

No. 2020-6384

**OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF INSURANCE**

Date: 07/03/2020

Subject considered:

Surplus Lines Stamping Office of Texas
Plan of Operation Amendment

General remarks and official action taken:

The subject of this order is the adoption of an amended plan of operation for the Surplus Lines Stamping Office of Texas (stamping office).

Background

On May 21, 2020, the stamping office submitted an amendment to the stamping office plan of operation to the Commissioner of Insurance under Insurance Code Section 981.153(b). The submission was assigned Petition Number O-0520-04.

On May 28, 2020, the Texas Department of Insurance informed the stamping office that the Commissioner rejected its amendment under Insurance Code Section 981.153(c).

On June 17, 2020, the Texas Department of Insurance held a public hearing on an amendment to the plan of operation proposed by the Commissioner. The Commissioner accepted written comments through the date of the hearing and accepted oral comments. The Commissioner considered the comments in preparation of this order.

The following findings of fact and conclusions of law are adopted:

Findings of Fact

1. On May 21, 2020, the stamping office board of directors approved an amendment to the plan of operation at a special meeting of the board.

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2. On May 21, 2020, the stamping office submitted the board's amendment to the plan to TDI with a request for Commissioner approval. The stamping office submitted the amendment to the plan under Insurance Code Section 981.153(b).
3. The stamping office's submission was assigned Petition Number O-0520-04.
4. On May 28, 2020, the stamping office was notified by the department that the Commissioner rejected the board's proposed amendment to the plan of operation because, among other things, it impeded the Commissioner's supervision of the stamping office and failed to sufficiently address deficiencies in stamping office operations.
5. On the May 28, 2020, the department also informed the stamping office that the department would hold a hearing on an amendment to the plan of operation proposed by the Commissioner under Insurance Code Section 981.153(c).
6. On June 3, 2020, the department posted on its website notice of the hearing on the Commissioner's proposed amendment to the plan of operation. The department also posted the text of the proposed amendment and requested that interested parties provide written comments on the proposed amendment. The stamping office posted on its website a link to the department's notice on the same date.
7. On June 17, 2020, a hearing was held on the Commissioner's proposed amendment to the plan of operation. Department staff discussed the Commissioner's proposed amendment, and two interested parties testified at the hearing.
8. In addition to the oral testimony, the department received five written comments on the Commissioner's proposed amendment.
9. The Commissioner's proposed amendment to the plan of operation reorganizes the plan of operation, aligns the plan with statutory requirements of Insurance Code Chapter 981, facilitates the Commissioner's supervision of the stamping office, addresses deficiencies in stamping office operations, provides direction to the board of directors and the stamping office, and ensures flexibility by removing elements from the plan best suited for operational procedures.

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10. The department reviewed all written comments and the testimony provided at the hearing. Changes were made to the Commissioner's proposed amendment to the plan of operation on the basis of the comments and testimony.
11. The Commissioner's proposed amendment, including revisions made in response to comments, is included in this order as Exhibit A.

Conclusions of Law

1. Procedures to administer the stamping office are established by a plan of operation approved by the Commissioner under Insurance Code Section 981.153(a).
2. The stamping office must submit any amendment to the plan of operation to the Commissioner, and an amendment to the plan of operation is effective on approval by Commissioner order under Insurance Code Section 981.153(b).
3. The amendment to the plan of operation submitted by the stamping office was not suitable on the basis of the findings stated in Finding of Fact No. 4 of this order.
4. If the stamping office fails to submit a suitable amendment to the plan of operation, the Commissioner may, after notice and hearing, adopt an amendment to the plan of operation under Insurance Code Section 981.153(c).
5. The amendment to the stamping office plan of operation as proposed by the Commissioner and revised in response to comments is a suitable amendment to the plan of operation under Insurance Code Section 981.153 on the basis of the findings stated in Finding of Fact No. 9 of this order.

Order

It is ordered that the amendment to the plan of operation for the Surplus Lines Stamping Office of Texas proposed by the Commissioner of Insurance and revised in response to comments, as included in this order as Exhibit A, is approved, effective the

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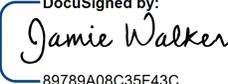
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date of this Commissioner Order.

By: 
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Kent C. Sullivan
Commissioner of Insurance

Recommended by:


89789A08C35F43C...
Jamie Walker, Deputy Commissioner
Financial Regulatory Division

Reviewed by:


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Moya McKenna, Attorney
General Counsel Division
Office of Financial Counsel

SURPLUS LINES STAMPING OFFICE OF TEXAS PLAN OF OPERATION

Senate Bill 989, 70th Legislature, Regular Session (1987), created the surplus lines stamping office of Texas (stamping office) and authorized it to operate under the supervision of the Commissioner of Insurance (Commissioner).

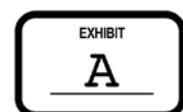
The stamping office is governed by a board of directors (board) that is appointed by the Commissioner. It is the board's responsibility to oversee the stamping office and to ensure that the stamping office conducts its operations in a manner that is prudent and fiscally responsible and is consistent with its statutory obligations. The board will hire an executive director to manage the day-to-day operations of the stamping office, as provided in the plan of operation, but the board cannot delegate its oversight responsibility or its function to govern.

The plan of operation also recognizes the Commissioner's authority to intervene in stamping office matters. However, unless otherwise provided by law or rule, nothing in the plan requires Commissioner action or otherwise absolves the board of its responsibilities over the stamping office.

The plan of operation is adopted under Insurance Code Chapter 981 and supersedes any prior plan of operation.

Section 1. General.

- (a) The stamping office is an unincorporated nonprofit association created under Insurance Code Chapter 981.
- (b) The Commissioner supervises the stamping office, which operates under a plan of operation approved by the Commissioner.
- (c) An amendment to the plan of operation is effective on written approval of the Commissioner and governs the way the stamping office operates and discharges its responsibilities under Insurance Code Chapter 981 and 28 Texas Administrative Code Chapter 15.
- (d) The stamping office assists the Texas Department of Insurance (department) by performing duties under Insurance Code Chapter 981, 28 Texas Administrative Code Chapter 15, and the plan of operation.



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- (e) The powers of the stamping office are vested in the board, subject to the Commissioner's supervision.
- (f) The stamping office and all persons licensed as surplus lines agents under the Insurance Code are subject to the plan of operation.
- (g) Instances of reasonably suspected fraud, waste, or abuse by the board or the stamping office, or any board director or office employee, must be promptly reported to the department's deputy commissioner of the Financial Regulation Division, or the deputy commissioner's designee, and, if necessary, to any other authorized governmental agency.
- (h) The definitions in Insurance Code Chapter 981 and 28 Texas Administrative Code Chapter 15 apply to the plan of operation.

Section 2. Board of Directors.

(a) Appointment and Term.

- (1) The board consists of nine directors appointed by the Commissioner.
- (2) A minimum of four of the nine directors must represent the public and meet the requirements of Insurance Code Section 981.152.
- (3) Directors serve a term of three years and can be removed at the discretion of the Commissioner. Directors serve until their successors are duly appointed, except on removal from office or on resignation accepted by the Commissioner.
- (4) If a vacancy occurs on the board, the Commissioner can appoint an individual for the remainder of the unexpired term.
- (5) Directors must complete training on the Texas Open Meetings Act, Public Information Act, and general corporate governance before serving at their first board meeting. The training that the directors undertake must be submitted for review to the department's deputy commissioner of the Financial Regulation Division. If the deputy commissioner determines that the training is inadequate, he or she may require changes to the training.
- (6) Directors must sign a conflict of interest statement confirming that they do not have an interest that is in substantial conflict with the proper discharge of their

duties on the board. The conflict of interest statement must be submitted for review to the department's deputy commissioner of the Financial Regulation Division. If the deputy commissioner determines that the statement is inadequate, he or she may require changes to the statement.

- (7) Directors serve without compensation, but they may be reimbursed for actual, necessary, and reasonable expenses incurred in carrying out their duties and responsibilities, subject to subsection (b)(3) of this section.

(b) Duties.

- (1) The management of the affairs, property, and business of the stamping office is vested in the board.
- (2) The board must employ an executive director who will be responsible for the day-to-day management of the stamping office. The executive director will perform duties under the direction of the board and under policies developed by the board. The policies must be submitted for review to the department's deputy commissioner of the Financial Regulation Division, or the deputy commissioner's designee. If the deputy commissioner determines that any policy is inadequate, he or she may require changes to the policy.
- (3) The board must develop policies that address allowable and unallowable expenses and the approval of expenses. Travel policies and procedures should, when possible, mirror the Texas Comptroller of Public Accounts' (comptroller's) "travel" policies and procedures, located at <https://fmx.cpa.texas.gov/fmx/>.
- (4) The board selects and hires the executive director. The board must notify the Commissioner of its selection and the proposed terms of the offer at least five business days prior to making an offer. The Commissioner may reject the board's selection and the proposed terms. The executive director can be terminated by a majority vote of the board or at the discretion of the Commissioner.
- (5) The board must provide for an annual independent audit of the books and records of the stamping office, and the auditors must report directly to the board. A copy of the audit report must be promptly submitted to the department's deputy commissioner of the Financial Regulation Division, or the deputy commissioner's designee.
- (6) The board must develop an investment and cash management policy for the

stamping office, and that policy must be reviewed annually by the board. The policy may provide for reasonable delegation of deposit and withdrawal authority to such investment accounts for stamping office business consistent with prudent fiscal policy. The policy must be submitted for review to the department's deputy commissioner of the Financial Regulation Division. If the deputy commissioner determines that any policy is inadequate, he or she may require changes to the policy.

- (7) On receipt of the stamping office's proposed budget for the stamping office's operating and capital expenses and contingent expenses for the following calendar year (as described in Section 3(a)(4) of this plan of operation), the board's audit and finance committee must refer the budget to the department's deputy commissioner of the Financial Regulation Division before the board votes to adopt the budget. The board must adopt the budget before November 1 of each year.
 - (A) The budget must take into account unknown and unanticipated expenses as may reasonably occur and make provision for such expenses under prudent business practice. Projected reserves, except for funds for asset replacement, must not exceed two times the average of audited operating expenses for the five-year period immediately preceding the budget year.
 - (B) If the reserve balance is projected to exceed the limit under subsection (b)(7)(A) of this section in the upcoming year, within 30 days after the Annual Meeting the board must submit a written plan for reducing the amount of actual reserves within a reasonable time given the then-existing market conditions to the department's deputy commissioner of the Financial Regulation Division, or the deputy commissioner's designee.
 - (C) On the basis of the anticipated volume of surplus lines premium during the upcoming calendar year, the board must recommend for adoption by the Commissioner a stamping fee, as measured by premium, to be charged on all surplus lines filings submitted to the stamping office. The recommendation must be submitted to the deputy commissioner of the Financial Regulation Division within 30 days of the Annual Meeting and must include a description of the factors considered and whether the recommendation is to raise the fee, lower the fee, or take no action.
- (8) The board must utilize appropriate competitive bidding procedures for any

contract or group of related contracts above \$5,000. The bidding procedures should, to the extent practical, reflect best practices established in the comptroller's procurement and contract requirements, which are summarized in the State of Texas Procurement and Contract Management Guide, located on the comptroller's website at www.comptroller.texas.gov. The bidding procedures must be submitted for review to the department's deputy commissioner of the Financial Regulation Division, or the deputy commissioner's designee. If the deputy commissioner determines that the bidding procedures are inadequate, he or she may require changes to the procedures.

(c) Board Meetings and Duties.

- (1) All meetings must comply with the Texas Open Meetings Act, and they must be held in Texas.
- (2) The board must notify the department's deputy commissioner of the Financial Regulation Division, or the deputy commissioner's designee, at least three business days in advance of the public posting date under the Texas Open Meetings Act, except for an emergency meeting called under Texas Government Code Section 551.045. The notification should include a draft of the meeting agenda and meeting materials.
- (3) The board must hold regular meetings, with no fewer than four per calendar year. Board meetings may be called by the board chair, the Commissioner, or at the request of any three directors.
- (4) Because the Commissioner supervises the stamping office, representatives of the department may attend executive sessions of the board.
- (5) The first regular meeting of the board in the calendar year is designated as the Annual Meeting, during which the board must:
 - (A) elect officers, including a chair, vice-chair, and secretary;
 - (B) review the plan of operation and propose amendments, if any;
 - (C) review the operating expenses, schedule of fees, and annual report for submission to the department's deputy commissioner of the Financial

Regulation Division, or the deputy commissioner's designee; and

- (D) review, consider, and act on any other matters deemed by the board or the Commissioner as necessary for the administration and purposes of the stamping office under Insurance Code Chapter 981 and 28 Texas Administrative Code Chapter 15.
- (6) A quorum, consisting of a majority of the board, is required for the transaction of official business by the board. The board must act on majority of those directors present and must record the board's actions in the meeting minutes. An affirmative vote of two-thirds of the directors present is required to take the following actions:
- (A) adopt an annual budget;
 - (B) approve contracts that are not otherwise authorized to be approved by the executive director under Section 2(b)(2) and Section 3(a)(2) of the plan of operation;
 - (C) recommend for adoption by the Commissioner a schedule for stamping fees and other fees;
 - (D) borrow money;
 - (E) recommend to the Commissioner an amendment to the plan of operation; and
 - (F) authorize bank signatories in addition to those authorized under Section 3(a)(5) of the plan of operation.
- (7) The stamping office may not lend money.
- (8) A director, with approval of the chair, may participate in a board meeting by telephone or video conference call consistent with Texas Government Code Chapter 551.
- (9) The chair, vice-chair, and secretary hold office until the next Annual Meeting, or until their successors are elected and installed, unless removed under Section 2(a)(3) of this plan of operation.

- (A) The chair will preside at all meetings and perform all duties customary to the office, including the appointment of committees.
 - (i) The chair is an ex officio member of all committees.
 - (ii) The chair must sign contracts as established in the board policies under Section 2(b)(2), and as described under Section 3(a)(2)(A), of this plan of operation.
 - (B) The vice-chair performs all duties of the chair during the absence of the chair.
 - (C) The secretary must keep full minutes of the proceedings of the board and perform other duties customary to the office or assigned by the chair.
- (10) The board must have an audit and finance committee that meets quarterly and reports to the board.
- (11) Each board committee must have a charter that outlines the board committee's purpose its purpose and duties and is reviewed at least annually by the board. A copy of each charter must be submitted for review to the department's deputy commissioner of the Financial Regulation Division, or the deputy commissioner's designee, and posted on the stamping office's website. If the deputy commissioner determines that a charter is inadequate, he or she may require changes to the charter.
- (12) The board chair and executive director must schedule a meeting to communicate with the Commissioner, or Commissioner's designee, about the status of the stamping office's operations at least quarterly. The board chair and executive director must immediately elevate concerns about the conduct or operations of the board and stamping office to the deputy commissioner of the Financial Regulation Division, or the deputy commissioner's designee.

Section 3. Stamping Office.

(a) Stamping Office Operations.

- (1) The stamping office may employ persons, or contract with firms, corporations,

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- individuals, attorneys, or accountants, as necessary for the performance of its duties.
- (2) The board may authorize the executive director to approve and execute certain contracts on behalf of the stamping office. The executive director's authority to approve and execute contracts must be detailed in board policies established under Section 2(b)(2) of this plan of operation.
 - (A) Contracts that are for an amount over the dollar threshold established in the board policies under Section 2(b)(2) of this plan of operation, or a series of related contracts estimated to be cumulatively over the dollar threshold, must be signed by the executive director and board chair.
 - (B) All contracts executed by the executive director, or the executive director and chair, and must be promptly submitted to the board.
 - (3) The stamping office policies must ensure that:
 - (A) the independent auditor that performs the annual audit of the stamping office's financial statements reports directly to the board;
 - (B) the general counsel reports directly to the board; and
 - (C) the independent auditor and general counsel frequently and openly communicate with the department.
 - (4) The stamping office must submit a proposed budget for the stamping office's operating and capital expenses and contingent expenses for the following calendar year to the board's audit and finance committee.
 - (5) The stamping office's executive director and chief financial officer are authorized bank signatories.
 - (6) The stamping office may open one or more bank accounts in its name with the approval of the board.
 - (7) The stamping office may borrow money with the approval of the board.
 - (8) The stamping office must purchase bonds and insurance covering the stamping office, its directors, officers, employees, and agents of stamping office, and its

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properties and activities as it deems appropriate. The stamping office must prepare a detailed summary of bonds and insurance policies to include coverage, policy dates, premium, and limits for review and approval by the board at the third-quarterly board meeting and prior to procurement or renewal.

(b) Submission of Surplus Lines Insurance Policies.

- (1) All surplus lines agents must submit surplus lines insurance documents to the stamping office and must pay fees, as required under Insurance Code Chapter 981 and 28 Texas Administrative Code Chapter 15.
- (2) The stamping office must prepare, in cooperation with the department, a procedures manual with instructions on submitting surplus lines insurance documents to the stamping office. The stamping office must review the procedures manual annually and must post the manual on its website.

(c) Stamping Office Reporting Requirements and Information Requests.

- (1) The stamping office must report a surplus lines agent who is more than 90 days late paying stamping fees to the department's deputy commissioner of the Financial Regulation Division, or the deputy commissioner's designee.
- (2) The stamping office must record all surplus lines insurance filings and prepare and submit reports as required under Insurance Code Chapter 981 and 28 Texas Administrative Code Chapter 15.
- (3) The stamping office must prepare reports for other purposes as approved by the board, or as the department or the comptroller may request.
- (4) The stamping office must provide records and documents to board members for the purposes of overseeing stamping office operations, and to staff of the department or the comptroller on request for purposes of regulation, examination, or tax collection.
- (5) The stamping office must ensure that there is frequent and open communication between its employees and the department, and the stamping office must report to the board at least quarterly confirming that the communication has occurred.
- (6) The following must be submitted to the department's deputy commissioner of the Financial Regulation Division, or the deputy commissioner's designee:

- (A) the proposed and adopted budget;
 - (B) a copy of the annual audit;
 - (C) policies and procedures developed by the board or the stamping office;
 - (D) board committee charters;
 - (E) board meeting minutes; and
 - (F) an annual summary of operations that contains information on transactions, conditions, operations, and investments during the preceding year, and any matters and information required by the board.
- (7) The Commissioner may at any time require the stamping office to provide additional information with respect to any matter in evaluating the economic, efficient, fair, and nondiscriminatory operation of the stamping office.
- (d) Additional Duties and Powers.
- (1) The stamping office must assist the department and facilitate compliance with Insurance Code Chapter 981 and 28 Texas Administrative Code Chapter 15 by performing the following functions:
 - (A) identifying technical deficiencies in policy preparation and submission, and ensuring correction of deficiencies;
 - (B) identifying potential nonfraudulent violations of law or rules;
 - (C) notifying surplus lines agents of such potential nonfraudulent violations of law or rules and obtaining 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 potentially fraudulent violations of law or rules, including unauthorized transactions of the business of insurance;
 - (E) reporting to the department, within time frames specified by the department,

the following information:

- (i) evaluations of eligibility under 28 Texas Administrative Code Section 15.9 (relating to becoming an eligible insurer) and Section 15.301 (relating to evaluation requirements of surplus lines insurance coverage);
 - (ii) summaries of stamping office activities, including actions relating to deficiencies or potential violations of law or rules;
 - (iii) results of inquiries relating to complaints;
 - (iv) results of other actions under 28 Texas Administrative Code Section 15.107 (relating to requests for information);
 - (v) patterns and practices of any surplus lines agent that may constitute lack of compliance with the applicable insurance laws or rules;
 - (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, other allied lines (if available), and where the risk is located; and
 - (vii) compilations of premium volume by surplus lines agent and insurer, and kinds and classes of surplus lines insurance coverage;
- (F) conducting seminars and other educational programs relating to Insurance Code Chapter 981, 28 Texas Administrative Code Chapter 15, the plan of operation, and the procedures of the stamping office;
- (G) collecting information under Insurance Code Chapter 981 and 28 Texas Administrative Code Chapter 15;
- (H) communicating with surplus lines agents, surplus lines insurers, insurance industry advisory associations, and related trade associations;
- (I) communicating with the Commissioner, the department, and the comptroller;
- (J) providing information to surplus lines agents, including tax reports; and

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- (K) performing other activities required by 28 Texas Administrative Code Chapter 15.
 - (2) The stamping office is authorized by 28 Texas Administrative Code Section 15.107 (relating to requests for information) to make inquiries to carry out its functions under 28 Texas Administrative Code Section Chapter 15.
 - (3) The stamping office must report to the department's deputy commissioner of the Financial Regulation Division, or the deputy commissioner's designee, or in the case of information relating to taxes, to the comptroller any information collected under Insurance Code Chapter 981 and 28 Texas Administrative Code Chapter 15 that indicates a potential nonfraudulent violation of the laws or rules of this state that has not been corrected.
 - (4) The stamping office must make recommendations to the department's deputy commissioner of the Financial Regulation Division, or the deputy commissioner's designee, regarding eligibility under 28 Texas Administrative Code Section 15.301 (relating to evaluation requirements of surplus lines insurance coverage). The stamping office may change an eligibility recommendation on the basis of new or corrected information.
- (e) Indemnification.
- (1) The stamping office agrees to indemnify anyone who may serve or who has served at any time as a member of the board of directors, an officer, or an employee of the stamping office from liability arising out of the person's performance of services described in Insurance Code Chapter 981, 28 Texas Administrative Code Chapter 15, or the plan of operation.
 - (2) The stamping office does not agree to indemnify persons under subsection (e)(1) of this section if the person commits a breach of duty involving gross negligence, bad faith, dishonesty, willful misfeasance or malfeasance, or acts with reckless disregard toward the person's responsibilities under Insurance Code Chapter 981, 28 Texas Administrative Code Chapter 15, or the plan of operation.
 - (3) The stamping office may purchase insurance for a liability described under paragraphs (1) or (2) of this subsection, regardless of whether the stamping office will indemnify the board member or employee against the liability under Insurance Code Chapter 981, 28 Texas Administrative Code Chapter 15, or the plan of

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operation.

- (f) Antitrust activities are prohibited at all stamping office meetings and functions. The stamping office must establish an antitrust policy and submit it for review to the department's deputy commissioner of the Financial Regulation Division. If the deputy commissioner determines that the antitrust policy is inadequate, he or she may require changes to the policy.

- (g) Notwithstanding Government Code Section 556.002, the stamping office and its directors and employees must comply with Government Code Chapter 556, related to political activities by certain public entities and individuals, as if the stamping office funds are appropriated moneys.