

SUBCHAPTER A. GENERAL PROVISIONS

§15.1. Effective Date of Rules and Regulations.

(a) These sections apply to all transactions and circumstances taking place on or after the effective date of this subchapter if Texas is the home state of the insured.

(b) Texas Department of Insurance rules ~~[which are]~~ applicable to ~~[the]~~ licensing, regulation, and supervision of surplus lines agents and surplus lines insurers and transactions in effect before ~~[prior to]~~ the effective date of these sections ~~[shall]~~ apply in the adjudication of acts and transactions occurring before ~~[prior to]~~ the effective date of these sections.

§15.2. Definitions.

(a) The definitions in Insurance Code §31.001 and §981.002 apply to this chapter.

(b) The following words and terms, when used in this chapter ~~[subchapter]~~, have the following meanings, unless the context clearly indicates otherwise.

(1) Admitted or authorized insurer--An insurer ~~[that is]~~ doing the business of insurance in this state, as defined in ~~[the Texas]~~ Insurance Code §101.051, and licensed under the provisions of the ~~[Texas]~~ Insurance Code.

(2) ~~[Surplus Lines]~~ Agent of record--A Texas-licensed surplus lines agent, whether an individual or an agency, that places ~~[placing]~~ a policy with an eligible surplus

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lines insurer and holds the rights to renew the policy; or the Texas-licensed surplus lines agent, whether an individual or an agency, transacting business directly with an unlicensed agent to obtain coverage with an eligible surplus lines insurer. The agent in these situations is the agent of record for the policy placement. In a transaction involving a managing underwriter and another Texas-licensed surplus lines agent, the party responsible for paying premium taxes under Insurance Code §225.006 is the agent of record [~~Eligible surplus lines insurer--An unlicensed insurer allowed by the commissioner to do business in Texas as a surplus lines insurer~~].

(3) Client--Any person to whom a surplus lines agent sells or attempts to sell a surplus lines insurance policy, or from whom an application for surplus lines insurance is accepted, or to whom advice and counsel on a surplus lines insurance policy is given for the purpose of selling a surplus lines insurance policy.

(4) Comptroller--The Office of the Texas Comptroller of Public Accounts.

(5) EFS--The stamping office's electronic filing system.

~~[(6) Licensee--A person holding a Texas surplus lines agent's license.]~~

(6)[(4)] Person--An individual or entity as defined by [Texas] Insurance Code §541.002(2) [Art.21.21, §2(a)].

(7) Principal place of business--The location from which the officers of an insured that is not an individual directs, controls, and coordinates the insured's activities; generally, the insured's main headquarters. If the principal place of business is not located within any state, the state from which the insured's activities within the

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states are directed, controlled, and coordinated. If the insured's activities within the states are not directed, controlled, and coordinated from a location in any state, then the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated is the principal place of business.

(8) Principal residence--The state where the insured who is an individual resides for the greatest number of days during a calendar year. If the insured's principal residence is located outside of any state, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

~~(9)[(5)] Properly allocated and apportioned--The division or distribution of premium based on on ~~[upon]~~ the location of the various exposures afforded coverage under the insurance contract. This distribution of premium must be in accordance with the methods prescribed by the comptroller ~~[Comptroller of Public Accounts of Texas 9999(the comptroller)]~~.~~

~~[(6) Stamping Office--The Surplus Lines Stamping Office of Texas created under the Texas Insurance Code, and operating under the plan of operation specified by §15.101 of this title (relating to the Plan of Operation of the Surplus Lines Stamping Office of Texas).]~~

(10) State--Any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the U.S. Virgin Islands, and American Samoa.

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~~(11)~~~~(7)~~ Surplus lines agent--An agent holding a surplus lines license issued by the ~~[this]~~ department under ~~[pursuant to the Texas]~~ Insurance Code Chapter 981 ~~[Article 1.14-2]~~.

~~(12)~~~~(9)~~ Taxable surplus lines premium--For surplus lines taxation purposes, ~~[except for exempt or federally pre-empted premiums,]~~ surplus lines premium is taxable as provided in ~~[Texas]~~ Insurance Code Chapter 225 ~~[Article 1.14-2, §12]~~.

(13) Timely filed--A transaction filed with the stamping office that meets the requirements of Insurance Code §981.105(a).

(14) Untimely filed--A transaction filed with the stamping office that does not meet the requirements of Insurance Code §981.105(a).

~~[(10) Unauthorized insurer--An insurer that is conducting the business of insurance as defined in the Texas Insurance Code and is not licensed or an eligible surplus lines insurer under the Texas Insurance Code.]~~

§15.3. Sanctions. (Currently §15.5)

(a) The commissioner may impose any sanction or remedy in Insurance Code Chapter 82 ~~[and 981.006,]~~ or any other applicable laws or statutes~~[,]~~ if the commissioner determines, after notice and an opportunity for hearing, that the applicant or license holder individually or through any officer, director, or shareholder:

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(1) [~~has~~] committed any action that would form the basis for sanctioning a general property and casualty agent or a managing general agent, as applicable to the surplus lines agent's other license(s), under the Insurance Code;

(2) failed to allow the department or [~~and~~] the comptroller to examine the surplus lines agent's accounts and records or failed to maintain surplus lines insurance business accounts and records as required by the Insurance Code and this chapter [~~subchapter~~];

(3) failed to make and file all reports when due, as required by the Insurance Code and this chapter [~~subchapter~~];

(4) failed to properly collect and pay required taxes and stamping fees on surplus lines gross premium or failed to submit tax reports as required by law or regulation;

(5) failed to otherwise maintain the qualifications for a surplus lines agent license; or

(6) is in violation of, or has failed to comply with the Insurance Code, this chapter, or any other applicable laws or regulations of this state.

(b) Notwithstanding subsection (a) of this section, and except when Insurance Code §981.203(a-1) applies to a nonresident surplus lines agent, an [~~The~~] agent's surplus lines license will [~~shall~~] be canceled [~~cancelled~~] when [~~in the event~~] the agent fails to maintain or renew the agent's license as a general property and casualty agent or managing general agent, as appropriate to the license status of the agent.

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(c) ~~[No]~~ A surplus lines agent whose license has been revoked or suspended will not have a license issued, renewed, or a suspension lifted ~~[shall be licensed]~~ until all fines, penalties, delinquent taxes, and delinquent stamping office fees the agent owes ~~[owed by the agent]~~ have been paid. The suspension of a surplus lines agent ~~[agent's]~~ license will ~~[shall]~~ continue in effect until all fines, penalties, restitution, delinquent taxes, and delinquent stamping office fees owed by the agent have been paid.

§15.4. Minimum Content of Contracts. (Currently §15.21)

(a) Every new or renewal insurance contract, policy, certificate, cover note, or other confirmation of insurance purchased ~~[procured]~~ and delivered as surplus lines coverage under ~~[pursuant to]~~ the Insurance Code must ~~[shall]~~ contain, at ~~[as]~~ a minimum ~~[by the Texas Insurance Code Article 1.14-2, §7.~~

~~(b) In addition to the requirements of subsection (a) of this section, the following items are required]:~~

(1) the information required by Insurance Code §981.101;

(2) a statement designating the name and address of the person to whom the commissioner will mail service of process in accordance with the Insurance Code;
and

(3) a stamping fee.

§15.5. [Uniformity of Reporting] Forms. (Currently §15.11)

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Applications, reports, and memorandums required under the ~~[Texas]~~ Insurance Code and by this chapter ~~[subchapter]~~ relating to surplus lines insurance must ~~[shall be submitted on the forms promulgated and maintained by the department]~~ include all required information. The department may issue optional forms that agents may use. ~~[These forms will be available from the department. A person may reproduce the forms obtained from the department by photocopying, electronic scanning, or other electronic means. The reproductions may be used in filings if so long as the reproduction is an unaltered duplicate of the original form.]~~

§15.6. Correct Execution Required for Filing. (Currently §15.13)

(a) No report required to be filed under the ~~[Texas]~~ Insurance Code or ~~[these sections]~~ this chapter relating to surplus lines insurance will ~~[shall]~~ be deemed filed with the department or the stamping office unless the documents submitted are correctly completed and signed on forms complying with §15.5 ~~[§15.11]~~ of this title (relating to ~~[Uniformity of Reporting]~~ Forms).

(b) A correct surplus lines policy filing submitted to the stamping office using the EFS or other electronic means will be deemed to be correctly executed and filed the day the transaction is posted by the stamping office.

(c) A correct surplus lines policy filing submitted to the stamping office by ~~[facsimile telecopy or other]~~ electronic means other than EFS will ~~[shall]~~ be deemed filed on the date it is received by the stamping office if the specific electronic means has

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been preapproved by the department in writing and otherwise complies with all applicable laws.

(d) ~~However, in such circumstances, the~~ The surplus lines agent responsible for a ~~the~~ filing must maintain the subject contract file, as specified in §15.110 ~~§15.16~~ of this title (relating to Contract File), at the agent's place of business in accordance with §15.108 ~~§15.14~~ of this title (relating to Recordkeeping), and must promptly submit the ~~such~~ contract file to the stamping office on request. On ~~Upon~~ mutual agreement, a representative of the stamping office may view the requested contract file at the agent's place of business.

(e) Nothing in this section limits ~~shall serve to limit~~ the department's ability to require the ~~surplus lines~~ agent to submit information or reports as required by the ~~Texas~~ Insurance Code and this chapter ~~subchapter~~.

§15.7. Eligibility Requirements for Surplus Lines Insurance.

(a) The stamping office will ~~shall~~ evaluate surplus lines insurance policies, contracts, or other evidences of coverage for eligibility and compliance with filing requirements. The stamping office may request additional information from the surplus lines agent responsible for the filing if the information filed is not sufficient to make an evaluation in accordance with this section.

(b) Following its evaluation of filings under this section, the ~~The~~ stamping office will ~~shall~~ provide a written report to the department documenting ~~of~~:

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(1) any surplus lines insurance policy or contract appearing to be ineligible under the [Texas] Insurance Code unless corrected under (c) of this subsection, [after evaluation under this section.] and

(2) [~~In any event, the stamping office must provide a written report to the department of~~] any policy issued by an ineligible insurer or any major and improper conduct by a surplus lines agent, regardless of whether the agency corrects the violation [~~violation(s)~~].

(3) The written report must be provided to the department within 60 days of discovery.

(c) The stamping office must ask [~~shall attempt to have~~] the surplus lines agent to correct any administrative or technical errors before providing [~~prior to~~] a written report to the department. If the surplus lines agent fails to correct any administrative or technical errors [~~voluntary compliance cannot be obtained~~], the stamping office must [~~shall~~] promptly provide a written report to the department.

~~[(b) The stamping office shall provide a written report to the department of any surplus lines insurance policy or contract appearing to be ineligible under the Texas Insurance Code after evaluation under this section. The stamping office shall attempt to have the surplus lines agent correct any administrative or technical errors prior to a written report to the department. If voluntary compliance cannot be obtained, the stamping office shall promptly provide a written report to the department. In any event, the stamping office shall provide a written report to the department of any policy issued~~

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~~by an ineligible insurer or any major and improper conduct by a surplus lines agent, whether or not such violation is later corrected. (Reorganized into sections (b)(1)-(2) and (c) above)~~

~~[(c) Notice by the department of intention to institute disciplinary action may be provided to the holder of the license upon receipt of the report and determination that the coverage may not be eligible for surplus lines.]~~

SUBCHAPTER B. SURPLUS LINES AGENTS [~~Stamping Office of Texas~~]

§15.100. Licensing of Surplus Lines Agents. (Currently §15.3)

(a) Persons performing any of the following surplus lines insurance activities are required to have a surplus lines agent license:

(1) supervising unlicensed staff engaged in activities described in subsection (b) of this section, although unlicensed intermediary supervisors may supervise unlicensed staff engaging in these activities if the ultimate supervisor is licensed [~~except that supervision of staff may be conducted through the supervision of the staff's unlicensed supervisors~~];

(2) negotiating, soliciting, effecting, procuring, or binding surplus lines insurance contracts for clients or offering advice, counsel, opinions, or explanations of surplus lines insurance products to agents or clients beyond the scope of underwriting policies or contracts, except for a general lines property and casualty agent making a

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referral of surplus lines business to a surplus lines agent [~~or agency~~] that then completes the surplus lines transaction; or

(3) receiving any direct commission or variance in compensation based on the volume of surplus lines premiums taken and received from, or as a result of, another person selling, soliciting, binding, effecting, or procuring surplus lines insurance policies, contracts, or coverages, except for a general lines property and casualty agent making a referral of surplus lines business to a surplus lines agent [~~or agency~~] that then completes the surplus lines transaction.

(b) The following activities, if supervised by a licensed [~~in a~~] surplus lines agent that is not an individual, [~~agency~~] do not require a surplus lines license if the employee does not receive any direct commission from selling, soliciting, binding, effecting, or procuring insurance policies, contracts, or coverages, and [~~or~~] the employee's compensation is not varied by the volume of premiums taken and received:

(1) full-time clerical and administrative services, including, but not limited to, the incidental taking of information from clients; receipt of premiums in the office of a licensed agent; or transmitting to clients, as directed by a licensed surplus lines agent, prepared marketing materials or other prepared information and materials[;] including, without limitation, invoices and evidences of coverage;

(2) contacting clients to obtain or confirm information necessary to process an application for surplus lines insurance so long as the contact does not involve any activities for which a license would be required under subsection (a)(2) of this section;

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(3) performing the task of underwriting any insurance policy, contract, or coverage, including and without limitation, pricing of the policy or contract; or

(4) contacting clients, insureds, agents, other persons, and insurers to gather and transmit information regarding claims and losses under the policy to the extent the contact does not require a licensed adjuster as set forth under Insurance Code Chapter 4101.

(c) This section must not be construed to prohibit distribution of agency profits to unlicensed persons, including shareholders, partners, and employees.

(d) Before the department issues [any] a surplus lines agent [agent's] license ~~[shall be issued]~~, the ~~[following must be submitted by an]~~ applicant ~~[seeking for a surplus lines agent's license]~~ must submit the following:

(1) an appropriate, fully completed written application; and

(2) the fee specified by §19.801 and §19.802 of this title (relating to General Provisions Regarding Licensing Fees and License Renewal and Amounts of Fees).

(e) Texas-resident applicants, and nonresident applicants who do not hold a surplus lines license in their state of residence or whose state of residence does not license Texas residents on a reciprocal basis as determined by the department, must ~~[shall]~~ meet all licensing requirements set forth in Insurance Code Chapter 981. Nonresident applicants under this section must also comply with Insurance Code §4056.051.

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(f) Nonresident applicants who hold [~~holding~~] a surplus lines agent [~~agent's~~] license in good standing in the agent's state of residence and meet [~~meeting~~] the requirements of Insurance Code §4056.052 must [~~shall~~] meet all the licensing requirements of Insurance Code Chapter 981 to the extent that the requirements are not waived by the commissioner under §4056.055.

(g) Notwithstanding any other subsection of this section, nonresident applicants are not required to obtain a general property and casualty agent license if they meet the requirements of Insurance Code §981.203(a-1).

(h)[~~(g)~~] Each surplus lines agent license issued to an agent will [~~shall~~] be valid for a term [~~expiring two years after the date of issuance or~~] as [~~otherwise~~] established [~~by the commissioner~~] under Insurance Code §4003.001. The license may be renewed by submitting a renewal application and a nonrefundable license fee as specified by §19.801 and §19.802 of this title. *(Currently §15.3(g).)*

§15.101. Submission of Applications, Notices, [Notice] and Correspondence to the Department for Commencement and Cessation of Employment of Individual Surplus Lines Agents. *(Currently §15.4)*

(a) Surplus lines agents, and persons applying for a surplus lines agent license, submit applications, notices, or correspondence to obtain, renew, or surrender a surplus lines agent license to TDI's Agent and Adjuster Licensing Office.

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(b) Surplus lines agents and all others who reasonably suspect that a fraudulent insurance act has been or is about to be committed must submit all notices required under Insurance Code Chapter 701 to TDI's Fraud Unit.

(c) Surplus lines agents submit all other notices or correspondence required by Insurance Code Chapter 981 or under these rules to TDI's Company Licensing and Registration Office.

~~[(a) Within 30 days of employment, each licensed surplus lines agency, both resident and nonresident, shall notify the department of the name and Texas surplus lines agent license number of each individual agent employed by the agency.]~~

~~[(b) Within 30 days after an individual surplus lines agent ceases to be employed by a licensed surplus lines agency for any reason, the licensed surplus lines agency, whether resident or nonresident, shall notify the department that the individual is no longer employed by that agency.]~~

§15.102. Conduct of Agent's Business. (Currently §15.6)

(a) A surplus lines agent engaging in surplus lines ~~[doing]~~ business as an individual surplus lines agent may be licensed only in his or her name. No individual may hold more than one surplus lines agent ~~[agent's]~~ license. A surplus lines agent engaging in surplus lines ~~[doing]~~ business under an assumed name must comply with §19.902 of this title (relating to One Agent, One License).

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(b) An insurance agent [~~agency~~] doing business as a partnership, corporation, or limited liability company may apply for and obtain a [~~have the issuance of its~~] surplus lines license [~~evidenced by a single certificate license~~], provided that the agent [~~such agency~~] meets [~~has~~] the qualifications and has been issued a license under the [~~pursuant to the Texas~~] Insurance Code for either a general property and casualty agent or a managing general agent. The surplus lines agent [~~agent's~~] license will [~~shall~~] be issued to a partnership, corporation, or limited liability company in the name of the agency as indicated on the underlying license issued under the Insurance Code. No partnership, corporation, or limited liability company may receive more than one surplus lines agent [~~agent's~~] license. A partnership, corporation, or limited liability company doing business under an assumed name must comply with §19.902 of this title (relating to One Agent, One License).

(c) Every act [~~done~~] in placing or servicing a surplus lines insurance contract under an assumed name must [~~shall~~] also clearly disclose the true name of the surplus lines agent [~~or agency~~] acting under the [~~such~~] assumed name, or the true name of the individual licensed surplus lines agent representing the surplus lines agency, partnership, corporation, or limited liability company acting under the [~~such~~] assumed name.

(d) A [~~No~~] surplus lines agent [~~or agency~~] must not [~~shall~~] shift, transfer, delegate, or assign his or her responsibility to a person or persons not licensed as a surplus lines agent. A surplus lines agent must not file with the stamping office a policy

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on behalf of an agent that does not hold a Texas license for a transaction in which the surplus lines agent did not place the policy.

(e) Notwithstanding subsection (d) of this section, a surplus lines agent may contract with a third party to meet the requirements of Insurance Code §981.105(a) and (b) to file policies with the stamping office, but the agent remains responsible for the timeliness and accuracy of the filings. The licensed agent (not the third party) must pay any fees owed for policies that were not timely filed.

(f) A surplus lines agent may exercise underwriting authority on behalf of an eligible surplus lines insurer if the surplus lines agent possesses a current written agreement from each ~~[such]~~ eligible surplus lines insurer granting that authority. The written agreement must set forth the identity of the insurer and the scope of the underwriting authority granted, and must reserve the duty of final underwriting review by the insurer. The underwriting agreement must be available for review by TDI ~~[the department]~~. The underwriting authority granted to a surplus lines agent by the insurer may include the rating and acceptance of risks, binding of coverage, issuance of formal evidence of coverage, and cancellation of coverage.

(g) A surplus lines agent ~~[agency]~~ may exercise claims authority on behalf of an eligible surplus lines insurer if the surplus lines agent possesses a current written agreement from the eligible surplus lines insurer granting ~~[such]~~ authority. A Texas-licensed adjuster must perform all claims adjustments unless the policy covers risks in multiple states and the claim is for a loss on a non-Texas risk. In that case, the adjuster

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must be licensed in the state where the risk is located. The written agreement must be available for review by TDI [~~the department~~].

(h) Claims authority delegated to the surplus lines agent by the insurer may include, but is not limited to, the investigation, adjustment, supervision, and payment of claims including payment from the surplus lines agents' funds, provided the agent is promptly reimbursed by the insurer for the payments.

(i) Partial payments to claimants by the surplus lines agent made under the written agreement do not relieve the surplus lines insurer of any continuing obligations to the insured. Payment of claims may also be made by the surplus lines agent directly from funds of the eligible surplus lines insurer, provided the surplus lines agent possesses a current written agreement that [~~wherein~~] the insurer authorizes the direct payments. This written agreement must be available for review by TDI [~~the department~~].

§15.103. Surplus Lines Stamping Fee. (Currently §15.10)

For each surplus lines policy, contract, or other detailed evidence of coverage issued on Texas risks, including additions or deletions to, or cancellations of, the surplus lines agent must submit a stamping fee as approved by TDI [~~the department~~]. The fees are due and payable as provided in §15.106 [~~§15.10~~] of this title (relating to Policy Form Filings and Stamping Office Fees).

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**§15.104. Duty of Reasonable Effort by Surplus Lines Agents to Ascertain
Financial Condition and Other Practices of Eligible Surplus Lines Insurers.**

(Currently §15.9)

(a) Before placing insurance with an eligible surplus lines insurer, a surplus lines agent must ~~[shall]~~ make a reasonable inquiry into the financial condition and operating history of the insurer.

(b) During the course of placing coverage with an eligible surplus lines insurer, each surplus lines agent will ~~[shall]~~ be under a continuous duty to stay informed of the insurer's solvency and the soundness of its financial strength, and of the insurer's ability to process claims and pay losses expeditiously.

(c) A surplus lines agent must ~~[shall]~~ immediately inform TDI ~~[the department]~~ and the stamping office if ~~[whenever]~~ the agent has grounds to reasonably doubt the capacity, competence, stability, claim practices, or business practices of an eligible surplus lines insurer.

(d) A surplus lines agent must immediately inform the director of the Company Licensing and Registration Office at the department and the stamping office if ~~[whenever]~~ the agent has reasonable grounds to believe that an ~~[unauthorized]~~ insurer that is neither an admitted insurer nor an eligible surplus lines insurer is ~~[is illegally]~~ transacting the business of insurance in this state.

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(e) A surplus lines agent may [~~shall~~] place surplus lines insurance on Texas risks [~~only~~] with only an eligible insurer that meets the requirements of the [~~Texas~~] Insurance Code and TDI's [~~the department~~] rules.

§15.105. Furnishing Evidence of Insurance. (Currently §15.22)

(a) A surplus lines agent must promptly provide the insured or the insured's [~~his~~] agent with written evidence of insurance containing complete terms, conditions, and exclusions pertaining to the coverage so as to protect all parties against misunderstanding. If temporary confirmation of insurance coverage is required by the insured or is given by the surplus lines agent, that [~~such~~] temporary confirmation must [~~shall~~] be replaced as promptly as possible with a policy or certificate stating the complete terms, conditions, and exclusions of the insurance.

(b) If, after delivery to the insured or the insured's [~~his~~] agent of any document evidencing insurance coverage, there is any change as to the identity of the insurers or the portion of the direct risk assumed by the insurer as stated in the previously mentioned original documents, or any other material change as to the insurance coverage, the surplus lines agent must [~~shall~~] promptly mail to the insured or the insured's [~~his~~] agent a substitute certificate, cover note, confirmation, or endorsement for the original. All substitute documents [~~The document(s)~~] must accurately show the current status of the coverage and the responsible insurers [~~responsible thereunder~~].

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§15.106. Policy Forms Filings and Stamping Office Fees. (Currently §15.23)

(a) Unless the surplus lines agent elects to file electronically and [procedure for electronic filing is elected by the surplus lines agent] in accordance with subsection (b) of this section, a true and correct copy of each executed surplus lines policy, contract, or other detailed evidence of coverage, including additions, ~~[of]~~ deletions, ~~[thereof]~~, or cancellations, ~~[thereof]~~, must [shall] be filed by the ~~[procuring surplus lines]~~ agent of record with the stamping office within 60 days of issuance or the effective date, whichever is later. If ~~[other detailed]~~ evidence of coverage other than the policy is initially filed, a copy of the policy must [shall] be promptly filed with the stamping office when available.

(b) To the extent permitted under the ~~[Texas]~~ Insurance Code and other applicable laws, the surplus lines agent may elect to file the information required under subsection (a) of this section by electronic transmission~~[,]~~ if ~~[the]~~ TDI has preapproved the electronic method [has been preapproved by the department]. The stamping office will [shall] provide surplus lines agents with a written procedure for optional electronic filing of policies, contracts, and other detailed evidence of coverage.

(c) For purposes of reporting to the stamping office, the term "true and correct copy of a surplus lines insurance policy" as used in ~~[the Texas Insurance Code Article 1.14-2, §6 and]~~ this section, includes [shall include]:

- (1) a declarations page;
- (2) a listing of all participating insurers on the policy;

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(3) all coverage parts and schedules;

(4) extended coverage exclusions;

(5) all premium-bearing documents; and

(6) any other parts as may be required by the stamping office to review and record the policy.

(d) The stamping office will ~~[shall]~~ compile information from these filings on ~~[an individual]~~ a surplus lines agent ~~[or agency]~~ basis within 10 days after the end of each month. The ~~[Such individual]~~ reports will ~~[shall]~~ be provided to the surplus lines agent or agency with a notice of the total stamping fees due. The surplus lines agent ~~[or agency]~~ must ~~[shall]~~ pay the ~~[such]~~ fees to the stamping office by the end of the month in which the surplus lines agent receives the notice ~~[of the stamping fees due is received]~~.

§15.107. Surplus Lines Insurance Requests for Information, Examination, and Complaints. (Currently §15.12)

In addition to those documents required to be filed under §15.301 ~~[\$15-8]~~ of this title (relating to Eligibility Requirements of Surplus Lines Insurers) and §15.106 ~~[\$15-23]~~ of this title (relating to Policy Forms Filing and Stamping Office Fees), a surplus lines agent may be requested by the stamping office to submit additional information necessary to evaluate the eligibility of surplus lines policies, contracts, or other detailed evidence of coverage. The stamping office will ~~[shall]~~ issue a written report ~~[under §15-7 of this title [(relating to Eligibility Requirements for Surplus Lines Insurance)]]~~ if the

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requested additional information is not timely submitted by the surplus lines agent. The stamping office and the surplus lines agent may mutually agree for a representative of the stamping office to review the requested information [~~documentation~~] at the surplus lines agent of record's [~~agent's~~] place of business. Nothing in this section limits [~~shall serve to limit~~] the department's ability to require the surplus lines agent to submit information or reports as required by the [~~Texas~~] Insurance Code and this chapter [~~subchapter~~].

§15.108. Recordkeeping. (Currently §15.14)

(a) In order to provide for basic uniformity in recordkeeping requirements, and to make it possible for the department to make a complete and accurate examination of the surplus lines agent's records [~~by the department~~], the following insurance and accounting records must be established and maintained by each surplus lines agent:

- (1) a policy register;
- (2) a contract file;
- (3) general books of account;
- (4) a list of all agreements entered into with a managing underwriter under

Insurance Code §225.006(c) and copies of the agreements; and

(5) any [~~such~~] other insurance and accounting records as are necessary to properly and promptly service policyholders in this state and provide required information to the department.

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(b) The surplus lines agent's records and accounts relating to surplus lines insurance that are required to be kept by the ~~[Texas]~~ Insurance Code and this chapter ~~[these sections relating to surplus lines insurance]~~ are subject to examination by TDI ~~[the department]~~ and the comptroller at all times and without notice. These records and accounts must ~~[shall]~~ be available for inspection and review by the department for five years following the expiration or termination of the insurance contract, unless specified otherwise in the Insurance Code.

§15.109. Policy Number. (Currently §15.15)

(a) All surplus lines agents must ~~[shall]~~, immediately on ~~[upon]~~ purchasing ~~[the procurement of]~~ insurance from an eligible surplus lines insurer, record the ~~[chronological]~~ policy number and the name of the insured. The surplus lines agent must ~~[shall]~~ inscribe with the same policy number all records and files maintained by the surplus lines agent that are pertinent to a specific risk ~~[with the same policy number]~~.

(b) For agents having authority to issue policies on behalf of an eligible surplus lines insurer, ~~[strict chronological sequence is required in the assignment of policy numbers,]~~ and in the instance of voided or unused policy numbers, the agent must record an explanation in the policy number register.

§15.110. Contract File. (Currently §15.16)

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Each surplus lines agent must ~~[shall]~~ maintain a contract file containing ~~[which shall contain]~~ a complete and true record for ~~[of]~~ each individual surplus lines contract, including a copy of the daily report or other evidence of insurance, including ~~[and showing]~~ the following items, as ~~[may be]~~ applicable:

- (1) amount of insurance and perils insured against;
- (2) brief general description of the property insured and the location of the property, including ZIP code;
- (3) gross premium charged ~~[paid]~~;
- (4) return premium paid, if any;
- (5) all ~~[rate(s) of]~~ premiums charged;
- (6) effective date ~~[date(s)]~~ of the contract, and the terms ~~[thereof]~~;
- (7) name and mailing address of the insured;
- (8) name and home office address of the insurer, underwriting syndicate or other risk-bearing entity;
- (9) amount collected from the insured;
- (10) record of losses or claims filed and payments made;
- (11) a true and correct copy of the insurance policy, contract, and other detailed evidences of coverage, as issued to the insured; ~~[and]~~
- (12) all correspondence relating to the specific insurance coverage of that contract file; and

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(13) support for exempt commercial purchaser status if applicable to insured.

§15.111. Required Documentation Supporting Exempt Commercial Purchaser

Status. (new)

(a) Support for exempt commercial purchaser status must include documentation of the following:

(1) a copy of the document described in Insurance Code §981.004(c)(2);

and

(2) a signed statement from the insured identifying which provisions of Insurance Code §981.0031(a)(3) and §981.0032(3) are applicable to the insured.

(b) TDI may provide forms for the insured to complete documenting qualification as an exempt commercial purchaser that may be used instead of the documents described in subsection (a) of this section.

§15.112. Agent [Agency] Accounting Records. (Currently §15.17)

(a) Each surplus lines agent must [~~shall~~] maintain general accounting records, which must [~~shall~~] include a general ledger, a general journal, [~~and~~] cash records, and other [~~such-~~] items necessary to reflect the financial solvency of the agent.

(b) The surplus lines agent's general accounting records must [~~shall~~] show a month-end summary of operations and fiscal- or calendar-year-to-date summary of

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operations, and must [~~shall~~] be maintained in accordance with generally accepted accounting principles.

§15.113. Untimely Filed Policies. (new)

(a) By the 15th day of each month, the stamping office will either directly provide or make easily obtainable to surplus lines agents a report listing any surplus lines policies the agent filed in the previous month that were untimely filed. It is the surplus lines agent's responsibility to personally review the report each month for accuracy.

(b) For any policy listed in the report described in subsection (a) of this section that the agent believes was timely filed, the agent must, by the earlier of 90 days from the date of the report or February 15 of the year following the year in which the policies were filed, either

(1) correct any errors in the EFS, or

(2) if, and only if, the error cannot be corrected through the EFS, the agent must notify the stamping office that the agent believes the policy was timely filed. The notification must identify the filing at issue, describe any special factors or unique circumstances that apply, and provide all necessary documentation to support the agent's position that it was timely filed.

(3) On receipt of notification described in paragraph (2) of this subsection, and by the earlier of either 30 days after receipt or March 1, the stamping office will

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review and research the notification and then provide TDI with a summary as well as its opinion as to whether the policy should be considered timely filed. On receiving the summary from the stamping office, TDI will decide by the earlier of either 45 days after receiving the stamping office's analysis or March 15 whether the policy should be considered timely filed and notify the agent and stamping office. If TDI determines that the policy should be considered timely filed, the stamping office will make any necessary changes to its records so that the policy is considered timely filed.

(c) An agent waives the right to later dispute the timeliness for any filing for which the agent fails to comply with the requirements of subsection (b) of this section.

(d) No later than the first business day of April, the stamping office will prepare a report for TDI listing all of the surplus lines policies that were not timely filed in the previous calendar year. If TDI decides a policy should be considered timely filed under subsection (b)(3) of this section, the filing will not be included in the annual report. The annual report must be in a format acceptable to the commissioner and it must reflect any corrections made by the agent under subsection (b)(1) of this section or determinations made by the department under subsection (b)(3) of this section.

§15.114. Unacceptable Reasons for Changing an Untimely Filing to Timely Filing.

[new]

A transaction reported by the stamping office as untimely filed will not be considered timely filed unless the circumstance for its untimeliness are beyond the control of the

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surplus lines agent. Business reasons do not constitute circumstances beyond the control of the surplus lines agent.

§15.115. Purchase of Insurance by Purchasing Groups Through Surplus Lines Agents. (Currently §15.25)

(a) A purchasing group is any group that:

(1) has as one of its purposes the purchase of liability insurance on a group basis;

(2) purchases ~~[such]~~ liability insurance only for its group members and only to cover their similar or related liability exposure;

(3) is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, service, premise, or operation; and

(4) is domiciled in any state.

(b) When ~~[Whenever]~~ a registered purchasing group purchases insurance through a surplus lines agent, either the purchasing group or surplus lines agent, as appropriate, must ~~[shall]~~ submit all registration forms, fees, or taxes required by ~~[the Texas]~~ Insurance Code Chapter 225 ~~[Article 21.54]~~, directly to the comptroller ~~[Comptroller of Public Accounts of Texas]~~ or the stamping office, as applicable.

(c) A surplus lines agent must ~~[shall]~~ stamp or write the words "Purchasing Group" conspicuously on every policy, contract, or other detailed evidence of coverage

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issued to a purchasing group or its members through the surplus lines agent. ~~[All copies of such documents shall be marked in the same way. However, copies of such documents need not be filed with the stamping office or the department unless requested by the department in a specific case.]~~

(d) A surplus lines agent may not sell insurance to a purchasing group that is not registered with TDI. Registration may be verified on TDI's website.

SUBCHAPTER C. SURPLUS LINES STAMPING OFFICE OF TEXAS PLAN

OFOPERATION (Currently subchapter B, §15.101)

§15.201. Commissioner Approval.

(a) The plan of operation ~~[Plan of Operation]~~ of the Surplus Lines Stamping Office of Texas (plan of operation) ~~[(Plan of Operation)]~~ and any amendment to it will ~~[thereto shall]~~ become effective on ~~[upon]~~ written approval by ~~[of the]~~ commissioner order ~~[Commissioner of Insurance (commissioner)]~~, and will ~~[shall]~~ constitute the manner in which the stamping office ~~[Surplus Lines Stamping Office of Texas (stamping office)]~~ will ~~[shall]~~ operate and discharge its responsibilities in accordance with the ~~[Texas]~~ Insurance Code and ~~[the]~~ TDI's rules ~~[of the Texas Department of Insurance (department)]~~.

(b) The stamping office must submit proposed amendments to the plan of operation to the commissioner for consideration and approval.

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(1) The commissioner will accept or reject some or all of the proposed amendments.

(2) The commissioner will work with the stamping office to resolve, if possible, any issues identified with the proposed amendments.

(3) If the acceptable amendments propose significant changes to the plan of operation, TDI will provide public notice on its website and in the *Texas Register* that the commissioner is considering amending the plan of operation and will post the proposed amendments on its website for public comment. Instructions on where and when to submit comments will be provided on TDI's website at the time the proposed amendments are posted.

(4) The commissioner will approve amendments to the plan of operation by order.

(c) If the stamping office fails to submit an acceptable amendment to the plan of operation, the commissioner will amend the plan of operation as set forth in Insurance Code 981.153(c).

(d) The stamping office will post the most current approved plan of operation on its website.

(e) If the stamping office's board of directors recommends changing the stamping fee, the commissioner will post notice in the *Texas Register* that a stamping fee change is being considered and allow for a 20-day comment period. The notice will specify the current stamping fee and the proposed stamping fee. After the close of the

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comment period and review of the comments, the commissioner will either approve or deny changing the stamping fee by order.

~~[(b) All persons licensed as surplus lines agents under the Texas Insurance Code shall be subject to the provisions of the Plan of Operation.]~~

~~[(c) The board and its directors are subject to the following provisions:]~~

~~[(1) The management of all the affairs, property, and business of the stamping office shall be vested in the board of directors, which shall consist of nine persons who serve terms as established in the Plan of Operation. Four of the members of the board of directors must represent the general public and must be qualified under the Texas Insurance Code §981.152 and §981.153 (formerly Article 1.14-2, §6A(e)).]~~

~~[(2) The board of directors shall be appointed by the commissioner. The commissioner may remove a director for willful misconduct or absence from three meetings of the board of directors during a calendar year. A director who is absent from four or more meetings of the board of directors during a calendar year automatically vacates his or her position on the board of directors.]~~

~~[(3) Directors will serve for a term of three years. Directors may not serve consecutive full terms. Directors shall serve until their successors are duly appointed except when removed from office or upon resignation accepted by the commissioner. The minutes of the stamping office board meetings shall show the names of the directors attending and the term of office for each, and the actions taken by the board of~~

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~~directors. Upon approval of the minutes of each meeting of the board of directors, a copy shall be provided to the department.]~~

~~[(4) The commissioner may appoint successors for the remaining period of a vacating director's term. A person appointed to replace a public member must be a public representative.]~~

~~[(5) A quorum, consisting of a majority of the board of directors, is required for the transaction of official business by the board of directors. The board of directors shall act upon majority vote of those directors present, and such actions shall be recorded in the minutes. However, an affirmative vote of two-thirds of the directors present shall be required to take the following actions:]~~

~~[(A) adopt an annual budget;]~~

~~[(B) approve contracts with an obligation of \$15,000 or more, which are not contemplated within the approved annual budget;]~~

~~[(C) recommend for adoption by the commissioner a schedule for stamping fees and other fees;]~~

~~[(D) borrow money;]~~

~~[(E) officially recommend to the commissioner an amendment to the Plan of Operation; or]~~

~~[(F) authorize bank signatures.]~~

~~[(6) A director, upon approval of the chair, may participate in a meeting of the board of directors by telephone conference call or video conference call. However,~~

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~~the medium for such participation, such as a speakerphone or computer teleconference screen and speaker, must be accessible by members of the general public attending the open meetings and must be placed in a location specified in the notice of the meeting.]~~

~~[(7) The first regular meeting of the board of directors in the calendar year is designated as the Annual Meeting, during which the board of directors shall:~~

~~[(A) elect officers, including a chair, a vice chair and a secretary;]~~

~~[(B) review the Plan of Operation and proposed amendments, if any;]~~

~~[(C) review operating expenses, schedule of fees, and annual report for submission to the commissioner;]~~

~~[(D) review, consider, and act on any other matters deemed by the board of directors as necessary to the administration and purposes of the stamping office under the Texas Insurance Code Chapter 981 (formerly Article 1.14-2) and the rules adopted thereunder by the commissioner that are applicable to the stamping office.]~~

~~[(8) The chair, vice chair, and secretary shall hold office until the next Annual Meeting, or until their successors are elected and installed, unless removed pursuant to paragraph (2) of this subsection.]~~

~~[(A) the chair shall preside at all meetings and perform all duties customary to such office, including the appointment of committees. The chair shall be an ex officio member of all committees.]~~

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~~[(B) the vice chair shall perform all duties of the chair during the absence of the chair.]~~

~~[(C) the secretary shall keep full minutes of the proceedings of the board of directors and perform such other duties customary to such office or as may be assigned by the chair.]~~

~~[(9) The board of directors shall hold regular meetings at least quarterly and the Texas Department of Insurance shall be notified. The board of directors shall comply in all respects with the Texas Open Meetings Act. All board meetings shall be held in the State of Texas. Special meetings of the board of directors may be called by the chair and shall be called at the request of any three directors upon not less than five days written notice to each director and to the commissioner or the commissioner's designee of the time and place. The written notice shall state the purpose or purposes of any special meeting. Such notice for any special meeting may be waived by unanimous consent, provided the requirements of the Texas Open Meetings Act have been met.]~~

~~[(10) Directors shall serve without compensation, but they may be reimbursed for reasonable expenses incurred by them in carrying out their duties and responsibilities as members of the board of directors.]~~

~~[(d) The board of directors shall employ a general manager who will be responsible for the operation and management of the stamping office in accordance~~

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~~with policy established by the board of directors. The general manager shall serve at the pleasure of the board of directors.]~~

~~[(e) The stamping office is subject to the following provisions:]~~

~~[(1) The stamping office may employ such persons, or contract with such firms or corporations, individuals, attorneys, or accountants, as are necessary for the performance of its duties. Contracts shall be subject to policies adopted by the board of directors. The board of directors shall utilize appropriate competitive bidding procedures for any contract or group of related contracts of a material amount.]~~

~~[(2) The stamping office may open one or more bank accounts. The board of directors shall recommend for approval by the commissioner an investment and cash management policy for the stamping office. Such policy may provide for reasonable delegation of deposit and withdrawal authority to such accounts for stamping office business as may be consistent with prudent fiscal policy. The stamping office may borrow money upon the approval of the board of directors.]~~

~~[(3) Prior to November 1 of each year, the board of directors shall adopt, subject to review by the commissioner, a budget for the stamping office's operating and capital expenses and contingent expenses for the following calendar year. The budget shall take into account unknown and unanticipated expenses as may reasonably occur and make provision for such expenses in accordance with prudent business practice, but projected reserves, excluding funds for asset replacement, shall not exceed two times the average of audited operating expenses for the five-year period immediately~~

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~~preceding the budget year. However, in the event that the reserve balance is projected to exceed this limit in an upcoming year, the board of directors shall submit to the commissioner within thirty days after the Annual Meeting a written plan for reducing the amount of actual reserves in compliance with this section within a reasonable time given the then-existing market conditions. Based upon the anticipated volume of surplus lines premium during the upcoming calendar year, the board of directors shall recommend for adoption by the commissioner a stamping fee to be charged on all surplus lines filings, as measured by premium, submitted to the stamping office.]~~

~~[(4) All surplus lines agents shall submit surplus lines insurance documents to the stamping office as required by the Texas Insurance Code and the rules of the department and shall pay the fees therefore as permitted by law and as required by the stamping office. If submitted by electronic means, the electronic means used must have been approved by the department in writing and otherwise comply with all applicable laws. Pursuant to the Texas Insurance Code §§981.002, 981.151, and 981.213 (formerly Article 1.14-2, §6A(a)), the portions of the surplus lines insurance contract required to be filed with the stamping office are:]~~

~~[(A) a declarations page;]~~

~~[(B) a listing of all participating insurers on the policy;]~~

~~[(C) all coverage parts and schedules;]~~

~~[(D) extended coverage exclusions;]~~

~~[(E) all premium-bearing documents; and]~~

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~~[(F) any other parts as may be required by the stamping office to review and record the policy.]~~

~~[(5) Any surplus lines agent who is delinquent in the payment of stamping fees may be reported to the commissioner; provided, however, that any delinquency of more than 90 days shall be reported to the commissioner.]~~

~~[(6) The stamping office shall record all surplus lines insurance filings and reports submitted to it pursuant to the Texas Insurance Code and rules of the department and shall prepare reports to the commissioner and to surplus lines agents as required. Reports shall also be prepared for such other purposes as approved by the board of directors, or as the department or the Comptroller of Public Accounts of Texas (comptroller) may reasonably request. The stamping office will furnish records and/or documents to staff of the department or the comptroller upon request, for purposes of regulation, examination, or tax collection. The following shall be submitted to the commissioner:]~~

~~[(A) the adopted budget;]~~

~~[(B) copy of the annual audit; an]~~

~~[(C) an annual summary of operations which contains information on transactions, conditions, operations, and investments during the preceding year, such report to contain such matters and information as prescribed by and in such form as approved by the board of directors. The commissioner may at any time require the stamping office to furnish additional information with respect to any matter connected~~

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~~therewith and considered to be material in evaluating the economic, efficient, fair, and nondiscriminatory operation of the stamping office.]~~

~~[(7) The stamping office shall prepare and distribute a procedures manual to each surplus lines agent setting forth the procedure for submitting surplus line insurance documents to the stamping office and other matters germane to the operation of the stamping office. The manual shall be prepared in cooperation with the department.]~~

~~[(8) The stamping office shall procure such bonds and insurance covering the stamping office, the directors, officers, employees, and agents of the stamping office, and its properties and activities, as it deems appropriate.]~~

~~[(9) The stamping office shall perform those functions specifically enumerated in the Texas Insurance Code §§981.152, 981.154, 981.155, and 981.160 (formerly Article 1.14-2, §6A(b)).]~~

~~[(10) The stamping office shall assist the department and facilitate compliance with the insurance laws of the state and the rules promulgated thereunder by conducting the following functions:]~~

~~[(A) identifying technical deficiencies in policy preparation and submission, and seeking correction of such deficiencies;]~~

~~[(B) identifying potential non-fraudulent violations;]~~

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~~[(C) notifying surplus lines agents of such potential non-fraudulent violations and seeking information related to the potential violations when necessary to fulfill the stamping office's duties;]~~

~~[(D) compiling information on the eligibility of surplus lines insurers and immediately reporting to the department all potentially fraudulent and willful violations of law or rules, including unauthorized transactions of the business of insurance; an]~~

~~[(E) reporting to the department, within specified and agreed upon time frames, the following information:]~~

~~[(i) evaluations of eligibility under §15.7 and §15.8 of this title (relating to Eligibility Requirements for Surplus Lines Insurance and Eligibility Requirements of Surplus Lines Insurers);]~~

~~[(ii) summaries of stamping office activities, including actions relating to deficiencies and potential violations;]~~

~~[(iii) results of inquiries relating to complaints;]~~

~~[(iv) results of any other actions under §15.12 of this title (relating to Surplus Lines Insurance Requests for Information, Examination, and Complaints);]~~

~~[(v) patterns and practices of any surplus lines agent that may constitute lack of compliance with the applicable insurance laws of the state;]~~

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~~[(vi) compilations of premiums for property coverage written under a separate policy by a surplus lines insurer affiliated with a licensed insurer, including the total policy premium, the portion of the premium that is actual extended coverage and other allied lines, if available, and where the risk is located; and (vii) compilations of premium volume by surplus lines agent, insurer, and kinds and class of surplus lines insurance coverage;]~~

~~[(F) providing seminars and other educational programs relating to the Texas Insurance Code, this chapter, and the procedures of the stamping office;]~~

~~[(G) collecting information as provided in this chapter and the Texas Insurance Code §981.002 (formerly Article 1.14-2, §6A);]~~

~~[(H) maintaining communications with agents, surplus lines insurers, insurance industry advisory associations, and related trade associations;~~

~~[(I) maintaining communication with the commissioner, the department and the comptroller;]~~

~~[(J) providing information, including tax reports, to surplus lines agents; and~~

~~[(K) conducting other activities required by this chapter.~~

~~[(11) The stamping office is authorized by §15.12 of this title to make inquiries to effect its function under this chapter.]~~

~~[(12) Any information collected under this chapter that indicates potential non-fraudulent violation of the laws of this state or the rules adopted thereunder that has~~

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~~not been determined by inquiries for information to be nonexistent or corrected as a technical deficiency shall be reported to the department, or in the case of information relating to taxes, reported to the comptroller.]~~

~~[(13) Stamping office recommendations against eligibility under §15.8 of this title shall be considered by the department. The stamping office may change an eligibility recommendation based on new or corrected information.]~~

~~[(f) The board of directors shall, once each year, provide for an independent audit of all the books and records of the stamping office, and a copy of the audit report shall be provided to the commissioner.]~~

~~[(g) Each member of the board of directors, officer, or employee of the stamping office shall be indemnified by the stamping office against all expenses, judgments, decrees, fines, penalties, and amounts paid in settlement, or incurred in the defense, of any action taken or not taken by such person in the performance of such person's powers and duties under the Texas Insurance Code and the rules of the department and this plan of operation, unless such person shall be finally adjudged to have committed a breach of duty involving gross negligence, bad faith, dishonesty, willful misfeasance, malfeasance, or reckless disregard of such person's responsibilities. In the event of settlement before final adjudication, such indemnity shall be provided only if the stamping office is advised by independent counsel that such person did not, in counsel's opinion, commit such a breach of duty. The stamping office may purchase and maintain insurance on behalf of any person who is or was a director, officer, or~~

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~~employee of the stamping office against any liability asserted against such person and incurred by such person in such capacity or arising out of such person's status as such, whether or not the stamping office can indemnify such person against such liability under this chapter.]~~

~~[(h) In the event the stamping office is dissolved, the commissioner shall take charge of and transfer the remaining assets, books, and records of the stamping office to the department or to another organization established for the same or similar purpose as the stamping office and which organization shall be exempt under the Internal Revenue Code, §501(c)(3).]~~

SUBCHAPTER D. SURPLUS LINES INSURERS

§15.301. Eligibility Requirements of Surplus Lines Insurers. (Currently §15.8)

(a) Surplus lines insurers seeking eligibility must ~~[shall]~~ provide to TDI ~~[the department]~~ and to the stamping office, information relating to the insurer's eligibility to write surplus lines insurance. ~~[Such information shall include:]~~

(1) For insurers domiciled in another state, this information must include documents evidencing authorization from the insurer's domiciliary jurisdiction to write the same kind and class of business that it proposes to write in Texas and documentation that the insurer has capital and surplus required by Insurance Code §981.057. [National Association of Insurance Commissioners (NAIC) Annual Statement (association edition, yellow cover), Quarterly Statements, SEC 10K Reports, and

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~~audited financial statements of United States domiciled companies and audited financial statements expressed in U.S. dollars for companies domiciled outside the United States;]~~

~~(2) Alien insurers listed with the NAIC's International Insurance Department are not required to submit anything under this section, but are encouraged to provide TDI with a contact person located in the United States, including the person's address and phone number, as well as information regarding the types of insurance the company anticipates writing in Texas. This information may be sent electronically to TDI. [documents evidencing authorization from the insurer's domiciliary jurisdiction to write the same kind and class of business that it proposes to write in Texas;]~~

~~[(3) documents evidencing the existence and amount of United States trust funds of alien insurers;~~

~~[(4) a certified actuarial opinion regarding the adequacy of the insurer's loss reserves;~~

~~[(5) biographical affidavits of owners, officers, directors and management;~~

~~[(6) a three-year business plan discussing the insurer's plan of operation in Texas;~~

~~[(7) NAIC's Insurance Regulatory Information System (IRIS) ratio reports, accompanied by management's explanation of the insurer's IRIS ratios outside the allowed ranges and a description of any related corrective action;~~

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~~[(8) for foreign companies only, a copy of its latest Examination Report from the insurer's state of domicile;]~~

~~[(9) for alien companies listed with the NAIC's International Insurance Department (IID), a copy of its annual IID filing; an]~~

~~[(10) a list of currently used and proposed to be used Texas surplus lines agents.]~~

~~[(b) Except as specified in paragraphs (1) and (2) of this subsection, foreign surplus lines insurers shall submit annually to the department and the stamping office the material identified in subsection (a) of this section by March 31.]~~

~~[(1) Audited financial statements and SEC 10K Reports shall be annually submitted to the department by June 1.]~~

~~[(2) Quarterly financial reports shall be submitted to the department within 45 days of the end of each calendar quarter.]~~

~~[(c) Alien surplus lines insurers shall submit annually to the department and the stamping office the material identified in subsection (a) of this section by June 1, except the IID filing and the actuarial opinion shall be annually submitted to the department by August 1.]~~

~~[(d) In addition, surplus lines insurers or their representatives shall provide other information relevant to the determination of eligibility that is requested by the department or the stamping office. The surplus lines insurer, agent, or representative shall be permitted at least 10 days to respond, after receipt, to a request for additional~~

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~~information or documentation. Failure by the surplus lines insurer or agent to submit the information requested in a timely manner shall be grounds for a denial or termination of eligibility to write surplus lines insurance in this state. Nothing herein shall interfere with the department's rights to require additional information or documentation or to examine or inspect records. Other relevant information includes, but is not limited to, the following:]~~

~~[(1) activities of management and agents;]~~

~~[(2) history and competency of reinsurers;]~~

~~[(3) pattern of claims services;]~~

~~[(4) domestic trust agreements; and]~~

~~[(5) powers of attorney.]~~

~~(b) Information received under this section is subject to Government Code §§552.001 - 552.132.~~

~~[(f) The stamping office shall report to the department whether insurers have submitted evidence that appears to be satisfactory evidence for eligibility under this section and the Texas Insurance Code.~~

~~(g) Upon receiving reports under subsection (f) of this section, the department shall determine if satisfactory evidence of eligibility has been presented and shall notify the surplus lines insurer of the department's determination.~~

~~(h) Each surplus lines insurer shall continuously maintain its eligibility.~~

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~~(i) The department, stamping office, and commissioner have no duty or responsibility under the Insurance Code, this section or §15.101 of this title (relating to Plan of Operation of the Surplus Lines Stamping Office of Texas) to determine the actual financial condition or claims practices of any surplus lines insurer.~~

~~(j) A list of surplus lines insurers that have provided satisfactory evidence of eligibility shall be maintained by the department as public information. This list shall contain sufficient information to inform the public of the limitations of the department's authority with regard to surplus lines insurers and the relevant differences between surplus lines insurers and admitted insurers.]~~

SUBCHAPTER E. SURPLUS LINES PREMIUM TAX

§15.401. Financed Transactions. (Currently §15.18)

(a) Financed transactions include all insurance policies that provide for installment or deferred payments of the premium, and include installment payments, conditional contracts, and premium financed insurance policies.

(b) Premium tax is due on premium, interest, finance charges, and all other consideration charged to the insured for the insurance policy unless the finance charges are billed and stated separately to the insured by written documents.

§15.402. Allocation of Premium. (Currently §15.19)

(a) Unless otherwise properly allocated and reported under a cooperative agreement, reciprocal agreement, or compact entered into by the comptroller under

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Insurance Code Chapter 229 [~~pursuant to the regulations or instructions of the comptroller~~], all taxable surplus lines premium[s] associated with a surplus lines insurance policy is [~~are~~] considered Texas premium for reporting and taxation purposes when Texas is the home state of the insured as provided under Insurance Code Chapter 225 and 34 TAC §3.822.

(b) If taxable surplus lines premium is allocated under a cooperative agreement, reciprocal agreement, or compact entered into by the comptroller under Insurance Code Chapter 229, the [~~The~~] method of allocation between Texas and non-Texas exposures must be maintained conspicuously in the records of the [~~surplus lines~~] agent of record, and the records are subject to inspection by the comptroller, the stamping office, and TDI [~~the department~~].

~~[(c) For exposures located in another state or states, the surplus lines agent of record, and the related agency if applicable, shall be liable for the premium tax on any unallocated or unreported premium. Premiums that are properly allocated that are specifically exempt from taxation under the regulations of another state or states are not taxable in Texas.]~~

(c) [~~(d)~~] If a surplus lines insurance policy covers risks or exposures that are properly allocated to federal waters, international waters, or locations under the jurisdiction of a foreign government, then the premium associated with these [~~such~~] policies or portions of these [~~such~~] policies will [~~shall~~] not be taxable in Texas. The method of allocation between Texas and non-Texas exposures must be maintained

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conspicuously in the records of the agent of record, and the records are subject to inspection by the comptroller, the stamping office, and TDI.

(d)~~(e)~~ All premium taxes must ~~[shall]~~ be computed under ~~[pursuant to]~~ the regulations or instructions of the comptroller.

§15.403. Reporting of Premium Allocation to the Stamping Office. (Currently §15.20)

(a) If a surplus lines insurance policy covers risks or exposures that are properly allocated to federal waters, international waters, or locations under the jurisdiction of a foreign government, then the ~~[A surplus lines]~~ agent of record must file with the stamping office ~~[comptroller]~~ its allocated ~~[allocation of]~~ premium and other information requested in the proper form and using the instructions available from the stamping office ~~[distributed by the comptroller]~~ for these purposes.

(b) Unless 100 percent of the premium is preempted from taxation by federal law or is exempt from tax under Texas law ~~[meets the requirements of paragraphs (1)-(3) of this subsection]~~, an ~~[a surplus lines]~~ agent of record must ~~[shall]~~ file with the stamping office its allocation of premium in the manner prescribed by TDI ~~[the department]~~ and the stamping office.

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