

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.	[Reserved].
124.9.	[Reserved].
124.10.	Eligible surplus lines insurer filing requirements.
124.11.	Exempt commercial purchaser.

Authority

The provisions of this Chapter 124 issued under Article XVI of The Insurance Company Law of 1921 (40 P. S. §§ 991.1601—991.1625), unless otherwise noted.

Source

The provisions of this Chapter 124 adopted March 17, 2000, effective March 18, 2000, 30 Pa.B. 1542, unless otherwise noted.

§ 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 must, 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. 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. 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.

Authority

The provisions of this § 124.3 amended under sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); and Article XVI of The Insurance Company Law of 1921 (40 P. S. §§ 991.1601—991.1626).

Source

The provisions of this § 124.3 amended October 25, 2013, effective November 25, 2013, 43 Pa.B. 6345. Immediately preceding text appears at serial pages (263780) to (263781).

§ 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 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.

Authority

The provisions of this § 124.4 amended under sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); and Article XVI of The Insurance Company Law of 1921 (40 P. S. §§ 991.1601—991.1626).

Source

The provisions of this § 124.4 amended October 25, 2013, effective November 25, 2013, 43 Pa.B. 6345. Immediately preceding text appears at serial pages (263781) to (263782).

§ 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 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 will 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. The written record must 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 includes the manner in which the contact was made and the information required under subparagraph (ii)(A)—(C).
 - (iv) A written record that the risk does not meet the underwriting guidelines of the admitted insurer. The written record must include:
 - (A) The name of the admitted insurer.
 - (B) Reference to the underwriting guidelines upon which the declination is based.
- (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 at least 5 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 employee of the admitted insurer and who has underwriting responsibility for that admitted insurer or by a full-time employee of a firm acting in the capacity of underwriting manager for the admitted insurer.
 - (4) For purposes of this paragraph, the term “affiliate” is used as defined in section 1401 of The Insurance Company Law of 1921 (40 P. S. § 991.1401).
 - (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.
 - (ii) 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.
 - (iii) The restrictions in 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.

(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 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 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.

Authority

The provisions of this § 124.5 amended under sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); and Article XVI of The Insurance Company Law of 1921 (40 P. S. §§ 991.1601—991.1626).

Source

The provisions of this § 124.5 amended October 25, 2013, effective November 25, 2013, 43 Pa.B. 6345. Immediately preceding text appears at serial pages (263782) to (263783).

§ 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 written declaration reporting the transaction on a form prescribed by the Department.

Authority

The provisions of this § 124.6 amended under sections 206, 506 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); and Article XVI of The Insurance Company Law of 1921 (40 P. S. §§ 991.1601—991.1626).

Source

The provisions of this § 124.6 amended October 25, 2013, effective November 25, 2013, 43 Pa.B. 6345. Immediately preceding text appears at serial page (263784).

§ 124.7. Unique forms of coverages.

Under section 1604(2)(iii) of the act (40 P. S. § 991.1604(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 on a form prescribed by the Department.

Authority

The provisions of this § 124.7 amended under sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); and Article XVI of The Insurance Company Law of 1921 (40 P. S. §§ 991.1601—991.1626).

Source

The provisions of this § 124.7 amended October 25, 2013, effective November 25, 2013, 43 Pa.B. 6345. Immediately preceding text appears at serial page (263784).

§ 124.8. [Reserved].

Authority

The provisions of this § 124.8 reserved under sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); and Article XVI of The Insurance Company Law of 1921 (40 P. S. §§ 991.1601—991.1626).

Source

The provisions of this § 124.8 reserved October 25, 2013, effective November 25, 2013, 43 Pa.B. 6345. Immediately preceding text appears at serial pages (263784) to (263785).

§ 124.9. [Reserved].

Authority

The provisions of this § 124.9 reserved under sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); and Article XVI of The Insurance Company Law of 1921 (40 P. S. §§ 991.1601—991.1626).

Source

The provisions of this § 124.9 reserved October 25, 2013, effective November 25, 2013, 43 Pa.B. 6345. Immediately preceding text appears at serial page (263785).

§ 124.10. Eligible surplus lines insurer filing requirements.

(a) A request to consider a foreign insurer for placement on the Department's eligible surplus lines insurer list under section 1605(b) of the act (40 P. S. § 991.1605(b)) shall be made in writing by or on behalf of an insurer and include the following:

- (1) *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.

(2) *Financial statement.* A copy of the jurat page from 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. If the Department is unable to determine from the jurat page of the latest annual financial report or statement whether the insurer meets the requirements of section 1605(a) of the act, the insurer shall, upon request, forward to the Department:

(i) A copy of the entire annual financial report or statement. The copy must include all supplemental reports, exhibits and schedules required as part of the annual statement filing.

(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.

(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.

(b) After placement on the eligible surplus lines insurer list, a foreign insurer shall submit to the Department the information required under subsection (a)(2) within 30 days after the date required for filing in its domiciliary jurisdiction. If the Department cannot determine from the information provided whether the insurer continues to meet the requirements of section 1605(a) of the act, the insurer shall submit the information required under subsection (a) upon request.

(c) A request to consider an alien insurer for placement on the Department's eligible surplus lines insurer list under section 1605(b) of the act shall be made in writing by or on behalf of an insurer and include 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.

(d) After placement on the eligible surplus lines insurer list, a nonadmitted insurer shall notify the Department within 10 business days if the nonadmitted insurer no longer satisfies the requirements of section 1605 of the act.

Authority

The provisions of this § 124.10 amended under sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); and Article XVI of The Insurance Company Law of 1921 (40 P. S. §§ 991.1601—991.1626).

Source

The provisions of this § 124.10 amended October 25, 2013, effective November 25, 2013, 43 Pa.B. 6345. Immediately preceding text appears at serial pages (263785) to (263788).

§ 124.11. Exempt commercial purchaser.

For the Department to determine whether a surplus lines licensee has placed business for an exempt commercial purchaser under section 1610(a.1) of the act (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.

Authority

The provisions of this § 124.11 issued under sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); and Article XVI of The Insurance Company Law of 1921 (40 P. S. §§ 991.1601—991.1626).

Source

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[Next page is 125-1.]

124-10

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