract of insurance is not immediately available.

(b) Delivery of the contract or other evidence of insurance by the surplus lines licensee shall occur within 15 calendar days after:

(1) Coverage has been bound by the surplus lines licensee, if the surplus lines licensee holds binding authority on behalf of the eligible surplus lines insurer.

(2) The surplus lines licensee has received written notification from the eligible surplus lines insurer or other nonadmitted insurer that it has assumed the risk, if the surplus lines licensee does not hold binding authority on behalf of the eligible surplus lines insurer.

(c) Under section 1624 of the act (*40 P. S. § 991.1624*), a contract or other evidence of insurance delivered by the surplus lines licensee shall contain a service of process clause substantially similar to the following:

SERVICE OF PROCESS CLAUSE

It is agreed that in the event of the failure of the Insurer(s) or Underwriter(s) herein to pay any amount claimed to be due hereunder, the Insurer(s) or Underwriter(s) herein, at the request of the Insured (or reinsured), will submit to the jurisdiction of any court of competent jurisdiction within the United States of America and will comply with all requirements necessary to give such court jurisdiction, and all matters arising hereunder shall be determined in accordance with the law and practice of such court. It is further agreed that in any such action instituted against any one of them upon this contract, Insurer(s) or Underwriter(s) will abide by the final decision of such court or of any appellate court in the event of an appeal.

Service of process shall be made pursuant to the procedures provided by 42 Pa.C.S. Ch. 53 Subch. B (relating to interstate and international procedure). When making service of process by mail, such process shall be mailed to . The above-named is authorized and directed to accept service of process on behalf of the Insured(s) or Underwriter(s) in any such action or upon the request of the insured (or reinsured) to give a written undertaking to the insured (or reinsured) that it or they will enter a general appearance for the Insurer(s) or Underwriter(s) in the event such an action shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States of America, which makes provisions therefor, the Insured(s) or Underwriter(s) hereby designates the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute or his successor or successors in office, as the true and lawful attorney upon whom any lawful process may be served in any action, suit or proceeding instituted by or on behalf of the insured (or reinsured) or any beneficiary hereunder arising out of his contract of insurance (or

reinsurance), and hereby designates the above-named as the person on whom such process or a true copy thereof shall be served.

§ 124.5. Diligent search of admitted insurers.

Under section 1604(2)(i) of the act (40 P. S. § 991.1604(2)(i)), surplus lines insurance may be procured through a surplus lines licensee from nonadmitted insurers if a diligent search is made among the admitted insurers who are writing, in this Commonwealth, coverage comparable to the coverage being sought. The following minimum requirements and conditions apply to the conduct of a diligent search among admitted insurers under section 1604(2)(i) of the act.

- (1) Under section 1609(a)(1)(i) of the act (40 P. S. § 991.1609(a)(1)(i)), the [producing broker] **writing producer** shall execute and forward to the surplus lines licensee a written statement, in a form prescribed by the Department, declaring that a diligent effort to procure the desired coverage from admitted insurers was made. **A diligent effort shall be deemed to have been made if the writing producer has documented a declination of coverage from at least three admitted insurers which are writing, in this Commonwealth, coverage comparable to the coverage being sought. A declination may be documented by any of the following:**

(i) A written declination from the admitted insurer.

(ii) A written record of an oral declination made by the person who initially received the declination or by another person working for the business from information transmitted by the person who received the declination. Such written record shall include:

(A) The name, office location and phone number of the admitted insurer or firm acting in the capacity of underwriting manager for the admitted insurer.

(B) The name and position of the person contacted.

(C) The date of contact.

(D) An explanation of the declination.

(iii) A written record that the writing producer contacted an admitted insurer who failed to respond within 5 business days, which shall include the manner in which the contact was made and the information required by subparagraph (ii)(A)-(C).

(iv) A written record that the risk does not meet the underwriting guidelines of the admitted insurer. Such written record shall include:

(A) The name of the admitted insurer.

(B) Reference to the underwriting guidelines upon which the declination is based.

[(i) A diligent effort by the producing broker to procure the desired coverage from admitted insurers shall have been made if the producing broker declares on the prescribed form that at least three admitted insurers which are writing, in this Commonwealth, coverage comparable to the coverage being sought have declined to insure the particular risk.

(ii) A producing broker who obtains a declination from an admitted insurer shall either obtain the declination in writing from the admitted insurer or create a written record of an oral declination by the admitted insurer. A written record of an oral declination shall be made by the person who initially received the declination or by another person working for the business from information transmitted by the person who received the declination. A declination shall be obtained from the admitted insurer or recorded by the producing broker at or near the time of receipt of the declination and maintained in the regular course of business.

(iii) A written record documenting an oral declination shall include:

(A) The name, office location and phone number of the admitted insurer or firm acting in the capacity of underwriting manager for the admitted insurer.

(B) The name and position of the person contacted.

(C) The date of contact.

(D) An explanation of the declination.

(iv) If an admitted insurer fails to respond within 5 business days after first being contacted by the producing broker, the producing broker may assume that the insurer has declined to write the risk. The producing broker shall create a written record of the contact, including the manner in which contact was made and the information required under subparagraph (iii)(A)—(C).

(v)]

(2) A declination shall be obtained from the admitted insurer or recorded by the writing producer at or near the time of receipt of the declination and maintained for a period of not less than five years following termination of the contract.

(3) A declination of coverage by an admitted insurer shall be made by a person who is a full-time employeee of the admitted insurer and who has underwriting responsibility for that admitted insurer or by a full-time employeee of a firm acting in the capacity of underwriting manager for the admitted insurer.

[(vi)] **(4)** For purposes of this [sub]paragraph, the term “affiliate” is used as defined in section 1401 of The Insurance Company Law of 1921 (40 P. S. § 991.1401).

[(A)] **(i)** A declination may not be obtained from an admitted insurer which is an affiliate of an admitted insurer from which a declination has already been obtained.

[(B)] iii Surplus lines insurance may not be placed with a nonadmitted insurer that is an affiliate of an admitted insurer from which a declination has been obtained.

[(C)] iiii The restrictions in [clauses (A) and (B)] subparagraphs (i) and (ii) do not apply if the affiliated insurers write independently of each other using separate and independently developed underwriting criteria and marketing plans, and for underwriting purposes, compete with each other for the same type of coverage or class of insurance.

[(2)] (5) Under section 1609(a)(2) of the act, the surplus lines licensee shall file with the Department a written declaration of the licensee's lack of knowledge of how the coverage could have been procured from admitted insurers and shall simultaneously file the written declaration of the [producing broker] writing producer required under section 1609(a)(1) of the act. Under section 1609(a)(3) of the act, if the surplus lines licensee acts as both the [producing broker] writing producer and surplus lines licensee in a particular transaction, the surplus lines licensee is required to execute the declarations required under section 1609(a)(1) and (2) of the act.

§ 124.6. Export list coverages

(a) Under section 1604(2)(ii) of the act (*40 P. S. § 991.1604(2)(ii)*), the Commissioner may create and maintain an export list of insurance coverages for which the full amount or kind of insurance cannot be obtained from admitted insurers.

(b) The diligent search requirement of section 1604(2)(i) of the act and the reporting requirements of section 1609(a) of the act (*40 P. S. § 991.1609(a)*) do not apply to the placement of an insurance coverage which appears on the export list.

(c) Within 45-calendar days after the placement of an insurance coverage which appears on the most recent export list published by the Commissioner, the surplus lines licensee shall file with the Department or its designee [a copy of the declaration page of the policy, cover note, binder or other evidence of insurance delivered by the surplus lines licensee in accordance with section 1612(a) of the act (*40 P. S. § 991.1612(a)*) with the word "EXPORT" stamped in red letters in the upper right hand corner] a written declaration reporting the transaction on a form prescribed by the Department.

§ 124.7. Unique forms of coverages

Under section 1604(2)(iii) of the act (*40 P. S. § 1604(2)(iii)*), surplus lines insurance may be procured through a surplus lines licensee from nonadmitted insurers if the kind of insurance sought to be obtained from admitted insurers requires a unique form of coverage not available in the admitted market. Within 45-calendar days after a unique form of coverage has been placed, the surplus lines licensee shall file with the Department or its designee, a written declaration reporting the transaction [in] on a form prescribed by the Department.

§ 124.8. [Surplus lines licensee bond requirements]

(a) The bond required under section 1615(b)(4) of the act (*40 P. S. § 991.1615(b)(4)*) to be maintained concurrent with the term of a surplus lines agent's license shall be in the amount of at least \$ 50,000 for the initial term of the license.

(b) The amount of the bond required for renewal of a surplus lines agent's license shall be based on the total taxable surplus lines premium volume of the surplus lines agent during the preceding calendar year as reported to the Department of Revenue under section 1621 of the act (40 P. S. § 991.1621) and determined by using the following table:

Total Taxable Surplus Lines Premium Volume	Required Minimum Amount of Bond
\$ 0 -- \$ 1,999,999	\$ 50,000
\$ 2,000,000 -- \$ 3,999,999	\$ 100,000
\$ 4,000,000 -- \$ 5,999,999	\$ 150,000
\$ 6,000,000 -- \$ 7,999,999	\$ 200,000
\$ 8,000,000 -- and over	3% of the total taxable surplus lines premium volume of the surplus lines licensee during the preceding calendar year or other amount acceptable to the Commissioner.]

Reserved.

§ 124.9. [Requirements to qualify as an eligible surplus lines insurer

(a) To be considered for placement on the most recent eligible surplus lines insurer list, a nonadmitted insurer shall meet the requirements of the act and this chapter. The nonadmitted insurer shall meet the following requirements:

(1) Currently licensed as an insurer in the state or country of its domicile for the kinds of insurance which it proposes to provide in this Commonwealth.

(2) Either engaged in doing the business of surplus lines insurance in one or more jurisdictions for at least 3 years immediately preceding the filing of an application to be an eligible surplus lines insurer; or an affiliate of an admitted insurer which has been so admitted for at least 3 years immediately preceding seeking approval to do business in this Commonwealth.

(b) In addition to the requirements in subsection (a), an alien insurer shall provide documentation evidencing its inclusion on the most recent quarterly listing of nonadmitted alien insurers which have met the criteria in the plan of operation adopted by the National Association of Insurance Commissioners International Insurers Department, or successor organization] **Reserved.**

§ 124.10. Eligible surplus lines insurer filing requirements

(a) A request to consider a foreign [nonadmitted] insurer for placement on the Department's eligible surplus lines insurer list **pursuant to 40 P.S. §991.1605(b)** shall be made in writing by **or on behalf of an insurer** [a surplus lines licensee] and shall include the following:

(1) [*Charter.* A copy of the charter of the nonadmitted insurer or similar document and any amendments, additions and deletions thereto certified by the corporate secretary of the nonadmitted insurer

(2)] [*Certificate of authority.* A copy of the certificate of authority of the insurer or similar document setting forth its authority to issue policies and insure risks in the jurisdiction in which the insurer is incorporated, formed or organized.

[(3)] (2) *Financial statement* .

(i) A copy of the latest annual financial report or statement of the insurer signed by the officers of the insurer and filed with the insurance regulatory authority or other governmental authority in the jurisdiction in which the insurer is incorporated, formed or organized. The copy shall include all supplemental reports, exhibits and schedules required as part of the annual statement filing and shall be certified as provided under section 1605(3) of the act (*40 P. S. § 991.1605(3)*).

(ii) A copy of each subsequent quarterly financial report or statement of the insurer signed by the officers of the insurer and filed with the insurance regulatory authority or other governmental authority in the jurisdiction in which the insurer is incorporated, formed or organized.

[(4)] *Report of examination* . A copy of the most recent report of examination of the insurer conducted by the insurance regulatory authority or similar governmental authority requiring the examination and certified by the proper official of that authority.

(5) *Biographical information* . Biographical data for each officer, director, person in managerial control, and like individual on a form provided by the Department

(6)] (3) *Kind of insurance* . A written statement by an officer of the insurer identifying the kinds of insurance coverages the insurer intends to write and the types of risks the insurer intends to insure in this Commonwealth.

[(7)] *Designee for service of process* . A written designation of the name of the individual employed by the insurer or other appropriate representative to whom all lawful process shall be mailed. The designee shall maintain a legal residence, domicile or office in the United States.

(8)] (4) *Additional information*. Additional information as may be required by the Commissioner to determine whether the insurer meets the standards and requirements of the act [and this chapter].

(b) After placement on the eligible surplus lines insurer list, a foreign insurer shall submit to the Department [through a surplus lines licensee]:

(1) [Changes or additions, or both, to the information in subsection (a)(7) within 10-calendar days of the occurrence.

(2) Changes or additions, or both, to the information in subsection (a)(1) and (5) within 30-calendar days of the occurrence.

(3)] A certified copy of the information in subsection [(a)(3)(i)] (a)(2)(i) within 30-calendar days after the date required for filing in its domiciliary jurisdiction. [A copy of the information in subsection (a)(2) shall accompany the filing.]

[(4)] (2) A copy of the information in subsection [(a)(3)(ii)] (a)(2)(ii) within 45-calendar days from the close of the quarter for which the report is prepared.

[(5)] A certified copy of the information in subsection (a)(4) within 30-calendar days of the date it became a public document].

[(6)] (3) Additional items as may be required by the Commissioner to determine whether the insurer continues to meet the standards under the act.

(c) A request to consider an alien [nonadmitted] insurer for placement on the Department's eligible surplus lines insurer list pursuant to 40 P.S. §991.1605(b) shall be made in writing by [a surplus lines licensee] or on behalf of an insurer and shall include [the following:] **documentation evidencing that the insurer is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the National Association of Insurance Commissioners.**

[(1) *Charter*. A copy of the charter of the insurer or similar document and any amendments, additions and deletions thereto certified by the corporate secretary of the insurer

(2) *Certificate of authority*. A copy of the certificate of authority of the insurer or similar document setting forth its authority to issue policies and insure risks in the jurisdiction in which the insurer is incorporated, formed or organized.

(3) *Annual financial statement*.

(i) Two copies of the latest annual financial report of the insurer signed by the officers of the insurer and filed with the insurance regulatory authority or other governmental authority in the jurisdiction in which the insurer is incorporated, formed or organized. One copy of the financial report or statement shall be expressed in language and currency of the place of incorporation, formation or organization of the insurer and the other copy prepared and expressed in the English language and United States currency at the current rate of exchange as of the statement date. Certification of the financial report or statement shall be in accordance with section 1605(3) of the act (40 P. S. § 991.1605(3)).

(ii) A copy of the latest annual financial statement of the insurer in the standard reporting format prescribed by the National Association of Insurance Commissioners' International Insurers Department, or successor organization.

(4) *Trust fund agreement*.

(i) A copy of the trust fund agreement concerning the trust fund which the insurer maintains in the United States in either a National bank or a member of the Federal Reserve System in an amount as set out in the act for the protection of all of its policyholders in the United States, consisting of cash, securities, letters of credit or investments of substantially the same character and quality as those which are eligible investments for admitted insurers authorized to write like kinds of insurance in this Commonwealth.

(ii) The trustees of the trust fund shall give written verification of the amount initially deposited and presently on deposit by the insurer in the trust fund. The trustees shall immediately give written notification to the Department at any time the trust fund deposit is less than the minimum requirement as provided for in section 1605(a)(2)(i) of the act.

(5) *Biographical sketches*. Biographical data for each officer, director, person in managerial control, and like individual on a form provided by the Department.

(6) *Kind of insurance*. A written statement by an officer of the insurer identifying the kinds of insurance coverages the insurer intends to write and the types of risks the insurer intends to insure in this Commonwealth.

(7) *Designee for service of process.* A written designation of the name of the individual employed by the insurer or other appropriate representative to whom all lawful process shall be mailed. The designee shall maintain a legal residence, domicile or office in the United States.

(8) *Additional information.* Additional information as required by the Commissioner to determine whether the insurer meets the standards and requirements of the act and this chapter.]

(d) After placement on the eligible surplus lines insurer list, [an alien] a nonadmitted insurer shall [submit the following to] **notify** the Department [through a surplus lines licensee:] **within 10 business days if the nonadmitted insurer no longer satisfies the requirements of 40 P.S. §991.1605.**

[(1) Changes or additions, or both, to the information in subsection (c)(7) and (4)(i) within 10-calendar days of the occurrence.

(2) Changes or additions, or both, to the information in subsection (c)(1) and (5) within 30-calendar days of the occurrence.

(3) A certified copy of the information in subsection (c)(3)(i) within 30-calendar days after the date required for filing in its domiciliary jurisdiction. A copy of the information in subsection (c)(2), (3)(ii) and (4)(ii) shall accompany the filing.

(4) Additional items as may be required by the Commissioner to determine whether the insurer continues to meet the standards under the act.]

124.11. Exempt commercial purchaser.

In order for the Department to determine whether a surplus lines licensee has placed business for an exempt commercial purchaser pursuant to 40 P.S. §991.1610(a.1), the surplus lines licensee shall file, with the Department or its designee, a written declaration reporting the transaction on a form prescribed by the Department.



February 22, 2013

Mr. David Sumner
Executive Director
Independent Regulatory Review Comm.
333 Market Street, 14th Floor
Harrisburg, PA 17101

Re: Insurance Department Proposed Regulation No. 11-251, Surplus Lines Insurance

Dear Mr. Sumner:

Pursuant to Section 5(a) of the Regulatory Review Act, enclosed for your information and review is proposed regulation 31 Pa. Code, Chapter 124, Surplus Lines Insurance.

The purpose of this rulemaking is to update Chapter 124 in accordance with amendments made to the Surplus Lines Law in 2002, 2010, and 2011.

If you have any questions regarding this matter, please contact me at (717) 787-4429.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Peter J. Salvatore".

Peter J. Salvatore
Regulatory Coordinator

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 11-251
SUBJECT: SURPLUS LINES INSURANCE
AGENCY: DEPARTMENT OF INSURANCE

TYPE OF REGULATION

- X Proposed Regulation
Final Regulation
Final Regulation with Notice of Proposed Rulemaking Omitted
120-day Emergency Certification of the Attorney General
120-day Emergency Certification of the Governor
Delivery of Tolled Regulation
a. With Revisions b. Without Revisions

2013 FEB 22 PM 3:17

RECEIVED
IRRC

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
2-22-13	<i>John Deery</i>	HOUSE COMMITTEE ON INSURANCE
2-22-13	<i>Nina Strone</i>	MAJORITY CHAIRMAN <u>REP. NICHOLAS MICOZZIE</u>
2-22-13	<i>Cheryl Schell</i>	SENATE COMMITTEE ON BANKING & INSURANCE
2-22-13	<i>C. Kennedy</i>	MAJORITY CHAIRMAN <u>SEN. DONALD C. WHITE</u>
2/22/13	<i>K. Cooper</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
2/22/13	<i>Samuel Hassan</i>	LEGISLATIVE REFERENCE BUREAU (for Proposed only)