

RULES AND REGULATIONS

Title 31—INSURANCE

INSURANCE DEPARTMENT

[31 PA. CODE CHS. 35, 123 AND 124]

Surplus Lines Insurance

The Insurance Department (Department), by this order deletes Chapters 35 and 123 (relating to surplus lines agents; and surplus lines) and adopts Chapter 124 (relating to surplus lines insurance) to read as set forth in Annex A. This rulemaking sets forth duties and requirements relating to surplus lines agents, producing brokers and surplus lines insurers transacting business in this Commonwealth.

Purpose

The surplus lines insurance market is intended to provide coverage for nonstandard or unique risks that do not fit the underwriting guidelines of insurers licensed to transact business in the market for standard or traditional insurance coverages (admitted insurers). Surplus lines insurance may be procured through licensed surplus lines agents (surplus lines licensees) from insurers that appear on a list of eligible surplus lines insurers published by the Department. A surplus lines licensee may place coverage as a result of being contacted directly by a consumer or in response to a request from another insurance broker (producing broker) who is dealing directly with the consumer.

The Commonwealth's surplus lines laws and regulations were adopted to establish a system of regulations that permits orderly access to surplus lines insurance in this Commonwealth with reputable and financially sound insurers and provides for adequate protections in the insurance marketplace. The Commonwealth's initial Surplus Lines Insurance Law (act of January 24, 1966, (1965) P. L. 1509) was replaced by Article XVI of The Insurance Company Law of 1921 (40 P. S. §§ 991.1601—991.1625) (act) in 1992. This rulemaking replaces the regulations adopted under the authority of the initial Surplus Lines Insurance Law with updated regulations consistent with Article XVI of the act.

Statutory Authority

This final-form rulemaking is adopted under the authority of Article XVI of the act.

Comments

Notice of the proposed rulemaking was published at 28 Pa.B. 4932 (October 3, 1998) with a 30-day public comment period.

No comments were received from the standing committees. Comments were received during the 30-day public comment period from the Alliance of American Insurers (Alliance); The Insurance Federation of Pennsylvania, Inc., (IFP) and from Senator Frank A. Salvatore on behalf of Martin G. Lane, Chairperson of the Board of Aegis Security Insurance Company (Aegis). On November 12, 1998, comments were also received from the Professional Insurance Agents Association (PIA). The Independent Regulatory Review Commission (IRRC) submitted its comments and recommendations to the Department on December 3, 1998. The following is a summary of the comments and the Department's response to its final-form rulemaking.

The Alliance and the IFP commented in support of the rulemaking published in proposed form.

Aegis suggested that the rulemaking requires notice to insureds that a nonadmitted insurer is not licensed by the Department, is subject to limited regulation, and that losses would not be covered by the State guaranty fund if the insurer becomes insolvent. Section 1608 of the act requires surplus lines licensees to provide insureds with written notice when all or part of their insurance is placed with a nonadmitted insurer (an eligible surplus lines insurer or other insurer that is not authorized and not licensed to do business in this Commonwealth). The notice must be provided at the time an insured is presented with a quotation and must advise the insured that: (1) the nonadmitted insurer is not licensed by the Department and is subject to only limited regulation; and (2) losses will not be covered by the State guaranty fund in the event the insurer becomes insolvent. Section 124.2 (relating to notice to insured) requires the notice to be substantially similar in content to the language cited in section 1608 of the act and prominently printed on the first page of the quotation. In addition, section 1612 of the act requires substantially the same notice to appear on every evidence of insurance negotiated, placed or procured under Article XVI of the act. Therefore, the Department believes that the notice suggested by Martin Lane is sufficiently addressed in the authorizing statute and § 124.2 of this final-form rulemaking.

The PIA and IRRC commented on § 124.5(1)(i) (relating to diligent search of admitted insurers) of the proposed rulemaking concerning the producing broker's duty to make a diligent effort to procure the desired coverage from admitted insurers before having the coverage placed with an eligible surplus lines insurer. Section 1604(2) of the act sets forth three criteria, at least one of which must be satisfied before a surplus lines licensee may place coverage with an eligible surplus lines insurer. Under section 1604(2)(i) of the act, the first criterion permits placement of surplus lines insurance when the full amount or kind of insurance cannot be obtained from admitted insurers in this Commonwealth, if a diligent search has been made among the admitted insurers who are writing coverage comparable to the coverage being sought. Under section 1609(a)(1) of the act, the second criterion, the declaration form prescribed, currently requires the producing broker (or the surplus lines licensee when acting as both the producing broker and the surplus lines licensee) to identify at least three admitted insurers which have declined to insure the risk. Under section 1609(a)(2) of the act, the third criterion, the surplus lines licensee, is also required to file a written declaration of the licensee's lack of knowledge of how the coverage could have been procured from admitted insurers when coverage is placed under the diligent search criterion of the act.

Section 124.5(1)(i) of the proposed rulemaking would have permitted a producing broker with less than three agent appointments to obtain declinations from less than three admitted insurers when placing coverage in the surplus lines market under the diligent search criterion. An agent appointment is a written agreement between an agent and an insurer under which the agent may solicit, negotiate, make or procure insurance coverages written by the insurer. See § 37.1 (relating to definitions). IRRC commented that the proposed provisions for less than three declinations appeared to penalize brokers and

agents with three or more appointments because they would be required to secure three declinations while brokers and agents with less than three appointments would be allowed to secure fewer declinations. The PIA also questioned the basis of the proposed provisions to tie the number of required declinations to the number of appointments but commented on the difficulties producing brokers or surplus lines licensees may face in obtaining declinations from admitted insurers with which they do not have agent appointments. IRRC recommended that the final-form rulemaking addresses what is required if a producing broker is unable to secure the required number of declinations. In response to these comments, the Department has amended § 124.5(1)(i) to:

1. Delete the proposed provisions to base the number of required declinations on the number of agent appointments, and

2. Add a statement consistent with existing requirements to provide that a diligent effort to procure the desired coverage from admitted insurers shall have been made if the producing broker declares on the form prescribed under section 1609(a)(1) of the act that at least three admitted insurers have declined to insure the risk.

The amendment will retain the Commonwealth's historic requirement that producing brokers obtain at least three declinations when placing coverage under the diligent search criterion of the act. At least 42 other states specifically require a diligent search as a condition for placing coverage in the surplus lines market, and at least 11 of those states require a minimum of three declinations to evidence a diligent search. In addition to being a Nationally recognized approach to diligent search requirements, the standard requirement for three declinations applies equally to all producing brokers transacting business in the surplus lines market. The historic requirement for three declinations also provides for stronger consumer protection by establishing a uniform minimum standard for the degree of diligence performed by producing brokers when searching the admitted market for available coverages. Under § 124.6 (relating to export list coverages), a diligent search will not be required when placing coverages that appear on the most recent export list of coverages recognized as generally unavailable from admitted insurers. Additionally, a diligent search is not required when placing coverage for a risk that requires a unique coverage not available from admitted insurers. Further, § 124.5(1)(iv) will permit a producing broker to assume that an admitted insurer has declined to write a risk if the insurer fails to respond within 5 business days. Surplus lines insurers are subject to limited regulation by the Department, and policyholders are not protected by the Pennsylvania Property and Casualty Insurance Guaranty Association in the event of the insolvency of a surplus lines insurer. Therefore, the criteria in section 1604(2) of the act and the requirements of this final-form rulemaking are intended to permit orderly access to surplus lines insurance in this Commonwealth while providing for adequate consumer protections.

Section 124.5(1)(ii) of the proposal requires a producing broker who obtained less than three declinations in conducting a diligent search of the admitted market to attach to the prescribed declaration form a notarized statement affirming the number of agent appointments held by the broker. The PIA commented that this requirement was unnecessary, cumbersome and expensive and recommended it be deleted in the final-form rulemaking. IRRC noted that the purpose of the statement was to affirm the number of appointments held by a broker who

obtained less than three declinations, but asked the Department to explain why the statement needed to be notarized. Since the Department has deleted the companion provision in § 124.5(1)(i) that based the minimum number of required declinations on the number of agent appointments, § 124.5(1)(ii) is no longer needed and has also been deleted in this final-form rulemaking.

IRRC suggested that the requirements for declinations in § 124.5(3) of the proposed rulemaking be included under the provisions of § 124.5(1) to improve the clarity of the rulemaking. In response to IRRC's comment, the Department has included the provisions of § 124.5(3) and (4) of the proposal under § 124.5(1) in this final-form rulemaking.

Finally, the Department amended § 124.10(c)(2) (relating to eligible surplus lines insurer filing requirements) to change the word insurer to insure. The change was made to correct a typographical error in the proposed rulemaking.

Fiscal Impact

State Government

Department costs associated with the review of applications and reports filed under Chapter 124 will not increase as a result of this final-form rulemaking. The chapter eliminates current costs imposed on the Department and regulated parties related to the filing and review of binding authority contracts. The chapter will serve to enhance the protection of Commonwealth revenues by imposing minimum bonding requirements consistent with premium tax liability.

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 chapter has no impact on costs to political subdivisions.

Private Sector

The reporting, recordkeeping and qualification requirements in Chapter 124 will impose no significant costs on surplus lines licensees, producing brokers or surplus lines insurers transacting business in this Commonwealth.

Paperwork

Chapter 124 eliminates filing requirements related to binding authority contracts. The chapter requires producing brokers to maintain records to demonstrate that a diligent search of licensed insurers was made before placing coverage in the surplus lines market. These recordkeeping requirements provide guidance to producing brokers in efforts to conduct a proper search of the licensed market and enhance compliance with the statutory conditions that must be met before coverage is placed in the surplus lines market. The requirements also enhance the Department's ability to monitor transactions in the surplus lines market.

Persons Regulated

This final-form rulemaking applies to all surplus lines agents, producing brokers and surplus lines insurers transacting business in this Commonwealth.

Contact Person

Questions or comments regarding this final-form rulemaking may be addressed to Peter J. Salvatore, Regulatory Coordinator, Office of Special Projects, 1326 Strawberry Square, Harrisburg, PA 17120, (717) 787-4429. Questions or comments may also be E-mailed to psalvato@ins.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 September 23, 1998, the Department submitted a copy of this proposed rulemaking, published at 28 Pa.B. 4932 (October 3, 1998) to IRRC and to the Chairpersons of the Senate Committee on Banking and Insurance and the House Insurance Committee. In addition to the submitted rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." In compliance with section 5(c) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of the comments received. A copy of that material is available to the public upon request.

This final-form rulemaking was deemed approved by the Senate and House Committees on February 13, 2000, in accordance with section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)). IRRC met on February 17, 2000, and approved the regulation in accordance with section 5.1(e) of the Regulatory Review Act.

Findings

The Insurance Commissioner finds that:

(1) Public notice of intention to adopt this final-form rulemaking as amended by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202), and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of this final-form rulemaking in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statutes.

Order

The Insurance Commissioner, acting under the authorizing statutes, orders that:

(1) The regulations of the Department, 31 Pa. Code Chapters 35, 123 and 124, are amended by deleting §§ 35.1—35.4, 35.11—35.13, 35.21, 35.22, 123.1, 123.4, 123.11, 123.12, 123.31—123.42 and 123.51—123.63; and by adding §§ 124.1—124.10, to read as set forth in Annex A.

(2) The Commissioner shall submit this order and Annex A to the Office of General Counsel and Office of Attorney General for approval as to form and legality as required by law.

(3) The Commissioner shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(4) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,
Insurance Commissioner

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 30 Pa.B. 1320 (March 4, 2000).)

Fiscal Note: Fiscal Note 11-170 remains valid for the final adoption of the subject regulations.

Annex A**TITLE 31. INSURANCE****PART I. GENERAL PROVISIONS****CHAPTER 35. (Reserved)**

§§ 35.1—35.4. (Reserved).

§§ 35.11—35.13. (Reserved).

§ 35.21. (Reserved).

§ 35.22. (Reserved).

PART VIII. MISCELLANEOUS PROVISIONS**CHAPTER 123. (Reserved)**

§ 123.1. (Reserved).

§ 123.4. (Reserved).

§ 123.11. (Reserved).

§ 123.12. (Reserved).

§ 123.21. (Reserved).

§§ 123.31—123.42. (Reserved).

§§ 123.51—123.63. (Reserved).

CHAPTER 124. SURPLUS LINES INSURANCE

Sec.

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124.10. Eligible surplus lines insurer filing requirements.

§ 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. 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 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.

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

(vi) For purposes of this subparagraph, the term "affiliate" is used as defined in section 1401 of The Insurance Company Law of 1921 (40 P. S. § 991.1401).

(A) 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) 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) The restrictions in clauses (A) and (B) 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) 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 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 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.

§ 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 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:

<i>Total Taxable Surplus Lines Premium Volume</i>	<i>Required Minimum Amount of Bond</i>
\$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.

§ 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.

§ 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 shall be made in writing by 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) *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) *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 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) 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) A copy of the information in subsection (a)(3)(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) 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 shall be made in writing by a surplus lines licensee and shall include the following:

(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 insurer shall submit the following to the Department through a surplus lines licensee:

(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.

[Pa.B. Doc. No. 00-478. Filed for public inspection March 17, 2000, 9:00 a.m.]

Title 52—PUBLIC UTILITIES

PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 69]

Corrective Amendment to 52 Pa. Code § 69.85

The Pennsylvania Public Utility Commission (Commission) has discovered a discrepancy between the agency text of 52 Pa. Code § 69.85, as deposited with the Legislative Reference Bureau, and adopted at 28 Pa.B. 6309, 6314 (December 26, 1998) and the official text published in the *Pennsylvania Code Reporter* (MTS 292) and as currently appearing in the *Pennsylvania Code*. The deletion of § 69.85 was not codified.

Therefore, under 45 Pa.C.S. § 901, Commission has deposited with the Legislative Reference Bureau a corrective amendment to § 69.85. The corrective amendment to § 69.85 is effective as of March 6, 1999, the date the defective official text was announced in the *Pennsylvania Bulletin*.

The correct version of § 69.85 appears in Annex A.

JAMES J. MCNULTY,
Secretary

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 69. GENERAL ORDERS, POLICY STATEMENTS AND GUIDELINES ON FIXED UTILITIES

§ 69.85. (Reserved).

[Pa.B. Doc. No. 00-479. Filed for public inspection March 17, 2000, 9:00 a.m.]